

**MEDIATION SERVICES FOR FAMILIES, COMMUNITIES,  
EMPLOYMENT, BUSINESS AND REAL ESTATE ISSUES**

**AGREEMENT TO MEDIATE**

This agreement to Mediate is signed by the parties and Michael Garelick to create and clarify the Mediation relationship. The parties desire to Mediate all issues which might be involved in contested litigation. The parties herein agree to abide by the provisions of this Agreement to Mediate. This agreement reflects each party's sincere intention to be fair and equitable during Mediation.

**MATTER BEING MEDIATED:**

The matter being mediated is \_\_\_\_\_

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**AGREEMENT TO BEGIN MEDIATION:**

All parties must sign this Agreement to Mediate prior to commencement of Mediation with Michael Garelick.

**IN CONSIDERATION OF THE ABOVE:**

- 1. Hourly Rate:** Michael Garelick will conduct the Mediation and will be compensated at the rate of \$200.00 hour for actual Mediation sessions. Payment for Mediation sessions will be made at the conclusion of each Mediation session. In addition, if is agreed upon by all parties, a co-mediator may be present for some or all of the Mediation sessions, and in that case the fees are \$ \_\_\_\_\_ per hour for the work done by Michael Garelick.
- 2. Work Done Outside the Mediation Room.** In addition to compensation for Mediation sessions, Michael Garelick will be paid for the Mediator's work outside of the Mediation session at the hourly rate set forth above. The Mediator's work outside of the Mediation session may include preparation for upcoming Mediation sessions, preparation of the Mediated settlement agreement, and discussions with the parties, their counsel or with other persons concerning matters related to the Mediation. Parties will also be charged for any long-distance phone calls associated with their case and for necessary word processing work. The anticipation of these costs will be explained to the parties, and payment will be due at that time or at the beginning of the next Mediation session.
- 3. Scheduling of Sessions and Starting Times.** If any party needs to change their scheduled appointment, they must do so at least 24 hours in advance. The parties agree that they will pay Michael Garelick \$100.00 if any appointment is canceled or rescheduled without 24 hour advance notice. Exceptions include circumstances such as significant illness or dangerous weather conditions, and in such cases a fee will not be charged. In-session Mediation time will be charged commencing with the time that the session is scheduled to begin, unless the delay in starting time is attributable to Michael Garelick.

**4. Collection of Mediator's Fees.** Should Michael Garelick be required to incur costs or fees in an attempt to collect the amounts due under this agreement, the parties agree that they will be responsible for court costs and reasonable attorney's fees.

**5. Disagreements.** Should any disagreement arise between either party or Michael Garelick concerning fees or charges, the parties agree that they will use the services of a Mediator to resolve the disagreement after first trying to resolve it themselves. And should they not resolve the disagreement through Mediation, they agree to submit the matter for binding arbitration pursuant to the terms of the Minnesota Arbitration Act.

**6. Conduct of Mediated Sessions.** The Mediation process may be conducted in the manner that the Mediator believes will most expeditiously permit full discussion and resolution of the issues. The Mediator will assist the parties in fully discussing and understanding each issue before agreements are made so that both parties arrive at solutions that to them are fair and equitable. The parties agree to negotiate in good faith.

**7. Concerns of the Mediator.** The Mediator may indicate verbally or in writing his concerns regarding any final decisions that the parties make when the Mediator is concerned or does not understand the parties' sense of fairness. The Mediator's comments may appear in the Preliminary and/or Final Memorandum of Agreement.

**8. Confidentiality of Mediation Sessions.** Although Minnesota Statutes and Rules of Court say that all communications, documents, and work notes made or used in Mediation are privileged (i.e. confidential), I ask that the parties contract with each other and with Michael Garelick to keep the Mediation discussions and documents confidential. By signing this **Agreement to Mediate**, the parties agree as follows:

- a) I understand that the purpose of this Mediation is settlement and agree to negotiate in good faith to resolve our differences in a mutually satisfactory way.
- b) I understand that this Mediation session is not to be used as a discovery tool and that the Mediator(s) will stop the Mediation if he/she believes this is occurring during the Mediation session.
- c) I understand that the Mediator's role is to help the parties clarify their issues and interests, explore and evaluate options for settlement, and assist in writing up an agreement. I understand that the Mediator(s) will not make decisions for the parties in the resolution of the disagreement. I understand that the Mediator(s) may not offer legal advice to anyone participating in this Mediation session.
- d) I understand that discussion during the Mediation session(s) are confidential and may not be used in subsequent proceedings pursuant to Minn. Statute Sec. 595.02, subd. I(L).
- e) I understand the Mediation may be terminated at any time by any party or the Mediator(s).

