



CONFIDENTIALITY, NONDISCLOSURE AND NON-CIRCUMVENTION AGREEMENT

This Confidentiality, Nondisclosure and Non-Circumvention Agreement (the "Agreement") is entered into as of _____, 20____, between URBIA EXCHANGE, LLC a Utah corporation ("Urbia"), and _____ ("Recipient").

RECITALS:

A. In connection with a possible sharing of information or a possible transaction (the "Transaction") between URBIA and Recipient (each generically a "Party" and collectively the "Parties"), Recipient desires to observe and review certain proprietary and confidential information and materials belonging to URBIA for the purpose of evaluating the feasibility of the Transaction, and URBIA desires to observe and review certain confidential information and materials belonging to Recipient for the purpose of evaluating the feasibility of the Transaction.

B. URBIA and Recipient desire to define their respective rights and obligations with respect to such confidential and proprietary information as set forth in this Agreement.

AGREEMENT:

NOW, THEREFORE, the parties agree as follows:

1. **Definition of Confidential Information.** The term "Confidential Information" means all data, information and materials, including, without limitation:

- (a) proprietary information, so identified or not, and
- (b) all information relating to the business, operations, financing and management of URBIA and its affiliates which is disclosed to the other Party in the course of the other Party's evaluation or negotiation of the Transaction.

2. **Confidentiality.** Each Party (the "Obligated Party") hereby agrees and obligates itself that it:

- (a) shall not disclose (other than to employees, advisors, consultants or affiliates with a need to know such information for the purposes described in this Agreement, provided such persons or entities are aware of the obligations under this Agreement) (i) any Confidential Information of the other Party (the "Benefitted Party"), or (ii) any information derived by either Party or any of their respective affiliates from such Confidential Information;
- (b) shall not copy, reproduce or use, for any purpose other than evaluating and completing the Transaction, any Confidential Information of the Benefitted Party without the prior written consent of the Benefitted Party;
- (c) shall maintain the same secrecy and security with respect to the matters listed in clauses (a) and (b) of this Section as it maintains with respect to its own operations, finances and other proprietary business information; and
- (d) shall continue to treat the matters listed in clauses (a) and (b) as confidential, except in each case for and to the extent to

which:

- (i) such information is or becomes part of the public domain through no fault of the Obligated Party;
- (ii) such information was known by the Obligated Party prior to entering into discussions with the Benefitted Party;
- (iii) such information is disclosed by the Obligated Party or any of its affiliates with the prior written approval of the Benefitted Party as to both the specific information to be disclosed and the intended person to whom disclosure is made or proposed;
- (iv) such information is lawfully received by the Obligated Party from a third party; provided that such information was not obtained by such third party from the Party; and provided further that the Obligated Party has no actual knowledge that such third party is subject to a confidentiality restriction; and
- (v) such information is required by law to be disclosed by the Obligated Party, in which case the Obligated Party shall promptly notify the Benefitted Party in writing of such requirement and shall use its best efforts to obtain assurances that confidential treatment will be given to such information. In any event, each Party shall be responsible for any breach of this Agreement by any of that Party's directors, officers, employees, agents, advisors or affiliates ("Representatives"), and each Party agrees, at its sole expense, to take all reasonable measures to restrain its Representatives from prohibited or unauthorized disclosure or use of the Confidential Information of the other Party.

3. **Reproduction of Confidential Information.** Each Party shall copy or reproduce Confidential Information of the other Party only to the extent necessary to review and evaluate the same.

4. **Return of Confidential Information.** Upon either Party's decision not to proceed with the Transaction, each Party will promptly deliver, or cause to be delivered, to the other Party all documents, data, files and other materials containing or pertaining to the Confidential Information of the other Party and shall not retain any documents or other information, or any reproduction or excerpt thereof, containing or pertaining to any Confidential Information of the other Party. The obligations of each Party under this Agreement shall survive any such return of the Confidential Information of the other Party.



5. No Implied License; No Use for Business Advantage. Nothing contained herein shall be deemed to constitute the grant by either Party of any right, interest or license under or with respect to any Confidential Information of that Party to the other Party or any of the affiliates. Each Party hereby agrees and covenants with each other that it is the intent, upon which each Party shall be entitled to rely, that each Party and its affiliates shall utilize Confidential Information of the other Party only for the purpose of evaluating the Transaction and shall not utilize Confidential Information of the other for business advantage or any other purpose not intended by the other Party. Each Party acknowledges and agrees that the other reserves the right, in its sole discretion, to reject any and all proposals made with regard to the Transaction, and to terminate discussions and negotiations in connection with the Transaction at any time unless otherwise precluded in another document pertaining to the Transaction.

