

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (this "Agreement") is entered into and made effective as of the \_\_<sup>h</sup> day of February, 2010 ("Effective Date"), by and between \_\_\_\_\_

\_\_\_\_\_, whose address is \_\_\_\_\_ (the "Bidder")

and Waverton Group, LLC, receiver in the action styled *State of Colorado, ex rel. John W. Suthers, Attorney General v. Colorado Humane Society & S.P.C.A., Inc.*, Civil Action No. 2008-CV-2659, District Court for the District of Arapahoe, Colorado whose address is 4101 East Louisiana Avenue, Suite 300, Denver, Colorado, 80246 (the "Receiver" in the "Receivership Action" in the "Arapahoe District Court"). The Bidder and the Receiver will collectively be referred to as the "Parties."

The purpose of this Agreement is to facilitate the exchange of Confidential Information (as "Confidential Information" is defined in paragraph 1 below) relating to the judicial sale in the Receivership Action (the "Judicial Sale"). In furtherance of this purpose, each Party has agreed to disclose or otherwise make available its Confidential Information to the other Party, which Confidential Information the disclosing Party considers confidential and proprietary. Each Party wishes to review and examine the Confidential Information received under this Agreement only for the purposes of determining whether to enter into the relationships and provide the services relating to the purposes described in this Agreement. The intent of the Parties is to protect the Confidential Information that each elects to disclose.

The Party disclosing Confidential Information (including its affiliates, directors, officers, employees, representatives, agents, and advisors) under this Agreement is referred to as the "Disclosing Party," and the Party receiving Confidential Information under this Agreement is referred to as the "Receiving Party."

The Parties wish to discuss the Judicial Sale. In order to facilitate this goal and for this limited purpose, the Parties will disclose Confidential Information to each other. This Agreement is entered into for the purposes of specifying the conditions under which each Party may disclose to the other Party, orally or in writing, such Party's Confidential Information and specifying the conditions under which each Party may use and disclose the other Party's Confidential Information.

1. Confidential Information. As used in this Agreement, the term "Confidential Information," means any non-public information, including, without limitation, business plans and proposals, financial information,

marketing information, implementation steps, know-how and ideas related to the Judicial Sale, each Party's ongoing and proposed business, products and services which are being provided or which has been provided to the Receiving Party by the Disclosing Party, or which is obtained by the Receiving Party from its meetings and contacts with the Disclosing Party. Confidential Information includes all written or electronically recorded materials identified and marked as confidential or proprietary or which on their face appear to be confidential or proprietary, and oral disclosures of Confidential Information by the Disclosing Party.

Confidential Information does not include any of the following: (a) information that is in or becomes part of the public domain without violation of this Agreement by the Receiving Party; (b) information that was known by Receiving Party on a non-confidential basis, as evidenced by written records; (c) information that was developed independently by the Receiving Party's employees, as established by written evidence; (d) information that is disclosed to the Receiving Party by a third party under no obligation of confidentiality to the Disclosing Party; or (e) is authorized by the Disclosing Party in writing for disclosure by the Receiving Party. The burden of proving that information may be disclosed because it does not fall within the definition of Confidential Information shall be on the Receiving Party.

2. Performance and Non-Use. In order to maintain the confidentiality of the Confidential Information, the Parties further agree as follows: (a) not to disclose without the Disclosing Party's prior written consent, any portion of the Confidential Information or other materials derived in any way from the evaluation thereof by the Receiving Party or its representatives, except to representatives who have knowledge of this Agreement and agree in writing to be bound by the terms of this Agreement; (b) to advise each Receiving Party representative to whom any Confidential Information is to be made available of the confidential nature of such Confidential Information and of the terms of this Agreement before making such information available to such representative; (c) not to use the Confidential Information for the benefit of the Receiving Party or to advance the business ventures of third parties, other than for the purposes contemplated by this Agreement and for no other purpose, and shall not use the Confidential Information to compete with the Disclosing Party in Disclosing Parties' business, whether directly or indirectly; (d) to, at the election of the Disclosing Party to either promptly return to the Disclosing

Party (or its designees), upon the Disclosing Party's request, all Confidential Information and all copies thereof; or to destroy all such copies and to so certify to the Disclosing Party; and (e) upon discovery of an unauthorized disclosure, the Receiving Party shall endeavor to prevent further disclosure or use and shall notify the Disclosing Party immediately.

