

AGREEMENT TO MEDIATE

1. The undersigned parties (the "Parties) as of the undersigned date hereby agree to private, voluntary, confidential and non-binding mediation (the "Mediation") of a dispute (the "Dispute.") The Mediation will take place at a date and time selected by the Neutral, after consultation with the Parties.
2. The Parties have chosen William J. Caplan, of counsel/mediator with Rutan & Tucker, LLP (the "Neutral") as an independent and impartial mediator to aid the Parties in their attempt to settle their Dispute. The Neutral will not decide who prevails in the Dispute and will not render an award, verdict, or judgment, or otherwise determine the fault of any Party.
3. The Parties, and their counsel and/or other representatives, if any, agree that the Mediation shall be conducted as confidential settlement negotiations under California Code of Civil Procedure § 1775, et. seq. and Evidence Code 1115, et. seq. Therefore, statements made during the Mediation shall not be admissible in any legal proceeding, including arbitration, and the Neutral shall not be made a party to, or called as a witness in, any further legal proceeding relating to the Dispute or the Mediation.
4. The Neutral will not offer legal advice to the Parties, and the Parties should seek legal advice from their own counsel. The Neutral has no attorney-client relationship with any of the parties and does not represent any party in any respect in this Mediation. The Neutral has not personally represented any of the parties in this Mediation in the past, and is unaware whether Rutan & Tucker,

LLC has represented any party hereto. The parties hereby waive any conflict of interest arising out of representation of a party by Rutan & Tucker, LLC, whether or not that representation was past or is current.

5. The Mediation is not guaranteed to result in settlement of the Dispute. The Mediation may be terminated at the instruction of a Party or the Neutral, in the Neutral's absolute discretion, where a good faith determination is made by either that the Mediation will not result in settlement.
6. If the Parties reach settlement during the Mediation, the Parties, and not the Neutral, will draft a written agreement setting forth the matters decided prior to adjourning the Mediation conference, although the Neutral may jointly assist the Parties in this effort at their request. The Parties and their counsel are responsible for making sure that the agreement reflects their understanding and that the agreement is enforceable. The Neutral shall have no responsibility whatsoever respecting regarding the written agreement, or its enforceability, effect or interpretation, but rather all such responsibility shall be borne by the Parties and their counsel.
7. The Parties, and their respective attorneys, agree that they are responsible to pay the Neutral the sum of \$500 for each hour (or partial hour) the Neutral spends in the course of the Mediation and are also responsible to pay any out of pocket costs incurred by the Neutral in the course of the Mediation, all of which shall be shared equally by the Parties. Payment shall be made within ten (10) days of the

date of billing for such fees and costs. Each party will be billed separately for their share of the fees and costs.

8. The prevailing party shall recover attorneys fees in any dispute over the Neutral's fees. This is the entire agreement of the Parties respecting the Mediation, and can only be modified by a writing signed by all Parties.

The Parties have caused this Agreement to be duly executed the latest date set forth below.

William J. Caplan, Mediator:

_____ Date:_____

Party No. 1.

Date:_____

Entity Name:_____

(Type or Print)

Signature:_____

Person signing:_____

(Type or Print)

Representative Capacity: _____

(Type or Print)

Attorney signature

Print name of Attorney

Party No. 2.

Date: _____

Entity Name: _____
(Type or Print)

Signature: _____

Person signing: _____
(Type or Print)

Representative Capacity: _____
(Type or Print)

Attorney signature

Print name of Attorney