

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “**Agreement**”) is made effective as of _____ (the “**Effective Date**”), by and between 4600 Forbes Blvd, LLC (the “**Disclosing Party**”), and _____ (the “**Receiving Party**”).

RECITALS:

WHEREAS, the Disclosing Party is considering or is already in a business relationship with Receiving Party, which relationship may include, without limitation, the purchase or sale of certain assets;

WHEREAS, in the course of the relationship or potential relationship, the Receiving Party has been or may be given access to certain confidential and proprietary information of the Disclosing Party, and only the confidential and proprietary information of the Disclosing Party will be subject to the confidentiality and use restrictions of this Agreement;

WHEREAS, the Disclosing Party is willing to commence or continue its relationship with Receiving Party only if Receiving Party enters into this Agreement; and

WHEREAS, the Parties have entered into this Agreement to ensure the confidentiality of Confidential Information (as hereafter defined) in accordance with the terms of this Agreement, to restrict the Receiving Party’s use of such information solely as expressly permitted herein, and to ensure that Receiving Party does not utilize such information to compete with the Disclosing Party, circumvent the Disclosing Party, give advantage to any competitor, or otherwise unfairly disadvantage the Disclosing Party;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Disclosing Party and Receiving Party hereby agree as follows:

I. DEFINITIONS. As used in this Agreement, the following terms, when capitalized, have the following meanings, unless a contrary meaning is clearly indicated.

- (a) “**Confidential Information**” has the meaning set forth in Section II.
- (b) “**Disclosing Party**” means 4600 Forbes Blvd, LLC, in its capacity as the party that discloses Confidential Information to Receiving Party.
- (c) “**Party**” means the Disclosing Party or the Receiving Party, individually, and the term “**Parties**” means, collectively, the Disclosing Party and the Receiving Party.
- (d) “**Receiving Party**” means _____, in its capacity as the party that receives Confidential Information from any Disclosing Party.

II. CONFIDENTIAL INFORMATION. The term “**Confidential Information**” means any information or material that is proprietary, non-public, or confidential to a Disclosing Party, the

disclosure, misuse, or unauthorized use of which may harm such Disclosing Party, whether or not owned or developed by such Disclosing Party, and/or its parent, subsidiary, and affiliated entities and their respective agents, employees, members, managers, attorneys, accountants, consultants, financing sources, and advisors, and which the Receiving Party may obtain through any direct or indirect contact with such Disclosing Party. Regardless of whether specifically identified as confidential or proprietary and without limiting the foregoing, Confidential Information shall include:

- (a) Intellectual property, trade secrets, technical data, copyrights, licenses, inventions, ideas, processes, formulas, computer programs and applications, software, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques;
- (b) information regarding plans for research, development, new products, ideas for adaptations and modifications of products;
- (c) marketing, business and strategic plans;
- (d) budgets, financial statements, and other financial information,
- (e) sales data, discounting policies, price lists, pricing structures, proposals, customer and prospective customer lists, and lists of strategic partners;
- (f) supplier data, hardware, manuals, correspondence, drawings, blueprints, notes, reports, and manufacturing data;
- (g) information regarding the skill and compensation of employees and independent contractors;
- (h) information concerning contemplated transactions, opportunities, acquisitions, dispositions, financing arrangements, properties, tenants, investors, owners, deal structures, terms, conditions, negotiations, and the identities of actual or prospective counterparties, customers, clients, lenders, brokers, and other business relationships of the Disclosing Party; and
- (i) the existence and status of the Parties' discussions and relationship, the fact that Confidential Information has been made available, and the terms of this Agreement.

Confidential Information includes, without limitation, any abstracts, reports, analyses, compilations, forecasts, notes, summaries, extracts, copies, materials, documents, and other information that the Receiving Party or any of its Representatives prepares by using, reflecting, or incorporating the Confidential Information.