Notwithstanding any other terms or conditions of this Agreement, the Receiving Party may disclose Confidential Information to satisfy a legal demand by a court of competent jurisdiction, provided however that the Receiving Party shall have first advised the Disclosing Party prior to the disclosure so that the Disclosing Party has the opportunity to seek appropriate relief from the court order, and provided further that the Receiving Party shall disclose only that portion of the Confidential Information which is legally required to be disclosed and request confidential treatment of the Confidential Information by the court.

3. Miscellaneous. This agreement shall not be changed, modified, waived or amended in whole or in part except in writing signed by both Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective lawful successors and assigns. This Agreement may not be assigned by either Party or by operation of law except with the prior written consent of the other Party.

4. Notices. Communication under this Agreement must be in writing and will be deemed duly given: (A) (i) when personally delivered, (ii) upon receipt of a fax transmission with a confirmed telephonic transmission answer-back; provided that such communication is also sent by a nationally recognized overnight courier, (iii) three (3) days after having been deposited in the United States mail, certified or registered, return receipt requested, postage prepaid, or (iv) one (1) business day after having been dispatched by a nationally recognized overnight courier service, and (B) when emailed with a return receipt confirmation request. Notice must be given to the Parties, or their permitted assigns, at the addresses set forth in the preamble of this Agreement.

5. Reproduction of Confidential Information. The Confidential Information provided or made available by the Disclosing Party shall not be copied, reproduced, or otherwise delivered to a third party without the Disclosing Party's express written permission, except for such copies as may

reasonably be required for internal evaluation or to be sent to advisers or consultants, who are informed of the contents of this Agreement and who agree to be bound hereby.

6. Term of Agreement. This Agreement shall terminate three (3) years from the Effective Date, unless extended by mutual written agreement, but may be terminated prior to that time as to receipt of further information by either Party upon thirty (30) days written notice. Each Party's obligations under Sections 1, 2, 3, 4, and 5 hereof shall survive any termination.

7. No License or Authority. Neither the execution of this Agreement nor the furnishing of any information hereunder shall be construed by the Receiving Party as granting any license or any other rights other than as set forth herein under any trade secrets or intellectual properties now or hereafter owned by or controlled by the Disclosing Party, or under any trade secrets, or copyrights in which the Disclosing Party is now licensed. Nothing in this Agreement shall grant to either Party the right to make commitment of any kind for or on behalf of the other Party without the prior written consent of the other Party.

8. Assignment; Binding Effect. Neither Party shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other Party hereto, except to a successor in ownership of all or substantially all of the assets of the assigning Party if the successor in ownership expressly assumes in writing the terms and conditions of this Agreement. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties.

9. Governing Law. The Parties agree that this Agreement shall be interpreted and construed both as to performance and validity in accordance with and governed by the laws of the State of Colorado. This Agreement shall be subject to the exclusive jurisdiction of the Arapahoe District Court.

10. Remedies. The Receiving Party recognizes and agrees that the Confidential Information is of a unique character, which gives it a peculiar value the loss of which cannot be adequately compensated in damages, and that a breach of this Agreement will cause irreparable damage and injury to the Disclosing Party. The Receiving Party, therefore, expressly agrees that

the Disclosing Party shall be entitled to injunctive and other equitable relief to prevent a breach of the provisions of this Agreement, in addition to any other remedies available to the Disclosing Party.

11. Authority. Each Party represents and warrants that its delivery of this Agreement has been duly authorized by all necessary corporate or other action and that the person signing the Agreement on its behalf is duly authorized to do so.

12. Modification. This Agreement may not be modified except by a writing that expressly refers to this Agreement and is executed by the Parties hereto.

In witness whereof, the Parties have duly executed this Agreement as of the date first above written.

Waverton Group, LLC, as Receiver:

Bidder:

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

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

Name: Richard A. Block \_\_\_\_\_

Name: \_\_\_\_\_

Title: Managing Member \_\_\_\_\_

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