



NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Non-Disclosure and Confidentiality Agreement (this “**Agreement**”) is made and entered into by and among the owners of the real estate located at Sundance Marine Jensen Beach and Sundance Marine Melbourne and their officers, directors, managers, authorized members, and successors (collectively the “**Owner**”) and _____ individually and on behalf of any entities or persons for whom it acts as an agent, or in his capacity as a principal, including such entities’ managers, agents, officers, directors or authorized members (collectively “**Investor**”). David Kendall SVN (the “**Broker**”), acting as an agent for the Owner, is providing this Agreement to the Investor with both the Owner and Investor being named parties (the “**Parties**”) to the Agreement with the rights and obligations stipulated herein.

RECITALS:

A. The Owner (the “**Disclosing Party**”) possesses certain confidential information relating to its property, business, activities, assets or management that it may elect to disclose to the other Party (the “**Receiving Party**”). Certain Confidential Information (defined below) is being provided for the purpose of enabling the Receiving Party to evaluate a potential transaction whereby Investor may seek to present a formal offer to purchase a property or certain assets now owned by the Owner (a “**Proposed Transaction**”).

B. The Owner is willing to provide such Confidential Information to the Investor subject to the terms and conditions set forth below.

NOW, THEREFORE:

1. **Definition of Confidential Information.** For purposes of this Agreement, “**Confidential Information**” means any non-public information, technical data, or know-how, including, without limitation, that which relates to the Proposed Transaction, research, developments, intellectual property, product or service plans, business practices, agreement terms, products, assets (real and personal), services, employees, suppliers, customers, technology or other strategic partners, shareholders, members, partners, management, markets, developments, permits, approvals, processes, engineering, plans, equipment, fixtures, marketing, finances, notes, analyses or studies and all tangible and intangible embodiments thereof of any kind whatsoever, wherever located, whether conveyed in writing, orally or by any other form by the Disclosing Party or its Representatives (defined below). The term “Confidential Information” shall be deemed to include any notes, analyses, compilations, studies, interpretations, memoranda, or other documents (regardless of the form thereof) prepared by the Receiving Party or its Representatives which contain, reflect or are based upon, in whole or in part, any information covered by the first sentence of this Section 1.

The term “Confidential Information” does not include information that (i) is known to the Receiving Party prior to disclosure, or is information generally available to the public prior to disclosure; (ii) becomes hereafter, through no act on the part of the Receiving Party or its Representatives in violation of this Agreement, information generally available to the public; (iii) is or becomes available to the Receiving Party or its Representatives from a third party that is not bound by an obligation of confidentiality to the Disclosing Party with respect to such information; or (iv) was developed by, or for, the Receiving Party without use of or reference to the Confidential Information.

2. **Disclosure of Confidential Information.** The Owner is willing to disclose certain Confidential Information to the other Party on the following terms:

(a) The Receiving Party agrees to take precautions to safeguard Confidential Information of the Disclosing Party which are not less than (i) the precautions it takes to protect its own Confidential Information; and (ii) take all commercially reasonable precautions;

(b) The Receiving Party agrees not to disclose the Confidential Information to third parties, except to its Representatives as provided in Section 2(c) of this Agreement or as provided in Section 3 of this Agreement, without first having obtained the Disclosing Party's prior written consent thereto;

(c) The Receiving Party shall disclose the Confidential Information only to its officers, employees, directors, agents, financing sources, professional advisers (including, without limitation, legal counsel, accountants, and financial advisors), professional consultants, or other independent contractors ("**Representatives**"), *provided* that each such Representative shall be instructed to comply with the terms of this Agreement and the Receiving Party shall be liable for any breach of this Agreement by such Representative; and

(d) The Receiving Party shall use the Confidential Information only in matters directly connected with its evaluation or performance of the Proposed Transaction or such matters which are incidental, but required, for such performance.

3. **Confidential Information Required to be Disclosed by Law.** Notwithstanding any other provision in this Agreement (i) in the event that the Receiving Party or any of its Representatives is required by law, regulation, legal or regulatory process, court order, or other governmental requirement (each a "**Governmental Requirement**") to disclose any Confidential Information of the Disclosing Party, the Receiving Party shall, to the extent permitted by law, provide the Disclosing Party with notice of any such request or requirement so that the Disclosing Party may seek a protective order or other appropriate remedy (and the Receiving Party will reasonably cooperate with the Disclosing Party in such efforts, at the Disclosing Party's request and expense) or waive compliance with the provisions of this Agreement and (ii) if, in the absence of a protective order or other remedy or the receipt of a waiver from the Disclosing Party, the Receiving Party or its Representative, as applicable, is advised by legal counsel that it is nonetheless required to disclose Confidential Information, the Receiving Party or its Representative, as applicable, may, without liability hereunder, disclose not more than that portion of the Confidential Information required to be disclosed (*provided* that the Receiving Party will cooperate with the Disclosing Party, at the Disclosing Party's request and expense, to obtain assurance that confidential treatment will be accorded such disclosed information).

4. **No Grant of Rights.** Nothing in this Agreement, nor any disclosure made under this Agreement, shall be construed to grant the Receiving Party any rights by license or otherwise, either express or implied, in any patent, copyright, trademark, trade secret or other form of intellectual property now or hereafter owned, obtained or licensed (or protected in common law) by the Disclosing Party, or any other ownership rights of any kind. The Parties acknowledge that the Confidential Information of the Disclosing Party is, and remains, the exclusive property of the Disclosing Party at all times throughout the world.

5. **No Representations or Warranties.** Nothing in this Agreement shall be deemed to be a representation or warranty by the Disclosing Party about the Confidential Information, including, without limitation, with respect to the accuracy, validity, strength, scope, nature, applicability, or breadth of the Confidential Information. The Parties acknowledge that neither the other Party nor any of its Representatives has made any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information made available by the other Party or its Representatives. The Parties agree that, except as

otherwise set forth in a written agreement, other than this Agreement, executed by the Parties (including, without limitation, in a definitive written agreement with respect to the Proposed Transaction), neither Party nor any of such Party's Representatives shall have any liability to the other Party relating to or resulting from the use of the first Party's Confidential Information or any errors therein or omissions therefrom. Only those representations or warranties made in definitive written agreements between the Parties with respect to the Proposed Transaction, when, as and if executed, and subject to such limitations and restrictions as may be specified therein, will have any legal effect.

6. Return or Destruction of Confidential Information. The Receiving Party shall, within ten (10) days following the Disclosing Party's request, return all originals, copies, summaries and any other form(s) or embodiment(s) made by the Receiving Party of the Confidential Information in any tangible form within ten (10) days of such request or, in the alternative and at the Disclosing Party's sole option, the Receiving Party shall certify to the Disclosing Party, in writing, destruction of the same within ten (10) days of such request, and at the same time shall delete any Confidential Information from all electronic files, archives and back-up media and such certification to the Disclosing Party shall provide that it has done so. The Receiving Party's obligation to return or destroy copies of Confidential Information does not apply to copies of Confidential Information stored in system-type media (e.g., server system caches and backup tapes) nor shall it apply to Confidential Information represented in the files of legal counsel of the Receiving Party; *provided* that (i) such Confidential Information is not readily accessible to users, and in the ordinary course of business such Confidential Information is periodically, and systematically, overwritten, and (ii) notwithstanding Section 9 of this Agreement, the Receiving Party will be subject to the confidentiality obligations of this Agreement with respect to such retained Confidential Information for so long as such Confidential Information is so retained and is Confidential Information.

7. No Disclosure of Discussions. Except upon written agreement or as required by Governmental Requirement, neither Party shall disclose or announce to any third party (other than its Representatives) its potential participation in a business relationship with the other Party (including, without limitation, the Proposed Transaction), or disclose any discussions or negotiations with the other Party relating to such potential business relationship, or relating to this Agreement, including any of the terms, conditions, or other facts relating thereto or the fact of such discussions or negotiations, without the prior written consent of the other Party. All such information shall be Confidential Information.

8. Definitive Agreements. The Parties acknowledge and agree that other than with respect to the matters specifically set forth in this Agreement or as otherwise expressly agreed to in writing, no contract or agreement providing for any potential business relationship or other transaction (including, without limitation, the Potential Transaction) shall be deemed to exist between the Parties unless and until a definitive written agreement has been executed and delivered by the Parties with respect to a business relationship or other transaction.

9. Term. Except as expressly provided in Section 6(ii) of this Agreement, the obligations of each Party under this Agreement shall continue for One (1) year from signing this Agreement.

10. Other Opportunities. The Disclosing Party acknowledges that the Receiving Party may currently be developing, or may, in the future, develop, information internally, or receiving information from other parties, that is similar to the Confidential Information. Accordingly, nothing in this Agreement shall be construed as a representation or agreement that the Receiving Party shall not develop, or have developed for it, products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information, *provided* that the Receiving Party does not use Confidential Information in connection with such development. The Disclosing Party acknowledges that the Receiving Party may be pursuing other opportunities for investing in, acquiring, partnering with or otherwise conducting business or forming alliances with businesses

competing with the Disclosing Party, operating in the same or similar industry as the Disclosing Party, serving the same customers as the Disclosing Party, or using technology similar to the technology that is used by the Disclosing Party. The Disclosing Party agrees that the Receiving Party is not required to, and does not intend to, restrict or segregate the work assignments of personnel who may have been exposed to the information disclosed by the Disclosing Party to the Receiving Party (including, without limitation, Confidential Information).

11. Miscellaneous.

(a) **Equitable Relief.** The Parties agree that in the event of any breach or threatened breach by the Receiving Party, the Disclosing Party may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect the Disclosing Party against such breach or threatened breach.

(b) **Fees and Costs.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, collection, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, and fees incurred in collecting the foregoing, sales and use taxes and all other charges billed by the attorney to the prevailing party.

(c) **Assignment.** No Party may assign this Agreement or any interest in this Agreement without the other Parties' prior written consent. Any attempted assignment or transfer by either Party not in accordance with this Section 11(c) shall be null and void.

(d) **Severability.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining unaffected terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

(e) **Amendment and Modification.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each of the Parties.

(f) **Effect of Waiver or Consent.** No delay or omission to exercise any right, power or remedy accruing to either Party, upon any breach or default by either Party in the performance by that Party of its obligations with respect to the other Party, shall impair any such right, power or remedy of such Party; nor shall it be construed to be a waiver of any such breach or default or an acquiescence in such breach or default or of any similar breach or default occurring after such breach or default; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after such breach or default. Any waiver, permit, consent or approval of any kind or character on the part of either Party of any breach or default under this Agreement must be made in writing and shall be effective only to the extent specifically set forth in such writing.

(g) **Governing Law & Jurisdiction.** This Agreement shall be construed and enforced in accordance with the laws of the state of Florida. The parties to this Agreement hereby submit to the jurisdiction of the courts of the state of Florida.

(h) **Notices.** All notices which are required or may be given under this Agreement shall be in writing and sent to the destination provided below and shall be deemed to have been duly given when received if

personally delivered, upon delivery; if transmitted electronically (via electronic mail or facsimile), upon transmission.

12. Further Miscellaneous Provisions. The headings contained in this Agreement are for convenience only. The headings are not considered a part of this Agreement and will not limit or affect in any way the meaning or interpretation of this Agreement. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting or causing any instrument to be drafted. This Agreement may be executed in counterparts, or electronically, each of which shall be deemed to be an original, but both of which shall constitute the same agreement. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in “portable document format” (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

13. Notwithstanding anything contained herein, Investor agrees that any information, including the availability of the subject, will not be shared with anyone outside of its own principals, agents, and or advisors. Investor agrees that any information, including the availability of the subject, will not be disclosed to any unrelated third parties, without the prior written consent from the owner. Investor agrees not to disclose any of this information with any government agencies, townships, taxing authorities, & or local municipalities.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date set forth below.

The Investor

By: _____

Date: _____

Name:

Company:

Title:

and

Broker

By: _____

Date: _____

David Kendall

SVN | Safe Haven Advisors

SVN Marinas

Senior Advisor