The foregoing notwithstanding, “**Confidential Information**” does not include only information that the Receiving Party can demonstrate by contemporaneous written records:

- (i) matters that are or become public knowledge through no disclosure or other breach of this Agreement by the Receiving Party or any of its Representatives;

- (ii) information rightfully received by the Receiving Party from a third party that is not, to the Receiving Party's knowledge, under any duty of confidentiality, non-use, or other restriction with respect to such information;
- (iii) information required to be disclosed by applicable law, regulation, or valid order of a court, legislative body, or governmental agency, but only to the extent of such required disclosure and subject to Section III(e);
- (iv) information disclosed by the Receiving Party with the prior written consent of the applicable Disclosing Party;
- (v) and any other information that the applicable Disclosing Party agrees in writing is not Confidential Information.

III. PROTECTION OF CONFIDENTIAL INFORMATION. The Receiving Party understands and acknowledges that the Confidential Information has been developed or obtained by the applicable Disclosing Party by the investment of significant time, effort and expense, and that the Confidential Information is a valuable, special and unique asset of such Disclosing Party which provides such Disclosing Party with a significant competitive advantage and needs to be protected from improper disclosure, use, exploitation, and circumvention. In consideration for the receipt by the Receiving Party of the Confidential Information, the Receiving Party agrees:

- (a) **No Disclosure.** The Receiving Party will hold the Confidential Information in strict confidence, will protect the Confidential Information using at least the same degree of care that it uses to protect its own highly confidential information (and in no event less than a reasonable degree of care), and will not disclose the Confidential Information to any person or entity without the prior written consent of the applicable Disclosing Party, except as expressly permitted under this Agreement.
- (b) **Limited Use; No Copying/Modifying.** The Receiving Party will use the Confidential Information solely for the purpose of evaluating, pursuing, or performing the Parties' actual or potential business relationship with the Disclosing Party and for no other purpose whatsoever, including not for the benefit of the Receiving Party or any third party and not to compete with, circumvent, or otherwise disadvantage the Disclosing Party. The Receiving Party will not copy, reproduce, summarize, reverse engineer, decompile, disassemble, modify, or create derivative works from any Confidential Information without the prior written consent of the Disclosing Party, except that limited copies may be furnished to permitted Representatives who have a strict need to know the Confidential Information and are bound by obligations at least as protective as those set forth in this Agreement.
- (c) **Unauthorized Use.** The Receiving Party shall immediately, and in any event within one business day after becoming aware thereof, advise the Disclosing Party of any actual or suspected unauthorized disclosure, use, loss, or access of the Confidential Information, shall take all reasonable measures requested by the Disclosing Party to prevent, control, mitigate, and remedy such unauthorized disclosure, use, loss, or access, and shall cooperate fully with the Disclosing Party in connection therewith.

- (d) **Application to Representatives.** The Receiving Party shall not disclose any Confidential Information to any employee, officer, director, manager, member, partner, affiliate, attorney, accountant, consultant, financing source, or other representative of the Receiving Party (collectively, "Representatives"), except those Representatives who are required to have the Confidential Information in order to perform their duties in connection with the limited purposes of this Agreement and who are informed of the confidential nature of the Confidential Information and bound by confidentiality and non-use obligations at least as protective as those contained in this Agreement. Each permitted Representative to whom Confidential Information is disclosed shall sign a non-disclosure agreement substantially the same as this Agreement if requested by a Disclosing Party. Regardless of whether separate non-disclosure agreements are executed, the Receiving Party shall be responsible and liable for any act or omission of its Representatives that would constitute a breach of this Agreement if committed by the Receiving Party.
- (e) **Demanded Disclosure.** If the Receiving Party or any of its Representatives is required or purportedly required to disclose any Confidential Information by applicable law or by order, subpoena, or other process of a court, legislative body, or governmental agency, the Receiving Party shall, to the fullest extent permitted by applicable law, provide the Disclosing Party with prompt written notice of the demanded disclosure so that the Disclosing Party may, at its sole cost and expense, seek to quash such demand or obtain a protective order or other appropriate remedy. The Receiving Party shall cooperate with the Disclosing Party's efforts to quash the demand or obtain a protective order or other appropriate remedy. If disclosure is nonetheless required, the Receiving Party shall disclose only that portion of the Confidential Information that its counsel advises is legally required to be disclosed and shall use commercially reasonable efforts to obtain confidential treatment for such disclosed information. However, the Receiving Party shall not be required to take any action that would cause Receiving Party to be subject to any fine, penalty, punishment, criminal charges, or civil or criminal contempt proceedings.

