

## **MEDIATION AGREEMENT**

This Mediation Agreement is entered into by the undersigned parties ("Party" or "Parties") and mediator(s) ("Mediator"), and shall be effective as of the last date indicated by any of the Parties on the execution page.

### **Mediation Process**

This is a voluntary dispute resolution process. The Parties agree to participate in good faith in the mediation process as administered by the Real Estate Bar Association for Massachusetts ("REBA") and in compliance with any order of referral entered by the U. S. Bankruptcy Court.

Representatives of the Parties with sufficient settlement authority and counsel for the Parties shall attend the mediation sessions. No one else may attend without the permission of the Parties and the consent of the Mediator.

During the session, the Mediator may have joint and separate meetings with the Parties and their counsel. If a Party informs the Mediator that information is being conveyed to the Mediator in confidence, the Mediator will not disclose the information to the other Party.

If a Party wishes to terminate its participation for any reason, it may do so by giving notice to REBA, the Mediator and the other Parties. The Parties will continue to be bound by the confidentiality provisions of this agreement.

The Parties agree that the Mediator is not acting as an attorney or providing legal advice on behalf of any Party.

### **Disclosures**

The Mediator, each Party, and counsel confirm that they have disclosed any past or present relationship or other information that a reasonable person would believe could influence the Mediator's impartiality and that no conflict of interest or appearance of a conflict of interest is known to exist.

In addition, the Mediator practices in association with his/her law firm, \_\_\_\_\_ ("Firm"). Attorneys of the Firm may be involved in other cases unrelated to this case in which professionals involved in this case are also involved. The Mediator is not aware of any aspect of these relationships that would create a conflict or interfere with his/her acting as a mediator in this matter. The parties acknowledge that these factors do not constitute a conflict of interest or the appearance of a conflict of interest.

### **Protection of Information Disclosed at Mediation**

The Mediator and the participants in mediation are prohibited from divulging outside of the mediation, any oral or written information disclosed by the Parties or by witnesses in the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial, or other proceedings, evidence pertaining to any aspect of the mediation effort, including but not limited to: (a) views expressed or suggestions made by a Party with respect to a possible settlement of the dispute; (b) the fact that another Party had or had not indicated willingness to accept a proposal for settlement made by the Mediator; (c) proposals made or views expressed by the Mediator; (d) statements or admissions made by a Party in the course of the mediation; (e) documents prepared for the purpose of, in the course of, or pursuant to the mediation; (f) statements or actions which may otherwise constitute a waiver of a legally protected privilege; and (g) documents prepared subsequent to the mediation which refer to any of the foregoing. In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediation or other alternative dispute resolution procedure shall apply. Parties and their counsel may disclose information obtained at the mediation session to members of their respective organizations who shall also be bound by the confidentiality provisions of this Rule. Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used by a Party in a mediation. These provisions shall not preclude a Party, its counsel or the Mediator from responding in confidence to appropriately conducted inquiries or surveys concerning the use of mediation generally.

### **Discovery from Mediator; Limitation of Liability**

The Mediator shall not be compelled to disclose to any court or to any person outside the mediation conference any of the records, reports, summaries, notes, communication, or other documents received or made by a Mediator while serving in such capacity. The Mediator shall not testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial, or other proceeding. The Mediator shall not be a necessary Party in any proceedings relating to the mediation. Aside from proof of actual fraud or unethical conduct, there shall be no liability on the part of, and no cause of action shall arise against, the Mediator on account of any act or omission in the course and scope of such person's duties as Mediator hereunder. Nothing contained in this subsection shall prevent the Mediator from reporting the status, but not the substance, of the mediation effort to a court in writing in compliance with any court order pertaining to the mediation.

### **Preservation of Privileges**

The disclosure by a Party of privileged information to the Mediator does not waive or otherwise adversely affect the privileged nature of the information. The Parties agree to defend the Mediator from any subpoenas from outside Parties arising out of this Agreement or the mediation.

**Miscellaneous**

Any documents provided to the Mediator by the Parties or counsel will be destroyed 45 days after the conclusion of the mediation, unless the Mediator is otherwise instructed by the Parties or counsel. This Agreement is governed by Massachusetts law, is executed under seal, and may be executed in counterparts, by facsimile or electronic signature.

**PARTY**

**PARTY**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

FOR: \_\_\_\_\_

FOR: \_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

**COUNSEL**

**COUNSEL**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

FOR: \_\_\_\_\_

FOR: \_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

**MEDIATOR**

**MEDIATOR**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

FOR: \_\_\_\_\_

FOR: \_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_