

MEDIATION AND CONFIDENTIALITY AGREEMENT

The undersigned parties (referred to individually as “Party” and collectively as “Parties” or “You”) to this Mediation and Confidentiality Agreement (“Agreement”) agree to participate in a Mediation (“Mediation”) conducted by Steven M. Sepassi (“Mediator”) in the case entitled:

Case Number: _____, and they further agree as follows:

1. **Role of Mediator:** Although the Mediator is an attorney licensed to practice law in the State of California, in these proceedings the Parties have chosen the Mediator to act solely as an impartial, neutral intermediary, to aid them in reaching a settlement, resolve claims and clarify issues by negotiation between or amongst themselves. The Mediator shall not decide who prevails in the dispute, and shall not render an award, verdict, judgment, or otherwise determine fault or blame. The Parties acknowledge, understand and agree that the Mediator does not act as an attorney or advocate for, or give legal, tax or other professional advice to, any Party. In this regard, no professional-client or fiduciary relationship is created between any Party and the Mediator.
2. **Representation of Parties:** The Parties acknowledge that they are free to consult an attorney at any time during the Mediation process. The Parties are specifically encouraged to have their attorneys review any settlement agreement, or other agreement, reached through Mediation, prior to signing it. Each Party who is represented by counsel confirms that said Party is relying solely upon such counsel for legal advice.
3. **Privileged Statements and Confidentiality:** This Mediation is conducted consistent with California Evidence Code Sections 703.5, 1115 through 1128, 1152, and California Code of Civil Procedure Section 1775.10, and other sections of successor statutes of the California State Codes, if applicable, governing among other things, the confidentiality of Mediation proceedings.

No written or oral communication made by the Mediator or any party, attorney or other participant in preparation for, during the course of, or subsequent to but regarding the Mediation (the “Mediation Process”) may be used for any purpose in any pending or future proceedings unless all Parties, including the Mediator, so agree in writing. Disclosure during the Mediation proceeding of information that otherwise is privileged shall not alter its privileged character.

The Parties shall not subpoena the Mediator or any documents submitted to or prepared by the Mediator during or in connection with the Mediation process. The Mediator shall not testify voluntarily or on behalf of a Party. This Agreement shall not render inadmissible a written settlement agreement reached as a result of this Mediation in an action to enforce that settlement.

4. **Waiver of Liability and Indemnification:** The Mediator shall have no liability for any action or omission in connection with the conduct or results of the Mediation, and the Parties hereby release the Mediator from any and all claims arising out of (i) any purported acts or omissions by any of the participants in the Mediation in connection with the conduct thereof or the results of the Mediation, (ii) the Parties’ failure to reach agreement, (iii) the Parties’ decision to enter into any agreement, or (iv) any other aspects of the Mediation process. Any Party who attempts to or does bring any claim, action or proceeding of any

nature against the Mediator, or who seeks to have the Mediator testify, shall be responsible to indemnify the Mediator from any expenses, loss or damage incurred, including without limitation, attorney's fees and expenses incurred in connection with such claim, action or proceeding.

5. **Fees for Mediation:** By signing this Agreement, the Parties hereby understand, acknowledge, and agree that continuation of the Mediation beyond the scheduled ___ hours of the first session shall be deemed agreement by the continuing Parties to compensate the Mediator at \$400.00 per hour for all his time incurred thereafter.

6. **Potential Conflicts of Interest:** By signing this Agreement, the Parties hereby understand, acknowledge, and agree that I have made any and all disclosure of potential conflicts of interest that would be grounds for my disqualification in accordance with California Code of Civil Procedure Section 170.1 (applicable to judges and by reference to Mediators), or applicable federal laws, or that would affect my ability to be impartial. By signing this Agreement, the Parties expressly waive any conflicts and potential conflicts that may have been disclosed. If any party believes that the Mediator is not impartial, said Party should immediately terminate the Mediation.

7. **Informed Consent:** Attorneys who act as mediators to resolve disputes between non-clients of that attorney are not counsel for either party during the mediation. However, during the course of the mediation, the Mediator may receive confidential information from the Parties and/or their counsel and/or the insurer(s). By signing this Agreement, you hereby understand, acknowledge, and agree that the Mediator has disclosed to you that he is a practicing attorney and that as part of his ongoing law practice in representing both plaintiffs and insured defendants, from time to time he may be involved in actions that may involve the Parties herein and/or their counsel and/or the insurer(s) of the Parties herein. Further, by signing this Agreement, you hereby understand, acknowledge, and agree that you will not seek to disqualify the Mediator or his firm in any subsequent litigated/adversarial matter, while unrelated to the instant mediation, which may nevertheless involve one or more of the undersigned parties, their counsel or the insurance company(ies) involved.

8. **Electronic Signature(s):** I agree that this document can be signed electronically, and that any electronic communication indicating, or purporting to be, an agreement to and/or affixing a signature to this document will be deemed as a valid signature to this entire agreement. For example: "for purposes of your Mediation and Confidentiality Agreement, which I have reviewed, you can use this response as my electronic signature on behalf of myself, as well as the authorized electronic signature(s) on behalf of all other person(s) who will be participating in the mediation and who would have otherwise been in my 'room' had the mediation been in person, and our collective acceptance of all terms stated in said document" or some variation thereof shall be deemed as an electronic signature to this document.

We have read, understood, and agree to be bound by the terms of the above Agreement.

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