

[L & B Letterhead]

MEDIATION AGREEMENT

This is an Agreement between _____, _____, (the “Parties”), and [Hon. Michael F. Mullen] of the law firm Lamb & Barnosky, L.L.P. (the “Firm”), as mediator (“Mediator”), to enter into mediation in an effort to resolve issues regarding:

_____ (the “Dispute”).

The undersigned Parties, their respective counsel, and the Mediator agree to enter into mediation under the following terms and conditions:

1. Appointment of Mediator. The Parties jointly accept [Hon. Michael F. Mullen] of the Firm as mediator of their Dispute.
2. Nature of Mediation. The Parties and their counsel understand that the purpose of mediation is to give the Parties the opportunity to reach their own resolution of the Dispute through the assistance of a mediator. The Mediator will not make decisions for the Parties, but will lead the negotiation process to assist the Parties in exploring the contentions raised and to assist the Parties in generating options for settlement. The Parties agree to mediate this dispute in good faith.
3. Mediation is Voluntary. Any settlement reached by the Parties is voluntary and achieving settlement is in no way mandated. The mediation may be terminated at any time by the Mediator or by any of the Parties.
4. Confidentiality. The Mediator will keep the information gathered in the mediation process confidential, except as otherwise provided for in paragraph 5 of this Agreement. The mediation process shall be considered a settlement negotiation for the purpose of all federal and state rules protecting disclosures made during such conferences from later discovery or use in evidence. The Mediator will meet in joint session with the Parties and counsel, and also in separate caucus(es) with a Party and counsel. All statements, oral or written, made during the mediation process by any Party or a Party’s agent, employee or counsel are confidential. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any court, administrative or other proceeding involving any of the Parties. Additionally, but without limitation, mediation discussions, documents exchanged or utilized in the mediation process, mediation position statements, the Mediator’s notes, and any draft settlement agreements shall not be admissible in any court, administrative or other proceeding. Only a settlement agreement signed by all Parties may be so admissible. However, evidence otherwise subject to discovery or admissible is not excluded from discovery or admission into evidence simply as a result of it having been used in connection with this mediation process.

5. Mediator Not to Be Witness. The Parties and their counsel agree not to call the Mediator or any member or employee of the Firm as a witness to testify in any proceeding and agree not to subpoena or otherwise seek discovery of any written materials developed for or in the course of this mediation.

In no event will the Mediator or the Firm voluntarily testify on behalf of any Party. Nothing contained herein shall be construed to prevent the Mediator or the Firm from disclosing such matters as the Mediator or the Firm is required by law to disclose, for example, but without limitation, matters such as imminent threats of bodily injury or matters as to which the Mediator or the Firm is required by court order or the law to disclose. Furthermore, nothing in this Agreement shall prevent the Mediator or the Firm from disclosing facts in connection with collecting a fee pursuant to this Agreement or in defending the Mediator or the Firm in any action or proceeding relating to the liability of the Mediator arising from this mediation.

6. Mediator's Role. The Parties understand that, although the Mediator is an attorney, the Mediator does not provide legal or financial advice and is not functioning as an attorney for any party in the mediation of this matter. The Parties understand that mediation is not a substitute for legal advice of their own counsel. The Parties are encouraged to secure such legal advice from their own counsel throughout the mediation process and are strongly advised to obtain independent legal review of any formal mediated agreement before signing that agreement.

7. Mediator's Disclosures. The Parties understand that the Mediator will remain impartial throughout the mediation process. The Mediator has disclosed any matters which the Mediator believes may present a potential conflict or may impact his/her impartiality and/or neutrality in this mediation. By signing below, the Parties accept the Mediator based on the disclosures made.

8. Mediation Fees and Expenses. The Parties, the Mediator, and the Firm agree that the fee for the mediation shall be as follows:

- Hon. Michael F. Mullen: \$_____ per hour

This hourly rate shall apply to all of the Mediator's time spent on this Dispute, including preparation time before, during and after the mediation; time spent in reviewing materials provided by the Parties, researching issues, corresponding, telephoning or otherwise communicating with the Parties or their counsel; time mediating the case and drafting and preparing an agreement; travel time to and from the mediation if the mediation is held at a location other than the Mediator's office; and for time to do such other things as may be reasonably necessary to facilitate the Parties reaching an agreement.

The Parties shall also reimburse the Mediator and the Firm for all expenses incurred as a part of the mediation process.

The Parties shall be jointly and severally liable for the mediation fees and expenses.

As between the Parties only, responsibility for the mediation fees and expenses shall be apportioned as follows:

An advance payment of \$_____ toward the mediation fees and expenses shall be paid to the Firm along with the signing of this Agreement. Any unearned amount of this advance payment will be refunded to the Parties.

The Parties will be provided with a monthly bill of fees and expenses by the Firm. Payment of such fees and expenses is due to the Firm no later than 15 days following the date of such billing, unless otherwise agreed in writing.

I have read, understand and agree to each of the provisions of this Agreement. Entered into and agreed to this ____ day of _____, 200__.

Plaintiff

Defendant

Plaintiff's Counsel

Defendant's Counsel

Mediator

LAMB & BARNOSKY, LLP

Eugene R. Barnosky, Partner