

## **CONFIDENTIALITY AGREEMENT**

This is a Confidentiality Agreement (this "Agreement") dated as of \_\_\_\_\_, 20\_\_\_\_, between Garnett Station Partners ("The Company"), and \_\_\_\_\_ (the "Recipient").

### **Recitals**

A. To determine whether the Recipient wishes to pursue certain business or financing transactions with the Company ("Transaction"), the Recipient wishes to obtain and evaluate certain confidential and proprietary information of the Company (as more fully described in paragraph 3 of this Agreement and herein collectively referred to as "Evaluation Material").

B. The Company is willing to make the Evaluation Material available to the Recipient subject to the terms and conditions of this Agreement.

### **Agreement**

1. **Confidentiality of Transaction.** Except for those directors, officers, employees, agents and representatives (including, but not limited to, accountants, attorneys, and potential sources of financing, etc.) of the Recipient or its affiliates (as defined in Rule 12b-2 under the Securities and Exchange Act of 1934, as amended) who will directly participate in the determination of whether to pursue the Transaction ("Recipient Group"), the Recipient shall not, and shall direct the Recipient Group not to, disclose to any person (a) that discussions or negotiations are taking place concerning the Transaction; or (b) any of the terms, conditions, materials or other facts with respect to such Transaction, including the status thereof. As used in this Agreement, the term "person" will be broadly interpreted to include, without limitation, any individual, partnership, corporation or other business organization.

2. **Confidentiality of Evaluation Material.** Except for the Recipient Group, the Recipient shall not make the Evaluation Material available to any person. The Recipient acknowledges and agrees that all Evaluation Material shall be held in the strictest confidence and used exclusively to evaluate the Transaction. The Recipient shall take all reasonable precautions necessary to safeguard the Evaluation Material from disclosure to any person other than a member of the Recipient Group. The Recipient acknowledges that the Evaluation Material does not constitute any expressed or implied representation or warranty of the Company. Any representations and warranties shall be limited to those representations and warranties of the Company set forth in any definitive agreement between the parties hereto.

In the event that Recipient or any member of the Recipient Group is requested or required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar legal, judicial or regulatory process or as otherwise required by applicable law or regulation) to disclose any of the Evaluation Material, such person shall (a) provide the Company with prompt prior written notice of such request or requirement, and (b) to the extent legally permissible, cooperate with the Company at the Company's expense so that the Company may seek a protective order or other appropriate remedy or, if appropriate, waive compliance with the terms and provisions of this Confidentiality Agreement. In the event that such protective order or other remedy is not obtained, or the Company waives compliance with the terms and provisions hereof, Recipient and its respective members of the Recipient Group shall disclose only that portion of the Evaluation Material that such person is advised by legal counsel is legally required to be disclosed, and provided that the Company

uses reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Evaluation Material so disclosed.

3. Evaluation Material. As used in this Agreement, the term "Evaluation Material" shall include any information and materials concerning the Company's business, operations, procedures, properties, assets and financial affairs which the Company furnishes, directly or indirectly, to the Recipient under this Agreement; provided, however, that Evaluation Material shall not include information which (a) at the time of disclosure to the Recipient, is, or subsequently becomes through no fault of Recipient, generally available to the public; (b) at any time comes into Recipient's possession from a third party not known by Recipient to be bound by confidentiality; (c) is developed by Recipient without use of the Evaluation Material; or (d) was already known by Recipient prior to the disclosure by the Company, which Recipient can establish through credible evidence. The disclosure by the Company of any Evaluation Material shall be solely in the Company's discretion.

4. Return or Destruction of Evaluation Material. At any time upon the request of the Company, (a) the Recipient, its affiliates, and their employees and agents shall each thereafter refrain from using any Evaluation Material, whether in a competitive manner or otherwise; and (b) the Recipient, its affiliates, and their employees and agents shall immediately return or destroy all Evaluation Material, without retaining a copy or copies thereof. All documents, memoranda, notes and other writings whatsoever prepared by the Recipient or its affiliates based on the information contained in the Evaluation Material shall be destroyed within ten days thereof, and such destruction shall be certified in writing to the Company by an authorized officer supervising such destruction. The Recipient and its affiliates, employees or agents shall not use any of the Evaluation Material with respect to its business or their business (except in negotiation of the proposed Transaction), or the business of any other person, whether or not in competition with the Company, or for any other purpose whatsoever.

5. Affiliates, Employees and Agents. The Recipient shall cause each member of the Recipient Group to be bound by this Agreement.

6. No Solicitation of Employees. The Recipient agrees that for a period of two (2) years from the date hereof, they will not recruit, solicit or hire any corporate office employee to become an employee or otherwise interfere with any such employee's employment relationship with the Company, unless the employee has been terminated by the Company; provided however, that this prohibition shall not apply to any employee who, on an unsolicited basis, initiates contact with the Recipient related to employment, or, becomes an employee through general solicitation not specifically targeted at employees of the Company without prior solicitation or encouragement by the Recipient.

7. Damages and Injunctions. The parties hereto agree that the covenants of this Agreement and the Evaluation Material being provided the Recipient are of a special, unique and extraordinary character. The Company could be irreparably harmed by any disclosure in violation of this Agreement. Moreover, use of the Evaluation Material for the business purposes of any person or entity, including, but not limited to, the Recipient, would enable such person or entity to compete unfairly with the Company. Accordingly, the Recipient waives any claim or defense that the Company has an adequate remedy at law and agrees that, in addition to any and all other remedies (including monetary damages), the Company shall be entitled to injunctive or other equitable relief to enforce the provisions of this Agreement, including, but not limited to, preventing any further disclosure of the Evaluation Material.

8. Governing Law. The laws of Delaware shall govern the validity, construction, interpretation and enforcement of this Agreement.

9. Entire Agreement. This Agreement embodies the entire understanding and agreement of the parties with respect to the subject matter hereof, and it supersedes any prior or contemporaneous agreement or understanding pertaining thereto.

10. Amendments and Waivers. This Agreement may be amended, modified, superseded, canceled, renewed or extended, and the terms or covenants hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. The failure of any party at any time or times to require performance of any provision hereof shall not affect its right at a later time to enforce the same. No waiver by any party of the breach of any term or covenant contained in this Agreement or in any other instrument, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any breach, or a waiver of the breach of any other terms or covenants contained herein.

11. Severability. If any provision of this Agreement or its application shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of all other applications of that provision and of all other provisions and applications hereof shall not be affected or impaired.

12. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Company, the Recipient, the members of the Recipient Group and each of their respective legal representatives, successors and assigns. This Agreement or any rights or obligations hereunder may not be assigned without the prior written consent of the parties hereto.

13. Term. All obligations under this Agreement shall expire two (2) years from the date of execution.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth in the preamble hereto, but actually on the dates set forth below.

**Garnett Station Partners**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**[The Recipient]**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_