

## NONDISCLOSURE AGREEMENT

This “Nondisclosure Agreement” (this “Agreement”), is made as of this \_\_\_\_ day of Month 2024 (the “Effective Date”), by and between Name of Recipient, a State of Formation Type of Entity (together with its affiliates, “Recipient”), and Newmark of Southern California, Inc., a California corporation dba Newmark Knight Frank (“Newmark”).

### RECITALS:

**WHEREAS**, Newmark has been engaged by the owner (“Owner”) of the real property and improvements located at 1427 4<sup>th</sup> Street, Santa Monica, California (the “Property”), to act as Owner’s exclusive real estate broker in connection with Owner’s efforts to sell the Property.

**WHEREAS**, Recipient has expressed an interest in purchasing the Property (the “Transaction”) and desires to receive certain information regarding the Property and/or Owner.

**WHEREAS**, the information referenced above contains “Confidential Information,” as that term is defined herein, which Newmark is willing provide to Recipient subject to the full execution of this Agreement.

**NOW, THEREFORE**, in consideration of the undertakings contained herein and subject to the terms and conditions set forth in this Agreement, and as a condition to the disclosure by Newmark to Recipient of any Confidential Information, the Parties agree as follows:

### 1 DEFINITIONS

1.1 “Affiliate” means any company or other entity that directly or indirectly Controls a Party; any company or other entity that is directly or indirectly Controlled by a Party; or any company or entity that is Controlled, directly or indirectly, by the ultimate parent company of a Party.

1.2 “Control” over a company means having the power, in law or in fact, to exert a decisive influence on the appointment of the majority of directors or managers thereof, or on the orientation of its management.

1.3 “Confidential Information” means, without the need to mark it as such, any of Client’s non-public information, whether oral, written, visual or otherwise, disclosed by Newmark to Recipient, or to Recipient’s directors, partners, officers, employees, agents or advisors, including attorneys, accountants, technical consultants, real estate broker, or investment bankers (collectively, the “Representatives”) of Recipient. Recipient shall be responsible for disclosures of Confidential Information made by its Representatives in violation of this Agreement. Confidential Information includes but is not limited to, without the need to mark it as such, any requests for proposals, requests for information, project plans, designs, drawings, analysis, research, price lists, product lists, processes, methods, ideas, auction information, “know how” and the like, strategies, forecasts, employee and vendor information, software (including all documentation, code and specifications), hardware and system designs, environmental information, architectures, structure and protocols.

1.4 “Purpose” shall mean the discussions and negotiations regarding the Transaction.

## 2 TERM

2.1. The term of this Agreement (the "Term") shall commence on the Effective Date and shall automatically expire one (1) year thereafter, unless earlier terminated pursuant to this Agreement.

2.2 Each Party shall be entitled to terminate this Agreement by giving not less than thirty (30) days' written notice to the other Party.

2.3 All rights and obligation of the Parties which have accrued prior to expiration or earlier termination of this Agreement shall survive such expiration or earlier termination.

## 3 OBLIGATION OF CONFIDENTIALITY

3.1 During the Term of this Agreement and for a further period of ten (10) years thereafter, Recipient and its Affiliates shall maintain all Confidential Information in strict confidence and shall: (i) not disclose the Confidential Information to any third party, without receiving formal written approval of Newmark in advance; (ii) not use the Confidential Information for any purpose other than the Purpose; (iii) take all necessary steps to prevent any access by a third party to the Confidential Information; (iv) not use the Confidential Information in any way detrimental to the interests of Newmark or its Affiliates, or so as to obtain any competitive advantage for themselves; and (v) not file any patent applications disclosing the Confidential Information.

3.2 Recipient and its Affiliates shall ensure that all Confidential Information is kept secure, shall restrict access to the Confidential Information on a strict need-to-know basis, and shall take reasonable steps to ensure that its employees, directors, and officers who receive or have access to any Confidential Information are aware of the existence and terms of this Agreement and are bound by terms of secrecy at least to the same extent that Recipient and its Affiliates are bound by this Agreement.