6. No Communication With Third Parties; Publicity. Each Party and its respective affiliates shall at no time after the date of this Agreement communicate orally or in writing with any third party with respect to the other Party, the Confidential Information of the other Party, or any other information proprietary to the other Party without, in each case, obtaining the prior written consent of an officer of the other Party as to each specific communication. Each Party and its affiliates shall take reasonable precautions to avoid disclosure to any other person or entity of the fact that the Confidential Information of the other has been made available to it, that discussions or negotiations are taking place concerning a possible Transaction, or any of the terms, conditions or other facts with respect thereto (including the status thereof), unless the prior written consent of the other Party is obtained with respect to such disclosure, or unless such disclosure is required under law and then only with as much prior written notice to the other Party as is practical under the circumstances.

7. Non-Circumvention. Each Party hereby covenants and agrees, for itself, its partners and affiliates, ventures, officers, directors, shareholders, subsidiaries, employees, agents, representatives, successors and consultants, that for a period of thirty six (36) months following the last action performed by either Party related to the Transaction (the "Non-Circumvention Period"), unless otherwise agreed to in writing, that either Party shall not directly or indirectly (i) circumvent either Party or deal directly with any third party in regard to the Transaction, (ii) encourage or cause its clients or affiliates to circumvent either Party or deal directly with any third party in regard to the Transaction, or (iii) enter into any other transaction that is in any way competitive with the Transaction that would be detrimental to either Party's interest (hereof are referred to individually and/or collectively as "Prohibited Circumvention Acts"). If either Party engages in any Prohibited Circumvention Act, the negatively affected Party shall be entitled to all Remedies upon breach described in this Agreement.

8. Remedies Upon Breach. A breach of this Agreement by any Party or any of its Representatives may involve an irreparable loss to the other for which damages at law would be inadequate; and, accordingly, in such event, the other shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to enjoin the Party and its Representatives from violating any of the terms of this Agreement, to enforce the specific performance by the Party and its Representatives of the terms of this Agreement, and to obtain damages, or any of them, but nothing herein contained shall be construed to prevent such remedy or combination of remedies as the other Party may elect to invoke. The failure of the other Party to promptly institute legal action upon any breach of this Agreement shall not constitute a waiver of that or any other breach hereof.

9. No Representation or Warranty. Each Party expressly acknowledges that the other Party is making no representation or warranty hereunder as to the accuracy or completeness of the Confidential Information of the other Party. Each Party agrees that the other Party shall not have any liability hereunder relating to or resulting from the use of the Confidential Information of the other Party.

10. General Provisions.

- (a) This Agreement represents the complete and exclusive statement of the agreements between the parties relating to the subject matter hereof and supersedes all prior agreements, proposals, representations and other communications, as well as contemporaneous oral communications, relating to the subject matter of this Agreement.
- (b) This Agreement may be modified only by a writing duly authorized and executed by each of the Parties hereto.
- (c) The rights and remedies of the parties under this Agreement shall inure to the benefits of its successors, assigns and transferees.
- (d) This Agreement may be executed in counterparts, which together shall be deemed to be one and the same instrument when each Party has signed one such counterpart.
- (e) In the event of any litigation concerning any controversy, claim or dispute among the parties hereto, arising out of or relating to this Agreement or the breach hereof, or the interpretation hereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs incurred therein or in the enforcement or collection of any judgment or award rendered therein. The "prevailing party" means the party determined by the court to have most nearly prevailed, even if such party did not prevail in all matters, not necessarily the one in whose favor a judgment is rendered.
- (f) This Agreement shall be governed and construed in accordance with the substantive laws of the State of North Carolina, disregarding the principles of conflicts of laws thereof.
- (g) This Agreement is intended by the parties to be a valid and enforceable agreement to the fullest extent of its terms. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such a decision shall not affect the validity or



enforceability of the remaining provisions of this Agreement, and this Agreement shall be construed as if the invalid or unenforceable provision had never been included.

(h) No term or provision of this Agreement shall be deemed waived unless such waiver shall be in writing and signed by the party making such waiver. Any waiver of a particular breach of this Agreement shall not constitute a waiver of any other breach, nor shall any waiver be deemed a continuing waiver unless it so states expressly.

(i) The obligations of confidentiality arising under this Agreement are intended to survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

URBIA:

URBIA EXCHANGE, LLC. a Utah corporation

By : _____

Name:

Title:

RECIPIENT:

By: _____

Name: _____

Title: _____