IV. UNAUTHORIZED DISCLOSURE OF INFORMATION - INJUNCTION. If it appears that the Receiving Party has disclosed, used, or retained (or has threatened to disclose, use, or retain) Confidential Information in violation of this Agreement, the Disclosing Party shall have all remedies at law and in equity, including, without limitation, the right to seek temporary, preliminary, and permanent injunctive relief and specific performance to restrain the Receiving Party from disclosing, using, retaining, or otherwise exploiting the Confidential Information in whole or in part, without the necessity of posting bond or proving actual damages [waiver of bond may not be enforced in all jurisdictions]. The Parties acknowledge and agree that the Disclosing Party will be irreparably harmed by any breach of this Agreement and that monetary damages would be inadequate and extremely difficult to ascertain. In addition to equitable relief, the Disclosing Party shall be entitled to recover its actual damages, any unjust enrichment, and any profits or other benefits realized by the Receiving Party or its Representatives as a result of any breach. All of the remedies of the Disclosing Party are cumulative, and the Disclosing Party shall not be required to elect its remedy.

V. RETURN OF CONFIDENTIAL INFORMATION. Upon the earlier of the written request of the Disclosing Party or the termination of discussions or relationship between the Parties, the Receiving Party shall immediately cease using the Confidential Information and, within five (5) days, return to the Disclosing Party or, at the Disclosing Party's option, destroy all materials containing or

reflecting the Confidential Information of the Disclosing Party, in whatever form maintained, including all originals, copies, summaries, notes, analyses, extracts, and electronic files, and shall cause its Representatives to do the same. The Receiving Party shall also deliver to the Disclosing Party a written statement signed by an authorized representative of the Receiving Party certifying that all such materials have been returned or destroyed, as applicable, within such five (5)-day period. The foregoing notwithstanding, solely to the extent required to comply with applicable law, bona fide internal compliance policies, or document retention requirements, the Receiving Party may retain one archival copy of Confidential Information for such period (and only such period) as Receiving Party is required to retain such Confidential Information, provided that such retained copy shall remain subject to all confidentiality, non-use, and other restrictions of this Agreement.

VI. RELATIONSHIP OF PARTIES. Neither Party has an obligation under this Agreement to purchase any service, asset or item from the other Party, or commercially offer any products using or incorporating the Confidential Information. This Agreement does not create any agency, partnership, or joint venture.

VII. NO WARRANTY. The Receiving Party acknowledges and agrees that the Confidential Information disclosed by the Disclosing Party is provided on an “AS IS” basis. THE DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The Disclosing Party does not represent or warrant that any product, plan, projection, or business opportunity disclosed to the Receiving Party will be marketed or carried out as disclosed, or at all. Any actions taken by the Receiving Party in response to the disclosure of the Confidential Information shall be solely at the risk of the Receiving Party.

VIII. LIMITED LICENSE TO USE; OWNERSHIP. The Receiving Party shall not acquire any intellectual property rights, license rights, ownership rights, or other rights under this Agreement except the limited, revocable, non-exclusive, non-transferable right to review the Confidential Information solely on the terms expressly set forth in this Agreement. The Receiving Party acknowledges that, as between the Parties, the Confidential Information and all related copyrights, trade secret rights, and other intellectual property and proprietary rights are, and at all times shall remain, the exclusive property of the applicable Disclosing Party, even if suggestions, comments, and/or ideas made by the Receiving Party are incorporated into the Confidential Information or related materials during the period of this Agreement. All notes, analyses, compilations, and other derivative materials prepared by or for the Receiving Party that contain, reflect, or are based upon Confidential Information shall be owned exclusively by the applicable Disclosing Party to the extent they embody Confidential Information. No license or other rights are granted by implication, estoppel, or otherwise.

