

## **AGREEMENT TO MEDIATE PRE-SEPARATION/DIVORCE**

Our mediation process is an opportunity where a mediator works with those in conflict or in dispute to change a quality of their interaction from negative and destructive to positive and constructive while they explore possible solutions to problems or disputes identified by them.

The undersigned parties, hereinafter the participants, in good faith intend to explore and/or resolve through this dialogue the conflicts or controversies they bring to the mediation process.

The participants intend to avoid for themselves the bitterness and frustration which may accompany these controversies.

The participants intend to have greater understanding about their conflict or dispute and to create through mediation an agreement that settles the major issues and that represents the interests of all parties and that is fair and appropriate for all parties.

Therefore, the participants agree:

### **1. Costs of Mediation**

Mediation shall be conducted by a mediator from Baltimore Mediation, who shall be compensated at the rate of \$400 an hour for hours spent in the conduct of the mediation session(s) or in working on behalf of the participants to achieve the goals of mediation, including phone calls, document reviews, and the like.

### **2. Payment**

The participants shall pay for the mediation sessions on a pay as you go basis, with payment being given to the mediator at the end of each session, or, if arranged in advance, the parties or their designated representative or referral source shall pay for the mediation sessions within five (5) days of receipt of an invoice from Baltimore Mediation.

### **3. Written Agreements**

If so chosen by the participants, the mediator(s) will prepare a summary of the mediation or terms of agreement and will be compensated at the rate of \$400 per hour for time spent in the preparation of such documents.

Or, if so chosen by the participants, if agreements regarding legal disputes or matters are reached during mediation sessions, the mediator will be compensated at the rate of \$400 per hour for time spent in the preparation of a memorandum of understanding or a more formal agreement.

The participants understand that no participant in mediation will be bound by anything said or done in mediation unless and until there is a written agreement signed by the participants. The participants understand that, before signing any settlement agreement, each has the right to consult with an attorney of his or her choosing.

#### **4. Drafting Deposit**

The participants will pay the mediator(s) a deposit of \$800 before the mediator begins drafting the summary or agreement.

#### **5. Voluntary Process**

The participants agree to try to resolve this situation through mediation. They understand that mediation is voluntary and that they can withdraw from it at anytime.

#### **6. Role of Mediator**

The participants understand that the mediator has no power to decide how matters should be resolved, nor to decide who wins or loses and will not express an opinion on who is right or wrong. Rather, the participants understand that the mediator is going to try to help all participants reach his or her own satisfactory outcome of this matter.

#### **7. Privacy of Mediation**

The participants agree that neither will call as a witness any employee or agent of Baltimore Mediation to testify, nor will they subpoena any records of Louise Phipps Senft & Associates/Baltimore Mediation, in any matter related to the mediation.

#### **8. Confidentiality**

The mediator(s) is bound by the Maryland Code of Professional Conduct for Mediators to advise all and each of the participants to the mediation session(s) about the confidentiality clause, as follows:

The mediator(s) will treat all information provided during mediation sessions as confidential. Unless otherwise agreed, each mediator will hold information confidential that each participant tells her and him. In the event of future or ongoing legal disputes between the participants, the participants agree not to subpoena the mediator(s) to testify about what was said or done in mediation. The mediator(s) will not voluntarily testify on behalf of any participants and will not report anything said or done during the mediation. The participants understand the following exceptions to confidentiality: allegations of child or elder abuse, threats of physical harm or allegations of other criminal activity.

## **9. Use of Information**

Regarding legal matters, if any, in controversy between the participants, the participants understand that one of the possible outcomes of mediation is a settlement and that the purpose of the process is not to gather information for a hearing or trial. The participants understand that any communication between them at a mediation session cannot be used by them in a hearing or trial unless it is otherwise discoverable. The participants understand that any documents prepared for or during mediation (such as offers, case summaries presented to other participants or to the mediator or notes taken by the mediator) are for settlement purposes only and may not be subpoenaed for, or used in, a hearing or trial. However, unless decided otherwise, the participants understand that they are free to consult with others outside the mediation process regarding information from a mediation session if they so choose.

## **10. Consultants**

The participants understand that the mediator(s) is not going to act as an advocate, mental health counselor, or attorney for them (or for any other participant in the matter), and that they have the right to have a representative assist them in mediation. Persons other than the mediator such as property appraisers, accountants, actuaries, engineers, mental health professionals or other experts may be called for consultation by any participant, or by all participants together when the participants agree to their being jointly consulted and agree to their rate of compensation.

## **11. Attendance at Mediation Sessions**

The participants will be expected to arrange their business and personal affairs so as to enable them to attend mediation sessions as scheduled. Mediation sessions will be scheduled at the convenience of the participants in so far as possible.

## **12. Notice of Cancellation**

Notice of cancellation of appointments must be given by the participants not less than three (3) full business days in advance of the scheduled session. Otherwise full charge may be made for the missed session.

## **13. Participation of Others**

Other persons having a direct interest in the mediation may participate in mediation sessions relating to their interests, if the mediator and the participants find that their participation may facilitate settlement or greater understanding of the issues.

Experts assisting the participants in mediation may participate in mediation sessions, if the mediator and the parties find that their participation may facilitate settlement or greater understanding of the issues.

#### **14. Personal Counsel**

When legal matters may be in controversy between the participants, the participants are encouraged to consult with counsel early in the mediation process in order to ascertain any legal parameters of their controversy. The participants will provide their attorney with information concerning the controversy. Baltimore Mediation is also available to provide the participants' attorneys with information about the mediation process and information from the mediation sessions, if the participants concur. After a final agreement is reached and it is formalized in writing, each participant is encouraged to have it reviewed by his or her attorney prior to signing it, if so chosen.

#### **15. Full Disclosure of Financial Information**

Each participant will be expected to disclose fully all financial information requested by the mediator, and reasonable and pertinent information requested by the other participants if it may aid in the mediation process. Note: Subsequent findings of nondisclosure of appropriate information may constitute grounds for nullifying the agreement.

#### **16 Transfers of Property**

During the mediation process, if any property is at issue, neither participant without the agreement of the other will transfer, encumber, conceal, or in any way buy or dispose of any tangible or intangible property except in the usual course of business.

#### **17. Termination of Mediation**

Mediation is a voluntary process, and any party in mediation may terminate at any time. However, anyone wishing to terminate mediation will do so during a session.

#### **18. Impasse**

If the participants are unable to reach a better understanding or are unable to resolve or to reach an agreement about any or all issues, the participants and the mediator will discuss options for resolution of the issues. These options may include separate sessions with the mediator, referral of particular issues to other experts or suspension or termination of mediation.

#### **19. Initiating Court Proceedings**

Baltimore Mediation does not represent any participants in court and does not file on behalf of the participants any documents with the court.

**20. Mediation of Future Matters or Disputes**

Baltimore Mediation is available for mediation of further conflicts or disputes concerning any of the terms of the memorandum of understanding or agreement or other issues.

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For Baltimore Mediation

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