

MUTUAL NONDISCLOSURE AGREEMENT

This MUTUAL NONDISCLOSURE AGREEMENT (this "**Agreement**"), is made and entered into as of _____, _____ by Cherrywood Enterprises, LLC, a New York corporation with its principal place of business at 6901 Okeechobee Blvd, #D5-L2, West Palm Beach, FL 33411, and _____, a _____, with its principal place of business at _____ ("**Company**").

Company and Cherrywood Enterprises, LLC wish to discuss a possible business relationship of mutual interest (the "**Relationship**"). As part of such discussions and any resulting business arrangement(s) between the parties, Company and Cherrywood Enterprises, LLC may exchange certain proprietary and confidential information. With respect to each disclosure of Confidential Information (defined below) made by the parties hereunder, the term "**Discloser**" refers to the party who discloses such Confidential Information, and the term "**Recipient**" refers to the party who receives such Confidential Information.

In consideration of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. **Definition of Confidential Information.** "**Confidential Information**" means all tangible and intangible information, whether written, oral or in any electronic, magnetic, visual or other medium, of Discloser that is disclosed or made known to Recipient during the course of the Relationship which is identified as, or should reasonably be understood to be, confidential to Discloser. By way of example, Confidential Information may include ideas, processes, know-how, data, computer programs, formulas, designs, technology, techniques, inventions (whether patentable or not), works of authorship, trade secrets, business or marketing plans, financial information, business assessments, proposals, research or development, or any information received by Discloser from any other person in confidence. Confidential Information shall also include all nonpublic personal information regarding Cherrywood Enterprises, LLC's customers, consumers or employees that may be disclosed under this Agreement ("**Consumer Information**").

2. **Permitted Use; Nondisclosure of Confidential Information.**

(a) Recipient agrees to use Confidential Information disclosed by Discloser hereunder only for purposes related to the parties' discussions concerning, and the undertaking of, the Relationship (a "**Permitted Use**") and for no other purpose or use.

(b) Recipient shall maintain in confidence any and all Confidential Information received from Discloser, its officers, directors, employees, affiliates or agents. Recipient shall not, without the prior written consent of Discloser, disclose any Confidential Information to any third person or entity other than its employees, agents, advisors, lenders or affiliates who reasonably need access to such Confidential Information for a Permitted Use. Such persons or entities shall be advised by Recipient of the confidential nature of such Confidential Information and shall have entered or be required to enter into a confidentiality agreement with terms substantially similar to those hereof. Recipient shall be liable for any violations of this Agreement committed by such persons or entities.

(c) Recipient shall not, without the prior consent of Discloser, disclose to any other person the fact that Confidential Information of Discloser has been and/or may be disclosed under this Agreement, that discussions or negotiations are taking place between the parties hereto, or any of the terms, conditions, status or other facts with respect thereto.

(d) Recipient shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that Recipient utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care.

(e) Recipient agrees to notify Discloser in writing of any actual or suspected breach of this Agreement including, without limitation, misuse, misappropriation or unauthorized disclosure of Discloser's Confidential Information which may come to Recipient's attention.

3. **Consumer Information.** Notwithstanding anything else provided for herein, Recipient agrees as follows to the extent it receives Consumer Information hereunder:

(a) Recipient shall collect, use, disclose, protect and keep confidential all Consumer Information in accordance with all applicable state and federal privacy laws, rules and regulations.

(b) Recipient warrants that it now has, and covenants that it shall continue to have for so long as it retains Consumer Information, adequate administrative, technical, and physical safeguards to (i) ensure the security and

confidentiality of all Consumer Information, (ii) protect against any anticipated threats or hazards to the security or integrity of the Consumer Information and (iii) protect against unauthorized access to or use of Consumer Information.

4. **Exceptions.** The obligations of Recipient pursuant to this Agreement shall not apply if Confidential Information received by Recipient:

(a) is or has become generally known to the public without the fault or omission of Recipient or its employees or agents;

(b) was known to Recipient (or to a parent, subsidiary, or affiliate of Recipient) prior to the first disclosure of such information by Discloser;

(c) becomes known to Recipient, without restriction, from a source other than Discloser without breach of this Agreement by Recipient and not otherwise in violation of Discloser's rights; or

(d) was independently developed by Recipient (or by a parent, subsidiary or affiliate of Recipient) through persons who have not had, either directly or indirectly, access to or knowledge of similar information provided by Discloser.

5. **Disclosures Required by Law.** If Recipient is required by any court or legislative or administrative body (whether by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar process) to disclose any Confidential Information, Recipient will immediately notify Discloser of the existence, terms and circumstances surrounding such request and work with Discloser as necessary in order to seek an appropriate protective order or confidential treatment; provided that, in any case, disclosure shall be limited to that amount of information necessary to lawfully comply with such disclosure order or demand. To the extent any action is taken at the written request of Discloser, Recipient shall be entitled to reimbursement for its reasonable expenses, including the reasonable fees and expenses of its counsel, in connection with the actions taken at the direction of Discloser.