IX. INDEMNITY. The Receiving Party agrees to defend, indemnify, and hold harmless the Disclosing Party and its respective parent, subsidiary, and affiliated entities and their respective agents, affiliates, representatives, members, managers, officers, directors, employees, successors, and assigns from and against any and all claims, demands, actions, liabilities, damages, losses, costs and expenses, including reasonable attorneys’ fees, court costs, and expenses, arising out of or relating to any breach or alleged breach of this Agreement by the Receiving Party or any of its

Representatives, including any unauthorized disclosure, use, retention, or circumvention involving Confidential Information.

X. ATTORNEYS' FEES. In any legal action, arbitration, or other proceeding arising out of or relating to this Agreement, the Disclosing Party shall be entitled to recover from the Receiving Party its reasonable attorneys' fees and costs incurred in enforcing this Agreement, whether or not suit is filed and including fees and costs incurred in obtaining injunctive or other equitable relief [one-way fee-shifting provisions may be limited under applicable law in some jurisdictions].

XI. VENUE. The Parties agree that in the event of any dispute arising out of or relating to this Agreement, such dispute shall be brought exclusively in the state courts located in Prince George's County, Maryland, or, if federal jurisdiction exists, the United States District Court for the District of Maryland, and each Party irrevocably submits to the exclusive jurisdiction of such courts and waives any objection based on improper venue or forum non conveniens

XII. TERM. The obligations of confidentiality, non-disclosure, non-use, non-solicitation, non-circumvention, return or destruction, and all other obligations of the Receiving Party under this Agreement shall commence on the Effective Date and shall continue for five (5) years after the later of the Effective Date or the last disclosure of Confidential Information; provided, however, that with respect to any Confidential Information constituting a trade secret, such obligations shall continue for so long as such information remains a trade secret under applicable law.

XIII. GENERAL PROVISIONS. This Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous discussions, understandings, and agreements regarding such subject matter. Any amendments, modifications, or supplements must be in writing and signed by the Disclosing Party and the Receiving Party. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party against whom the waiver is sought to be enforced, and no waiver shall constitute a waiver of any other or subsequent breach. This Agreement shall be construed under the laws of the State of Maryland without regard to its conflicts of law principles. The Receiving Party shall not assign this Agreement or delegate any of its duties under this Agreement, whether voluntarily, by operation of law, or otherwise, without the prior written consent of the Disclosing Party, and any purported assignment or delegation in violation of this sentence shall be void. The Disclosing Party may assign this Agreement, whole or in part, without the consent of the Receiving Party, to any affiliate or in connection with any merger, consolidation, reorganization, sale of equity, sale of assets, or similar transaction. The confidentiality provisions and all other provisions that by their nature should survive shall remain in full force and effect in accordance with their terms. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the remaining portions of this Agreement shall remain in full force and effect and construed to best effectuate the original intent and purpose of this Agreement, and any invalid, illegal, or unenforceable provision shall be deemed modified to the minimum extent necessary to make it enforceable [judicial modification or "blue pencil" authority varies by state].

XIV. NOTICES. Any notice, request, information, or other document to be given hereunder to any Party by any other Party shall be in writing and delivered personally, by registered or certified mail, postage prepaid, by nationally recognized overnight delivery service, or by electronic mail with confirmation of transmission, as set forth below. Notices shall be deemed given when received or

delivery thereof is refused; provided that notices sent by electronic mail shall be deemed given only if sent to the email address designated by the receiving Party for notice purposes and no undeliverable notice is received.

If to the Disclosing Party, addressed to:

4600 Forbes Blvd, LLC
c/o Chano Real Estate Partners, LLC
9662 Allisonville Road
Indianapolis, IN 46250

With a copy to:

The Gibson Legal Group
8440 Woodfield Crossing Boulevard, Suite 360
Indianapolis, IN 46220
Attn: Michael A. Lang

If to Receiving Party, addressed to:

Attention: _____

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This Confidentiality and Non-Disclosure Agreement is dated as of the day and year first above written.

“Disclosing Party”

4600 Forbes Blvd, LLC

By: _____
Printed: _____
Title: _____

“Receiving Party”

By: _____
Printed: _____
Title: _____