

Desert Family Mediation Services

225 S. Civic Drive, Suite 1-2

Palm Springs, CA 92262

760-323-7455

Agreement to Mediate

This is an agreement between: _____ and
_____ hereinafter “the parties” or “we” and Thurman
Arnold, III hereinafter “mediator,” to enter into mediation with the intent of resolving
issues related to certain disputed issues.

The parties and the mediator understand and agree as follows:

1. **ESTABLISHMENT OF MEDIATION RELATIONSHIP:** We wish to retain the services of the mediator to mediate disputed issues. All references to “mediator” also apply to any person designated by the mediator to assist in the mediation process, including his office staff.
2. **NATURE OF MEDIATION:** We understand that mediation is an agreement-reaching process in which the mediator assists the parties to achieve agreement in a collaborative, consensual and informed manner. We understood that the mediator has no power to decide any disputed issues for us. The mediator’s objective is to facilitate us in uncovering and creating our most constructive and fairest agreements.
3. **RIGHT OF CONSULTATION WITH LAWYER:** During the mediation, the parties are each encouraged to consult or be represented by a lawyer at any time, especially before signing the final settlement agreement.
4. **MEDIATOR REPRESENTS NEITHER PARTY:** We acknowledge that the mediator does not represent the interests of either of us. We understand that the mediator may draw upon his experience as an attorney in acting as our mediator; however, each of us understands that the mediator is not providing legal advice in the course of this mediation. We acknowledge that the purpose of mediation is to facilitate the resolution and agreement between us regarding the issues, problems, and disputes presented in mediation and that the mediator does not act as an advocate, representative, fiduciary, lawyer, or therapist for either party.
5. **IMPARTIALITY OF MEDIATOR:** We acknowledge that, although the mediator will be impartial and does not favor either party, the mediator has a duty to assure a balanced dialogue between us and to diffuse any manipulative or intimidating tactics by either party.

6. CONFIDENTIALITY: We intend that this mediation shall be confidential. We agree that all communications between us and the mediator and any documents prepared in the course of the mediation are privileged and shall be protected from disclosure, regardless of whether the communications are made in the presence of both of us or separately. Discussions regarding take place outside the mediation itself and/or the presence of the mediator about the subject matter thereof are likewise privileged.

This privilege shall not be waived without the express written consent of both of us. In the absence of such a written consent neither of us shall subpoena the records of the mediator or seek to take testimony from him/her in connection with any civil action or proceeding, or act in any other way to divulge the records or communications to third parties.

However, this privilege shall not apply to documents originally prepared for a purpose other than this mediation such as tax returns, bank statements, etc., even if those documents are used or referred to in the mediation. Also, this privilege shall not apply to any written agreement signed by both of us in the course of the mediation, if that agreement provides for it, and we may specifically authorize communication between the mediator and our own lawyers or counselors and therapists to assist in advising us in the mediation process.

A true copy of this Agreement 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 purposes of protecting the confidentiality of such information.

In the event that despite the promises set forth in this Agreement one of us attempts to subpoena the mediator or to compel the mediator to break confidentiality in violation of the terms of this Agreement, that party agrees to pay the mediator at his/her regular agreed upon mediation hourly rate for all time reasonably spent by the mediator in protecting the mediation privilege.

We understand the mediator has an ethical responsibility to break confidentiality if he suspects someone may be in danger or at risk for harm. The only other exceptions to this confidentiality of the mediation process are the mediator's ability to defend him in any legal action, in the event of a joint written waiver of confidentiality by the parties, or otherwise as may be required by law.

It is expressly agreed and understand that confidentiality in this mediation is governed by California Evidence Code sections 1115 - 1128. The mediator will supply these statutes upon request.

7. RIGHT OF MEDIATOR TO WITHDRAW: The mediator will attempt to

resolve any outstanding disputes among the parties as long as both parties make a good-faith effort to reach an agreement based on fairness to both parties. Parties must be willing and able to participate in the process. The mediated agreement requires compromise, and parties agree to attempt to be flexible and open to new possibilities for a resolution of the dispute. If the mediator, in his professional judgment, concludes that agreement is not possible or that continuation of the mediation process would harm or prejudice one or all of the participants, the mediator shall withdraw and the mediation conclude.

8. TERMINATION WITHOUT CAUSE: The mediation may be terminated without cause by any party at any time. No reason need be given, either to the other party or to the mediator. A decision to terminate mediation must be made in writing. Mediation may not resume following said notification, unless expressly authorized in writing by all parties.

9. VOLUNTARY DISCLOSURE OF POSSIBLE PREJUDICIAL INFORMATION: The parties agree that, while mediation is in progress, full disclosure of all information is essential to a successful resolution of the issues. Since the court process may not be used to compel information, any agreement made through mediation may be rescinded in whole or in part if one party fails to disclose relevant information during the mediation process. Since the voluntary disclosure of this information may give one party an advantage that may not have been obtained through the traditional adversarial process, the parties agree to release and hold harmless the mediator from any liability or damages caused by voluntary disclosure of prejudicial information in the mediation process that may be used in subsequent negotiations or court proceedings. The mediator has no power to bind third parties not to disclose information furnished during mediation.

10. FILING OF COURT DOCUMENTS: Once an agreement is reached, in whole or in part, or at any time the parties desire to file any court documents to confirm the agreement and to obtain court order or judgment based thereon, the parties authorize the mediator to prepare and file court papers and to monitor paperwork through the court system. In performing such work, the mediator will take no action without the mutual agreement and authorization of all parties.

11. MEDIATION FEES: The parties have deposited a Retainer of \$ _____ with the mediator, whose services shall be billed at the rate of \$350/hour. All work performed by the mediator's assistants shall be billed at the rate of \$135/hour. There shall be a one time administrative set up fee of \$100 at the commencement of each case. Fees for mediation include related services to be performed for us, including telephone conferences, summaries, and the drafting of any agreements or other documents.

The parties shall be jointly and severally liable for the mediator's fees and expenses. Checks should be made payable to "Desert Family Mediation Services."

If the Retainer fee is exhausted, we shall pay the mediator's charges as they are incurred either before each session, or after each session, as the mediator requests. The mediator shall present a written statement of charges incurred within seventy-hours of a request for same. Should payment not be timely made, the mediator may stop all work on behalf of the parties, including the drafting and/or distribution of the parties' agreements, and may also withdraw from the mediation.

12. BINDING ARBITRATION: All disputes between the parties and the mediator regarding any aspect of our professional relationship will be resolved by binding arbitration with the American Arbitration Association. By this provision, the parties and mediators are both giving up the right to have any such dispute decided by a judge or a jury and we are each giving you the right to appeal. All costs shall be shared 50% by the mediator and 50% apportioned equally between the parties.

It is important for you to know that under current California law a mediator has complete immunity from suits regarding negligence or malpractice or any other cause of action. This means that you cannot sue the mediator for any damage to you arising out of the mediation relationship.

Before signing this agreement, you have the right to consult your own attorney about the legal consequences to you of signing the agreement and of specifically waiving the right to use the courts in any fee dispute and by using arbitration instead.

13. EXECUTION OF MEDIATION AGREEMENT: By signing this Mediation Agreement, each party agrees that he or she has carefully read and considered each and every provision of the Agreement and agrees to each provision of this agreement without reservation.

Dated: _____

Desert Family Mediation Services
By: THURMAN W. ARNOLD, III

Dated: _____

Dated: _____
