



ORDINANCE NO. 1767-17

AN ORDINANCE AUTHORIZING THE EXECUTION OF A CERTAIN
CONFIDENTIALITY AGREEMENT – COMCAST OF ILLINOIS, LLC AND
AZAVAR AUDIT SOLUTIONS, INC.

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that the Mayor and Village Clerk be, and the same are, are hereby authorized to execute a certain Agreement with Comcast of Illinois, LLC and Azavar Audit Solutions, Inc., in substantially the form attached hereto as Exhibit "A", and, by this reference, made a part hereof.

The foregoing Ordinance was adopted by a roll call vote as follows:

AYES: Kosik, Riess, Corrigan, DiMaggio, David

NAYS: 0

ABSENT AND NOT VOTING: 0

APPROVED: 
Joseph Mancino, Mayor

ATTEST: 
Donna Lobaito, Village Clerk

ADOPTED: June 26, 2017

APPROVED: June 26, 2017

**CONFIDENTIALITY AGREEMENT
BY AND BETWEEN
VILLAGE OF HAWTHORN WOODS**

**AND
ITS AGENT, AZAVAR AUDIT SOLUTIONS, INC.**

**AND
COMCAST OF ILLINOIS, LLC**

THIS AGREEMENT is made as of the date first written below by Comcast of Illinois, LLC (hereinafter "Comcast") and Azavar Audit Solutions, Inc. (hereinafter "Consultant") pursuant to the authority in the Franchise Agreement (the "Franchise") between the Village of Hawthorn Woods ("Franchise Authority") and Comcast.

WHEREAS, the Franchise Authority has retained Consultant to perform an audit or franchise fee review and recomputing of any amounts due to the Franchise Authority pursuant to Comcast's Cable Television franchise granted by the Franchise Authority in the Franchise (the "Audit"), and

WHEREAS, conduct of the Audit requires Consultant to have access to certain information considered by Comcast to be proprietary and confidential, and

WHEREAS, 65 ILCS 5/11-42-11.05 and the Franchise between the Franchise Authority and Comcast allows the Franchise Authority to inspect and audit Comcast's books and records and to recompute any amounts payable as the franchise fee to the Franchise Authority, and

WHEREAS, in connection with the Audit, Comcast may produce documentation it contends is confidential, and

WHEREAS, the Consultant, Franchise Authority, and Comcast (hereinafter collectively "the Parties") desire to enter into a working relationship which will permit the review of necessary documentation so that the Audit can be completed while providing reasonable assurances to Comcast that any documentation it produces that it legitimately considered confidential will not be publicly disclosed by the Consultant to the extent permissible under application law or this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. The purpose of the disclosure hereunder shall be for the sole purpose of permitting Consultant to perform the Audit. Consultant agrees to use the Confidential Information (defined below in Section 2) for such purpose and related actions (such as preparation of a report to the Franchise Authority officials, and to enforce the terms of the Franchise) in accordance with the Franchise, the terms of the Franchise, and this Agreement.
2. The term "Confidential Information" shall mean and refer to all Comcast confidential or proprietary information, documents, and materials, whether printed or in machine-readable form or otherwise, including, but not limited to, processes, hardware, software, inventions, trade secrets, ideas, designs, research, know-how, business methods, production plans, marketing and branding plans, merger plans, human resource policies, programs, and procedures relating to and including but not limited to organizational structure, management, marketing and branding strategies, products and services,

customer service, merger integration provisions, human resource and employee benefit policies, programs, and services, and internal communication processes and technology tools. Confidential Information shall include all Comcast information marked by Comcast as “Confidential.”

3. Subject to Sections 4 and 5 hereof:

- (i) Consultant agrees to use the same degree of care and scrutiny as it would use with respect to its own confidential information, but in any case using no less than a reasonable degree of care, to avoid disclosure (including, but not limited to, disclosure to the United States government, State government, local government (other than Consultant’s client pursuant to Sections 4 and 5 below), or any agency or department thereof), publication, dissemination, or use of any or all of the Confidential Information obtained hereunder; and
- (ii) Confidential Information will be kept confidential until destroyed or returned to Comcast, and shall not, without the prior written consent of Comcast, be disclosed to a third party except to the extent required or allowed by law or this Agreement, by Consultant or any of its representatives in any manner whatsoever in whole or in part.

4. The Consultant agrees that with respect to Confidential Information it will:

- (i) not use the Confidential Information other than in connection with the Audit and related uses contemplated herein;
- (ii) reveal the Confidential Information only to its representatives or to the Franchise Authority’s attorneys in its Law Department, the Franchise Authority’s Manager, or outside legal counsel who need to know the Confidential Information for the purpose of performing or reviewing the Audit, who are informed of the confidential nature of the Confidential Information, and who shall act in accordance with the terms and conditions of this Agreement; and
- (iii) disclose Confidential Information to an independent expert, agent, or consultant of Consultants as necessary to assist Consultants with regard to the subject audit provided that prior to the disclosure of such Confidential Information to any such independent expert, agent, or consultant, Consultants shall require any such person to reach and sign an agreement in the form of Appendix A, which is attached hereto, agreeing to abide by the terms of this Agreement. All persons receiving access to Confidential Information shall treat it as confidential and shall not disclose it or afford access to it to any other person not authorized by this Agreement to obtain said information nor shall such information be used in any other manner or for any other purpose than provided in this Agreement; and
- (iv) at Comcast’s reasonable request and at Comcast’s sole cost, return promptly to Comcast or destroy (and confirm such destruction in writing to Comcast) any and all portions of the Confidential Information disclosed under this Agreement (including copies forwarded to subcontractors and/or agents), together with all copies thereof, that come into either the Franchise Authority’s or Consultant’s possession; and
- (iv) in preparing an Audit report to the Franchise Authority in accordance with Section 8 of this Agreement, Consultant may use Confidential Information, as reasonably necessary to defend such report’s findings against any challenge by Comcast or a third party, under procedures

