

Confidentiality Agreement

THIS CONFIDENTIALITY AGREEMENT (this “Agreement”) is entered into between _____ (“Discloser”) and _____ (“Recipient”) this _____ day of _____.

WHEREAS, Discloser intends to disclose certain Confidential Information (as hereinafter defined) to Recipient for Recipient’s review in connection with a potential business opportunity with the Discloser (the “Transaction”);

WHEREAS, Discloser desires to protect the Confidential Information that may be disclosed to Recipient;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound hereby, the parties agree as follows:

1. Use and Confidentiality of Information. All information provided by Discloser to Recipient concerning the Transaction is confidential and proprietary information of Discloser, and the Disclosure of the Information does not result in Recipient obtaining any property or other rights in the Information. Recipient will (a) use the Information solely to perform the services to be provided by Recipient in connection with the Transaction, (b) keep the Information confidential at all times, (c) mark as “Confidential” all Information, (d) keep all Information secure so that only persons authorized by this Agreement have access, (e) not, without Discloser’s consent, duplicate any of the Information, and (f) not use any of the Information to obtain, or attempt to obtain, a personal profit or interest adverse to the Discloser.

2. Permitted Disclosure of Information. Recipient may disclose the Information only to Recipient’s employees, officers, directors and owners (your “Representatives”) whom Recipient requires to have the Information so that Recipient may perform the services required to be performed by Recipient in connection with the Transaction. However, Recipient first must inform those Representatives that the Information is confidential and, upon our demand, Recipient first must obtain from them their written confirmation (in the form of Exhibit A hereto) that they will be bound by this Agreement. Recipient will be responsible for any breach of this Agreement by those persons. Recipient will maintain and upon our demand will provide us with a list of the persons to whom the Information has been disclosed and the number of copies of the Information that have been made.

3. Return of Information. Upon the termination of the Transaction or our demand, Recipient (and each of your Representatives) will promptly return to the Discloser all Information in Recipient’s possession.

4. Confidentiality Exclusions. The requirement of confidentiality set forth in this Agreement does not apply to any Information which (a) at the time of disclosure is generally available to and known by the public (other than as a result of a disclosure made directly or indirectly by Recipient or any of Recipient's Representatives), (b) was made available to Recipient on a nonconfidential basis from a source other than the Discloser or its advisors, provided that the source is not and was not bound by a confidentiality agreement with the Discloser, or (c) was independently acquired or developed by Recipient without violating any of Recipient's obligations under this Agreement.

5. Prohibited Disclosures. Without the prior written consent of the Discloser, Recipient will not, except as expressly required by the terms of the Transaction, disclose to any person (i) the fact that Recipient is negotiating with the Discloser in connection with the Transaction, (ii) the fact that Recipient has requested or received the Information, or (iii) any of the terms, conditions or other facts with respect to the Transaction, including, without limitation, the status thereof or the identification of the Property.

6. No Adverse Interest. Recipient represents and warrants to Discloser that neither Recipient, any of Recipient's Representatives, nor any corporation, partnership, limited liability company or other entity in which Recipient or any of Recipient's Representatives has an ownership interest (each such person or entity a "Restricted Party") has, as of the date hereof, any ownership interest in, right of first refusal, option, other property right or right to acquire a property right (each of the foregoing property interests or rights to acquire a property interest a "Prohibited Property Right") in any real property or improvements located within a one half mile radius of any property line of the Property (the "Restricted Area"). Recipient further covenants and agrees that neither Recipient nor any other Restricted Party shall acquire a Prohibited Property Right, or enter into an agreement to acquire a Prohibited Property Right, in any real property or improvements located in the Restricted Area during the term of the Transaction and for a period of twelve months thereafter.

7. No Representations or Warranties. The Discloser makes no express or implied representation or warranty concerning the accuracy or completeness of the Information; and neither the Discloser nor any of its officers, directors, employees, owners, affiliates or agents will have any liability to Recipient or any other person resulting from Recipient's use of the Information in connection with the Transaction.

8. Court Proceedings. If Recipient is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, Recipient must provide the Discloser with prompt oral and written notice of the request or requirement so that the Discloser may either seek an appropriate protective order or waive Recipient's compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Discloser waives compliance with the provisions hereof, Recipient agrees to furnish only that portion of the Information which is legally required to be disclosed and to exercise best efforts to obtain assurance that confidential treatment will be accorded such Information.

