

STATE AND LOCAL TAX INDEMNIFICATION AGREEMENT

This STATE AND LOCAL TAX INDEMNIFICATION AGREEMENT (this "Agreement") is entered into as of _____, 20_____, by and among _____ ("Seller"), and _____ ("Buyer"). Seller and Buyer may collectively be referred to herein as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, Buyer and Seller have entered into that certain _____ Agreement, dated as of _____, 20_____ (the "Purchase Agreement"), pursuant to which Buyer has agreed to acquire _____ (the "Company") from Seller;

WHEREAS, in connection with the transactions contemplated by the Purchase Agreement, the Parties desire to allocate responsibility for, and provide indemnification against, certain state and local tax liabilities of the Company as set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants, representations, and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

1.1 Defined Terms. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement. For purposes of this Agreement, the following terms shall have the meanings specified below:

- a. "Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period ending on the Closing Date.
- b. "State and Local Tax" or "State and Local Taxes" means any income, franchise, gross receipts, sales, use, ad valorem, transfer, employment, payroll, property, excise, or other tax, assessment, duty, fee, or levy of any kind whatsoever imposed by any state, local, municipal, or other subnational governmental authority, together with any interest, additions to tax, or penalties applicable thereto.
- c. "Straddle Period" means any taxable period that begins on or before the Closing Date and ends after the Closing Date.

ARTICLE II TAX INDEMNIFICATION

2.1 Seller Indemnification. From and after the Closing Date, Seller shall indemnify, defend, and hold harmless Buyer, the Company, and their respective affiliates, successors, and assigns (collectively, the "Buyer Indemnified Parties") from and against, and shall pay and reimburse the Buyer Indemnified Parties for, any and all losses, liabilities, claims, damages, deficiencies, costs, and expenses (including reasonable attorneys' and accountants' fees and expenses) arising out of, resulting from, or in connection with:

- a. Any and all State and Local Taxes of the Company for any Pre-Closing Tax Period;
- b. Any and all State and Local Taxes of any member of an affiliated, consolidated, combined, or unitary group of which the Company is or was a member on or prior to the Closing Date; and
- c. Any breach of any representation, warranty, or covenant of Seller contained in this Agreement or in the Purchase Agreement relating to State and Local Taxes.

2.2 Allocation of Straddle Period Taxes. For purposes of determining the amount of State and Local Taxes attributable to a Straddle Period:

- a. In the case of State and Local Taxes based on income, franchise, gross receipts, sales, use, or similar transactions, such taxes shall be allocated based on an interim closing of the books of the Company as of the close of business on the Closing Date.
- b. In the case of real property, personal property, or ad valorem State and Local Taxes, such taxes shall be allocated on a daily pro-rata basis over the entire Straddle Period.

ARTICLE III
TAX RETURNS AND COOPERATION

3.1 Tax Return Preparation.

- a. Seller shall, at its own expense, prepare or cause to be prepared and timely file or cause to be filed all State and Local Tax Returns of the Company for all taxable periods ending on or before the Closing Date that are required to be filed after the Closing Date. Seller shall provide a draft of each such Tax Return to Buyer for its review and comment at least _____ days prior to the due date thereof.
- b. Buyer shall prepare or cause to be prepared and timely file or cause to be filed all State and Local Tax Returns of the Company for all Straddle Periods. To the extent any such Tax Return shows an amount of State and Local Taxes for which Seller is responsible under this Agreement, Seller shall pay such amount to Buyer at least _____ days before the due date of such Tax Return.

3.2 Cooperation. Buyer and Seller shall reasonably cooperate, and shall cause their respective affiliates to cooperate, in preparing and filing all State and Local Tax Returns, and in connection with any audit, examination, or proceeding relating to State and Local Taxes of the Company. Such cooperation shall include retaining and providing records and information reasonably relevant to any such tax matters.

ARTICLE IV
TAX CONTESTS

4.1 Notice. Buyer shall promptly notify Seller in writing upon receipt of any notice of audit, assessment, suit, or proceeding (a "Tax Contest") involving State and Local Taxes of the Company for which Seller may be liable under this Agreement.

4.2 Control. Seller shall have the right, at its own expense, to control the defense, compromise, or settlement of any Tax Contest that relates solely to a taxable period ending on or before the Closing Date; provided, however, that Seller shall not settle or compromise any such Tax Contest without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed, if such settlement or compromise would have a material adverse effect on the State and Local Tax liability of the Company or Buyer for any Post-Closing Tax Period.

ARTICLE V
MISCELLANEOUS

5.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of _____ without regard to principles of conflicts of law.

5.2 Entire Agreement. This Agreement, together with the Purchase Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to such subject matter.

5.3 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this State and Local Tax Indemnification Agreement to be executed as of the date first written above.

SELLER:

By:

Name:

Title:

BUYER:

By:

Name:

Title:
