

## MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (the “**Agreement**”) is entered into effective as of the \_\_\_ day of \_\_\_\_, 2021, by and between **Spirit America Corp**, whose address is 11202 N. 24<sup>th</sup> Avenue, Phoenix, AZ 85029 (“**Spirit**”), and \_\_\_\_\_ having an address of \_\_\_\_\_ (“\_\_\_\_\_”, and together referred to as the “**Parties**”).

### Recitals

- A. Spirit America Corp is an Arizona Corporation;
- B. Spirit possesses certain confidential data, plans, proposals, materials and other information relating to Spirit’s business and operations; and \_\_\_\_\_ possesses certain confidential data, plans, proposals, materials and other information relating to \_\_\_\_\_'s business and operations;
- C. Spirit and \_\_\_\_\_ each wish to examine certain of the other’s Confidential Information (as hereafter defined) on a nonexclusive basis, all on the terms and conditions set forth in this Agreement;
- D. The purpose of this Agreement relates to distribution discussions for both parties
- E. The Parties acknowledge and agree that this Agreement is necessary to protect their respective businesses and that the Parties have been induced to provide Confidential Information to each other by the covenants and agreements set forth below.
- F. Each undersigned party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has disclosed or may disclose Confidential Information. The purpose of this Agreement is to prevent the unauthorized disclosure or use of Confidential Information.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. **Definition.** For purposes of this Agreement, “Confidential Information” shall mean any information (as described herein below) regarding the Disclosing Party, which is disclosed to the Receiving Party in connection with any potential or established business relationship or agreement between the Disclosing Party and the Receiving Party, which has actual or potential economic value to the Disclosing Party and which is not generally known to the public at the time it is disclosed to the Receiving Party. Such Confidential Information shall be identified in writing and marked confidential, or if

communicated to \_\_\_\_\_ verbally shall be reduced to writing by the Disclosing Party and marked confidential and sent to the Receiving Party within thirty (30) days of the verbal communication, and may include, but shall not be limited to \_\_\_\_\_ to, analyses, trade secrets, know-how, negative know-how, formulas, patterns, compilations, programs, devices, methods, techniques, processes, financial information, products, inventions, source codes, diagrams, marketing and pricing information, business strategies and practices, and information regarding customers and suppliers, any of which may be in any medium or format that exists.

2. **Conditions on Receiving Party.** In consideration of the Disclosing Party's disclosure of Confidential Information to and other relationships with the Receiving Party, the Receiving Party hereby agrees as follows:

a. **Standard of Care.** The Receiving Party shall hold and maintain all Confidential Information in strictest confidence, taking the same degree of care with the Confidential Information as the Receiving Party takes with its own similar information.

b. **Use and Benefit.** The Receiving Party shall not, without the prior written approval of the Disclosing Party, use for its own benefit, publish, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the Disclosing Party, any of the Confidential Information. In addition, the Receiving Party shall not, without the prior written approval of the Disclosing Party, reverse engineer, deconstruct, or otherwise analyze the contents or components of products or materials it receives from the Disclosing Party to acquire information that would be Confidential Information if then disclosed directly by the Disclosing Party.

c. **Restricted Access.** The Receiving Party shall restrict access to the Confidential Information to those of its officers, directors, consultants, and employees who clearly need such access in order to participate on behalf of the Receiving Party in the analysis, negotiation or carrying out of a business relationship or agreement with the Disclosing Party. The Receiving Party further warrants and represents that it will advise each of the persons to whom it provides access to any of the Confidential Information that such persons are strictly prohibited from making any use, publishing or otherwise disclosing to others, or permitting others to use for their benefit or to the detriment of the Disclosing Party, any of the Confidential Information, and are otherwise subject to the provisions of this Agreement.

d. **Use of Confidential Information.** The Confidential Information will not be used in any way against the interests of the Disclosing Party, including to file any patent, trademark or service mark application relating to the Confidential Information except in the name of or assigned to the Disclosing Party, to provide any reexamination or any interference with any such application which has been filed or will be filed by the Disclosing Party relating to the Confidential Information.

e. **Protection of Confidentiality.** The Receiving Party shall take all necessary action to protect the confidentiality of the Confidential Information, except for its disclosure pursuant to ¶ c above, and hereby agrees to indemnify the Disclosing Party against any and all losses, damages, claims, expenses or liabilities incurred or suffered by the Disclosing Party as a result of the Receiving Party's breach of this Agreement.

f. **Irreparable Harm; Remedies.** The Receiving Party understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause the Disclosing Party irreparable harm, the amount of which may be difficult to ascertain. The Receiving Party therefore agrees that the Disclosing Party shall have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as the Disclosing Party shall deem appropriate. Such right of the Disclosing Party is to be in addition to the remedies otherwise available to the Disclosing Party at law or in equity.

3. **Term.** The term of this Agreement shall be two (2) years from the date of execution by the Parties, unless extended by mutual consent in writing. The termination of this Agreement shall not relieve the Parties of any debts and obligations arising prior to the termination with respect to Confidential Information. Further, the confidentiality, nonuse and nondisclosure obligations under this Agreement shall continue indefinitely from the date of this Agreement, unless otherwise expressly terminated in writing by the Parties.

4. **Exceptions.** It is further agreed that the obligations of confidentiality and nonuse imposed in this Agreement will not apply to:

a. information which is now or becomes (through no improper action or inaction by Receiving Party) part of the public domain;

b. information already known to the Receiving Party at the time of disclosure;

c. information that was rightfully disclosed to Receiving Party by a third party without restriction;

d. information which can be shown by clear and convincing documentary evidence to have been independently developed by Receiving Party without use of any Proprietary Information or by employees of Receiving Party who have had no access to such information; or

e. information that the Receiving Party is required by law or court order to disclose, provided Receiving Party so notifies Disclosing Party in writing as soon as

practicable, so that the Disclosing Party may make efforts to limit disclosure and to obtain confidential treatment or a protective order as provided in subsection 4(e)(i) below.