3.3 If Recipient or its Affiliates wish to involve third parties that are part of or are themselves a legal entity other than Recipient, Newmark shall be consulted prior to any such involvement and their explicit agreement requested. Agreement to such third-party involvement, or lack thereof, shall be at Newmark's sole discretion.

3.4 Without the prior written consent of Newmark, neither Recipient nor its Affiliates will disclose to any individual or entity the fact that the Confidential Information has been made available, or that discussions or negotiations are taking place or have taken place concerning the Purpose, including the status of any discussions or negotiations with respect to the Purpose.

3.5 Without limiting the liability of its employees, directors, and officers, Recipient or its Affiliates shall be liable in the case of any breach of the secrecy obligations provided for in this Agreement by any of its employees, directors, or officers.

3.6 Recipient agrees and acknowledges that any actual or threatened breach of this Agreement will cause irreparable injury to Newmark and Client and that, in addition to any other remedies that may be available, Newmark and Client shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

3.7 The Confidential Information that has been or will be disclosed to Recipient or its Affiliates shall remain the exclusive property of Client.

3.8 The Confidential Information shall not be mechanically copied or otherwise reproduced by Recipient or its Affiliates without the express written permission of Newmark, except for such copies Recipient may require pursuant to this Agreement for internal evaluation purposes on a need-to-know basis.

3.9 All copies shall, on reproduction by Recipient or its Affiliates, contain the same proprietary and confidential notices and legends which appear on the original information, unless expressly authorized otherwise by Newmark.

3.10 Recipient and its Affiliates will return to Newmark immediately, upon its written request, all copies of the Confidential Information. Further, upon the written request of Newmark, that portion of the Confidential Information which consists of analyses, compilations, excerpts, forecasts, summaries, studies or other documents and writings prepared by Recipient that are based upon or incorporate any Confidential Information will immediately be destroyed by Recipient and its Affiliates as the case may be.

3.11 If requested by Newmark, such destruction shall be certified in writing to Newmark by an authorized representative of Recipient and its Affiliates. The return and/or destruction of such Confidential Information as provided above shall not relieve Recipient and its Affiliates of other obligations under this Agreement.

3.12 The restrictions on the use and disclosure of the Confidential Information set forth herein do not apply to Confidential Information that: (i) was in possession of Recipient prior to disclosure by Newmark, without an obligation of confidentiality; (ii) is or becomes publicly available without breach of this Agreement by Recipient; (iii) is independently developed by Recipient without the use of any Confidential Information; or (iv) is rightfully received by Recipient from a third party without an obligation of confidentiality to Newmark or to Client.

3.13 If Recipient or any of its Representatives are required pursuant to legal process to disclose any Confidential Information, Recipient shall promptly notify Newmark to permit it to seek a protective order or take other appropriate action. Recipient shall cooperate in Newmark's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded the Confidential Information. If, in the absence of a protective order, Recipient or any of its Representatives is, in the written opinion of the counsel addressed to it, compelled as a matter of law to disclose the Confidential Information, Recipient may disclose to the party compelling disclosure only that part of the Confidential Information or the discussion as is required by law to be disclosed.

3.14 Recipient shall notify Newmark promptly upon the discovery of the loss, unauthorized disclosure or unauthorized use of the Confidential Information and shall indemnify Newmark and hold Newmark harmless for such loss, unauthorized disclosure or unauthorized use, including attorneys' fees.

4 **OWNERSHIP.** All reports and other documentation, models, prototypes, contrivances, structures, and other materials (in tangible or intangible form), including all embodiments and copies of the foregoing, made or prepared by or on behalf of Recipient in relation to any of the Confidential Information (the "Materials") shall be the property of Client and shall be delivered on request to Newmark by Recipient. Recipient hereby acknowledges and agrees that Client is the owner of all intellectual property rights in the Materials as of the date of their creation. Recipient hereby irrevocably assigns any and all of its intellectual property rights in the Materials to Client.

## 5 LIABILITY

5.1 Nothing in this Agreement shall be deemed to grant a license directly or by implication under any registered design, patent, copyright, trademark, trade secret, or patent application, or any other intellectual property right in any jurisdiction, from Newmark or Client to Recipient and its Affiliates, other than expressly set out herein.