6. **Term; Termination.** Recipient's right to use Discloser's Confidential Information for any Permitted Use shall expire: (a) upon the termination or expiration of any subsequent contract entered into by the parties or as otherwise provided for in such contract; or (b) if no such contract is entered into, then immediately upon either party's written notice of termination of this Agreement or the Relationship. The remaining obligations of each party under this Agreement shall survive its termination or expiration.

7. **Return or Destruction of Materials.** All Confidential Information of Discloser in Recipient's possession or control will remain the property of Discloser and may be recalled by Discloser at any time. Upon the request of Discloser, Recipient shall promptly return to Discloser or destroy, at Discloser's sole discretion, any and all written or printed information (including all copies thereof) containing or reflecting Confidential Information (whether or not prepared by Discloser). All documents, memoranda, notes, summaries, analyses, extracts and other writings whatsoever prepared by Recipient based on the Confidential Information shall be destroyed, and such destruction shall be verified in writing to Discloser upon request.

8. **Mutual Representations and Warranties.** Each party represents and warrants to the other that: (i) it has full right, power and authority to enter into this Agreement and to perform all of its obligations hereunder; (ii) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms; and (iii) its execution, delivery and performance of this Agreement will not breach or result in a default of any material agreement or understanding to which it is a party. Discloser makes no representations or warranties whatsoever, express or implied, with respect to the content, completeness or accuracy of its Confidential Information disclosed hereunder, and all such disclosures are made on an "as is" basis.

9. **No Rights Granted.** Neither party may use the name, trade name, trademark, service mark, logo, acronym or other designation of the other party in connection with any press release, advertising, publicity materials or otherwise without the prior written consent of the other party. Nothing in this Agreement shall be construed as granting Recipient any license, ownership or other rights under or to any patent, copyright or other intellectual property right of Discloser or any other property rights to Discloser's Confidential Information.

10. **Limited Obligations.** Other than the obligations set forth herein, neither party shall have any further obligations to the other unless and until a definitive written agreement is executed. Either party may negotiate with others and may withdraw from negotiations at any time, for any reason, without obligation to the other. To the extent either party incurs costs or changes position as a result of any discussions between the parties, it does so entirely at its own risk. This Agreement shall not be deemed to create any agency, joint venture, partnership or similar working relationship between the parties and the relationship between the parties shall only be that of independent contractors. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.

11. **Assignment.** This Agreement is binding upon and shall inure to the benefit of the parties and their permitted successors and assigns. This Agreement is not assignable by either party, directly or indirectly, in whole or in part, by operation of law or otherwise, without the prior written consent of the other party.

12. **Remedies; Fees.** Recipient agrees that this Agreement is necessary and reasonable in order to protect Discloser and its business and that due to the unique nature of Discloser's Confidential Information, monetary damages would be inadequate to compensate Discloser for any breach by Recipient of its covenants and agreements set forth in this Agreement. Accordingly, Recipient agrees and acknowledges that any such violation or threatened violation shall cause irreparable injury to Discloser and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Discloser shall be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by Recipient, without the necessity of proving actual damages or posting a bond. The right to injunctive relief shall be cumulative with all other remedies available. In any action to enforce this Agreement, the prevailing party shall be entitled to recover all its reasonable attorneys' fees and costs, if awarded by a court of competent jurisdiction, in addition to any other relief to which it may be entitled.

13. **Governing Law; Severability.** This Agreement and any disputes arising hereunder shall be governed by the laws of the State of Florida, exclusive of its conflict of laws provisions. If any provision of this Agreement is held to be void or unenforceable, in whole or in part, the other provisions of this Agreement shall continue to be valid and the parties shall replace the void or unenforceable provision with one that is valid and enforceable and most nearly approximates their original intentions.

14. **WAIVER OF JURY TRIAL.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES WAIVES ANY RIGHT TO TRIAL BY JURY THAT THE PARTIES MAY HAVE IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO.

15. **Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed to have been received by a party when actually received if hand delivered against a signed receipt, two (2) business days after deposit with a reputable overnight courier, or upon receipt, when mailed by first class mail, postage prepaid, and addressed to such party at its address set forth herein or to such other address as such party may designate in writing.

16. **Entire Agreement; Amendment and Waiver.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all other prior understandings, correspondence and agreements, oral or written, between them with respect to the subject matter hereof. No term of this Agreement may be amended without the written consent of the parties. Any amendment or waiver of any term of this Agreement shall be binding upon the parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

17. **Construction.** The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as a jointly drafted document, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. When used herein, the terms "include" and "including" shall be construed as "include, without limitation" and "including, without limitation." Titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

18. **Counterparts.** This Agreement may be executed in any number of counterparts, including by facsimile, which taken together shall constitute a single original.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Mutual Nondisclosure Agreement as of the date first written above.

COMPANY:

Cherrywood Enterprises, LLC

By: _____

By: *Craig M. Geisler*

Name: _____

Name: Craig M. Geisler

Title: _____

Title: President