

AGREEMENT TO MEDIATE

THIS IS AN AGREEMENT BETWEEN:

HUSBAND

- and -

WIFE

- and -

JOHN L. FERRIS, Mediator

each of whom are parties to this Agreement to participate in mediation, and to hire John L. Ferris as the mediator.

1. **ROLE OF THE MEDIATOR:** The parties acknowledge that the mediator is not a lawyer for either of the parties, nor is he a judge. By signing this Agreement they acknowledge that the mediator will not make decisions for them, nor make recommendations or coerce a settlement, but will act as a neutral facilitator to assist them to reach their own settlement decisions.

2. **COMMITMENT TO MEDIATION:** The parties acknowledge that they are participating freely and willingly in the mediation, and each hereby commits to make a sincere effort to reach a consensual resolution of all issues brought to mediation.

3. **LEGAL ADVICE:** The parties specifically acknowledge that the mediator has explained to them and they understand the distinction between the role of the mediator and the role of an independent lawyer, and that they have been advised and encouraged by the mediator to seek independent legal advice from the outset of mediation and during the mediation process itself, to its conclusion. As a neutral facilitator, the mediator has no duty or obligation to assert or protect the legal rights of any party to the dispute, to raise any issues not raised by the parties themselves or their lawyers, to ensure that full disclosure has been made, or to ensure the validity or enforceability of any mediated agreement.

The parties specifically understand and acknowledge that they

are not relying on John L. Ferris to provide legal advice or to protect their legal rights. The parties acknowledge that if one or both of them proceed with mediation without first obtaining independent legal advice, they risk making significant decisions without being fully informed as to their legal rights and obligations, and without full knowledge of the possible legal implications and ramifications of such decisions.

4. **CONFIDENTIALITY:** The parties intend this mediation to be confidential, meaning that all written and oral communications made in the course of mediation are made on a "without prejudice" or "off the record" basis, in order to create the climate of open and productive discussion necessary for successfully reaching a negotiated settlement. Therefore, they agree that any and all statements or documents arising out of the mediation sessions will be treated by them and by the mediator as confidential, not to be disclosed to anyone who is not a party to the mediation (subject to the limitation set out below) or in any current or future court proceeding. Neither party will by summons or subpoena require the mediator to testify as a witness in any legal or administrative proceedings related to the matters in issue, about the mediation, any statements or admissions or offers made during the course of mediation, or any recollection of the mediator, nor will they seek production from the mediator of any written documents prepared for or produced during the course of mediation. If either party contravenes the above provision, the mediator will be entitled to move to quash the subpoena or summons and the party in breach will pay all fees and expenses for so doing.

5. **LIMITATIONS TO CONFIDENTIALITY:**

Notwithstanding paragraph 4 above:

- (a) Unless he is asked to keep the information in confidence at the time the information is provided, the mediator may disclose, to the other party, wholly or in part, any information provided by one of the parties in a private session or caucus, which in the mediator's sole judgment is relevant to the resolution of the matters at issue;

- (b) The confidentiality shall not apply to documents originally prepared for a purpose other than this mediation, such as tax returns, bank statements, financial statements, etc. even if those documents are used or referred to in the mediation;
- (c) The mediator may discuss the mediation and any information disclosed by the parties in mediation with the parties' lawyers and any third party advisers or experts engaged by the parties or either of them for the purpose of resolving the matters in issue;
- (d) The mediator may disclose or discuss the mediation in a way that does not identify the parties for the purpose of mediation research or education;
- (e) The mediator will only disclose otherwise confidential information where required by law, or where the information suggests an actual or potential threat to life or safety; or where ordered to do so by judicial authority;
- (f) If one or both parties:
 - (i) make a formal complaint regarding the mediator; or
 - (ii) refuses to pay his or her share of the mediator's account, necessitating the mediator to take steps to recover payment, that party or parties will be deemed to have waived his or her rights to confidentiality pursuant to the terms of this agreement. The mediator will not, however, be at liberty to disclose any substantive information relating to the other party who has not so waived his or her rights.
- (g) This agreement or a true copy thereof may be introduced into evidence in any court proceeding in which any person seeks the disclosure of the information which is the subject of this agreement, for the purpose of protecting the confidentiality of such information.

6. **UNDERTAKINGS AND ACKNOWLEDGMENTS:** The parties recognize that in order to reach effective decisions about this matter, they need to be able to talk in an open and honest atmosphere. To help create this climate, they agree to exchange all information and documentation available to them relating to the subject of this mediation. They acknowledge that their failure to be forthcoming with information may result in the mediated agreement subsequently being set aside by a court. Neither of the parties or their lawyers will initiate or take any fresh steps in any legal proceedings between them while the mediation is in progress.

7. **WAIVER OF LIABILITY:** In consideration for the neutral services provided by the mediator, the parties agree that neither of them will make a claim against the mediator whether in contract or in tort (e.g. for negligence). The mediator shall have the same immunity from the liability as a judge described in section 82 of the Courts of Justice Act. The parties further agree that they will indemnify the mediator from all costs, claims, causes of action or proceedings which they have or may have in future, arising out of the provisions of mediation services.

8. **FEES:** The parties agree to equally share the mediator's fees, GST on fees, plus any disbursements incurred by the mediator. The fee will be ***** for a one-half day mediation session which shall include intake meetings with each party as may be necessary in the opinion of the mediator. Additional mediation time shall be paid at the rate of ***** per hour. The parties have agreed that the mediator's fees will be shared equally by the parties and each will pay ***** (plus G.S.T.) prior to commencement of the mediation, and further retainers as requested if required as the mediation proceeds.

9. **MEDIATION REPORT:** Agreements reached in mediation are not binding, although it is recognized that both parties intend to reach an agreement that will be upheld by each. At the conclusion of the mediation, or at an interim stage if appropriate, the mediator will prepare a mediation report to summarize the terms of any agreements reached by the parties.

The mediation report is not itself a binding legal agreement, and the parties have been advised to retain legal counsel to draft the necessary documents to give binding effect to the mediated agreement, as well as to obtain legal advice about the meaning and effect of the agreement.

Each of the parties has carefully read this Agreement to Mediate in full and understands the contents of such Agreement, and agrees to proceed with the mediation on the terms set out above.

Each party may sign a separate copy of this Agreement which, when so signed and delivered, shall be an original copy even though not signed by the other party. All such separately signed copies shall together constitute evidence of all parties' consent to be bound by this Agreement.

DATED at the Municipality of Grey Highlands, in the County of Grey this day of October 2008.

SIGNATURES:

John L. Ferris