

TAX INDEMNITY SIDE LETTER

Date: _____

To:

From:

Dear Sir/Madam,

Reference is made to the _____ Agreement dated _____ (the "**Purchase Agreement**") by and among _____ ("**Buyer**"), _____ ("**Seller**"), and _____ (the "**Company**"). This letter agreement (this "**Side Letter**") sets forth the agreement of the parties with respect to certain tax indemnity matters relating to the transactions contemplated by the Purchase Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS

"**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 and including the Closing Date.

"**Pre-Closing Tax Liability**" means any and all liability for Taxes of the Company (or any subsidiary thereof) for any Pre-Closing Tax Period, including any Taxes arising as a result of the transactions contemplated by the Purchase Agreement.

"**Straddle Period**" means any taxable period that begins on or before the Closing Date and ends after the Closing Date.

"**Tax**" or "**Taxes**" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severity, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto.

2. INDEMNIFICATION

2.1 Seller hereby agrees to defend, indemnify, and hold harmless Buyer, the Company, and their respective affiliates, successors, and assigns from and against any and all losses, damages, liabilities, claims, interest, penalties, costs, and expenses (including reasonable attorneys' and tax advisors' fees and expenses) arising out of or resulting from any Pre-Closing Tax Liability.

2.2 Payment by Seller of any amount due under this Section 2 shall be made within _____ business days after written demand thereof by Buyer, provided that Seller shall not be required to make any payment earlier than _____ business days before the date on which the relevant Tax is required to be paid to the applicable Tax authority.

3. STRADDLE PERIODS

3.1 In the case of any Straddle Period, the Taxes of the Company shall be allocated between the Pre-Closing Tax Period and the post-closing tax period as follows:

- (a) In the case of Taxes based upon or related to income, receipts, activities, events, or transactions, such Taxes shall be allocated based on an interim closing of the books as of the close of business on the Closing Date; and
- (b) In the case of other Taxes (such as ad valorem or real property Taxes), such Taxes shall be allocated on a daily pro-rata basis.

4. TAX RETURNS

4.1 Seller shall prepare, or cause to be prepared, at its own expense, all 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. Such Tax Returns shall be prepared in a manner consistent with past practices of the Company unless otherwise required by applicable law. Seller shall submit each such Tax Return to Buyer for its review and approval at least _____ days prior to the due date for filing such Tax Return.

4.2 Buyer shall prepare, or cause to be prepared, and file all Tax Returns of the Company for Straddle Periods. Buyer shall provide Seller with a draft of any such Tax Return at least _____ days prior to the due date for filing. Seller shall pay to Buyer the portion of the Taxes shown on such Tax Return that constitutes a Pre-Closing Tax Liability within _____ days of receiving Buyer's calculation thereof.

5. TAX CONTESTS

5.1 Buyer shall promptly notify Seller in writing upon receipt by Buyer or the Company of any notice of any Tax audits, examinations, or assessments that could give rise to an indemnity obligation under this Side Letter.

5.2 Seller shall have the right to control, at its own expense, the defense and settlement of any Tax audit or proceeding relating solely to a Pre-Closing Tax Period, provided that Seller shall keep Buyer fully informed of the progress of such proceeding, and Buyer shall have the right to participate in such proceeding at its own expense. Seller shall not settle any such proceeding without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed.

6. MISCELLANEOUS

6.1 This Side Letter shall be governed by, and construed in accordance with, the laws of the State of _____, without regard to principles of conflicts of law.

6.2 This Side Letter may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.3 This Side Letter constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

Please confirm your agreement with the foregoing by signing and returning the enclosed counterpart of this Side Letter.

Sincerely,

SELLER:

By: _____
Name: _____
Title: _____

COMPANY:

By: _____
Name: _____
Title: _____

Acknowledged, Accepted, and Agreed to:

BUYER:

By: _____
Name: _____
Title: _____
Date: _____