IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PHYLLIS KILLMEYER, ET AL.,	CIVIL ACTION NO.: 2:96-cv-01723
Plaintiff,	The Honorable Gary Lancaster
vs.	
OGLEBAY NORTON COMPANY, ET AL.,	
Defendants.	

STIPULATION OF THE PARTIES AND THE MEDIATOR

AND NOW, come Phyllis Killmeyer, in both her individual right and as Executrix of the Estate of Harry Killmeyer, Deceased ("Ms. Killmeyer"), Jeffrey J. Sikirica, Chapter 7 Trustee for Ms. Killmeyer's bankruptcy estate (the "Trustee"), and Beazer East, Inc. ("Beazer" and together with Ms. Killmeyer in her dual capacities and the Trustee, the "Parties") and Norman E. Gilkey (the "Mediator"), and enter into this Stipulation as follows:

PREAMBLES

WHEREAS, the Mediator has disclosed to the Parties that his firm represents Beazer in primarily environmental matters (but not utilizing the Mediator's legal services); and, any conflicts in that regard have been waived by Ms. Killmeyer and the Trustee; and,

WHEREAS, if it approves this Stipulation, this Honorable Court is authorizing the Mediator to serve in that capacity and is approving the other terms of this Stipulation.

NOW, THEREFORE, with the foregoing Preamble forming a part of this Stipulation, the Parties and the Mediator agree as follows:

THE AGREEMENT

1.   Mediator's Hourly Rate. The Mediator shall charge $375 per hour for pre- and post-Mediation Session services rendered from October 1, 2012 through completion of the Mediation process, plus reasonable expenses incurred, if any. For a one-half day Mediation Session of up to five (5) hours, the Mediator will charge $1,750.00. For a full-day Mediation Session in excess of five (5) hours and up to ten (10) hours the Mediator will charge $3,250.00. The Parties believe at this time that a one-half day Session at the Mediator's offices may suffice.

2.   Retainer. The Mediator acknowledges having received from Beazer an initial $2,000.00 retainer for the Mediation process (the "Retainer"). Beazer has agreed to pay all Mediation fees and costs for this matter, subject to final approval of this Court, unless payment is otherwise agreed by Beazer and the Mediator.

3.   Monthly Invoices. On or before the fifteenth day of each month commencing no later than November 15, 2012, the Mediator will provide by e-mail an invoice to each of the Parties for services rendered in the prior month. Unless one or more of the Parties promptly expresses an objection to him, the Mediator may apply any Retainer to such invoices and request additional payments from Beazer, as appropriate.

4.   The Mediation. The Parties and the Mediator are exploring dates for a Mediation Session during the first two weeks of November, 2012, at the Mediator's offices. Within three (3) business days after such a Session, the Mediator will file a Status Report to the Court.

5.   Possible Co-Mediation. The Parties have no objection to the Mediator being joined by a Co-Mediator from the Bankruptcy Court's Mediation Panel, provided such Co-Mediator serves pro bono and, like the Mediator, is bound to the same conflict, confidentiality and other requirements. Such Co-Mediator, if any, will be subject to approval of the Parties.

Agreed to by the Parties and the Mediator the 16th day of October, 2012.

/s/ Jason T. Shipp
Jason T. Shipp, Esquire
PA. ID No. 87471
Goldberg, Persky, Jennings & White
1030 Fifth Avenue
Pittsburgh, PA 15219
(Counsel to Phyllis Killmeyer in her dual capacities)

/s/ Robert R. Leight
Robert R. Leight, Esquire
PA ID No. 33733
Pietragallo Gordon Alfano Bosick & Gordon, LLP
38th Floor, One Oxford Centre
Pittsburgh, PA 15219
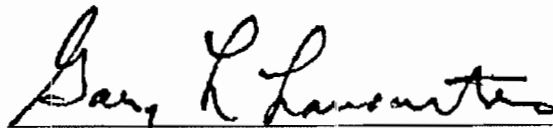(Counsel to Beazer East, Inc.)

By: */s/ Norman E. Gilkey*
Norman E. Gilkey, Esquire
PA I.D. No. 34310
Babst, Calland, Clements & Zomnir, P.C.
Two Gateway Center, 7th Floor
Pittsburgh, PA 15222
(Mediator)

By: */s/ Jeffrey J. Sikirica*
Jeffrey J. Sikirica, Esquire
PA I.D. No. 36745
121 Northbrook Drive
Gibsonia, PA 15044
(Chapter 7 Trustee)

ORDER

Stipulation approved the _16TH_ day of October, 2012.

The Honorable Gary Lancaster

3