

## MUTUAL NONDISCLOSURE AGREEMENT

This **Mutual Nondisclosure Agreement** (“**Agreement**”) is dated \_\_\_\_\_ (“**Effective Date**”) and entered into by and between Willow Glen Terminal LLC, a Delaware limited liability company (“**Willow Glen**”) and \_\_\_\_\_ (Company Name), a \_\_\_\_\_ (State) company (“xxx”) and governs the disclosure and use of information by the parties. The parties agree as follows:

**1. Purpose.** For the purpose of entering into certain discussions regarding a potential business relationship between the parties and evaluating whether to enter into a business arrangement concerning the same (“**Purpose**”), Willow Glen and \_\_\_\_\_ (Company) have established terms governing the disclosure, use, and protection of Confidential Information (as defined in Section 2) that one party (“**Discloser**”) may disclose to the other party (“**Recipient**”).

**2. Definition. “Confidential Information”** means all information disclosed by Discloser to Recipient in connection with the parties’ discussions related to the Purpose. Confidential Information may be disclosed by Discloser in written or other tangible form (including, but not limited to, on optical, magnetic, or electronic media) or by oral, visual, or other means. Confidential Information includes, without limitation, all information disclosed by Discloser: (a) that, although not related to the Purpose, should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party because of legends or other markings, the circumstances of disclosure, or the nature of the information itself; and (b) information of or relating to Discloser’s present or future products, research and development information, specifications, formulas, know-how, drawings, designs, processes, ideas, inventions, and other technical, business, and financial plans, pricing information, customer lists, the identity of any actual or potential customers or suppliers, forecasts, and any other information relating to any work in process, future development, forecasts, manufacturing plans, marketing plans, strategies, financial matters, personnel matters, investors or business operations of Discloser, as well as the terms of this Agreement, the existence of any discussions between the parties related to the Purpose or the terms of such discussions.

**3. Obligations.** Recipient will, at all times: (a) hold in strict confidence and not disclose to any third party Discloser’s Confidential Information; (b) use such Confidential Information for no purpose other than the Purpose; (c) protect and prevent the unauthorized disclosure or misuse of the Confidential Information by measures at least as restrictive as the measures it uses to protect its own Confidential Information, but with no less than a reasonable standard of care; (d) only permit access to Discloser’s Confidential Information to those Recipient employees, affiliates or authorized representatives with a need to know and who have signed confidentiality Agreements containing, or are otherwise bound by, confidentiality obligations at least as restrictive as those contained herein; (e) immediately notify Discloser upon discovery of any loss or unauthorized disclosure of Discloser’s Confidential Information; and (f) remain responsible and liable for any breach of this Agreement by its employees or authorized representatives. Notwithstanding the above, Recipient shall not be in violation of this section with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that Recipient provides Discloser with reasonable prior written notice of such disclosure in order to permit Discloser to seek confidential treatment of such information.

**4. Exceptions.** Recipient’s obligations under this Agreement with respect to any portion of Discloser’s Confidential Information shall terminate if and when Recipient can prove by clear and convincing evidence that such information: (a) was publicly available at the time it was communicated to Recipient by Discloser; (b) becomes publicly available after it was communicated to Recipient by Discloser through no breach of this Agreement by Recipient; (c) was in Recipient’s possession free of any obligation of confidence at the time it was communicated to Recipient by Discloser; (d) was rightfully communicated to Recipient free of any obligation of confidence subsequent to the time it was communicated to Recipient by Discloser; or (e) was developed by employees or agents of Recipient independently of and without reference to any of Discloser’s Confidential Information.

**5. No Licenses.** Recipient understands and agrees that nothing contained in this Agreement, shall be construed as granting any property rights, by license or otherwise, to any of Discloser’s Confidential Information, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. Recipient will not make, have made, use, or sell for any purpose any product or other item using, incorporating or derived from any of Discloser’s Confidential Information.

