

AGREEMENT TO PARTICIPATE IN MEDIATION

The undersigned parties hereby agree to participate in mediation of the dispute referenced below in accordance with the following terms:

1. **Dispute**—the dispute involves claims for damages asserted by each party against the other arising out of the design and construction of the core and shell of a mixed use facility located at the _____ and is the subject of pending litigation styled as _____, _____ (MA) County Superior Court, Civil Action No. _____.
2. **Voluntary Process**—we understand that mediation is a voluntary process, and the parties retain all rights they may have to a judicial or administrative determination of the dispute should the participants decide to withdraw from mediation before an agreement is reached.
3. **Confidentiality**—we understand the mediator, Walter K. McDonough and ELK Consulting Services, LLC cannot be subpoenaed to testify or produce records or work product in any future judicial or administrative proceeding relating to this matter (M.G.L. c. 233, § 23C). We also agree to keep confidential all information discussed during the mediation. Notwithstanding the foregoing, the mediator may disclose to appropriate authorities information obtained during the course of the mediation concerning the planned commission of a crime.
4. **Role of Mediator**—we understand the mediator is not a judge and has no decision-making authority. The mediator's role is to assist the parties in their effort to reach a mutually acceptable agreement.
5. **Consulting with Counsel**—we understand that it is not the mediator's role to give legal advice or counsel.
6. **Fees**—we agree to pay ELK Consulting Services, LLC (FEIN # 20-5496944) a fee of \$435 per hour of time spent on preparation for and mediation of the dispute, plus any actual, reasonable costs incurred. The parties agree that the fees and costs shall be split equally four (4) ways. Fees are to be paid upon receipt of the mediator's invoice.
7. This agreement may be executed in multiple counterparts which, when taken together, shall be deemed to be a complete document.

In consideration whereof, the parties have set their hands and seals this ____ day of June, 2020.

ELK CONSULTING SERVICES, LLC

Walter K. McDonough

Name:

Name: