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## AGREEMENT TO MEDIATE

The undersigned parties, having agreed and/or been court ordered to participate in a mediation to be conducted by **Timothy Kemery LCSW**, Mediator, for the purpose of compromising, settling, and or resolving disputed claims, or other family matters, hereby agree as follows:

1. **Mediation Proceedings:** Mediation is a voluntary process in which the parties and or their counsel agree to meet with a neutral mediator to assist them in settling their dispute. The mediator will assist in the process of communication, articulation, and understanding between the parties who, always, remain in control of the mediation process and any agreements reached. The parties fully understand and acknowledge that the mediator is a neutral facilitator of the mediation process.
2. **Authority of the Mediator:** During the course of the mediation, the mediator is authorized to conduct joint and separate meetings with the parties and or counsel and, at his discretion, to discontinue the mediation. The parties understand and specifically acknowledge that the mediator is not acting as an attorney or advocate for any part and that any recommendations and or statements of the mediator do not constitute legal advice. The parties further acknowledge that they have been advised by the mediator to seek and rely on the advice of their own counsel in connection with any settlement proposal or agreement in this matter. The parties agree that the mediator is authorized to report to the court concerning the process of the mediation.
3. **Confidential and Privileged Nature of Mediation Proceedings:** All communications, written and oral, made in connection with mediation are confidential and shall not be disclosed to anyone without the specific authority of the parties involved. All documents submitted for the mediation will either be returned to the submitting party or destroyed by the mediator at the conclusion of the mediation. Neither the confidential mediation conference statements nor communications of any kind made in the course of the mediation may be used by a party with regard to any aspect of subsequent, concurrent litigation or trial concerning the issues involved in the mediation. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its disclosure or use during the mediation proceedings. Evidence that the parties have entered into a written mediated settlement agreement may be disclosed and is admissible to the extent necessary to enforce the settlement.
4. **Exclusion of Mediator Testimony and Limitation of Liability.** The mediator shall not be subpoenaed or otherwise compelled by any party, or any person acting on behalf of any

party, to testify in any civil proceeding and shall not be required to provide a declaration or finding as to any fact relating to the mediation proceeding or the dispute which is the subject of said mediation proceedings. The party on whose behalf any such effort is made to compel testimony agrees to pay all legal costs incurred by the mediator in protecting and enforcing this exclusion provision. The mediator shall not be liable to any party for any act or omission in connection with the mediation proceedings conducted pursuant to the Agreement.

5. **Mediator Services and Compensation:** The mediator's services shall include attendance at mediation conferences and, if required, preparation of any agreements and or memoranda of understanding, between the parties. The mediator shall be compensated at the rate of **\$200** per hour, charged in ¼ hour increments. The parties shall share the mediator's fees equally unless otherwise indicated here: \_\_\_\_\_.

Compensation is due at the time services are provided. Any other agreed payment arrangements are subject to the following: invoice due upon presentment, invoice overdue at 30 days interest accrue at 2% monthly on unpaid balances. Invoice referred for collection at 60 days. The parties to this agreement agree to payment of all costs of collection, including court costs and attorney's fees at one-third of the amount sought in the collection (Plus \$50.00 and statutory fines for NSF checks).

6. **Filing of Pleadings during Mediation:** During the course of the mediation process, the parties agree not to institute any court action or litigation, discovery, or other legal processes pertaining to custody or visitation issues without first discussing such intentions in mediation.
7. **Warranties of Mediator:** The parties agree that the Mediator does not make any representation, warranties, promises, or other undertakings except those contained in this agreement, including but not limited to, any warranty or promise that the parties will resolve their dispute or successfully mediate any or all of the issues that were the subject of the mediation. The Mediator does not have any authority to make binding decisions or recommendations or complete the making of an agreement or enforce any agreement. Accordingly, the parties release the Mediator from any and all claims arising out of any agreement made by them as a result of the mediation process pursuant to this agreement and agree to indemnify and hold harmless the mediator from any loss or damage, including court costs and attorney's fees resulting from any such claim.
8. **Termination of Mediation:** The mediation will terminate either by resolution of the issues, completion of the court-mandated minimum number of sessions, or a decision by the mediator that the mediation would lead to an unjust or unreasonable result or that further mediation would not be appropriate.
9. **Counterparty Execution; Binding on Representatives:** This Agreement may be executed in any number of counterparts which when taken together shall constitute one fully executed Agreement. This agreement when so executed shall insure to the benefit of and be binding on the undersigned parties as well as their respective representative or

other persons they have caused to be present during these mediation proceedings  
(except the liability for payment of services shall be limited to the parties themselves).

The above terms of Mediation are agreed to by the following parties:

Signed \_\_\_\_\_

Signed \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

Signed \_\_\_\_\_

Signed \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Print Name \_\_\_\_\_

Print name \_\_\_\_\_

COUNSEL/REPRESENTATIVES

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

