AGREEMENT TO MEDIATE

This is an agreement among the undersigned (the "Parties"), and Joshua M. Schindler of Schindler Mediation & Arbitration Services ("Mediator"), to enter into mediation with the intent of resolving issues related to:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Docket No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The Parties and the Mediator understand and agree as follows:

1. Appointment and Objectives: By this agreement, the Parties appoint Joshua M. Schindler as Mediator for their negotiations. The Parties understand that the Mediator’s objective is to assist the Parties to reach a fair and constructive agreement that resolves their dispute(s) in a collaborative, consensual and informed manner. The Mediator is neutral in this dispute. The Mediator himself does not decide disputed issues. The Mediator shall be impartial throughout and after the mediation process.

2. Legal Representation: The Mediator does not provide legal advice to either party and does not represent either party. The Parties must retain their own legal counsel for the purpose of obtaining legal advice. If the Mediator provides any assessment on any legal issue or assistance in drafting a settlement agreement, that assessment or drafting assistance is in his role as Mediator, and does not constitute legal advice to any party or representation of any party.

3. Scope of Mediation: The Parties understand that it is for the Parties, with the Mediator’s concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.

4. Voluntary: Mediation is voluntary. Any party may withdraw from or suspend the mediation at any time, for any reason. In addition, the Mediator may suspend or terminate the mediation if he feels that the mediation will lead to an unjust or unreasonable result; that an impasse has been reached; or that he can no longer effectively perform his facilitative role. On his own initiative, the Mediator may follow up with one or more of the Parties after the initial conclusion of the mediation if the Mediator believes that there may be more potential for movement or settlement.

5. Confidentiality: The mediation is a settlement negotiation and will be strictly confidential. No party may disclose any statements made by any other participant in the mediation. Mediation discussions, written and oral communications, proposals, and any unsigned settlement agreements shall not be admissible in any court proceeding. The Parties also understand and agree that the Mediator may have private caucus meetings and discussions with any individual party, in which case all such meetings and discussions shall be confidential between the Mediator and the caucusing party(ies), unless the Parties agree otherwise.

The Parties agree to not call the Mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding. The only circumstances that permit the Mediator to break confidentiality are: 1) if the Parties make a joint written waiver of confidentiality; or 2) as may otherwise be required by law. The parties hereby authorize the Mediator to file ADR Reports requested by the Court having jurisdiction over this dispute.

6. Mediation Statements: The Parties shall provide the Mediator and the other Parties with written mediation statements at least one week prior to the scheduled mediation session. The written statements shall describe the Parties’ positions, prior settlement positions, and shall provide any background documents (such as pleadings, court rulings, contracts, or expert reports) that are necessary for the Mediator to understand the dispute. The Parties may also provide the Mediator with a private statement (i.e., a statement that is not provided to the other Parties) on issues or negotiating positions.

7. Authority: The Parties will be personally present for the mediation. Business entities will be represented by a senior person with settlement authority. Governmental entities will be represented by a senior person with settlement authority, or, in the case of a governmental body which cannot feasibly send a full contingent, a member of the governmental body who has the authority to recommend the approval of any settlement by the body with a good faith expectation that the body will approve the member’s recommendation. In cases controlled in some way by insurance carriers, a representative of the insurance carrier with settlement authority shall attend in addition to the insured party. “Settlement Authority” means the ability to access the full settlement resources of the party.

8. Settlement Agreement: If the Parties reach a Settlement Agreement, they shall (with the assistance of the Mediator) draft and sign a written Settlement Agreement. No Settlement Agreement shall be enforceable unless it is in writing and signed by the Parties.

9. Litigation: The Parties agree to refrain from pre-emptive maneuvers and adversarial legal proceedings while engaged in the mediation process, except where an emergency necessitates otherwise.

10. Fees: The Mediator will charge an administrative fee of $250.00 and a mediator fee at the rate of $400.00 per hour for time spent with the Parties and for time required to study documents, research issues, correspond, telephone calls, prepare draft and final agreements, and do such other things as may be reasonably necessary to facilitate the Parties reaching full agreement. The Mediator shall also be reimbursed for all expenses incurred as a part of the mediation process.

A payment of $2,250.00 toward the Mediator’s fees and expenses shall be paid to the Mediator along with the signing of this agreement. Any unearned amount of this retainer fee will be refunded to the Parties. 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:

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The Parties will be provided with an accounting of fees and expenses by the mediator. Payment of such fees and expenses is due to the Mediator no later than 15 days following the date of such billing.

It is so agreed.

DATED this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.