



NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“NDA”) is made as of the date on which both Balloonist LLC and its Affiliates (“Company”) and the Wisconsin Economic Development Corporation (“WEDC”) have signed below (“Effective Date”). The Company and WEDC will also be referred to, individually, as a “Party” or, collectively, “the Parties.” “Affiliate” means any entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a Party, where, “control” means the power to direct the management or affairs of an entity, and “ownership” means the beneficial ownership of 50% or more of the voting equity securities or other equivalent voting interests of the entity.

1. WEDC is a public private corporation created under Wis. Stat. §§ 238 et seq. WEDC is responsible for meeting its public records law (Wis. Stat. §§ 19.31 et seq) responsibilities for its records as is every Authority (as defined in Wis. Stat. § 19.32(1)) in the state. Except as limited by statute or otherwise prohibited by law, information submitted by the Company may be released in response to a public records request.
2. For purposes of this NDA, “Confidential Information”¹ means all non-public proprietary information or material disclosed or provided by the Company or its parents, subsidiaries and affiliates to WEDC orally or in writing, concerning any aspect of the business or affairs of the Company, including without limitation, product designs, product plans, data, software and technology, financial information, marketing plans, business opportunities, proposed terms, pricing information, discounts, inventions and know-how, and for written materials, that has been clearly marked at the time of disclosure to WEDC as “CONFIDENTIAL,” or would reasonably be understood, given the nature of the information or the circumstances surrounding its disclosure, to be confidential, and for content exempt from public records disclosure pursuant to Wis. Stat. § 19.36(5), “CONFIDENTIAL – TRADE SECRET” as that term is defined in Wis. Stat. § 134.90(1)(c). To the fullest extent permitted by law, Confidential Information also includes the existence of this NDA and the fact or nature of the discussions between the parties. Confidential Information does not include any information which (a) as of the Effective Date or hereafter becomes generally known to the public other than as a result of an unauthorized disclosure by WEDC or its Representatives (as defined below); (b) is or becomes available to WEDC on a non-confidential basis by Company or any officer, employee, agent or representative of Company prior to its disclosure by WEDC; (c) is or becomes available to WEDC from a source not known to WEDC to be under an obligation of confidentiality to Company; (d) is known by WEDC prior to its receipt of the information; or (e) is independently developed by WEDC without the use of the Confidential Information as can be shown by documentary evidence.
3. WEDC shall not use the Confidential Information other than in connection with the purposes contemplated by this NDA and relating to the business and economic

¹WEDC employees are subject to a legal duty of confidentiality relating to information gained in the course of or by reason of his or her official position pursuant to Wis. Stat. § 19.45(4). This NDA provides specificity on how WEDC will handle Confidential Information provided by Company or its parents, subsidiaries and affiliates.

development discussions between the parties and any Authority provided however that if any contract for a project arises out of the discussion, WEDC may also use the Confidential Information in connection with the implementation, administration and enforcement thereof. WEDC will: (a) hold Confidential Information in strict confidence and take reasonable precautions to protect such Confidential Information (such precautions to include, at a minimum, all precautions WEDC employs with respect to its own confidential materials); (b) not divulge any Confidential Information to any third party except as expressly permitted in this NDA or as required by applicable law; and (c) not copy or reverse engineer any materials disclosed under this NDA or remove any proprietary markings from any Confidential Information.

4. In connection with the business and economic development discussions between the parties, WEDC may need to disclose Confidential Information about the economic development opportunity to employees and officials of an Authority in Wisconsin that is subject to Wisconsin public records law. WEDC will advise an Authority of the confidential nature of the Confidential Information.
5. WEDC shall keep Confidential Information confidential and will not disclose Confidential Information to any person or entity other than set forth below:
 - a. WEDC's Representatives (which include, without limitation, employees, legal counsel and other professional advisors retained by WEDC) who need to know the Confidential Information for the purpose set forth in Section 3. WEDC shall be responsible for any failure of its Representatives to treat the Confidential Information as confidential in accordance with the terms and conditions herein.
 - b. Third parties that are not subject to Wisconsin's public records law who, along with any of their representatives, have a direct and immediate need of such access to advance the economic development opportunity referenced in Section 3 provided that each such individual or entity is informed of the confidential nature of the Confidential Information and has agreed to treat the information as confidential in accordance with the terms and conditions no less protective than as set forth in this NDA.
 - c. As required by law or legal process in the opinion of WEDC's counsel, including but not limited to Wisconsin's public records law, Wis. Stat. §§ 19.31 et seq.
 - d. To any auditor of WEDC.
 - e. To any Federal Agency (as defined in 42 U.S. Code § 5122(9)) in connection with an inquiry.
 - f. Otherwise authorized in writing by Company.
6. In the event WEDC or any of its Representatives is, in the opinion of WEDC's or any Representative's Counsel as applicable, required by applicable law to disclose any Confidential Information under Section 5(c) then WEDC, unless prohibited by law, will provide notice of the request or legal process to Company so that Company may respond with the legal basis for protecting the Confidential Information. If Company fails to respond within five (5) business days of receipt of such notice, WEDC may proceed with disclosing such Confidential Information. Additionally, if WEDC does not agree with the provided legal basis, Company will have another five (5) business days to, as its

