



**MEDIATION PROCESS SUMMARY
&
AGREEMENT TO MEDIATE**

This AGREEMENT TO MEDIATE is signed by the parties and their mediator to create and clarify the mediation relationship and process.

PURPOSE OF MEDIATION

Mediation is designed to enable the parties to discuss and reach informed agreements, where desired, as to the best arrangements for the individuals and the family in a situation where spouses or parents are living apart or considering or intending to do so. The parties understand that it is for the parties, with the mediator's concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.

ROLE OF THE MEDIATOR

The mediator's role is to facilitate the parties' communication and understanding of the issues. The mediator will assist the parties in the discussion of the issues by advising them of the decisions to be made and, if needed, possible alternatives. The mediator will make no decisions but will simply help the parties make their own decisions.

The mediator will not be providing legal advice or any other legal assistance for either of the parties in the context of this mediation.

The mediator shall conduct the mediation in accordance with the professional standards and ethics as promulgated by the Model Standards of Practice for Family and Divorce Mediators, as adopted by the Family and Divorce Mediation Council of Greater New York and the Association of Conflict Resolution, Family Section.

VOLUNTARY

Mediation is a voluntary process, and any party or the mediator may terminate mediation at any time. It is recommended that any concern or dissatisfaction with the mediation process be discussed as soon as it may arise, to address such concerns in a timely and appropriate manner. Each party understands that because mediation is not always an easy process, he or she will make his and her best efforts to discuss the consideration of withdrawing from the process in the presence of the other party and the mediator, in attempt to make the most informed decision possible.

FAIRNESS

Although each party may have conflicting interests and would be adversaries if the issues were presented to a court, the goal in mediation is to jointly problem solve towards finding a fair and equitable solution for all interested parties.

COMMUNICATION GUIDELINES

The most productive atmosphere for mediation is created when each person shows respect for the opinions and attitudes of the other even where there is disagreement. Difficult conversation can be improved if one speaks for him or her self and refrains from telling the other what he or she needs, wants or thinks.

SHARING OF INFORMATION

The parties recognize that in order to reach a satisfactory decision, and towards the goal of reaching informed decisions, each party needs to be able to talk in a free, open and honest atmosphere. To help create this atmosphere, the parties agree to exchange all information and documentation available relating to the subject of this mediation and that such information shall be confidential, as provided below. If applicable, the parties agree to complete financial disclosure statements including but not limited to a listing of all retirement accounts and other tangible and intangible assets, all forms of income, and copies of current (and prior) tax returns, and any other requested or relevant financial documents. If either party has any reason to doubt the honesty, accuracy or completeness of the other's disclosed relevant information, it is agreed to inform the mediator as soon as such concern arises.

CONFIDENTIALITY

The voluntary nature of mediation relies on the development of trust from increasing openness and risk taking. As a result, everyone involved in mediation, all information shared, and the mediation process itself, needs the protection offered by complete confidentiality to all outside parties and proceedings, unless express verbal consent is given by both parties. This confidentiality provision shall apply to any attorneys participating in the process and any additional neutral professionals involved in the mediation process.

It is agreed that all communications between the parties and the mediator(s) about the dispute come within the rules of evidence, which exclude from court or any other proceeding any disclosures made with a view towards settlement. However, when credible information concerning child abuse or neglect or serious threatened harm to anyone comes to the attention of the mediator(s), he may not adhere to confidentiality restrictions.

Since the law is still developing as to the extent a mediator is protected by the laws of confidentiality, by signing this Agreement to Mediate, you agree that you will not call the mediator as a witness to testify in any court or in any other proceeding regarding any aspect of the mediation. The parties shall not require the production in court or in any other proceeding any records or documents made by the mediator. If either party decides to subpoena the mediator or his records, the mediator will move to quash the subpoena. That party agrees

herein to reimburse the mediator for whatever expenses he incurred in such action (including attorney fees) plus the hourly rate charged by the mediator for his time taken up by this matter.

PRESERVING THE STATUS QUO

While mediation is ongoing, the parties agree not to (1) buy, sell, transfer, conceal or dispose of any property that may be the subject of this mediation (except in the ordinary course of business), (2) make any changes in insurance(s) or (3) make any significant changes in the status quo, without first discussing the issues in mediation so that both parties can have input into how any such changes would be made.

The parties understand that they cannot in good faith work both cooperatively and litigiously at the same time and therefore agree to refrain from pre-emptive maneuvers and adversarial legal proceedings (except in the case of an emergency), while actively engaged in the mediation process.

FEE

Fees for mediation services are \$ 100.00 per hour, and prorated for parts of an hour. For all time on this matter other than face-to-face meetings, a \$100.00 per hour fee shall apply, including but not limited to correspondence including letters, e-mails, and telephone calls (other than for scheduling appointments), drafting or reviewing parties' documents, and consulting with advisory counsel. Unless otherwise agreed, fees shall be paid at the end of each session, and at the next session for any time spent by the mediator between sessions.

It is agreed between the parties that these fees shall be split equally between them. The parties understand that these fees are not contingent upon the "success" of the mediation. In the event that either or both parties should fail to pay any and all fees as defined in this Agreement, each party shall be held responsible for any and all costs incurred by the mediator in the collection of such fees.

MEDIATION NOT BINDING

None of the agreements made in mediation are binding until a formal agreement is signed with proper legal formalities. Even if the parties agree to something in one meeting, all agreements are regarded as tentative to allow for the opportunity to consider carefully and to obtain separate legal advice about the meaning and effect of the agreement. If a party changes his or her mind about an agreement made in one meeting after he or she leaves and reconsiders it, this is acceptable and is not regarded as a broken "promise". Careful thought is needed before any agreement is finalized.

SAFETY

Each party agrees that if there has been any violence or abuse in their relationship that may limit his or her ability to effectively participate in mediation or raise any safety concerns, that party will report this to the mediator. Regarding safety issues, parties may inform me either directly during a mediation session, or confidentially in a private session or by telephone. If this issue arises, we will then discuss whether mediation can proceed and

develop an appropriate plan of action. Parties also agree to notify their respective attorneys of any concerns they may have in this regard.

INDEPENDENT COUNSEL AND ADVISORS

The parties understand that the mediator does not represent either or both of them. During the mediation, the parties are each encouraged to consult with or be represented by an independent attorney at any time, certainly before any agreement is signed. Such representation serves to ensure a better understanding of the legal issues, as well as each party's legal rights and responsibilities. At the request of either party, the mediator can be available to speak with the attorneys. If interested, the mediator will provide parties with a list of attorneys who are familiar with mediation and who can serve as independent counsel while still supporting the mediation process. Attorneys serving in this process are best used not as advocates for particular positions, but as a resource of legal information and settlement alternatives to enable parties to represent themselves. The parties understand that the mediator cannot take responsibility for the level of review and/or involvement that each may choose for his or her respective attorney.

Other advisors, such as accountants or appraisers, may also be valuable during mediation and the mediator will recommend this when it seems appropriate. The information obtained from such persons shall be gathered in a manner mutually agreed on by the parties. The parties will make the actual selection of advisors and payment for their services.

This AGREEMENT TO MEDIATE is signed by the parties and the mediator and acknowledges the agreement to participate in the mediation on the basis of the Mediation Process Summary outlined herein, which we have read and understand and discussed generally with the mediator and the other party.

Dated: _____

Party 1 (Print and Sign)

Dated: _____

Party 2 (Print and Sign)

Dated: _____

Party 3 (Print and Sign)

Dated: _____

Andrew D. Lewis, Mediator (Print and Sign)