



Seattle San Francisco  
Spokane Salt Lake City  
Chicago Portland  
Pittsburgh Nashville  
New York Des Moines

## **CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT**

### **ACT Client # 201105 – Leading Holiday Novelty Wholesaler**

ACT Capital Advisors, LLC (“ACT”) is acting as an advisor to the company identified as ACT Client Number 201105 (the “Company”). In connection with your interest in a potential transaction by you or one of your affiliates or assigns involving the Company (a “Transaction”) you have requested non-public information from ACT with respect to the Company (hereafter collectively referred to as the “Confidential Material”). For purposes of this Agreement, the term Confidential Material shall include all information, regardless of the form in which it is communicated (whether prepared by the ACT or the Company or otherwise) that contains or otherwise reflects information concerning the Company that you or your directors, officers, employees, partners, affiliates, agents, advisors, attorneys or representatives (the “Representatives”) may be provided by or on behalf of the Company in the course of your evaluation of a potential Transaction. The term Confidential Material shall also include all analyses, compilations, studies, reports, notes or other material prepared by you or your Representatives that are based on, contain or reflect, in whole or in part, any information furnished by ACT, the Company, or any of the Company’s representatives or agents whether written, oral, or otherwise embodied on any medium whatsoever. The term does not include information which (i) was in the public domain at or subsequent to the time it was communicated to you or your Representatives by ACT, the Company, or any of the Company’s representatives through no fault of you or your Representatives, (ii) was rightfully in your possession free of any obligation of confidence at or subsequent to the time it was communicated to you or your Representatives by ACT, the Company, or any of the Company’s representatives or (iii) was developed by employees or agents of yours independently of and without reference to any information communicated to you or your Representatives by ACT, the Company, or any of the Company’s representatives. In consideration of the foregoing, you and your Representatives agree as follows:

1. The Confidential Material shall (a) be kept confidential by you and your Representatives, (b) not, except as hereinafter provided, without the prior written consent of the Company, be disclosed or disseminated by you or your Representatives to any person in any manner whatsoever, in whole or in part, and (c) not be used by you or your Representatives other than for the purpose of evaluating a Transaction. Moreover, you further agree to transmit the Confidential Material only to those of your Representatives who need to know such information for the purpose of evaluating a transaction with and who shall be advised by you of this Agreement and agree with you to be bound by the provisions hereof. You agree to treat all the Confidential Material of the Company with the same degree of care as you accord your own Confidential Material, and you hereby represent that you exercise reasonable care to protect your own Confidential Material. You agree to give the Company immediate notice of any unauthorized use or disclosure of the Confidential Information and to assist the Company in remedying, any such unauthorized use or disclosure of the Confidential Information. You shall be responsible for any breach of this Agreement by your Representatives.

Merger and Acquisition Advisors

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2. You and your Representatives specifically agree not to: (i) use the Confidential Material to solicit or attempt to solicit any business or customer or client of the Company; and (ii) employ or attempt to employ or divert an employee of the Company for a period of two (2) years from the date of signing this Agreement. This paragraph shall not be construed to prevent you from employing any employee of the Company who (i) responds to a general solicitation for employment or (ii) who contacts you on his or her own initiative without foreknowledge of the pending transaction.
3. You and your Representatives shall not disclose that you are having or have had discussions concerning a Transaction, that you have received Confidential Material from ACT or the Company or that you are considering a Transaction; provided that you may make such disclosure if you have received the written opinion of your counsel that such disclosure must be made by you in order that you not commit a violation of law, and prior to disclosure, you promptly advise and consult with the Company and its legal counsel concerning the information you propose to disclose. In the event that you or your Representatives are legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Material or the fact that the Confidential Material has been made available, it is agreed that you or your Representatives, as the case may be, will promptly provide ACT and the Company with written notice of being compelled. You or your Representatives, as the case may be, shall consult with the Company and its legal counsel concerning the disclosure and will furnish only that portion of the Confidential Material and other information, which, in the opinion of your counsel, you are legally required to disclose.
4. If you decide not to proceed with a Transaction, you will promptly notify ACT and the Company of that decision. In that case, or if ACT or the Company shall elect to terminate further access by you to the Confidential Material for any reason, you shall within ten (10) business days of any written request from ACT or the Company, cause to be destroyed or delivered to the Company the Confidential Material, and all copies thereof, and you shall destroy all analyses, compilations, studies, reports, notes or other derivative documents, and all copies thereof, prepared by you or your Representatives derived from the Confidential Material and shall deliver to the Company a certificate executed by one of your duly authorized officers indicating that the requirements of this provision have been satisfied in full. The obligations under the terms and conditions of this Agreement shall survive any return of the Confidential Material to the Company whether such return was originated by you, ACT or the Company.
5. Although you understand that ACT and the Company will endeavor to include in the Confidential Material information known to them that they believe to be accurate in all material respects, neither ACT, the Company, nor their representatives make any representation or warranty, express, implied or otherwise, as to the accuracy or completeness of the Confidential Material or any part thereof. You agree that neither ACT nor its Representatives shall have any liability to you or any of your Representatives resulting from the use of the Confidential Material by you or your Representatives. Except for this Agreement, neither you or ACT or the Company shall have any legal obligation of any kind whatsoever or be committed in any way with respect to a Transaction or discussions concerning a Transaction, unless and until a definitive agreement or a letter of intent with binding provisions with respect to the Transaction has been executed and delivered.
6. You understand and agree that (i) ACT and the Company shall conduct the process for a possible Transaction as they in their sole discretion shall determine including, without limitation, negotiating with any prospective buyer and entering into definitive agreements without prior notice to you; (ii) any procedures relating to such a Transaction may be changed at any time without notice to you; (iii) the Company shall have the right to reject or accept any potential buyer, proposal or offer, for any reason whatsoever, in its sole discretion; and (iv) neither you nor any of your Representatives or affiliates shall

