

COLLINS BERMAN, P.C.

MEDIATORS AND ATTORNEYS AT LAW
520 SW 6TH AVE., SUITE. 1140 – PORTLAND, OR 97204
TEL (503) 222-2926 – FAX (866) 399-3093
www.collinsberman.com

Forrest R. Collins
Mediator/Attorney at Law
forrest@collinsberman.com

Noah J. Zimmerman
Paralegal
noah@collinsberman.com

Jonathan M. Berman
Mediator/Attorney at Law
jon@collinsberman.com

AGREEMENT TO MEDIATE

This is an Agreement between _____ and _____ and Forrest Collins, hereinafter the “mediator,” to enter into mediation with the intent of resolving the following issues: _____.

The parties and the mediator understand and agree as follows:

1. *Nature of Mediation*

The parties hereby retain Forrest Collins as mediator to facilitate their negotiations. The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative, consensual, and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. **It is further understood that Forrest Collins, although he is an attorney, will not represent either party or provide legal advice to either client.**

The parties understand that mediation is not a substitute for independent legal advice. The parties are encouraged to secure such advice throughout the mediation process and are strongly advised to obtain independent legal review of any formal mediated agreement before signing that agreement. The parties understand that the mediator’s objective is to facilitate the parties in reaching an agreement that, in their opinions, works well for both of them. The parties also understand that the mediator has an obligation to work on behalf of each party equally and that the mediator cannot render individual legal advice to any party and will not render therapy or arbitrate within the mediation.

2. *Mediation is Voluntary*

All parties here state their good-faith intention to conclude their mediation with a mediated agreement. It is, however, understood that any party may withdraw from or suspend the mediation process at any time, for any reason. The parties also understand that the mediator may suspend or terminate the mediation if the mediator feels that

the mediation will lead to an unjust or unreasonable result; if the mediator feels that an impasse has been reached; if the mediator feels material information has been concealed; or if the mediator determines that he or she can no longer effectively perform a facilitative role.

3. *Mediation Confidentiality*

It is understood between the parties and the mediator that the mediation will be strictly confidential. Mediation confidentiality has several aspects. First, mediation discussions are private and may not be discussed with anyone outside the mediation except your attorney (or another privileged relationship as defined by statute). Second, any draft resolutions, any meeting minutes, any correspondence and any unsigned mediated agreements shall not be admissible in any future court proceeding. Only a mediated agreement signed by any parties may be so admissible. An exception to this rule is that this Agreement to Mediate shall not be considered confidential.

The parties further agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the parties. The mediation is considered by the parties and the mediator to be inadmissible settlement negotiations.

All parties understand and agree that the mediator may have private caucus meetings and discussions with any individual party. These meetings and discussions shall be confidential between the mediator and the caucusing party unless the mediator obtains permission to share some aspect of the discussion.

The mediator has certain statutorily or judicially required reporting obligations, such as reporting a reasonable belief that child abuse has taken place or to speak up to protect one party from another if substantial physical harm is a concern.

4. *Full Disclosure*

Each client agrees to fully and honestly disclose all relevant information and writings as requested by the mediator and all information requested by any other party. **The parties acknowledge and agree to abide by the terms of ORS 107.089 relating to the mandatory disclosure of documents. The parties may mutually agree to waive the requirements of ORS 107.089 if both of them choose to do so.** The relevant portion of ORS 107.089 is provided in your Mediation Information Packet.

5. *Mediator Impartiality*

The parties understand that the mediator must remain impartial throughout and after the mediation process. Thus, the mediator shall not champion the interests of any party over another in the mediation or in any court or other proceeding. The parties agree

that the mediator may discuss the parties' mediation process with any attorney any party may retain as individual counsel. Such discussions will not include any negotiations, as all mediation negotiations must involve all parties directly. The mediator will provide copies of correspondence, draft agreements, and written documentation to independent legal counsel at a party's request.

6. *Mediation Fees*

You agree to pay the mediator at a rate of \$240 per hour. Work performed by legal assistants or paralegals will be billed at the rate of \$100 per hour.

The mediator has taken time creating agreements, pleadings, and other documents. The value of these cannot be measured merely by the time it may take to adapt them to your case. For this reason and others, you agree to pay for services at not less than certain minimum rates. For example, the minimum rate for a letter is .3 hours and telephone calls are .1 hours. An e-mail transmission (sent or received) will be treated as a letter for billing purposes. Drafting of the judgment will be billed based on the mediator's reasonable estimate of value of services provided (the typical judgment takes between 2.5 and 4.5 hours). The documents that accompany the judgment are billed at a flat rate of two hours time at the above-stated rate. **Moreover, unless otherwise reflected on the statement, there is a minimum charge of .1 (one-tenth of an hour) for all services provided and all actions taken on your case.** Travel time will be billed at the above-stated rate.

You agree to place two cards on file with the mediator instead of depositing a cash retainer. One of these cards must be a credit card; the other card may be a debit card. **You understand the mediator has not accepted your case and will not act as your mediator until you have signed this Agreement and placed the cards on file.**

Any statement of predicted fees is an estimate only and should not be relied on by the Client. The parties shall be jointly and severally liable for the mediator's fees and expenses. As between the parties only, responsibility for mediation fees and expenses shall be: _____.

If the mediator is unable to process Client's payment by credit card for any reason, Attorney will notify Client immediately. Client will then be responsible for arranging an alternate form of payment in full within three (3) days.

Should payment not be timely made, the mediator may, in his sole discretion, stop all work on behalf of the parties, including the drafting and/or distribution of the parties' agreement, and withdraw from the mediation. If collection or court action is taken by the mediator to collect fees and/or expenses under this agreement, the prevailing party

in any such action and upon any appeal therefrom shall be entitled to attorney fees and costs therein incurred.

7. *Preservation of Status Quo*

By signing this agreement the parties are agreeing to be bound by the terms of ORS 107.093 during the pendency of their divorce. This means, amongst other things, that neither party will make any changes to any beneficiary designations or allow any policy of insurance to be changed or lapse **without the written consent of the other party.** A copy of ORS 107.093 is provided in your Mediation Information Packet. Violation of this paragraph shall be grounds for terminating the mediation.

DATED this ___ day of _____, 2011.

Client

Client

Forrest Collins

Credit Card Authorization Form

Primary Card (Credit Card Only)

Name on card:

Billing address:

State, City, Zip:

Card Number

Expiration:

Card Type:

AMEX

Visa

Discover

MasterCard

Secondary Credit Card (Credit or Debit)

Name on card:

Billing address:

State, City, Zip:

Card Number

Expiration:

Card Type:

AMEX

Visa

Discover

MasterCard

Card(s) will be charged for (circle all that apply):

Consult

Ongoing

Other

Signature:

Print Name: