

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, _____, by and between **FEINBERG & McBURNEY REALTY/DEVELOPMENT, LLC**, a New Jersey Limited Liability Company (the "Disclosing Party") and _____, a _____ **AND** _____, a _____ (the "Receiving Party").

The Receiving Party has requested and/or will learn from the Disclosing Party information, both orally and in writing, concerning the business and assets of the Disclosing Party and its affiliates including, without limitation, the existence of, information contained in, and the terms of written or other agreements, title information, environmental information, and financing information. Such information, in whole or in part, together with analyses, compilations, programs, reports, proposals, studies, or any other documentation, prepared by the Disclosing Party, as the case may be, which contain or otherwise reflect or make reference to such information, whether or not specifically marked as confidential by the Disclosing Party, are hereinafter referred to as "Confidential Information."

The Receiving Party hereby agrees, as set forth below, to hold Confidential Information of the Disclosing Party in confidence and not to disclose such information to anyone except as otherwise provided for in this Agreement.

1. **NON-EXHAUSTIVE DEFINITION OF CONFIDENTIAL INFORMATION; NON-MARKING** The Receiving Party hereby agrees that Confidential Information will also include information that is not specifically encompassed in the definition thereof above, but that would reasonably be expected to be considered confidential by the Disclosing Party. Any issue as to the confidentiality expectations of the Disclosing Party regarding particular information shall be submitted to the Disclosing Party for determination. In addition, the parties hereby agree that although Confidential Information is not required to be marked as such under this agreement, some Confidential Information which is delivered to the Receiving Party hereunder may be so marked.
2. **USE OF CONFIDENTIAL INFORMATION** The Receiving Party agrees that the Confidential Information will be used solely for the purpose of evaluating a potential transaction between the Disclosing Party and the Receiving Party and not for any other purpose, except as otherwise agreed by the parties in writing.
3. **OWNERSHIP OF CONFIDENTIAL INFORMATION** The Receiving Party acknowledges that the Confidential Information is the Disclosing Party's property (or that the Disclosing Party is a valid licensee of such information) and that the Receiving Party shall not have any right, license, title, or interest in or to such Confidential Information, except as expressly provided in this Agreement.
4. **DISCLOSURE OF CONFIDENTIAL INFORMATION** The Receiving Party agrees to hold in confidence and not to disclose to anyone for any reason Confidential Information of the Disclosing Party; provided, however, that:
 - a. such Confidential Information may be disclosed to the officers, directors, employees, and agents (collectively, "Representatives") of the Receiving Party on a "need to know" basis for the purpose of evaluating the potential transaction between the parties, on the

condition that (i) each such Representative will be informed of the confidential nature of such Confidential Information and will agree in writing to be bound by the terms of this Agreement and not to disclose such Confidential Information to any other person and (ii) the Receiving Party agrees to accept full responsibility for any breach of this Agreement by its Representatives; and

- b. Confidential Information of the Disclosing Party may be disclosed by the Receiving Party upon the prior written consent of the Disclosing Party.

5. **RETURN OF CONFIDENTIAL INFORMATION** The Receiving Party agrees, upon the written request of the Disclosing Party, to promptly deliver to the Disclosing Party (or, with the Disclosing Party's consent, destroy) the originals and all copies of the Disclosing Party's Confidential Information then in the Receiving Party's possession or control, including, without limitation, the portion of the Confidential Information that is included in analyses, compilations, programs, reports, proposals, studies, or other documentation prepared by the Receiving Party or its Representatives.

6. **LIMITATIONS ON CONFIDENTIAL INFORMATION** The term "Confidential Information" does not include any information which:

- a. Is or becomes generally available to or known by the public (other than as a result of a disclosure directly or indirectly by the Receiving Party);
- b. Is lawfully received by the Receiving Party without restriction from a third party who obtained the Confidential Information other than as a result of a breach of any confidentiality obligation; or
- c. Is disclosed by the Receiving Party pursuant to judicial action or governmental regulations, provided that the Receiving Party notifies the Disclosing Party within a reasonable time prior to such disclosure (unless the notification is prohibited by law) and the Receiving Party cooperates with the Disclosing Party in the event that the Disclosing Party elects legally to contest and avoid such disclosure.
- d. The Receiving Party will promptly notify the Disclosing Party of its belief that the exception described in (b) above applies. The Receiving Party nevertheless agrees to retain in confidence the fact that any information supplied hereunder was obtained from the Disclosing Party.

7. **SPECIFIC PERFORMANCE** The Receiving Party acknowledges and agrees that the rights being protected by the terms of this agreement are of a special, unique, unusual and extraordinary character, which gives them a particular value, and that the breach of any provision of this agreement shall cause irreparable injury and damage to the Disclosing Party. In such event, Disclosing Party shall be entitled to require specific performance of all of the acts and the undertakings required of the Receiving Party hereunder and to obtain injunctive and other equitable relief in any court of competent jurisdiction to prevent the violation or threatened violation of any of the provisions of this agreement without having to post a bond. Neither this paragraph 7 nor any exercise by Disclosing Party of its right to equitable relief or specific performance herein granted shall constitute a waiver by the Disclosing Party of any other rights which it may have to damages or other relief.

8. **ENFORCEABILITY** If any of the provisions contained in this Agreement is held to be unenforceable, in whole or in part, by a court of competent jurisdiction, the Receiving Party agrees to be bound by all other provisions of this Agreement, and such unenforceable provision may be revised to be enforceable to the greatest extent permitted by law.
9. **SUCCESSORS** The parties agree that this Agreement shall be binding upon the successors and assigns of the Receiving Party and shall inure to the benefit of, and be enforceable by Disclosing Party and its successors and assigns, and any officers or directors thereof.
10. **APPLICABLE LAW** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey, without regard to its conflicts of laws provisions. Any proceeding related to this Agreement shall be brought only in a court of competent jurisdiction located in the State of New Jersey.
11. **NO OBLIGATION** Nothing in this Agreement shall impose any obligation upon either party to consummate a transaction or to enter into any discussion or negotiations with respect thereto.
12. **WAIVER** The parties agree that Disclosing Party's failure at any time to require performance of any provision of this Agreement shall in no way affect Disclosing Party's right at a later time to enforce this Agreement.
13. **FACSIMILE COUNTERPART** Delivery of an executed counterpart of this Agreement by facsimile shall be effective as delivery of an original executed counterpart of this Agreement.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have executed this Agreement as of the date first written above.

RECEIVING PARTY-Broker

By: _____

Print Name: _____

Title: _____

RECEIVING PARTY-Principal

By: _____

Print Name: _____

Title: _____

DISCLOSING PARTY

By: _____

Print Name: _____

Title: _____