

## The 153 Group Mutual Non-Disclosure Agreement

This Mutual Nondisclosure Agreement (this "Agreement") is made and entered into as of \_\_\_\_\_, 201\_ (the "Effective Date"), by and between The One Five Three Group dba The 153 Group, an Indiana LLC ("THE 153 GROUP") and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Company").

**WHEREAS**, THE 153 GROUP and Company (each, a "Party", and collectively, the "Parties") desire to discuss a possible future business relationship; and

**WHEREAS**, in connection with such discussions and any business relationship that the Parties may pursue as a result of such discussions, each Party may need to disclose certain of its confidential and proprietary information and materials to the other Party; and

**WHEREAS**, the Parties wish to enter into this Agreement to provide for the protection of such information, documents and materials, and to restrict the use and disclosure of such information and materials by the Receiving Party.

**NOW, THEREFORE**, in consideration of the foregoing, the covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Definition of Confidential Information and Trade Secrets. For purposes of this Agreement, "Confidential Information" shall include, without regard to form, business information, marketing and product plans, financial information and reports, pricing terms, customer lists and other customer and market data, lists of Company stores, store addresses and telephone numbers, and other identifying information, and documents and materials disclosed by the Disclosing Party to the Receiving Party orally or in writing during the term of this Agreement (including, but not limited to, the fact that an exchange of information and business discussions between the Parties is occurring or has occurred), but does not constitute Trade Secrets. "Trade Secrets" means information, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Confidential Information and Trade Secrets shall also include any modifications or derivatives prepared by the Receiving Party that contain or are based upon any Confidential Information or Trade Secrets obtained from the Disclosing Party, including any analysis, reports, or summaries of Confidential Information or Trade Secrets.

The Party disclosing Confidential Information or Trade Secrets is referred to in this Agreement as the "Disclosing Party" and the Party receiving such Confidential Information or Trade Secrets is referred to as the "Receiving Party."

2. Term. This Agreement will commence on the Effective Date and the non-disclosure and other obligations hereunder shall continue in full force and effect during the term of this Agreement and, after termination thereof: (a) in the case of Trade Secrets, for as long as such information remains a Trade Secret under applicable law; or (b)

in the case of Confidential Information, for a term of three (3) years. The obligations of the Parties concerning the protection and non-disclosure of Confidential Information or Trade Secrets shall survive the termination or expiration of this Agreement.

3. Limitations on Use. Unless the Disclosing Party expressly authorizes otherwise in advance of such use, the Receiving Party must only use the Confidential Information or Trade Secrets in connection with the possible business relationship referenced at the beginning of this Agreement.
4. Protection of Confidential Information and Trade Secrets. Each Receiving Party will protect the confidentiality of the Confidential Information and Trade Secrets with no less care than it protects the confidentiality of its own proprietary and confidential information and materials of like kind, but in no event will the Receiving Party protect the confidentiality of the Confidential Information and Trade Secrets with less than a reasonable standard of care. Each Receiving Party will take (and will cause its employees and agents to take) any steps required to avoid inadvertent disclosure of materials in Receiving Party's possession.
5. Access to Confidential Information and Trade Secrets. Access to Confidential Information and Trade Secrets must be restricted to employees of each Receiving Party on a need-to-know basis, who are engaged in the analysis and discussions concerning the exploration of a possible business relationship that the Parties may pursue, as contemplated at the beginning of this Agreement. Furthermore, each Receiving Party shall require all non-employee personnel granted access to Confidential Information and Trade Secrets including, but not limited to, agents and independent contractors of the Receiving Party, to execute a non-disclosure agreement binding such personnel to the confidentiality obligations set forth herein, to the same extent as the Receiving Party is bound to the Disclosing Party herein.
6. No Other License. Confidential Information and Trade Secrets disclosed by the Disclosing Party to the Receiving Party will at all times remain the property of the Disclosing Party. No other license to use any trademarks, patents, copyrights, or other rights is granted under this Agreement or by any disclosure of Confidential Information or Trade Secrets under this Agreement.
7. Return of Confidential Information and Trade Secrets. All written Confidential Information or Trade Secrets made available under this Agreement, including copies thereof, must be returned to the Disclosing Party upon the request by the Disclosing Party. Any materials prepared by the Receiving Party which include any Confidential Information or Trade Secrets of the Disclosing Party, including summaries or extracts thereof, must be destroyed, and written certification of such destruction provided to the Disclosing Party.
8. Exclusions. Nothing in this Agreement will prohibit or limit the use and/or disclosure of information by the Parties that: (a) was or becomes generally available to and known by the public (other than as a result of a disclosure directly or indirectly by the Receiving Party or its representatives in violation of this Agreement); (b) was or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or its directors, officers, employees, agents and representatives, provided that such source is not and was not bound by a confidentiality agreement or other obligation restricting such disclosure; (c) was independently developed by the Receiving Party without the use of Confidential

Information or Trade Secrets by any personnel, including but not limited to employees, agents and independent contractors, that have not had access to Confidential Information or Trade Secrets, as can be substantiated by reasonable evidence; or (d) is approved for release or disclosure by prior written permission from an authorized representative of the Disclosing Party.

9. Judicial Disclosures. If a Receiving Party receives a subpoena or other validly issued administrative or judicial process demanding Confidential Information or Trade Secrets, the Receiving Party must promptly notify the Disclosing Party and tender to it the defense of that demand. Unless the demand has been timely limited, quashed or extended, the Receiving Party will thereafter be entitled to comply with such demand to the extent permitted by law. If requested by the Disclosing Party, the Receiving Party will cooperate (at the expense of the Disclosing Party) in the defense of a demand.
10. Successors and Assigns. This Agreement is and will be binding upon the Parties and each of their respective affiliates, and upon their respective heirs, successors, representatives and assigns.
11. Injunctive Relief. The Parties recognize that serious injury could result to a Party and its business if a Receiving Party breaches its obligations under this Agreement. Therefore, each Party agrees that the Disclosing Party will be entitled to a restraining order, injunction or other equitable relief if the Receiving Party breaches its obligations under this Agreement, in addition to any other remedies and damages that would be available at law or equity.
12. No Waiver. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder.
13. Advertising and Publicity. Neither Party may use the name of the other in connection with any advertising or publicity materials or activities concerning the Parties' relationships without the prior written consent of the other Party.
14. Governing Law. The validity, performance, construction, and effect of this Agreement will be governed by the laws of the State of Indiana without regard to its conflicts of laws principles. Any action or suit concerning this Agreement or related matters shall only be brought by either Party in federal or state court with appropriate subject matter jurisdiction in the State of Indiana. The Parties mutually acknowledge and agree that they shall not raise in connection therewith and hereby waive any defenses based upon venue, inconvenience of forum or lack of personal jurisdiction in any action or suit brought in accordance with the foregoing.
15. Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the confidentiality and non-disclosure obligations discussed herein and may not be modified or amended other than by a written instrument executed by both Parties. The Parties represent that they have read this Agreement, understand it and agree to be bound by its terms and conditions. There are no understandings or representations, express or implied, which are not expressed herein. No provision herein is to be construed against or in favor of any Party on the basis of authorship.

