

KENSINGTON PARK CAPITAL

MERGERS & ACQUISITIONS | INVESTMENT BANKING

Confidentiality Agreement (NDA)

This Confidentiality Agreement ("Agreement") is made and entered into as of _____, by the entities identified in the signature block below (collectively "the Company" including persons and entities affiliated with the Company) and _____, (the "RECIPIENT").

1. Introduction. In consideration of a possible negotiated transaction by and between the Company and RECIPIENT, the Company will make available, directly or indirectly, to RECIPIENT, certain confidential and proprietary information (the "Confidential Information") concerning the Company's business, financial condition, operations, assets and liabilities. For the mutual benefit of the Company and RECIPIENT, the parties hereto have agreed to enter into this Agreement.

2. Confidential Information.

2.1 The term Confidential Information shall include, by way of example but without limitation, with respect to the Company, intellectual property; know-how; confidential processes; data; reports; projections; customers or suppliers; financial statements or other financial information; pricing information; cost and expense information; marketing plans and all other information, data and experience of kind whatsoever, of an operational, marketing or financial nature regarding the Company's business. Confidential Information also shall be deemed to include all notes, analyses, compilations, studies, projections, interpretations or other documents prepared by RECIPIENT's respective agents, consultants, employees, officers, directors, financing sources, and advisors (including, without limitation, attorneys, accountants and financial advisors) (collectively "Representatives") which contain, reflect or are based upon, in whole or in part, the Confidential Information furnished to RECIPIENT or its representatives pursuant to this Agreement. All written Confidential Information shall be marked as such before being tendered to RECIPIENT.

2.2 The term "Confidential Information" shall not include information that RECIPIENT can reasonably demonstrate (i) is or becomes generally available to the public other than as a result of a disclosure by RECIPIENT; (ii) was within RECIPIENT's possession prior to its being furnished by or on behalf of the Company pursuant to this Agreement, provided that the source of such information was not known by RECIPIENT to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Company with respect to such information; (iii) becomes available to RECIPIENT on a non-confidential basis from a source other than the Company or any of its representatives, provided, that such source is not known by RECIPIENT to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Company with respect to such information; or (iv) was independently developed by RECIPIENT without reference to the Confidential Information, provided such independent development can reasonably be demonstrated by the recipient of the records.

3. Nondisclosure by RECIPIENT and its Representatives.

3.1 Confidential Information shall be used by the parties hereto and their Representatives solely for the purpose of evaluating a possible transaction between the Company and RECIPIENT. Except as specifically set forth below, RECIPIENT shall hold in confidence any and all Confidential Information disclosed directly or indirectly to RECIPIENT or its Representatives by the Company under this Agreement and shall not use the Confidential Information except as authorized by the Company in writing. Subject to the terms of Section 4 below, without the prior written consent of the Company,

RECIPIENT shall not disclose to any other person, corporation, partnership, group, individual or other entity (including the news media), the Confidential Information or the fact that the Company has made the Confidential Information available.

3.2 RECIPIENT hereto warrants that it will direct each of such Representatives to abide by the confidentiality and use terms hereof to the same extent as if they were parties hereto before granting them any access to any of the Confidential Information.

3.3 In any event, RECIPIENT shall be responsible for any breach of the terms of this Agreement applicable to Recipient's Representatives by any of its Representatives and agrees, at its sole expense, to take all commercially reasonable measures (including, but not limited to court proceedings) to restrain its Representatives from prohibited or authorized disclosure or use of the Confidential Information.

4. Compelled Disclosures. In the event that RECIPIENT or any of its Representatives are requested or required to disclose Confidential Information pursuant to a subpoena or an order of a court or government agency, RECIPIENT shall (i) promptly notify the Company of the existence, terms and circumstances surrounding the governmental request or requirements; (ii) consult with the Company on the advisability of taking steps to resist or narrow the request; (iii) if disclosure of Confidential Information is required, furnish, without liability hereunder, only such portion of the Confidential Information as RECIPIENT is required or requested to make as advised by counsel; and (iv) cooperate in a commercially reasonable manner with the Company in its efforts to obtain an order or other reliable assurance that confidential treatment be accorded to that portion of the Confidential Information that is required to be disclosed.

5. Return of Confidential Information. RECIPIENT, as a recipient of Confidential Information, will, upon request by the Company, promptly return to the Company or destroy, at Recipient's election, any Confidential Information received from the Company or any of its Representatives, including all copies thereof made by RECIPIENT or its Representatives. Notwithstanding the foregoing, one copy of the Confidential Information may be kept by Recipient's counsel for compliance and evidentiary purposes, and Recipient shall not be required to destroy any electronic Confidential Information created pursuant to Recipient's standard electronic back-up procedures.

6. Non-Solicitation of Employees. For a five-year period beginning from the date of this Agreement, RECIPIENT shall not, directly or indirectly, employ or engage as a consultant (or solicit for employment or engagement as a consultant) any person who is an employee of the, or endeavor in any way to induce any of the Company's employees to leave the employ of the Company. It is understood that solicitations directed at the general public and not specifically at the employees of the Company, employees who approach Recipient independently, and former employees who are no longer employed by Company shall not be deemed to violate the provisions of this Section 6.

7. Final Agreement. No contract or agreement providing for any transaction by and between the Company and RECIPIENT shall be deemed to exist unless and until a final definitive agreement has been executed and delivered, and each party hereby waives, in advance, any claims (including, without limitation, breach of contract) in connection with any transaction between the parties hereto unless and until such parties have entered into a final definitive agreement. Until a final definitive agreement regarding a transaction between the Company and RECIPIENT has been executed and delivered, neither party will be under any legal obligation of any kind whatsoever with respect to such a transaction by virtue of this Agreement except for the matters specifically agreed to herein. Each party reserves the right, in its sole discretion, to reject any and all proposals made by either party hereto or its Representatives with regard to a transaction between the Company and RECIPIENT. Discussions and negotiations between the parties hereto may be terminated at any time. Neither this paragraph nor any other provision in this Agreement can be waived or amended except by written consent of both parties hereto, which consent shall specifically refer to this paragraph (or such Provision) and explicitly make such waiver or amendment.

8. Waiver. It is understood and agreed that no failure or delay by either party hereto 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.

9. Remedies. It is further understood and agreed that money damages may not be a sufficient remedy for any breach of Agreement by RECIPIENT or the confidentiality and use terms of this Agreement by its Representatives and that the Company may be entitled to seek equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies by the Company for a breach of this Agreement by Recipient or the confidentiality and use terms of this Agreement by its Representatives but shall be in addition to all other remedies available at law or equity to the Company. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that either party hereto or any of its Representatives has breached this Agreement, then it shall be liable and pay to the non-breaching party the reasonable legal fees incurred by the non-breaching party in connection with such litigation, including any appeal therefrom. Each party further agrees to waive any requirement for the posting of a bond in connection with any such equitable relief.

10. Governing Law. The validity and interpretation of this Agreement shall be governed by the laws of the State of Delaware.

11. Term. All obligations of this Agreement shall terminate five years from the date hereof (other than any breaches of such sections prior to such date).

AGREED TO AND ACCEPTED by the Company and RECIPIENT on the date first set forth above.

On behalf of the Company, collectively include the following entities:

By: _____

Name: Berry Cox _____

Title: Senior Managing Director _____

RECIPIENT:

By: _____

Name: _____

Title: _____