



## MEMORANDUM

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**TO:** Board of Directors  
**FROM:** Best Best & Krieger LLP  
**DATE:** November 19, 2019  
**RE:** Draft General Manager's Employment Agreement

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Enclosed please find a draft of Mr. Smith's employment agreement. While staff had initially expected to provide a simple extension of the existing agreement, the draft agreement is based on an updated template. This memorandum provides an explanation and overview of the revised draft agreement.

- New Template. The revised agreement is based on an updated BB&K template. This template reflects current best practices for manager employment agreements. With the exceptions discussed below, this template changes the "legalese" but does not change any of the deal-points from Mr. Smith's current agreement.

- Severance (§ 8(d)). Consistent with the current agreement, Mr. Smith is entitled to severance if he is asked to resign or terminated without cause. The amount of severance is the lesser of sum (1) his then-current monthly salary multiplied by six or (2) his then-current monthly salary multiplied by the remaining number of months on the term of the agreement. The important proposed change is that the new agreement requires Mr. Smith to provide a waiver of all claims against TTAD as a condition of receiving severance. This helps avoid a situation where he collects his severance and then files a lawsuit.

- Arbitration. The prior agreement contained an arbitration clause. This has been deleted as we generally recommend avoiding arbitration. It is very difficult to overturn arbitration decisions (even if clearly incorrect).

- Termination Near Election (§ 8(b)). The current agreement entitles Mr. Smith to additional severance payments if he is terminated without cause within ninety days of a Board election. The proposed agreement simply precludes termination during this time period. This is a more common approach and avoids potentially complicated severance calculations.

- Definition of Termination (§ 8(b)). The proposed agreement clearly defines what qualifies as termination under the agreement. This includes 1) notice of non-renewal of the agreement; 2) a request to resign as General Manager; 3) a reduction in salary or other financial benefits; 4) a material reduction in powers and authority (excluding placement on paid administrative leave); or 5) the elimination of the General Manager's position. This clear definition helps avoid claims by Mr. Smith regarding what types of adverse action can be considered termination.

Please let me know if you have any questions regarding the draft agreement.

JOSH NELSON