

NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Nondisclosure and Confidentiality Agreement (“**Agreement**”) is made on this ____ day of _____, 20____, by and between **Magnum Development, LLC** and its affiliates, (“**Magnum**”), and _____ (“_____”) (Magnum and _____ are collectively known as the “**Parties**”), as follows:

WHEREAS, Parties have entered into discussions with each other in connection with a possible transaction involving _____ (the “**Potential Transaction**”).

WHEREAS, the Parties are willing to provide, or to cause their Affiliates to provide, to the other certain information containing proprietary and non-public information in connection with the Potential Transaction, subject to and upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **Definitions.** For the purposes of this Agreement, the terms set forth herein shall have the following meaning:

“**Affiliate(s)**” shall include and mean a Party’s “Parent Company” and “Affiliated Companies.” The terms “Parent Company,” “Affiliated Companies,” and “Controlling Interest” shall be defined as follows: (i) a Party’s “**Parent Company**” shall mean an entity having a “Controlling Interest” in such Party; (ii) a Party’s “**Affiliated Companies**” shall mean any and all entities in which the Party or its Parent Company has a direct or indirect “Controlling Interest”; and (iii) a “**Controlling Interest**” shall mean the ownership of fifty percent (50%) or more of the voting stock or other equity or ownership interests in an entity.

“**Disclosing Party**” means the Party and/or its Affiliates, or such Party’s or its Affiliates’ Representatives, disclosing Information pursuant to the terms of this Agreement.

“**Information**” as used herein shall mean all records, maps, documents, electronic data, and all other information not expressly excluded by Section 2 of this Agreement that describes, relates to, or concerns in any way the Potential Transaction, which a Disclosing Party provides to a Receiving Party or its Representatives in connection with the Receiving Party’s evaluation of the Potential Transaction, by any means, including orally or in writing or gathered by inspection and regardless of whether the same is specifically marked or designated as “confidential” or “proprietary,” together with any and all copies, extracts, or other reproductions of any of the same.

“**Receiving Party**” means the Party and/or its Affiliates, or such Party’s or its Affiliates’ Representatives, receiving Information disclosed pursuant to this Agreement. For the purposes of Information that is jointly developed, both Parties shall be considered a Receiving Party.

“**Representative**” means the officers, directors, employees, partners, lenders, agents, consultants, legal and financial advisors or other representatives of a Party and/or their Affiliates.

2. **Exclusion.** “Information” shall not include any notes, memoranda, analyses, compilations, studies, or other documents prepared by the Receiving Party, and/or their managers, directors, officers, employees, agents, or representatives, which were based on or otherwise reflect Information disclosed under the terms of this Agreement. Additionally, Information shall not include information which (a) prior to the effective date of this Agreement, was already in the possession of the Receiving Party without obligation of confidence; (b) was developed by the Receiving Party without the use of the Information; (c) was or becomes available to the public through no wrongful act of the Receiving Party; (d) was or becomes rightfully acquired by the Receiving Party without obligations of confidentiality or restrictions as to use, from a source other than the Disclosing Party, who, to the best of the knowledge of the Receiving Party, was not under a contractual or other obligation to the Disclosing Party of confidentiality and/or non-use; or (e) was or becomes acquired by the Receiving Party in the ordinary course of Receiving Party’s business and in connection with Receiving Party’s ownership interest in a facility or other asset.

3. **Obligation of Confidentiality.** The Receiving Party shall keep the Information strictly confidential and shall not disclose said Information, absent the express prior written consent of the Disclosing Party, to anyone other than the Receiving Party’s Representatives who have a reasonable need to know such Information for the fulfillment of the Purpose stated herein. Additionally, the Receiving Party shall not use, and not permit its Representatives to use, the Information for the Receiving Party’s or its Representatives’ own benefit other than in fulfilling the Purpose stated herein. [REDACTED] and its Representatives shall not use the Information for purposes of developing or supporting, directly or indirectly, a competing facility at or near Magnum’s salt structure located in Central Utah. Any person receiving Information from the Receiving Party shall be informed by the Receiving Party of and be made aware of this Agreement, the confidential nature of the Information, and the other terms and conditions of this Agreement. The Receiving Party shall be responsible for taking all reasonable measures to restrain its Representatives from the unauthorized use of the Information. The Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives.