(i) If the Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any (i) Confidential Material; (ii) the content or substance of any Confidential Material; or (iii) materials or information relating to the Party's opinion, judgment or recommendations concerning the Confidential Material (every item listed in (i)-(iii), above, being included in the definition of "Confidential Material"), the Receiving Party shall provide the Disclosing Party with prompt notice of such request and the documents and/or information requested thereby so that the Disclosing Party may seek an appropriate protective order and/or waive the Receiving Party's compliance with the provisions of this Agreement. It is further agreed that, if in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party is nonetheless, in the written opinion of the Receiving Party's counsel, compelled to disclose Confidential Material to any tribunal or else stand liable for contempt or suffer other censure or penalty, the Receiving Party may disclose to such tribunal without liability hereunder that portion of the Confidential Material which the Receiving Party's counsel advises in writing that the Receiving Party is compelled to disclose; provided, however, that the Receiving Party shall give the Disclosing Party written notice of the information to be so disclosed as far in advance of its disclosure as is practicable. Upon further written request by the Disclosing Party, the Receiving Party shall use all reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the information required to be disclosed as the Disclosing Party designates, and the Disclosing Party shall either undertake legal action itself or reimburse Receiving Party's reasonable legal expenses incurred to comply with such request.

5. **Return of Property; Ownership.** The Receiving Party shall return to the Disclosing Party or destroy any and all records, notes and other written, printed, electronically stored, or tangible materials pertaining to the Confidential Information immediately on the written request of the Disclosing Party. Nothing in this Agreement shall be construed as granting any ownership or other property interest, assignment or license under any patent, trademark, trade secret, or copyright of Disclosing Party or any other entity.

6. **Prohibition Against Communications with Employees, Suppliers, and Customers.** Except as otherwise permitted by this Agreement, neither Party will communicate with the respective employees, suppliers, or customers of the other Party regarding the discussions and negotiations contemplated herein without the prior express written approval of the other Party. Neither Party will disclose to any other person the fact that the Confidential Information has been made available, that this Agreement has been

entered into, that discussions or negotiations are taking place concerning a possible transaction or any of the terms, conditions, or other facts with respect to any transaction, except and only to the extent that disclosure is required by law, judicial or administrative order or process and then only with prior written notice to and consultation with, as soon as possible, the responsible officer of the other Party.

7. **No Representation of Warranty, Accuracy, or Completeness.** The Parties and their Representatives do not make, nor shall they be deemed to make or have made, any representation or warranty as to the accuracy or completeness of that Party's Confidential Information, or any item thereof. No Party, its affiliates, nor any of their respective Representatives shall have any liability to any other Party, any of its Representatives, or any other person, of any nature or kind whatsoever, directly or indirectly, resulting from or arising out of the furnishing to the other Party or the use made by the other Party or any of its Representatives of any of the Confidential Information. Each Party agrees that it will rely upon its own investigation, due diligence, and analysis in evaluating and in satisfying itself as to all matters relating to the transaction.

8. **Nonexclusive.** The sharing of Confidential Information as provided in this Agreement does not create or imply an exclusive relationship by or among the Parties. Each Party remains free to negotiate or engage in other transactions, whether or not the same or similar to the matters relating hereto, provided that no Party may use Confidential Information provided by the other Party in furtherance of any transaction or agreement with a third party, except as provided herein.

9. **Further Agreements.** This Agreement does not obligate any Party to enter into any other agreements or transactions with any other Party. Any such other or further agreement shall exist only upon the execution of one or more written instruments to be negotiated between the Parties.

10. **General Provisions.**

a. **Binding Agreement.** This Agreement and the Receiving Party's obligations hereunder shall be binding on the representatives, assigns and successors of the Receiving Party and shall inure to the benefit of the Disclosing Party's assigns and successors.

b. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, and the courts of such State shall have exclusive jurisdiction to interpret and enforce this Agreement and to entertain applications for injunctive relief. Venue for any dispute or claim arising out of or in connection with this Agreement shall be only in the appropriate federal or state courts in Phoenix, Arizona. The Parties acknowledge that a material inducement to Spirit entering into this Agreement is \_\_\_\_\_'s agreement, on behalf of itself and each of its subsidiaries and affiliates, represented by the execution of this Agreement, to submit to the

jurisdiction of the U.S. District Court for the State of Arizona, or at Spirit's election, in the Courts of the State of Arizona, and of \_\_\_\_\_'s waiver of any defense of forum non convenient, lack of personal jurisdiction, or improper venue. The prevailing Party in any action to enforce this Agreement shall be entitled to court costs and reasonable attorneys' fees relating to such action.

c. **Sole Agreement.** This Agreement constitutes the sole understanding of the parties about the subject matter hereof and may not be amended or modified except in writing signed by each of the parties to the agreement.

d. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be a valid original agreement.

e. **Validity of Remaining Provisions.** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, it shall be deemed not to affect or impair the validity of the remaining provisions hereof, and each paragraph and sentence of this Agreement is hereby declared to be a separate and distinct provision. Such invalid or unenforceable provision shall be construed and reformed to make it conform as nearly as possible to its original intent.

f. **Non-Waiver.** No waiver of any provision of this Agreement will be deemed to be or will constitute a waiver of any other provision or other application of the same provision, whether similar, nor will any waiver constitute a continuing waiver.

**SPIRIT AMERICA CORP**

\_\_\_\_\_

By: \_\_\_\_\_  
Marti McCurdy  
CEO

By: \_\_\_\_\_  
[Print Name]  
[Title]