**AGREEMENT TO MEDIATE**

This Agreement to Mediate ("Agreement") is signed by \_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ (collectively “Parties”), their respective attorneys, if represented, and \_\_\_\_\_\_\_\_\_\_ of Tuft, Lach, Jerabek & O’Connell, PLLC (“Mediator”) to create and clarify the mediation relationship. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa. The Parties desire to mediate all issues which might be involved in contested litigation. By signing this Agreement, the parties herein agree to abide by the provisions of this Agreement. This Agreement reflects each party's sincere intention to be fair and equitable during mediation.

**MATTER BEING MEDIATED:**

The matter being mediated is: .

**AGREEMENT TO BEGIN MEDIATION:**

The Parties, their attorneys (if represented), and the Mediator must sign this Agreement prior to commencement of mediation.

**IN CONSIDERATION OF THE ABOVE:**

1. ***Administrative Fee****.* By scheduling the mediation, the Parties agree that Tuft, Lach, Jerabek & O’Connell, PLLC will be paid a one-time administrative fee of $\_\_\_\_ even if mediation is later canceled.

2. ***Hourly Rate***. The Mediator will conduct the mediation and will be compensated at the rate of $\_\_\_\_ per hour for actual mediation sessions and for review of documents and preparation time. Retainer payment for mediation sessions will be made at least one (1) week before scheduled mediation session. After the process, the Mediator will, upon request, provide to each of the Parties or their attorneys (if represented) an invoice of the time and fees expended by Tuft, Lach, Jerabek & O’Connell, PLLC.

3. ***Division of Fees.*** Unless otherwise agreed by the Parties, the fees will be equally divided between the Parties.

4 ***Work Done Outside Mediation Room***. In addition to compensation for mediation sessions, Tuft, Lach, Jerabek & O’Connell, PLLC will be paid for the Mediator's work outside of the mediation session at the hourly rate set forth above, and for necessary associate fees at the rate of $\_\_\_ per hour, and for necessary para-neutral work at the rate of $\_\_\_\_ per hour. The Mediator’s work outside of the mediation session may include preparation for upcoming mediation sessions, preparation of the mediated settlement agreement, and discussions with the Parties, their attorneys, if represented, or with other persons concerning matters related to the mediation. Work by the para-neutral between sessions will be charged; this may consist of any extensive phone calls with Parties, or special work requested by the parties, or administering of cash flow projections and spreadsheets/balance sheets. These administrative costs will be billed to the Parties on an ongoing basis with payment due prior to the next mediation session or within 30 days of invoice, whichever occurs first.

5. ***Providing Requested Documentation.*** **Please send all documents to the Mediator electronically, and index said documents. Please send Excel Spreadsheets to the Meditator in electronic form, not PDF. Please copy the Mediator’s Paralegal and Legal Administrative Assistant on all emails to the Mediator.**

6. ***Scheduling of Mediations and Starting Times***. If either Party or their attorney (if represented) need to change their scheduled mediation, they must do so at least 48-hours in advance or 2 business days, whichever is longer. The Parties agree that they will pay Tuft, Lach, Jerabek & O’Connell, PLLC $\_\_\_\_ (in addition to the administrative fee discussed above) if mediation is canceled or rescheduled without 48-hour or 2 business days, whichever is longer, advance notice to Tuft, Lach, Jerabek& O’Connell, PLLC. In-session mediation time will be billed commencing with the time that the mediation is scheduled to begin, unless the delay in starting time is attributable to Tuft, Lach, Jerabek & O’Connell, PLLC.

7. ***Collection of Mediator’s Fees***. Should Tuft, Lach, Jerabek & O’Connell, PLLC be required to incur costs or fees in an attempt to collect the amounts due to Tuft, Lach, Jerabek & O’Connell, PLLC under this agreement, the Parties agree that they will be responsible for court costs, mediation costs, arbitration costs, and reasonable attorneys' fees, including payment of Tuft, Lach, Jerabek & O’Connell, PLLC’s normal hourly rate (as set forth above) if it represents itself, incurred in attempting to collect the amounts due under this Agreement, said responsibility to be proportionate to the amount of unpaid fees owed by each Party. The Parties are hereby notified that the Mediator may seek remedies from any applicable court for non-payment of fees pursuant to Rule 114.11(b) of the General Rules of Practice for the District Courts.

