

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this "Agreement") is entered into as of this _____ day of _____, 20____, between _____ (Prospective Seller), a _____ corporation ("Disclosing Party"), and _____ (Prospective Buyer), a _____ corporation ("Recipient");

WHEREAS, Disclosing Party is in the business of _____ throughout the United States; and

WHEREAS, Recipient desires to purchase substantially all of the assets of Disclosing Party, and Disclosing Party desires to sell substantially all of its assets to Recipient; and

WHEREAS, Recipient, desires to conduct due diligence with respect to Disclosing Party so that Recipient is more familiar with the operations and financial status of Disclosing Party; and

WHEREAS, Disclosing Party desires to disclose certain of its confidential and proprietary information to Recipient for the afore-described reasons, and Recipient is desirous of receiving said confidential and proprietary information of Disclosing Party, pursuant to, and in accordance with, the terms and conditions of this Agreement;

NOW, THEREFORE, and in consideration of the promises, covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Disclosing Party and Recipient agree as follows:

1. Disclosing Party has disclosed, and intends to further disclose, to Recipient certain of its confidential and proprietary information for the sole purpose of permitting Recipient to evaluate Disclosing Party, financially and otherwise, with respect to the purchase of substantially all of its assets. For the purposes of this Agreement, "Confidential Information" means any information or data disclosed by Disclosing Party to the Recipient under or in contemplation of this Agreement which (a) if in tangible form or other media that can be converted to readable form is clearly marked by the Disclosing Party as proprietary, confidential or private when disclosed, or (b) if oral or visual, is identified as proprietary, confidential, or private on disclosure and is summarized in a writing so marked and delivered within ten (10)

days following such disclosure, but does not mean information which meets one or more of the criteria set forth in paragraph 4 hereof. Recipient and Disclosing Party hereby agree that any and all information previously provided by Disclosing Party to Recipient in contemplation of this Agreement and for the sole purpose of permitting Recipient to evaluate Disclosing Party, financially and otherwise, with respect to the purchase of substantially all of its assets, shall be deemed "Confidential Information" for purposes of this Agreement and Disclosing Party shall have ten (10) days from the date hereof to so identify in writing to Recipient such information as proprietary, confidential and private. Confidential Information shall be kept strictly confidential and not disclosed, except as expressly set forth in this Agreement for the "Restricted Period" (as hereafter defined). With respect to each particular item of Confidential Information, the "Restricted Period" shall mean: (a) five (5) years if the item of Confidential Information at issue does not constitute a "trade secret" as defined in the _____ Trade Secrets Act (the "Act"), or (b) indefinitely, if the item of Confidential Information at issue constitutes a "trade secret" as defined in the Act, until such item of Confidential Information at issue ceases to be a "trade secret" as defined in the Act, but in no event for a period of less than five (5) years.

2. The terms "Disclosing Party" and "Recipient" include each party's respective corporate subsidiaries, parents and affiliates, partners, joint venturers, officers, directors, shareholders, employees, agents, consultants, attorneys and accountants that disclose or receive Confidential Information (collectively "Affiliates"). The rights and obligations of the parties hereto shall therefore also inure to such Affiliates and may be directly enforced by or against such Affiliates.

3. Recipient acknowledges the economic value of the Confidential Information. Recipient shall:

- (a) use the Confidential Information only for the purpose of evaluating Disclosing Party with respect to the purchase of substantially all of its assets, and not otherwise disclose the Confidential Information except in accordance with this Agreement;
- (b) restrict disclosure of the Confidential Information to employees, officers, and directors of Recipient and its affiliates, subsidiaries, parent corporations, consultants, accountants and attorneys with a "need to

know" and not disclose it to any other person or entity without the prior written consent of Disclosing Party;

- (c) advise those employees, consultants, officers, directors, affiliates, subsidiaries, parent corporations, attorneys and accountants who are provided Confidential Information of their respective obligations with respect thereto;
- (d) cause each employee, consultant, officer, director, affiliate, subsidiary, parent corporation, attorney and accountant with whom it desires to disclose the Confidential Information to execute a non-disclosure agreement in substantially the same form as this Agreement prior to such disclosure and to provide Disclosing Party with a copy of each such executed non-disclosure agreement prior to the actual disclosure of Confidential Information to any such third party; and
- (e) copy the Confidential Information only as necessary for those employees, officers, directors, affiliates, subsidiaries, parent corporations, consultants, attorneys and accountants who are entitled to receive it, ensure that all confidentiality notices are reproduced in full on such copies, and account for the return or destruction of all copies or reproductions of the Confidential Information.