4. **Purpose.** The Parties will use the Information provided under this Agreement only for the purpose of evaluating the Potential Transaction.

5. **Return of the Confidential Information.** Absent an earlier demand by the Disclosing Party for the return of the Information, the Receiving Party and its Representatives shall only hold the Information for such period of time as it may be reasonable and necessary to assist the Receiving Party in fulfillment of the Purpose stated above. Within thirty (30) days after a written demand from the Disclosing Party or within thirty (30) days after the Information is no longer needed for the Purpose stated herein, the Receiving Party and its Representatives shall return to the Disclosing Party all materials that contain or evidence the Information required to be protected under this Agreement; provided, however, that (i) the Receiving Party’s Legal Department may retain one copy of the Information solely for the purpose of defending or

prosecuting claims relating to the Potential Transaction and/or this Agreement; and (ii) the Receiving Party shall not be deemed to have retained or failed to destroy any Information which is contained on servers or back-up sources if such Information is deleted from local hard drives and no attempt is made to recover the Information from such servers or back-up sources. Any Information that the Receiving Party maintains pursuant to the preceding sentence shall continue to be maintained as confidential pursuant to the terms of this Agreement. The Receiving Party shall confirm the completeness of any return of the Information in writing to the Disclosing Party. Return of the Information hereunder shall not extinguish the obligations and liabilities of the Receiving Party and its Representatives to the Disclosing Party for non-disclosure and non-use specified herein, which obligations and liabilities shall remain in full force and effect for the period specified in Section 12, below.

6. **Remedies.** The Receiving Party agrees that in the event of any breach of any provision hereof, damages resulting from the breach may be impossible to measure accurately, and injuries sustained by the Disclosing Party may be impossible to calculate and remedy. The Receiving Party therefore agrees that in such event, the Disclosing Party shall be entitled to obtain injunctive relief and specific performance of the covenants contained in this Agreement in any court of competent jurisdiction without the necessity of posting a bond even if a bond is otherwise normally required. Such injunctive relief will in no way limit the Disclosing Party's right to obtain other remedies available under applicable law or in equity. In the event the Disclosing Party prevails in obtaining such relief, the Receiving Party shall reimburse the Disclosing Party all reasonable costs and attorney fees and expenses incurred in connection therewith.

7. **Compelled Disclosure.** In the event the Receiving Party receives a request or may be required by applicable law to disclose all or any part of the Information, the Receiving Party will immediately notify the Disclosing Party of the request, consult with the Disclosing Party, and assist the Disclosing Party in seeking a protective order or request for other appropriate remedy. In the event that such protective order or remedy is not obtained or that the Disclosing Party expressly waives in writing compliance with the terms hereof, the Receiving Party or its Representatives, as the case may be, shall disclose only that portion of the Information which, in the written opinion of its legal counsel, is legally required to be disclosed, and will exercise its best efforts to assure that confidential treatment will be accorded the Information by the parties receiving the same. The Disclosing Party shall be provided an opportunity by the Receiving Party to review the Information to be disclosed by the Receiving Party prior to its disclosure.

8. **NO REPRESENTATIONS, WARRANTIES, OR LIABILITY.** EACH PARTY ACKNOWLEDGES AND AGREES THAT THE DISCLOSING PARTY AND ITS AFFILIATES MAKE NO EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, OR COVENANTS AS TO THE ACCURACY AND/OR COMPLETENESS OF THE INFORMATION AND AGREE THAT NEITHER THE DISCLOSING PARTY NOR ITS AFFILIATES SHALL HAVE ANY LIABILITY WHATSOEVER TO THE RECEIVING PARTY OR ITS REPRESENTATIVES FOR ANY USE MADE BY THE RECEIVING PARTY OR ITS REPRESENTATIVES OF THE INFORMATION, OR ANY ERRORS THEREIN OR OMISSIONS THEREFROM. THE RECEIVING PARTY AND ITS REPRESENTATIVES SHALL RELY SOLELY UPON THEIR OWN INDEPENDENT ESTIMATES, COMPUTATIONS, EVALUATIONS, REPORTS, STUDIES, AND KNOWLEDGE WITH

RESPECT TO THE EVALUATION OF THE POTENTIAL TRANSACTION. EACH PARTY AGREES THAT IT SHALL BE ENTITLED TO RELY ONLY ON ANY REPRESENTATIONS OR WARRANTIES MADE TO IT BY THE OTHER PARTY IN ANY DEFINITIVE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE POTENTIAL TRANSACTION THAT HAS BEEN EXECUTED AND DELIVERED.