have any claims whatsoever against ACT or the Company or any of their respective directors, officers, stockholders, owners, affiliates, or agents arising out of or relating to the Transaction (other than those against the parties to a definitive agreement with you in accordance with the terms thereof).

7. You agree that all (i) communications regarding a possible Transaction, (ii) requests for additional information, (iii) requests for facility tours or management meetings and (iv) discussions or questions regarding procedures, will be submitted or directed exclusively to ACT, and that none of you or your Representatives who are aware of the Confidential Material and/or the potential Transaction will initiate or cause to be initiated any communication with any director, officer or employee of the Company concerning the Confidential Material or a Transaction.
8. You acknowledge that the Company is intended to be benefited by this Agreement and that the Company shall be entitled to enforce this Agreement and obtain for itself the benefit of any remedies that may be available for the breach hereof.
9. The undersigned acknowledges the responsibility to perform a due diligence review to its own satisfaction and at its own expense prior to any Transaction.
10. You agree that monetary damages would not be sufficient remedy for any breach of this Agreement by you or your Representatives and that in addition to all other remedies, the Company shall be entitled to specific performance and/or injunctive relief and any and all other equitable relief as a remedy for a breach of this Agreement and you further agree to waive, and to use your best efforts to cause your Representatives to waive, any requirement for the securing or posting of any bond in connection with such remedies. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that you or your Representatives have breached this Agreement, you shall be liable and pay to the Company the reasonable legal fees incurred by the Company in connection with such litigation, including any appeal.
11. The Company reserves the right to assign its rights, powers and privileges under this Agreement including, without limitation, the right to enforce the terms of this Agreement, to any person or entity who enters into a Transaction. You will not assign or transfer any rights or obligations under this Agreement without the prior written consent of the Company. All modifications, waivers and amendments of this Agreement or any part hereof must be in writing executed by authorized representatives of the Parties to this Agreement. Should any provisions of this Agreement be held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby. No failure or delay by ACT and/or the Company 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 future exercise of any right, power or privilege hereunder. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington applicable to agreements made and to be performed within such State. This Agreement shall govern all communications between you and your Representatives and ACT, the Company, and their representatives (collectively the "Parties") concerning a Transaction during the period from the effective date of this Agreement to the date on which any Party receives from the other written notice by first class certified mail with return receipt requested that subsequent communications shall not be so governed, provided, however, that you and your Representatives obligations with respect to the Confidential Information of the Company shall continue for a period of two (2) years from the effective date hereof unless terminated pursuant to the terms of this Agreement.

This Agreement may be executed in multiple counterparts, all of which together shall constitute one and the same Agreement. The parties agree to accept faxed or scanned signatures by their authorized representatives in execution of this Agreement.

Agreed:

**(Please Print)**

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Organization: \_\_\_\_\_

Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Principal or Authorized Representative)