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AGREEMENT TO MEDIATE

THIS AGREEMENT TO MEDIATE is hereby entered into as of _____, 20____
(hereinafter the Effective Date), by and/between _____

_____, hereinafter collectively, the **PARTIES**,
and **JOHN H. GRASSBY**, hereinafter **MEDIATOR**.

RECITAL:

The Parties are entering into mediation with the MEDIATOR with the intention of
reaching a consensual settlement of their dispute regarding all aspects of _____

AGREEMENT:

Accordingly, for good and valuable consideration, the receipt of which in full is hereby
acknowledged, the PARTIES and the MEDIATOR hereby agree as follows:

1. **THE PROCESS.** The MEDIATOR is a neutral process facilitator who will assist the
PARTIES to reach their own settlement. The MEDIATOR will not make decisions about right
or wrong or tell the PARTIES what to do. It is the responsibility of the PARTIES to actively
participate in the mediation session(s) and work toward a constructive resolution which the
PARTIES are willing to abide by. Any agreements entered into throughout the mediation
process are strictly voluntary.

2. **LEGAL COUNSEL.** Notwithstanding being an attorney, the MEDIATOR will not
offer legal advice or provide legal counsel to the PARTIES. The PARTIES are advised to retain
his/her/their/its own attorney in order to be properly counseled about their respective legal
interests, rights, and obligations.

3. **CONFIDENTIALITY.** The PARTIES expressly acknowledge that, for mediation to
work, open, good faith, and honest communication is essential. To promote this objective, all
written and oral communications, negotiations, and statements made in the course of mediation
shall be treated as privileged settlement discussions, made without prejudice to any PARTY's
legal position, and, as such, absolutely confidential and inadmissible for any purpose in any legal
proceeding. Therefore,

a) In accordance with the Dispute Resolution Act of Colorado, C.R.S. 13-22-30 (and/or

other controlling state and federal law), the MEDIATOR shall keep all mediation communications, oral and written, privileged and confidential, meaning that evidence of conduct or statements made during mediation may not be used or admitted as evidence in any concurrent or subsequent administrative or judicial proceeding. MEDIATOR is, however, required under Colorado and other controlling law to report any statements regarding harm to a minor, intent to commit a crime, or intent to inflict bodily harm on another person.

b) The PARTIES agree they will not at any time, before, during, or after mediation, call the MEDIATOR as a witnesses in any legal or administrative proceeding concerning this dispute. To the extent the PARTIES may have a right to call the MEDIATOR as a witness, that right is hereby expressly waived.

c) The PARTIES agree to not subpoena or demand the production of any records, notes, work product or the like of the MEDIATOR in any legal or administrative proceeding(s) concerning this dispute. To the extent the PARTIES may have a right to demand such documents, that right is hereby expressly waived.

d) If, at a later time, any one or more of the PARTIES attempt to subpoena the MEDIATOR, the MEDIATOR will move to quash the subpoena, and that/those party(ies) shall forthwith reimburse the MEDIATOR for whatever expenses of any kind MEDIATOR incurs in any such action (including all attorneys fees), plus \$250.00 per hour for all time spent by the MEDIATOR on such matter.

e) The sole exception to the foregoing is that this Agreement, and any written agreement made and signed by the PARTIES as a result of mediation, may be used in any relevant proceedings, IF the PARTIES expressly so agree in writing.

4. **FULL DISCLOSURE.** Full disclosure of all relevant and pertinent information is essential to the mediation process. Accordingly, there will be complete and honest disclosure by all PARTIES, both to one another and to the MEDIATOR, of all information and documents relevant to the subject dispute. This includes all information and documentation normally made available through the discovery process in a civil action. If any one or more of the PARTIES make material misrepresentations upon which any one or more of the other PARTIES rely to their material detriment in entering into the Settlement Agreement (per §7 below) then, as with any contract, the PARTIES so misled may elect to not perform under the agreement and, in any suit brought as a result, may assert such material misrepresentation.

5. **TERMINATION OF MEDIATION BY PARTIES.** While the PARTIES intend to continue with mediation until a settlement agreement is reached, it is understood that any one or more of the PARTIES may withdraw from mediation at any time. It is agreed that if one or more of the PARTIES decide to withdraw from mediation, such PARTY(IES) shall exert their best efforts to discuss this decision in the presence of all other PARTIES and the MEDIATOR.

6. **TERMINATION OF MEDIATION BY MEDIATOR.** In the event MEDIATOR determines it is not possible to resolve the PARTIES' issues through mediation, the MEDIATOR

may terminate the process by advising the PARTIES and confirming such decision in writing.

7. **MEMORANDUM OF SETTLEMENT.** Upon the PARTIES reaching agreement, the MEDIATOR will prepare a draft “Memorandum of Mediated Settlement” which the PARTIES are advised to review with his/her/their/its own attorney(s) prior to such document being put in final form for execution.

8. **FEES.** The PARTIES agree to equally share the following costs of mediation (check one):

- \$1,000 for a half day session, that is, a session lasting less than 3½ hours, and/or for cases involving less than \$25,000.
- \$1,600 for a one day session, that is a session lasting more than 3½ hours, but no more than 8 hours. Time spent in excess of 8 hours will be billed at the rate of \$250 per hour.
- Multiple day sessions billed on a case-by-case basis.

Fees are payable one half (½) at the time of signing this Agreement, with the balance due in full immediately following the session(s). If due to (i) unusual complexity, (ii) multiplicity of parties, or (iii) other special circumstances or factors, it is advisable there be more than one MEDIATOR, fees will be adjusted accordingly. Additional *time* spent by the MEDIATOR on research, preparation, telephone calls, document drafting, travel time (outside the Steamboat Springs, CO, area), follow-up, and the like (if any) will be billed at the rate of \$250 per hour. Any mediation-related *expenses* such as long distance charges, photocopies, courier service, and travel expenses outside the Steamboat Springs area will be billed as incurred. All such bills are due upon receipt. If the PARTIES, or any of them, need to change a scheduled appointment time, they agree to give MEDIATOR at least 48 hours advance notice. If the PARTIES, or any one of them, fail to provide such notice, such Party(ies) shall be liable for the scheduled time.

9. **EXECUTION.** Upon signing, the PARTIES acknowledge having read, understood and agreed to all provisions of this Agreement as of the Effective Date. This Agreement may be executed in counterparts, all of which together shall comprise one Agreement.

PARTIES:

MEDIATOR:

Name: _____

John H. Grassby