8. ***Guarantors*. In signing this Agreement, the attorneys for the Parties, if represented, guarantee their respective client's payments to Tuft, Lach, Jerabek & O’Connell, PLLC.**

9. ***Disagreements***. Should any disagreements arise between either Party and Tuft, Lach, Jerabek & O’Connell, PLLC concerning fees or charges, the Parties agree that they will use the services of a mediator to resolve the disagreement (after first trying to resolve it themselves), and should they not resolve the disagreement through mediation, they agree to submit the matter for binding arbitration pursuant to the terms of the Minnesota Arbitration Act.

10. The Parties agree that the Mediator is presiding at an alternative dispute resolution proceeding under Minn. State. Sec. 604A.32 and pursuant to said statute, he or she is not subject to civil liability except for injury caused by malice, bad faith, or reckless conduct.

**CONDUCT OF MEDIATION SESSIONS:**

The mediation process may be conducted in the manner that the Mediator believes will most expeditiously permit full discussion and resolution of the issues. The Mediator will assist the Parties in fully discussing and understanding each issue before agreements are made so that both Parties arrive at solutions that to them are fair and equitable. The Parties agree to negotiate in good faith.

**CONCERNS OF THE MEDIATOR:**

The Mediator may indicate verbally or in writing his or her concerns regarding any final decisions that the Parties make when the Mediator is concerned about or does not understand the Parties’ sense of fairness. The Mediator’s comments may appear in the Preliminary and/or Final Memorandum of Agreement.

**CONFIDENTIALITY OF MEDIATION SESSIONS:**

Although Minnesota Statutes and Rules of Court say that all communications, documents, and work notes made or used in mediation are confidential (i.e., not admissible in Court), we ask that the Parties contract with each other and with Tuft, Lach, Jerabek & O’Connell, PLLC to keep the mediation discussions and documents confidential. The Parties agree as follows:

1. ***Confidentiality Agreement***. The communications made during the mediation process are confidential, documents and work notes used in mediation are confidential, and the parties to this agreement will not call either the Mediator or any officer or agent of Tuft, Lach, Jerabek & O’Connell, PLLC as a witness in any litigation of any kind regarding the mediation sessions conducted by Tuft, Lach, Jerabek & O’Connell, PLLC; and, in like manner, the parties to this Agreement, shall be estopped from requiring the production of any records or documents or any other notes or papers prepared by or under the control of the Mediator or Tuft, Lach, Jerabek & O’Connell, PLLC for any purpose associated with the litigation of any issue(s) dealt with in mediation.

b) ***Neutral Experts***. The foregoing exclusions from evidence and exemptions of the Mediator and the parties to this Agreement from giving testimony or being called upon to produce documents shall apply also to the use of neutral experts and other professionals called upon by the parties in mediation.

c) ***Child Abuse/Bodily Harm***. Although mediators are not mandated by Minnesota Law to report Child Abuse Allegations, the Mediator may encourage self-reporting of any such allegation disclosed during the mediation process and in circumstances where the Mediator believes the safety of a child to be in question, the Mediator may report such information to the local Child Protection Agency. The Mediator may reveal information relating to the mediation if the Mediator believes the disclosure is necessary to prevent reasonably certain death or substantial bodily harm.

d) ***Professional Reporting Requirement***. The Mediator may make disclosures required by the Mediator’s rules of professional conduct.

e) ***Parties Shall Not Subpoena Mediator***. The parties to this Agreement agree not to subpoena the Mediator, any officers or staff of Tuft, Lach, Jerabek & O’Connell, PLLC, or any records or documents of the Mediator or Tuft, Lach, Jerabek & O’Connell, PLLC. Should any party to this Agreement attempt to compel such testimony or production, such party shall be liable for, and shall indemnify the Mediator and Tuft, Lach, Jerabek& O’Connell, PLLC against any liabilities, costs or expenses - including reasonable attorneys’ fees, (including Tuft, Lach, Jerabek & O’Connell, PLLC’s normal hourly rate, as set forth above, if it represents itself) - which the Mediator and Tuft, Lach, Jerabek& O’Connell, PLLC may incur in resisting such compulsion.

f) ***Mediation Conducted by Mediator***. Mediation conducted by the Mediator shall come within the purview of his/her professional privilege as established by Minnesota State Statutes, rules, court rules and any other protection enacted either before or after the commencement of mediation by the Parties.

g) ***No Recording of Mediation Session****.* The parties to this Agreement agree that they will not record any statements or conduct, nor will they share any information about their mediation on social media. No one other than the Parties, their attorneys, if represented, and the Mediator, may be present or listening in on video conference unless mutually agreed to in advance. **Digital, audio, or other recordings (hereinafter “recording”) during the process are strictly prohibited,** **by anyone other than the Mediator. The Parties and all others attending this proceeding agree not to make any recording of any part of this alternative dispute resolution process and agree not to provide any recording to the court, guardian ad litem, custody evaluator, therapist, or anyone else involved with this case.**

