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Agreement to Mediate

The parties to this Agreement wish to work toward a settlement of the above-referenced claim through the process of mediation conducted by Judge Gil Jones ("Mediator"). The parties to this Agreement hereby agree to the following, and further that this Agreement is made also for the benefit of the Mediator who is entitled to rely on it:

1. **BINDING PROCESS.** Participation in the mediation process is voluntary (or participation is court-ordered), however the parties expressly understand and agree that any agreements reached as a result of mediation will be binding and should be reviewed by their attorneys before finalization.
2. **MEDIATION FEES.** The parties understand that MEDIATOR charges for mediator services provided in this case. The fee is a combination of a flat fee for a ½ day or full day of mediation that includes a maximum amount of administration and preparation time, plus a possible hourly rate for extra preparation, overtime sessions and post-mediation time. All mediation fees will be pre-collected or billed to the appropriate attorneys of record or insurance companies, in accordance with the terms of the MEDIATOR fee schedule. Attorneys are responsible for mediation fees generated on behalf of their clients. A separate schedule of mediation fees including the rescheduling and cancellation policy is attached and is a part of this Agreement.
3. **APPOINTMENT OF MEDIATOR.** The parties have agreed to the selection of Judge Guilford "Gil" Jones to serve as mediator in this dispute, or understand that he has been appointed by the Court if that is the case. The parties understand that the mediator is an independent contractor and is not serving as the attorney for either side. The mediator may not have any financial or personal interest in the outcome of the mediation and must disclose any circumstances which create a presumption of bias or cause a delay in the mediation process.
4. **ATTENDANCE AT MEDIATION:** The Parties agree that the Party personally shall attend mediation, or if the party is an entity or insurance carrier, it will have a designated representative with authority to negotiate in good faith and settle the matter in attendance. Anyone other than a Party or a party's designated representative and their respective counsel may not attend mediation without the Mediator's consent. Such consent must be secured prior to the day of mediation. The Mediator has the discretion to exclude any non-party or non-representative from attendance at mediation.
5. **CONFIDENTIALITY.** The parties recognize that mediation proceedings are settlement negotiations, and that all offers, promises, conduct and statements, whether written or oral, made in the course of the proceedings, are inadmissible in any mediation or court proceeding except to the extent allowed by applicable state law. The parties agree to not subpoena or otherwise require the mediator to testify or produce records, notes or work product in any future proceedings, and no audio recording or stenographic record will be made of the mediation session. Evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation session. In the event the parties do reach a settlement agreement, the terms of that settlement will be admissible in any court or mediation proceedings required to enforce it unless the parties agree otherwise. Information disclosed to the mediator in a private caucus shall remain confidential unless the party authorizes

disclosure. . **However**, (applicable if a child is involved) *if the mediator has cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person, the mediator is obligated by law to report it to the appropriate authorities and that those specific issues are not covered by the confidentiality of a mediation session.*

6. **MEDIATOR MAY MEET PRIVATELY WITH PARTIES:** The Mediator may meet privately with any of the parties, their counsel, or any combination thereof, and have such ex parte communications with any of the foregoing, before, during, or after the mediation, as the Mediator deems necessary and appropriate and within the scope and purpose of mediation and attempted settlement. The parties acknowledge and agree that the Mediator may request the parties and their counsel to meet in a group and discuss the issues and attempt settlement. In any case, the parties agree it is within the sole discretion of the Mediator whether private or group sessions will be required.
7. **SETTLEMENT AGREEMENT TO BE INDEPENDENTLY REVIEWED:** The parties acknowledge that if a partial or final settlement agreement is reached as a result of the mediation, the parties and their legal counsel shall be responsible for drafting the terms, obligations, and agreements of the parties in a written mediated settlement agreement. Any assistance provided by the Mediator in drafting the mediated settlement agreement shall be limited only to word processing or otherwise transcribing the terms, obligations, and agreements dictated by the parties and their respective legal counsel. Each Party shall have legal counsel review any proposed mediated settlement agreement prior to signing same. Each Party acknowledges that the Mediator is not providing legal advice or legal services in connection with transcribing any mediated settlement agreement.
8. **LEGAL REPRESENTATION.** All parties recognize that at the mediation session(s) and at every other point of the proceedings:
 - the mediator will not be acting as a legal advisor or representative for any or all parties;
 - the mediator has no duty to assert, analyze or protect any party's legal rights or obligations;
 - the mediator will not be responsible for drafting or filing any legal documents; and
 - the mediator makes no guarantee that the mediation session(s) will result in a settlement of all issues.
9. **TERMINATION OF MEDIATION.** The parties and their counsel acknowledge the Mediator has the sole discretion to terminate the session at any time if the Mediator believes an impasse has been reached, or that mediation should not be continued for any reason. The Parties agree that mediation will continue until such time as the Mediator terminates the mediation, even if the mediation session extends beyond the conclusion time stated in this Agreement.
10. **MEDIATOR TO ADVISE COURT OF OUTCOME:** The parties acknowledge that upon completion of mediation, the Court will be advised by the Mediator only whether or not the case was resolved/settled, or whether the mediation was recessed or was reset.
11. **NO ACTION AGAINST MEDIATOR.** The parties specifically stipulate and agree that no action may be brought against the Mediator arising from the discharge of his duties in connection herewith, and expressly agree that neither the Mediator nor anyone employed by or affiliated with him shall be liable to any party or its counsel for any act or omission relating in any way to or in connection with this mediation. Each party expressly covenants not to commence an action or administrative proceeding, in court or in mediation, against the Mediator concerning his services as Mediator. No party or counsel will ever subpoena the Mediator to testify in any action or proceeding, in mediation or otherwise, as to anything arising out of, relating to or

connected in any way with this mediation proceeding. The parties also agree that neither the Mediator nor anyone employed by or affiliated with him are in any way necessary parties in any judicial proceedings related in any way to this mediation proceeding. Each party agrees to hold the Mediator harmless against any claims, demands or lawsuits. The parties further agree that in the event a party does subpoena the Mediator to testify, that party shall compensate the Mediator at \$400 per hour for all the Mediator's time and expense related to the Mediator's response to the subpoena.

12. FINALITY OF AGREEMENTS AND RIGHT TO COUNSEL. All mediation participants are expressly advised to consult with independent legal counsel before signing any documents which result from the mediation process. All parties recognize that any agreements reached during the course of this mediation will be legally binding. **All parties recognize that any agreements reached during the course of this mediation will be legally binding.**

**WE HAVE READ AND UNDERSTOOD THE TERMS OF DOCUMENT AND HEREBY
AGREE TO BE BOUND BY ITS TERMS.**

DATED: DATE

(signature lines will be added here)

