



SPECIALIZING IN MEDIATION & ARBITRATION & DISPUTE REVIEW BOARDS

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CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC

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HOME INSPECTION AGREEMENT TO MEDIATE

HOMEOWNER PREPAY

REVISED 11/15/09

PARTY INFORMATION

The parties to this agreement are (Claimant) _____ and (Respondent) _____ called "Parties" and CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC called "Mediators." The Parties request that the Mediators assist them in resolving a dispute relating to _____. The Mediators have agreed to work with the Parties subject to the following terms and conditions:

ROLE OF THE MEDIATORS

- 1) Mediation is a voluntary process. It is an alternative to a decision by a judge or arbitrator. It is also an alternative to the use of lawyers as intermediaries to negotiate on behalf of their clients. The role of Mediators is to help the Parties to engage in constructive and creative communication and exploration of the issues to reach a mutually acceptable resolution. The Mediators will not make decisions about "right" and "wrong" or tell the Parties what to do.
- 2) The Parties have the ultimate responsibility for the content of their final agreement. The Mediators will not advise the Parties to accept or reject an agreement.

MEDIATORS' AUTHORITY

- 3) The Mediators do not have authority to impose a settlement upon the Parties but will attempt to help them reach a satisfactory resolution of their dispute.
- 4) The Mediators may hold joint and separate meetings with the Parties as they deem necessary. The Mediators may discuss any statements made to the Mediators by one Party in a separate session with the other Parties unless the Party making the statement specifically requests that the information remain private.

FULL DISCLOSURE

- 5) Adequate, timely information is essential for the Parties to make informed decisions about the wisdom and fairness of an agreement. Therefore, each Party shall produce all information necessary for the Mediators to understand the issues and for the Parties to negotiate knowledgeably. This includes providing each other and the Mediators with all information and documentation that usually would be available through the discovery process in a lawsuit. The Mediators may require either Party to supplement such information. If necessary information is not available, the Mediators may suspend the mediation until the information is available. The Parties recognize that the failure to make full disclosure may jeopardize the durability of the agreement and permit a court to set it aside.

MEDIATION, LAWYERS, AND COURT

- 6) The Parties acknowledge that they have been advised by the Mediators that:

- i) They should each have separate legal representation and should consult privately with their respective attorneys for independent, legal advice. This advice may be necessary prior to signing this Agreement to Mediate, Notice of Mediation, during the mediation process, and prior to signing any agreement for the resolution of the dispute;
- ii) Without review and advice by their own independent, legal counsel, they may be giving up legal rights to which they are entitled, or running risks of which they are not aware;
- iii) They should seek independent tax advice from their attorneys or other qualified tax advisors to assess any possible tax consequences related to the issues involved in the mediation;
- iv) Legal representation by a lawyer is not required at the mediation, however, an individual representing each client with full settlement authority must be present at all times during the mediation.

7) The Parties recognize that there may be alternative objective and subjective standards to measure the fairness and effectiveness of a resolution to the issues in dispute. The goal of mediation is a lasting agreement that is acceptable to all participants. The outcome of mediation may be different from the result that could be obtained from a court resolution of the dispute.

PRIVACY

8) Mediation sessions are private. Representatives of the Parties and other persons may attend only with the permission of the Parties and with the consent of the Mediators.

9) In order for mediation to work, open and honest communications are essential. Therefore, all written and oral communications of the Parties will be treated as privileged settlement discussions. As such they shall not be admissible as evidence in court. Specifically, but without limiting the scope of this paragraph, the Parties agree that they will not only rely on or introduce as evidence in any arbitral, judicial or other proceeding:

- i) Views expressed or suggestions made by another Party with respect to a possible settlement of the dispute;
- ii) Admissions made by another Party in the course of the mediation proceedings;
- iii) Proposals made or views expressed by the Mediators; or
- iv) The fact that another Party had or had not indicated willingness to accept a proposal for settlement made or presented by the Mediators.