**6. Reproduction.** Recipient will not reproduce Discloser’s Confidential Information in any form, except as required to further the Purpose. Any reproduction of Discloser’s Confidential Information by Recipient shall remain the property of Discloser and shall contain any and all patent, copyright, trademark, and other proprietary rights notices and confidentiality legends which appear on the original, unless otherwise authorized in writing by Discloser.

**7. No Warranties.** ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS.” DISCLOSER MAKES NO WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION.

**8. Term and Termination.** This Agreement shall commence on the Effective Date and shall continue until terminated. This Agreement may be terminated by either party at any time upon ten days written notice to the other party. Recipient’s obligations with respect to use and disclosure of Confidential Information under this Agreement shall survive termination of this Agreement and continue in full force and effect until the date that the applicable Confidential Information falls within an exception set forth in Section 4. Upon termination or expiration of this Agreement, or upon Discloser’s written request, Recipient shall promptly return to Discloser all documents and other tangible materials representing Discloser’s Confidential Information and all copies thereof, or at Recipient’s option, may destroy such Confidential Information and certify the destruction of such Confidential Information in writing. Notwithstanding the foregoing, one copy of such Confidential Information may be retained by Recipient in its legal department for regulatory or archival purposes.

**9. Irreparable Harm; Injunctive Relief.** Recipient acknowledges that any actual or threatened material breach of this Agreement by Recipient will constitute immediate and irreparable harm to Discloser for which monetary damages would be an inadequate remedy and entitle Discloser to obtain immediate injunctive relief, as well as such further relief as may be granted by a court of competent jurisdiction, without the requirement of posting bond. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys’ fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**10. Indemnification.** Recipient agrees to indemnify and hold harmless Discloser from any damage, loss, cost, or liability (including reasonable attorney fees) arising or resulting from any unauthorized use or disclosure of the Confidential Information by Recipient or any of its agents, employees, affiliates or other authorized representatives.

**11. Severability.** If any provision of this Agreement is found by a proper authority to be unenforceable or invalid then such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and in such event, such provision shall be changed to the minimum extent necessary and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or applicable court decisions.

**12. No Export.** Recipient shall not export, directly or indirectly, any technical data acquired from Discloser under this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

**13. Notices.** All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five days after deposit in the mail, or upon acknowledgment of receipt of facsimile or electronic transmission. Notices shall be sent to the addresses set forth at the end of this Agreement or such other address as either party may specify in writing. If notice is being provided to Willow Glen, a copy of such notice (which shall not constitute notice to Willow Glen) shall be provided to the following address:

Cruz-Abrams Seigel LLC  
1200 Pearl Street, Suite 314  
Boulder, CO 80302  
Attention: Carlos Cruz-Abrams, Esq.  
E-mail: [carlos@caslawfirm.com](mailto:carlos@caslawfirm.com)

**14. General.** This Agreement shall be governed by and construed in accordance with the laws of state of Colorado, without reference to conflict of laws principles. This Agreement may not be amended except by a writing signed by both parties hereto. Neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party; except pursuant to a transfer of all or substantially all of such party’s business and assets to which this agreement relates, whether by merger, sale of assets, sale of stock, or otherwise. Any assignment in violation of this provision will be void. This Agreement will be binding upon Recipient’s valid heirs, successors, and assigns. This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings.

**15. Counterparts; Execution.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed

signature page of this Agreement by facsimile transmission or electronic photocopy (i.e., a “pdf”) shall be effective as delivery of a manually executed counterpart hereof.

***[Remainder of Page Intentionally Blank]***

In witness whereof, the parties hereto have executed this Mutual Nondisclosure Agreement as of the Effective Date.

**WILLOW GLEN TERMINAL LLC**

\_\_\_\_\_ (COMPANY NAME)

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: Authorized Signer

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for Notice: 1700 Lincoln Street  
Suite 3475  
Denver, CO 80203 Attn:  
Legal Notices  
Email: [legal@willowglenterminal.com](mailto:legal@willowglenterminal.com)

Address for Notice: