NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (the "Agreement") is made and entered into as of \_\_\_\_\_\_\_\_\_ \_\_\_, 20\_\_, by and between XXX Foundation ("XXX") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Recipient").

RECITALS

1. XXX and Recipient are considering a potential business transaction (which may include provision of debt financing or equity financing) with Organization Name ("Initials") (the "Potential Transaction");
2. Recipient desires, for the purpose of furthering negotiations aimed at consummating the Potential Transaction, to review certain information regarding the credit facility extended to Organization, including, without limitation, Organization's financial records and the loan documents related to the extension of the credit facility; and
3. Each party desires to preserve the confidentiality of the information provided to Recipient under this Agreement.

AGREEMENT

The parties agree as follows:

* 1. Confidential Information. All information obtained by Recipient from XXX, whether received before or after the date of the Agreement, that relates to Organization, the credit facility, or the Potential Transaction, is referred to herein as "Confidential Information." Confidential Information includes any reports, analyses, studies or other materials, whether prepared by Recipient or otherwise, that contain or are based upon proprietary or non-public information covered by this Agreement. Confidential Information does not include:
     1. information that, when delivered to Recipient by XXX, is accompanied by a written statement that such information is not considered confidential;
     2. information that was known to Recipient prior to the date hereof and not obtained or derived from XXX;
     3. information that at the time of disclosure is already in the public domain;
     4. information that after disclosure hereunder becomes part of the public domain by publication or otherwise through no act or fault of Recipient;
     5. information obtained from a third party in lawful possession of such information which is not, to Recipient's knowledge, under a confidentiality obligation to XXX or Organization; or
     6. information that Recipient is required by law or fiduciary duty to give to its investors or to authorities that regulate Recipient.
  2. Confidentiality Obligation. Recipient is subject to the following obligations:
     1. Recipient will keep the Confidential Information secret, and not, without previous written consent of XXX or Organization, disclose Confidential Information to any third party (except as provided in paragraph (b) below).
     2. Recipient will disclose or divulge the Confidential Information only to Recipient's officers, employees, lenders, and professional consultants ("Representatives") who have reason or need to know Confidential Information for the purpose of enabling Recipient to evaluate the Potential Transaction and who are required to comply with the restrictions imposed on Recipient by this Agreement.
     3. Recipient will not use the Confidential Information for any purpose other than to evaluate the Potential Transaction, negotiate the terms thereof, and complete any agreed upon transaction.
     4. Recipient will exercise the same degree of care with respect to the Confidential Information as Recipient uses in handling its own confidential information.
     5. At the request of XXX, Recipient will account for and, at XXX’s sole discretion, return or destroy all copies of Confidential Information received from XXX.
     6. In the event the Potential Transaction is not consummated, Recipient agrees that it will not, directly or indirectly, utilize any of the Confidential Information to compete with XXX or Organization or in any other manner which is adverse to XXX or Organization.
     7. If Recipient is required by judicial or administrative process to disclose Confidential Information, Recipient will promptly notify XXX and allow XXX a reasonable time to oppose such process. If disclosure is nonetheless required, Recipient will use reasonable efforts to limit the dissemination of Confidential Information that is disclosed.
  3. Limitation on Obligations. This Agreement does not impose on either party any obligation to negotiate or to enter into the Potential Transaction or any other business relationship, does not create an agency or partnership relationship between the parties, and does not require that XXX disclose specific Confidential Information to Recipient.
  4. Remedies. Recipient acknowledges that remedies at law may be inadequate to protect against breach of this Agreement and that XXX will be entitled to specific performance and injunctive relief as a remedy for any such breach, in addition to all other remedies available at law or in equity.
  5. Applicable Law. This Agreement will be construed and interpreted in accordance with the laws of the State of Oregon without regard to its principles of conflicts of law.
  6. Effective Date and Termination. This Agreement is effective and binding from the date first written above and will remain effective as long as Recipient possesses Confidential Information.
  7. No Limitation on Other Transactions. Each party understands that the other party and/or its Representatives may review other possible alternative transactions, and nothing in this Agreement will limit the ability of either party to participate or invest, directly or indirectly, in such alternative transactions.
  8. No Representations or Warranties. XXX does not make any representation or warranty, either express or implied, with respect to the accuracy or completeness of the Confidential Information and will have no liability resulting from the use of the Confidential Information by Recipient or any of its Representatives, except as may be provided in any definitive agreement entered into by the parties in connection with the Potential Transaction or otherwise.
  9. Attorneys' Fees. In any litigation related to this Agreement, the prevailing party will be entitled to recover all reasonable expenses of litigation, including reasonable attorney fees at trial and on any appeal.
  10. Counterparts. This Agreement may be executed in counterparts. Fax or electronic transmission of a signed original document will be equivalent to delivery of an original.
  11. Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement, including any previous nondisclosure or confidentiality agreements between the parties.

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

|  |  |
| --- | --- |
| FOUNDATION  By:  Name:  Its: | By:  Name:  Its: |