10) The Mediators will not reveal anything discussed in mediation to anyone except the Parties without the permission of all Parties unless they are required to do so by law. The Mediators may be required by law to reveal information if they believe that a child is in need of protection or a person is a danger to self or to others.

11) At no time shall the Parties call the Mediators or anyone employed by the Mediators as a witness or deponent in any legal or administrative proceeding concerning this dispute. To the extent that they may have a right to call the Mediators or their employees as witnesses, the Parties hereby waive this right.

12) The Parties shall not subpoena or demand the production of any records, notes, documents, or work product of the Mediators in any legal or administrative proceeding concerning this dispute. To the extent that they may have a right to demand the production of this information, the Parties hereby waive this right.

13) If a Party causes a subpoena to be issued violating the terms of paragraphs 11 or 12, the responsible Party shall pay the Mediators' attorneys' fees and costs incurred to resist the subpoena and enforce the privacy terms of this agreement.

14) There are two exceptions to these privacy provisions. First, this agreement to mediate, and any written agreement made and signed by the Parties, as a result of mediation, may be used in any relevant proceeding, unless the Parties agree in writing not to do so. Second, the Mediators may testify and offer records, notes, or work product from the mediation in any legal or administrative proceeding between the Mediators and a Party regarding the Mediators' fees and services.

TERMINATION

15) All Parties intend to continue with mediation until reaching a settlement agreement. However, because mediation is a voluntary process, any Party may withdraw from mediation at any time. All Parties reserve the option, if a satisfactory settlement is not reached, to pursue other available legal options.

- 16) The Mediators may end the mediation if any Party fails to make full disclosure of necessary information.
- 17) The Mediators may end the mediation if, in their judgment, further efforts will not contribute to a resolution of the dispute.
- 18) Construction Dispute Resolution Services, LLC shall be entitled to payment in full for services rendered up to and including the termination of the proceedings. (See paragraph 22)

POSTPONEMENT AND CANCELLATION

- 19) Upon request by a Party, the mediators shall determine if there is good cause or compelling circumstances that would merit a postponement or cancellation.
- 20) Non-receipt of the initial retainer by the due date may be considered a cause for the mediators to postpone or cancel the mediation.
- 21) Please refer to the "Fees and Costs" section of the CDRS website for cancellation and postponement fees. Any mediation that is cancelled or postponed less than 72 hours prior to the scheduled mediation is subject to an additional \$300.00 fee which is payable by the Party responsible for the cancellation or postponement.

COST OF MEDIATION

- 22) Personal attorneys and witnesses or specialists are the direct responsibility of each Party and their fees and expenses shall be the responsibility of the individual Parties.
- 23) As per special terms for Home Inspection Mediations, a \$350.00 non-refundable filing fee shall accompany the *Home Inspection Request for Mediation Services* and a \$1,000.00 mediation fee shall accompany this *Home Inspection Agreement to Mediate*. Additional fees may need to be charged for excessive travel distances by the Mediator or for a longer than normal mediation. A normal mediation shall last for up to six hours.
- 24) As part of the Mediation Settlement Agreement, the parties shall attempt to agree as to which party(s) shall be responsible for the costs of the mediation process that has been paid by the Homeowner. If the parties can not come to an agreement, this issue may have to be submitted to binding arbitration.
- 25) All sums due under this contract shall be paid to Construction Dispute Resolution Services, LLC. If there are additional charges as mentioned in #23 above, a Party may request a detailed billing including time records, it will be provided within thirty (30) business days. Any sums due that are not covered by an initial retainer shall be paid within 10 (ten) days of receipt of invoice from CDRS.

ACCEPTANCE

By signing below, the Parties and/or their attorneys agree to the terms and conditions of this *Home Inspection Agreement to Mediate*.

PARTIES:

By: _____
Signature

Date: _____

Print Name

Print Company Name

By: _____
Signature

Date: _____

Print Name

Print Company Name

By: _____
Signature

Date: _____

Print Name

Print Company Name