sole option (but without any obligation to do so) and at its sole expense attempt to seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. Upon expiration of the additional five (5) business days, WEDC may proceed with disclosing such Confidential information in the absence of a protective order. To the extent that the Company seeks to narrow the nature and scope of the Confidential Information to be disclosed, WEDC agrees not to oppose any action by the Company to obtain a protective order or pursue other appropriate remedy in order to limit such disclosure.

7. The failure of either Party to insist upon strict performance of the provisions contained in this NDA shall not constitute a waiver of its rights as set forth in this NDA, or a waiver of any other provisions or subsequent default by the other party of any of the terms or conditions of this NDA.
8. This NDA and all matters relating to it shall be governed by and construed in accordance with the laws of the State of Wisconsin without regard to its choice or conflicts of law provisions. Should any provision of this Agreement be proven invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired. WEDC acknowledges that any misappropriation of the Confidential Information in violation of this Agreement may cause the Company harm, the amount of which may be difficult to ascertain, and therefore agrees that the Company shall have, as its exclusive remedy, the right to apply to a court of competent jurisdiction for an order enjoining any such further misappropriation and without the Company posting of any bond and without the proof of actual damages.
9. This NDA constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other oral and written representations, understandings or agreements relating to the subject matter, and may not be amended except by a written agreement signed by the parties.
10. The performance of the business and economic development discussions and evaluations creates no obligation on the part of either party to enter into a relationship or agreement and either may terminate such discussions at any time.
11. The following individuals are designated as the contacts for NDA purposes. Any notice required hereunder shall be in writing and shall be deemed to have been given or made as follows: (i) if sent by hand delivery, upon receipt; (b) if sent by electronic mail, upon receipt by sender of an electronic confirmation message, as recorded by the sender's system, or (ii) if sent by U.S. mail first class postage prepaid or by overnight courier services with all charges prepaid upon the earlier of receipt or five days after deposit in the United States mail, addressed as follows:
 - a. Balloonist LLC
Attn: Pamela A. Gregorski
103 Foulk Rd, Suite 202
Wilmington, DE 19803
Email: pamela.gregorski@cscgfm.com
 - b. Wisconsin Economic Development Corporation
Attn: WEDC Chief Legal Officer

201 W. Washington Avenue
Madison, WI 53703
Email: legal@wedc.org

12. This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.
13. Neither Party will make, or authorize any third party to make, any public announcement or other disclosures related to this NDA and any potential agreement or relationship with the other Party or any of its affiliates or subsidiaries without the prior written approval of the other Party. For the purposes of this NDA public announcements include disclosures to any person or entity other than the other Party by any means, including but not limited to, press releases, written or oral statements made to the media, blogs, trade organizations, publications, websites, or any other public audience or unauthorized third parties.
14. Neither Party to this NDA acquires any intellectual property rights or any other rights under this NDA except the limited right to use the Confidential Information set forth herein.
15. CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" AND WITH ALL FAULTS.
16. This NDA terminates as of the date the parties execute a final contract for the project protected by this NDA or if the parties do not execute a final contract, when WEDC no longer considers the project as "pending" per Wis. Stat. § 238.08 . WEDC's obligations with respect to non-disclosure of trade secrets shall survive any termination of this NDA for so long as the Confidential Information remains a trade secret under applicable law.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

WISCONSIN ECONOMIC DEVELOPMENT CORPORATION

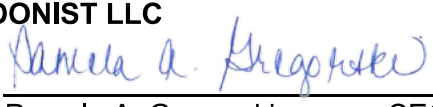
By: 

~~Jennifer Hagner Campbell, Chief Legal Officer~~

Maya Haese, Deputy General Counsel

Date: _____

BALLOONIST LLC

By: 

Pamela A. Gregorski

CEO, President & Secretary

Date: 8/9/2023