9. **No Offer and Non-Exclusivity.** The sole purpose of this Agreement is to provide access to the Information for the evaluation of the Potential Transaction while protecting and governing the confidentiality and use of the Information in accordance with the terms hereof. Furnishing and receiving Information hereunder does not constitute an offer by any Party hereto and does not prohibit any Party hereto from currently or subsequently entering into agreements with third parties concerning transactions that are the same as or similar to the Potential Transaction. The Parties agree that unless and until a definitive agreement between the Parties with respect to the Potential Transaction has been executed and delivered, and then only to the extent of the specific terms of such definitive agreement, no Party hereto will be under any legal obligation of any kind whatsoever with respect to any transaction by virtue of this Agreement or any written or oral expression with respect to such a transaction by any Party or their respective Representatives, except, in the case of this Agreement, for the matters specifically agreed to herein. At any time, for any reason or for no reason, the Parties shall be entitled to cease discussions regarding the Potential Transaction and to cease disclosure of Information hereunder by giving written notice to the other Party. The giving of such notice shall not, however, extinguish any rights or obligations which the Party may have under this Agreement. The Parties acknowledge and agree that their discussions and evaluation of the Potential Transaction are non-exclusive and that the Parties may currently or in the future be discussing or evaluating with third parties transactions that are the same as or similar to the Potential Transaction.

10. **Prior Disclosures.** The Parties acknowledge that before the date this Agreement is executed, certain Information may have already been exchanged between the Parties. The Receiving Party shall treat the Information described in the preceding sentence as if it had been exchanged after the effective date of this Agreement.

11. **Use of Name.** The Parties agree that they will not, except as required by law, use the other Party's name or the name of any Affiliates of the other Party without prior written consent.

12. **Term.** This Agreement shall remain in full force and effect for a period of two (2) years from and after the later to occur of: (i) the delivery by any Party of written notice of termination of further discussions regarding the Potential Transaction; or (ii) termination of the definitive agreement(s) entered into by the Parties with respect to the Potential Transaction.

13. **Scope of Agreement.** This Agreement supersedes all prior or contemporaneous agreements, discussions and correspondence, and constitutes the entire agreement of the Parties with respect to the subject matter hereof. This Agreement may be amended, modified, or supplemented only by a further written agreement executed by the Parties. The execution, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Utah without regard to rules concerning conflicts of law.

14. **Venue and Jurisdiction of Actions.** Any action at law, suit in equity, or any other judicial proceeding for the enforcement of any provision of this Agreement shall be instituted only in a Utah state court sitting in Salt Lake County, Utah or the federal court of the United States sitting in the District of Utah (the “**Court**”). All Parties agree that the Court shall have exclusive jurisdiction over the enforcement or interpretation of this Agreement.

15. **Severability.** If any provision of this Agreement is invalid or unenforceable, such provision shall be fully severable from this Agreement and the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be liberally construed to carry out the provisions and intent hereof. The invalidity or unenforceability of any provision of this Agreement with respect to any person or entity shall not affect the validity or enforceability of such provision with respect to any other person or entity.

16. **Attorney Fees.** In the event either party to this Agreement defaults in the performance of that party’s covenants and obligations contained herein, the defaulting party shall pay all reasonable attorney fees incurred by the other Party in enforcing this Agreement.

17. **Notices.** Any notice required to be given to a party hereto shall be directed to such party and mailed by certified mail, electronic mail, or personally delivered to an agent of the Party. Such notice shall be effective as of the date received at the address set forth below:

Magnum: _____:
Attn: Tiffany James, Vice President
Magnum Development LLC
3165 East Millrock Drive, Suite 330
Salt Lake City, UT 84121

IN WITNESS WHEREOF the parties hereto, intending to be legally bound, have caused their authorized representatives to execute and deliver this Agreement.

Magnum Development LLC: _____

by _____
its _____

by _____
its _____