**FULL DISCLOSURE:**

The Parties agree that they will fully disclose to the other and to the Mediator all information and writings as requested by the Mediator, including financial statements, income tax returns, etc., and all information requested by the other Party if the Mediator finds that such other disclosure is appropriate to the mediation process and may aid the Parties in reaching a settlement. At the conclusion of the mediation process, the Parties may find that the Parties, or their attorneys (if represented) will request further verification and disclosure in order to aid their review and implementation of their decisions in mediation and the Parties agree that they will provide such information at the request of the other Party. Likewise, at the conclusion of mediation, the Parties agree that they will sign a sworn statement declaring that they have fully and truthfully disclosed all information concerning assets, liabilities, and income, if so requested by the Mediator or the other Party. The Parties agree that they will not provide false information. If one or both Parties refuse to divulge relevant, requested information, the Mediator, in his or her discretion, may declare an impasse and terminate the mediation session.

**PREPARATION OF BUDGETS:**

In cases where the preparation of budgets by each Party is an essential part of the mediation process, and if either Party fails or refuses to prepare a budget adequately reflecting his/her needs, the Mediator shall have the option of suspending mediation of this issue, or at their discretion, declare an impasse.

**PARTICIPATION OF CHILDREN AND OTHERS**:

Children of sufficient age or other persons having a direct interest in the mediation may participate in mediation sessions related to their issues with consent of the Parties and the Mediator.

The Parties and their attorneys (if represented) hereby authorize the Mediator’s staff, interns, externs, mentees and/or assistants to attend this process.

**PROHIBITION AGAINST TRANSFERS OF PROPERTY, CHANGE OR CANCELLATION OF INSURANCE, OR ANY OTHER ACTION THAT CHANGES THE MARITAL ESTATE:**

Upon beginning mediation, the Parties agree that they will not engage in any transactions that materially affect the status quo of the existing marital estate. They agree that transfers or sale of property without the written agreement of both Parties and their attorneys (if represented) is prohibited, except in the usual course of meeting ordinary monthly obligations. Likewise, they agree that cancellation or change of health insurance, life insurance, auto insurance or other benefits or beneficiary designations should not occur while the Parties are meeting in mediation.

**DRAFTING OF MEMORANDUM OF AGREEMENT:**

At the conclusion of the mediation sessions, the Mediator, if requested by the Parties or their attorneys (if represented) will draft a Memorandum of Agreement (“Memorandum”) setting forth the decisions agreed upon by the Parties in mediation. The Memorandum may contain background information about the Parties and may set forth the factual information relied upon by the Parties in reaching settlement. This Memorandum will not be a legally binding agreement but is intended to provide an outline for the Parties and their attorneys, if represented, with which to prepare a legal binding agreement. Any new or omitted issues raised by the attorneys will be returned to mediation if the Parties and their attorneys are unable to efficiently and cooperatively resolve such new or omitted issues.

The parties agree that they and their lawyers (if represented) may sign this agreement and to conduct other transactions by electronic means and they waive any right they may have to argue otherwise.

**RULE 114 NOTICES:**

Pursuant to Subd. 7 (b) of the Code of Ethics for Court-Annexed ADR Neutrals under Rule 114 of the General Rules of Practice for the District Courts, the Parties are hereby notified:

1. The Mediator has no duty to protect the interests of the Parties or provide them with information about their legal rights;
2. no agreement reached in this process is binding unless it is put in writing, states that it is binding, and is signed by the Parties (and their attorneys, if they are represented) or put on the record and acknowledged under oath by the Parties;
3. signing a mediated settlement agreement may adversely affect the Parties’ legal rights;
4. the Parties should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights; and
5. in a family court matter, the agreement is subject to the approval of the court.
6. The Mediator must follow the Rule 114 Code of Ethics and is subject to the jurisdiction of the ADR Ethics Board.

**LEGAL REPRESENTATION:**

The Mediator does not legally represent either of the Parties. The Parties agree that legal advice and legal representation is not part of mediation and will not be provided by Tuft, Lach, Jerabek & O’Connell, PLLC. Effective legal representation is encouraged and it is strongly recommended that each Party retains an attorney of their own choice no later than at the conclusion of the mediation process. Tuft, Lach, Jerabek & O’Connell, PLLC recommends that the Parties retain legal representation at the beginning of the mediation process. By doing this, each Party will have a better understanding of their legal rights and responsibilities and will less likely be surprised by legal issues or concerns raised by their attorney after thinking that all decisions have been finalized. **ALTHOUGH TUFT, LACH, JERABEK & O’CONNELL, PLLC RECOMMENDS THAT EACH PARTY EDUCATE HIM OR HERSELF ABOUT THE LEGAL APPROACH TO THIS PROCEEDING, THE MEDIATOR WILL ENCOURAGE BOTH PARTIES TO DISCUSS AND NEGOTIATE A SETTLEMENT BASED UPON THEIR OWN STANDARDS OF FAIRNESS AND THEIR OWN DECISIONS ABOUT WHAT IS BEST FOR THEMSELVES AND THEIR FAMILY.**

If a Party is not represented, that Party is encouraged to choose and interview an attorney who will respect the work they have completed in mediation and who will provide them with an independent judgment of their decisions.

**MEDIATOR’S QUALIFICATIONS:**

The Mediator’s educational background includes a college and law school education. The Mediator has extensive experience as an attorney. The Mediator has been trained as a mediator, regularly attends continuing education in mediation and other forms of alternative dispute resolution, and is an experienced mediator.

**DISCLOSURE OF POSSIBLE CONFLICT OF INTEREST:**

The Parties and their attorneys, if represented, are aware of the following relationship(s) which may give rise to a conflict of interest: [DESCRIBE IF ANY, OR N/A]

The Mediator has been a lawyer and neutral in the Twin Cities Area for many years and has professional and social relationships with many attorneys and experts in the Twin Cities Area. The Mediator may have other mediations occurring which involve one or both of the attorneys, if any, that are involved with this matter. One or both of the attorneys involved in this matter, if any, may have referred mediation matters to the Mediator in the past and may be in the process of referring mediation matters to the Mediator at the present time. The Mediator represents that these relationships and said referrals will not interfere with his or her neutrality in this matter. If either Party has any questions about the extent of the Mediator’s relationship with any other professional in this matter, the Party agrees to ask these questions prior to signing this Agreement, and, if desired, whenever a new attorney or expert is added in this matter.

To the extent applicable, by signing this Agreement, the parties to this Agreement waive the potential conflict of interest as they do not expect it to interfere with the Mediator’s impartiality.

**PHONE CALLS AND SPECIAL SAFETY CONCERNS**:

Tuft, Lach, Jerabek & O’Connell, PLLC has a general policy of not caucusing separately with either Party unless the Mediator believes it is necessary to do so to avoid a possible impasse or to reduce the intensity of the conflict. For this reason, the Parties are asked not to communicate with their Mediator outside of the working session about any issues of substance associated with a dispute. Procedural questions are permitted. **However, Parties are encouraged and permitted to discuss with the Mediator, either in sessions or in private, any concerns related to their physical or emotional safety and well-being as it relates to the mediation process**.

If the Party feels that separate (private) communications with the Mediator are imperative, they may call their Mediator and present their concern(s) and reason(s) for discussing the matter outside of the scheduled mediation sessions.

**DISTRICT COURT REFERRALS:**

In the event you have been ordered to mediation by one of the District Court Judges through a Court Order, there may be other requirements contained in the Court Order and Parties are expected to follow all Orders of the Court. Special Orders for Protection and other requirements may be in force and these requirements by the Court will be discussed at the first mediation session. Any other special rules created and adopted by the Parties will be contained in the Memorandum prepared by the Mediator.

**WITHDRAWING FROM MEDIATION:**

It is understood and agreed that mediation is a voluntary process and any party to this Agreement is free at any time to terminate their participation therein upon notice to the Mediator. If a party is considering withdrawing from mediation, the party is asked - but not required - to return to the mediation table for a short session sufficient to provide an opportunity to clear up misunderstandings, if any, and to assure that all participants are on notice that other alternative dispute resolution processes may be pursued. The Mediator agrees not to charge any fee for this short session, unless both parties choose to go forward with mediation.

**RELEASE TO TALK TO THE PARTIES’ ATTORNEYS:**

The Parties authorize the Mediator to discuss issues related to the mediation with their attorneys, (if represented) at the Mediator’s discretion.

**DESTRUCTION OF MEDIATION FILE:**

The parties agree that the Mediator may destroy the entire file within thirty (30) days of the last mediation session.

**COUNTERPARTS:**

This Agreement may be signed in counterparts, each of which, when taken together shall constitute one and the same instrument.

By signing this Agreement each party agrees to abide by and be bound by the provisions within it, both as between themselves and as between the parties and Tuft, Lach, Jerabek & O’Connell, PLLC.

**TUFT, LACH, JERABEK & O’CONNELL, PLLC**

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

, Mediator Date

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