5.2 No guaranty, warranty, or representation is made, intended or implied, by Newmark, as to the completeness, correctness or sufficiency of any information or recommendation or as to the merchantability, suitability, or fitness of any products for any particular use or purpose. In all cases, it is the responsibility of the user to determine the applicability of such information and recommendations and the suitability of any product for its own particular purpose. Under no circumstances shall Newmark, its employees, directors, and officers, be liable for any consequential, indirect, incidental, special or punitive damages, including but not limited to, any damages resulting from loss of profit, loss of business, or any other loss that may be caused directly or indirectly, by any defect, insufficiency or deficiency in any information, data or samples disclosed hereunder.

6 **DISCLAIMER OF LICENSE.** Recipient acknowledges and agrees that Newmark is not granting Recipient a license to use any patents, copyrights, trademarks or other proprietary rights or information contained in the Confidential Information, other than in connection with the Permitted Use.

7 **DISCLAIMER OF DUTY TO DISCLOSE.** This Agreement shall not require Newmark to disclose to Recipient, in connection with the potential purchase of the Property or otherwise, any particular type or quantity of Confidential Information.

8 **NO DEFINITIVE AGREEMENT.** It is understood and acknowledged by the Parties that this Agreement does not represent a commitment between Client and Recipient to enter into the Transaction or otherwise. No such commitment shall arise until such time, if any, that a definitive agreement evidencing the Transaction is entered into by and between Client and Recipient.

## 9 MISCELLANEOUS

9.1 No amendment to terms and conditions of this Agreement shall be valid and binding on Recipient or its Affiliates and Newmark hereto, unless made in writing and signed by both (i) an authorized representative of Recipient and its Affiliates; and (ii) an authorized representative of Newmark.

9.2 Neither Party shall assign, transfer or otherwise dispose of any of its obligations or rights hereunder without the prior written consent of the other Party, save in the event of merger or transfer of substantially all assets to a valid successor in interest.

9.3 In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law. The remaining provisions of this Agreement shall continue in full force and effect.

9.4 Recipient shall not make any public disclosures relating to the existence of this Agreement or the potential Transaction without the prior written consent of Client.

9.5 No failure or delay by either Party in exercising any right under this Agreement is a waiver of its rights, nor does any single or partial waiver of its rights preclude any other or further exercise of its rights or the exercise of any other right under this Agreement.

9.6 This Agreement represents the entire understanding between the Parties with respect to the Confidential Information and supersedes all prior communications, agreements and understandings relating to the disclosure of Confidential Information.

9.7 This Agreement, its interpretation and any dispute arising out of or in connection with it (including disputes arising out of non-contractual obligations) shall be governed by the laws of the State of California.

9.8 Recipient shall indemnify and hold Newmark and Client harmless from, against, and in respect of any and all liabilities, damages, losses, deficiencies, costs, judgments, amounts paid in settlement, interest, penalties, assessments and out-of-pocket expenses (including attorneys' fees, including in connection with the defense of or any proceeding with respect to any claims, whether accrued, contingent or otherwise) incurred in connection with or arising out of any breach of this Agreement by Recipient or any of its Representatives, and any action, proceeding or threatened third-party action in connection with any such breach.

9.9 The Parties acknowledge and agree that Client is intended to be a third-party beneficiary of this Agreement.

9.10 This Agreement may be executed electronically and in any number of separate counterparts, all of which, when taken together, shall constitute one and the same instrument, notwithstanding the fact that all Parties did not sign the same counterpart. Each Party agrees that a signature transmitted to the other Party by facsimile transmission shall be effective to bind the Party whose signature was transmitted.

**IN WITNESS WHEREOF**, and intending to be legally bound, the Parties have caused this Agreement to be executed by their authorized representatives as of the Effective Date.

Name of Recipient, a State of Formation Type of Entity	Newmark of Southern California, Inc., a California corporation
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By: _____	By: _____
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Name: _____	Name: _____
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Title: _____	Title: _____
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Date: _____	Date: _____
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\*\*Please return executed copy to Renee Nelson at [renee.nelson@nmrk.com](mailto:renee.nelson@nmrk.com)