9. Equitable Remedies. Irreparable injury will result from a breach of any provision of this Agreement, and money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, the Discloser (in addition to any other remedies which may be available to it) shall be entitled to one or more preliminary or permanent injunctions (a) restraining any act which would constitute a breach, or (b) compelling the performance of any obligation which, if not performed, would constitute a breach.

10. Representations and Warranties of Receiving Party. The undersigned warrants to the Discloser that: (a) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action and that no further corporate action is required on the part of the undersigned to execute, deliver and perform this Agreement; or (b) the person(s) executing this Agreement on behalf of the undersigned have all requisite authority to execute and deliver this Agreement; and (c) this Agreement, as executed and delivered by such person(s), is valid, legal and binding on the undersigned, and is enforceable against the undersigned in accordance with its terms.

11. Indemnification. Recipient will indemnify, defend (with counsel reasonably satisfactory to the Discloser) and hold Discloser harmless from and against any and all claims, actions, causes of action, damages, losses, costs (including, without limitation, reasonable attorneys' and other professionals' fees, and disbursements) for matters caused by Recipient or Recipient's Representatives.

12. Notices. All notices, requests, demands, waivers and other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered personally, (ii) sent by registered or certified mail, return receipt requested, postage prepaid or (iii) sent by next-day or overnight mail or delivery to the applicable address set forth above in this Agreement or, in each case, at such other address as may be specified in writing to the other party. All such notices, requests, demands, waivers and other communications shall be deemed to have been received (i) if by personal delivery, on the date after such delivery, (ii) if by certified or registered mail, on the third business day after the mailing thereof or (iii) if by next-day or overnight mail or deliver, on the day delivered.

13. Amendments; Waivers. No provision of this Agreement may be waived or amended except by written consent of the Discloser, which consent must specifically refer to the provision being waived.

14. Parties Benefited; Governing Law; Jurisdiction. This Agreement is for the benefit of the Discloser and will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, not including its conflict of laws provisions. Any party hereto shall institute any claim, counterclaim or other proceeding relating to this Agreement, the transactions to which it relates or any other dispute between the parties, under any written or oral agreement or any legal theory, solely in the Court of Common Pleas for Allegheny County, Pennsylvania, or at the option of the Discloser, the United States District Court for the Middle District of Pennsylvania. Each party irrevocably consents to the exclusive jurisdiction of such courts and agrees that such courts are the most convenient forums for all litigation of such matters.

15. Parties Bound. The reference in this Agreement to “Recipient” shall be deemed to mean each organization and individual to whom or to which this Agreement is addressed, and their successors and assigns.

16. Duration. The restrictions concerning use and disclosure of the Information contained in this Agreement will continue for five years from the date of this Agreement.

17. Enforcement by Discloser. If Discloser brings suit in order to enforce the terms of this Agreement, then Discloser shall be entitled to recover the costs of suit, including the reasonable fees of counsel. This shall be (a) in a case where only damages are sought, if all or any portion of those damages are awarded; (b) in a case where only equitable relief is sought, if the relief sought is granted (each application for equitable relief being considered for this purpose as a separate action), or (c) in a case where both damages or equitable relief are sought, if either all or a portion of the damages are awarded or any of the equitable relief sought is granted.

18. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or such provision, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

19. Waiver of Right to Jury Trial. By Recipient’s execution and delivery of this Agreement and the Discloser’s acceptance of Recipient’s execution of this Agreement, each party irrevocably, knowingly, intentionally and voluntarily waives any right such party may have to a trial by jury concerning any litigation arising in connection with this Agreement.

20. Entire Agreement. This Agreement reflects the entire understanding between Recipient and the Discloser concerning the subject matter of this Agreement, and supercedes all prior or contemporaneous agreements or understandings (whether written or oral) concerning the subject matter of this Agreement.

If you agree with the foregoing, please sign and return two copies of this Agreement.

Discloser or Agent for the Discloser

By: _____

Date: _____

Intending to be legally bound, by the Recipient, confirmed and agreed to as of the date written below:

By: _____

Date: _____

Exhibit A

Acknowledgement

I/we acknowledge that I/we have read and understand the Confidentiality Agreement dated from _____ to _____, a copy of which is attached hereto and is incorporated herein by reference. Intending to be legally bound, I/we promise to abide by its terms, including, without limitation, those terms concerning the confidentiality and use of the information disclosed.

By: _____

Date: _____