A "need to know" means that the affiliate, subsidiary, parent, officer, director, consultant, employee, accountant or attorney requires the Confidential Information to perform his, her or its responsibilities in connection with the evaluation of Disclosing Party.

4. The obligations of Paragraph 3 shall not apply to any Confidential Information which:

- (a) is or becomes available to the public through no breach of this Agreement or fault of Recipient;
- (b) was previously known by the Recipient without any obligation to hold it in confidence;

- (c) is received from a third party free to disclose such information without restriction;
- (d) is approved for release by written authorization of Disclosing Party, but only to the extent of such authorization;
- (e) is disclosed in response to a valid order of a court or other governmental body of the United States or any political subdivisions thereof, but only to the extent of and for the purposes of such order and only if the Recipient first notifies Disclosing Party of the order and permits the Disclosing Party to seek an appropriate protective order within the time allowed or permitted for the obtaining of such an order.

5. If Disclosing Party inadvertently fails to mark as proprietary, confidential or private information for which it desires confidential treatment, it shall so inform Recipient within ten (10) days of delivery of such information to Recipient. Recipient thereupon shall return the unmarked information to Disclosing Party and Disclosing Party shall substitute the same with properly marked information. In addition, if the Disclosing Party, at the time of disclosure, inadvertently fails to identify as proprietary, confidential, or private oral or visual information for which it desires confidential treatment, it shall so inform the Recipient, and the information shall be treated as confidential hereunder provided that the Disclosing Party shall summarize the information in writing within ten (10) days thereafter.

6. Confidential Information, including permitted copies and reproductions, shall be deemed the property of Disclosing Party. Recipient shall, within five (5) days of a written request by Disclosing Party, return all Confidential Information (or any designated portion thereof), including all copies and reproductions thereof, and all notes, analyses, memoranda, or any other documents or writings incorporating or referring to the Confidential Information, to the Disclosing Party or, if so directed by Disclosing Party, destroy such Confidential Information. Recipient shall also, within five (5) days of a written request by Disclosing Party, certify in writing that it has satisfied its obligations under this paragraph.

7. The parties agree that an impending or existing violation of any provision of this Agreement may cause the Disclosing Party irreparable injury and that Disclosing Party shall have all remedies available to it at law and in equity in the

state and federal courts of the State of _____, United States of America and the remedies of Disclosing Party shall be cumulative and none shall be considered the exclusive remedy of Disclosing Party. In the event of a breach of this Agreement by Recipient, Recipient shall be liable to Disclosing Party for all court costs and reasonable attorneys' fees expended by Disclosing Party in the enforcement of the terms and conditions of this Agreement.

8. No warranties of any kind are given with respect to the Confidential Information or other information disclosed under this Agreement or any use thereof.

9. This Agreement may not be assigned, and no duties or obligations delegated, by any party without the prior written consent of the other party. No permitted assignment shall relieve any party of its obligations hereunder with respect to Confidential Information disclosed to it prior to the assignment. Any assignment in violation of this paragraph shall be void. This Agreement shall be binding upon the inure to the benefit of the parties' respective successors and assign, if any.

10. The provisions of this Agreement are severable. If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and replaced by a valid and enforceable provision which so far as possible as allowed by law achieves the parties' intent in agreeing to the original provision. The remaining provisions of this Agreement shall continue in full force and effect.

11. Each party warrants that it has the authority to enter into this Agreement.

12. This Agreement represents the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto, whether written or oral. The provisions of this Agreement may not be modified, amended or waived, except by a written instrument duly executed by both parties.

13. The recitals appearing at the beginning of this Agreement are hereby incorporated into its terms and conditions in full by this reference thereto.

14. This Agreement shall be governed in all respects by the laws of the State of _____ as applied to agreements entered into and to be fully performed within the State of _____.

IN WITNESS WHEREOF, the parties hereto enter into this Agreement as of the date first set forth above.

(DISCLOSING PARTY)

(RECIPIENT)

By: _____

By: _____

Title: _____

Title: _____