- f) I agree to abide by the terms of the written Mediated agreement, which are mutually agreed upon by the parties in this Mediation.
- g) I will not hold LifeCycle Mediation or the Mediator(s) liable for the results of the Mediation.
- h) I agree not to subpoena the Mediator(s) or representatives of Lifecycle Mediation Program regarding this sessions in the event there is subsequent action initiated or continued following the Mediation efforts. Likewise, I will not subpoena or use as evidence any document, including meeting notes, developed in or resulting from this Mediation.
- i) I understand that a) the Mediator(s) have no duty to protect my interests or provide me with information about my legal rights; b) signing a Mediated settlement agreement may adversely affect my legal rights; c) I should consult with an attorney before signing a Mediation agreement if I am uncertain of my rights pursuant to Minn. Statute 572.35, subd. 1.

#### **DRAFTING OF THE MEMORANDUM OF AGREEMENT:**

No decisions reached in Mediation become final and binding until they are put in writing, are approved by the parties' attorneys and implemented through a court order or binding stipulation of the parties and their attorneys. Pursuant to the Minnesota Civil Mediation Act, Minn. Stat. 572.35, the parties are hereby notified that a Mediated settlement is not binding unless:

- (1) it contains a provision stating that it is binding and a provision stating substantially that the parties were advised in writing that:
  - (a) the Mediator has no duty to protect their interest or provide them with information about their legal rights;
  - (b) signing a Mediated settlement agreement may adversely affect their legal rights; and
  - (c) they should consult an attorney before signing a Mediated settlement if they are uncertain of their rights; or
- (2) "the parties were otherwise advised of the conditions in clause (1)."

The parties, by signing this Agreement to Mediate, acknowledge that they have been "otherwise advised of the conditions contained in clause (1)." The parties intend to incorporate the above quoted language in the final, written Mediated Agreement, but the failure to do so shall not invalidate said Mediated Agreement.

At the conclusion of the Mediation sessions, the Mediator will draft a detailed memorandum setting forth the decisions agreed upon by the parties of Mediation. The Memorandum of Agreement will contain background information relied upon by the parties in reaching settlement. The Memorandum of Agreement may be submitted by each of the parties to their attorney for review and implementation of the decisions as reflected in the Memorandum. Any

new or omitted issues raised by the attorneys will be returned to Mediation if the parties and their attorneys are unable to efficiently and cooperatively resolve such new or omitted issues.

**LEGAL REPRESENTATION:**

The Mediator does not legally represent either of the parties. All parties agree that legal advice and legal representation is not part of Mediation and will not be provided by Michael Garelick.

**DISTRICT COURT REFERRALS:**

In the event you have been ordered to Mediation by one of the District Court Judges through a Court Order, Special Orders for Protection and other requirements may be in force, and these requirements by the Court will be discussed at the first Mediation session. Any other special rules created and adopted by the parties will be contained in the Memorandum of Agreement.

**WITHDRAWING FROM MEDIATION:**

It is understood and agreed that Mediation is a voluntary process and any party or signator to this agreement is free at any time to terminate their participation therein upon notice to the Mediator. The parties intend for this Agreement and the Mediation process to comply with the Minnesota Civil Mediation Act Minn. Stat. 527, et. seq. to the extent that such compliance may be required by any court of competent jurisdiction, and they further intend to waive the provisions of Minn. Stat. 572.33(3) which provides for termination of Mediation upon written notice. If a party is considering withdrawing from Mediation, the party is asked but not required to return to the Mediation table for a short session sufficient to provide an opportunity to clear up misunderstandings, if any, and to assure that all participants are on notice that alternatives such as court process may be pursued. The Mediator agrees not to charge any fee for this short session, unless both parties choose to go forward with Mediation.

**RELEASE TO TALK TO THE PARTIES' ATTORNEYS:**

By signing this Agreement to Mediate, the parties authorize the Mediator to discuss issues related to the Mediation with their attorneys, at the Mediator's discretion.

By signing this agreement, each party agrees to abide by and be bound by the provisions within it, both as between themselves and as between the parties and Michael Garelick.

**This Agreement to Mediate is signed by the parties and Michael Garelick, on this date**

\_\_\_\_\_.

**Michael Garelick**

By \_\_\_\_\_  
**Mediator**

By \_\_\_\_\_  
**Co-Mediator**

\_\_\_\_\_  
**Party**

\_\_\_\_\_  
**Party**