mutually agreed upon by the Parties to assure confidentiality to the extent permissible under applicable law or this Agreement.

Consultant shall be responsible for any breach of this Agreement by its representatives under Section 4(ii) above.

5. It is understood, however, that the foregoing provisions in Sections 1, 2, 3, and 4 above shall not apply to any portion of the Confidential Information which:

- (i) was previously known to the Franchise Authority or Consultant without obligation of confidentiality pursuant to this Agreement;
- (ii) is obtained by the Franchise Authority or Consultant after the date hereof from a third party lawfully in possession of such information and which is not in violation of any contractual or legal obligation to Comcast with respect to such information;
- (iii) is or becomes part of the public record or the public domain through no fault of either the Franchise Authority or Consultant any of its or their respective employees, subcontractors, or agents;
- (iv) is required to be disclosed to a third party by Comcast without execution of this Agreement;
- (v) is required to be disclosed by subpoena, statute, or administrative or judicial action provided that Franchise Authority or Consultant immediately after notice of such action notifies Comcast of such action to give Comcast the opportunity to seek any other legal remedies to maintain such Confidential Information in confidence prior to the required disclosure, or
- (vi) is approved for disclosure and release by written authorization of Comcast.

6. All the Confidential Information disclosed to, delivered to, or acquired by Consultant from Comcast hereunder shall be and remain the sole property of Comcast.

7. Disclosure of the Confidential Information disclosed by Comcast to Consultant shall not constitute any option, grant, or license to the Franchise Authority of such Confidential Information under any patent, know-how, or other rights heretofore, now, or hereinafter held by Comcast. It is understood and agreed that the disclosure by Comcast of the Confidential Information hereunder shall not result in any obligation on the part of either party to enter into any further agreement with the other with respect to the subject matter hereof or otherwise.

8. Any final Audit report prepared by Consultant that references or is based upon Confidential Information provided shall disclose such information only to the extent necessary to convey essential report information (e.g., as in a compilation or abstract). Consultant shall not release any confidential or proprietary information except in accordance with the terms of this Agreement.

9. This Agreement is binding on the Parties, their successors and assigns. No modification of this Agreement shall be effective unless in writing and signed by both parties hereto.

10. Notices hereunder shall be in writing and shall be deemed to have been delivered as of the day they are received when delivered personally, via certified mail, or via nationally recognized overnight courier:

- a. if to Consultant: Attention: Mr. Jason Perry
Azavar Audit Solutions, Inc.
234 S. Wabash Avenue, 6th Floor
Chicago, IL 60604
- b. if to Franchise Authority Attention: Kristin Kazenas
Village of Hawthorn Woods
Chief Financial Officer
2 Lagoon Drive
Hawthorn Woods, IL 60047
- c. if to Comcast: Attention: Mr. Marc Lockard
Comcast Cable – Franchise Audits
200 Cresson Blvd
Phoenixville, PA 19460

And

Ms. Debra L. Piscola
Sr. Director of Government Affairs
Comcast
1500 McConnor Parkway
Schaumburg, IL 60173

11. Comcast's waiver of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive its right thereafter to enforce and compel strict compliance with every term and condition hereof.
12. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State in which the cable system at issue is operated, without regard to principles of conflicts of law.
13. This Agreement constitutes the complete agreement between the Parties hereto and supersedes and cancels any and all prior communications and agreements between the Parties with respect to the disclosure of Confidential Information related to the purpose described herein and the subject matter hereof.

The Parties hereby indicate their assent this 10th day of July 2017.

Comcast of Illinois / West Virginia, LLC

Village of Hawthorn Woods

By: [Signature]
Title: RSVP
Date: 7/11/17

By: [Signature]
Title: MAYOR
Date: June 26, 2017

Azavar Audit Solutions, Inc.

By: [Signature]
Title: President
Date: 02/22/2017

EXHIBIT A

**CERTIFICATION REGARDING
CONFIDENTIAL INFORMATION**

I hereby certify:

- (i) My understanding that Confidential Information is provided to me pursuant to the terms and restrictions of the Confidentiality Agreement (“Agreement”) signed by AZAVAR AUDIT SOLUTIONS, INC. (“Consultant”), COMCAST, and the VILLAGE OF HAWTHORN WOODS (“Franchise Authority”);
- (ii) That I have read and understand the terms of the Agreement and agree to be fully bound by its terms; and,
- (iii) I will review said Confidential Information or information derived therefrom solely in accordance with the terms of the Agreement and not for any other purpose whatsoever.

Signature: _____

Date: _____

Print Name: _____

Company: _____