

## **Non Disclosure and Confidentiality Agreement**

This Non Disclosure and Confidentiality Agreement (“Agreement”) is made as of the Effective Date by and between the undersigned Disclosing Party (“Disclosing Party”) and the undersigned Receiving Party (“Receiving Party”). The parties hereto may be referred to generically as a “Party” or collectively as the “Parties.” This Agreement is effective as of the Effective Date, regardless of when it may be executed by the Parties hereto. In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

### **BACKGROUND & RECITALS**

The Parties acknowledge and agree to the terms and conditions set forth herein as it relates to the contemplated purchase and sale of the Property (as defined below) and further the Parties recognize that (a) the Disclosing Party shall supply the Receiving Party with certain information that is proprietary to, about or created by the Disclosing Party, such information being Confidential Information (as defined below); (b) the transmission of the Confidential Information is solely for the purpose of contemplating the purchase and/or sale of the Property (the “Project”); (c) the disclosure of the Confidential Information would be detrimental to the interests of the Disclosing Party; and (d) the Disclosing Party would be unwilling to transmit the Confidential Information without this Agreement.

### **AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement and the disclosure of Confidential Information, the Parties hereby agree as follows:

#### **1. Definition of Confidential Information**

1.1. “Confidential Information” as it relates to a particular Party shall be construed broadly and means any information or material: 1) that such Party designates as being “confidential” or “proprietary,” 2) which, under the circumstances surrounding disclosure, would be reasonably understood to be confidential by the Receiving Party, 3) as well as Trade Secrets as such terms is defined in the Texas Uniform Theft of Trade Secrets Act and 4) which is not known to the general public or is known by other third parties but without being lawfully acquired. Information need not be marked “confidential” in order to be held as such. For clarity ANY information shall be construed as Confidential Information unless otherwise designated as public by the Disclosing Party or this Agreement. Confidential Information includes, but is not limited to, revenue, taxes, marketing plans, planned capital improvements, pro forma, zoning report(s), environment report(s), the identity or financial status of investors or partners, all data, reports, interpretations, forecasts, leases, rents, rent rolls, UCC, Master Plans, site plans, development plans, easements, Commitments, title, estoppels, judgements, liens, releases, appraisals, proposals, test data, other data, business plans or other plans, treatments, scripts, budgets or other information conveyed in writing or in discussion. It further includes other documents, protected intellectual property, and other information related to the Disclosing Party’s financial, organizational, and/or commercial operations (including plans or other documentation). Confidential Information also includes any material that contains, references or is otherwise derived from Confidential Information provided by the Disclosing Party. Confidential Information does not include any information, that: (i) is or subsequently becomes publicly available without breach of any obligation under this Agreement by a Receiving Party; (ii) became known to a Receiving Party from a source other than the Disclosing Party or its Affiliates (as defined below) (other

than by the breach of an obligation of confidentiality owed to the Disclosing Party); (ii) is independently developed by the Receiving Party without access or use of the other Party's Confidential Information or (iv) the Disclosing Party consents to be disclosed by the Receiving Party in writing and in advance of such disclosure. "Lawfully acquired" means acquired from a third party without restrictions on further disclosure when the third party had the right to provide the information.

1.2. The Parties anticipate that much of the information communicated by each other to the other Party may be Trade Secrets (as defined below). Both Parties agree to preserve the secrecy of all Trade Secrets. "Trade Secrets" shall include, but shall not be limited to, all information that becomes known to the Parties; such as but not limited to licensed real estate agents/brokers; investors; prepared information packages; financials and related documents; names of potential buyers and sellers, intermediaries, contacts and deal sources; deal structures; and financial considerations. Both Parties agree to preserve and protect the secrecy and confidentiality of all Trade Secrets and shall not disclose to any third party without first receiving the express written permission of the Party who owns such Trade Secret. Each Party understands and agrees that this Paragraph is a material provision of this Agreement and that any breach of this Paragraph shall be a material breach of this Agreement, and that the other Party would be irreparably harmed by violation of this provision.

## **2. Obligations Regarding Confidential Information**

2.1. Each Party shall not directly or indirectly, make available, sell, disclose, reproduce, distribute, or otherwise communicate in any medium or method the Confidential Information of the other Party to its Affiliates, representatives or agents except as necessary to further the Project, or to third parties, other than those who have first been identified to and approved by the party who owns the Confidential Information, nor shall a Receiving Party use Confidential Information for its own purposes except in the furtherance of the Project.

2.2. With regard to the Confidential Information of the other, each Party shall take reasonable security precautions, to a degree that is at least as great as the precautions such Party takes to protect its own Confidential Information, but in any event, no less than reasonable care, to keep the Confidential Information of the other Party confidential.

2.3. Neither Party shall not reverse engineer, decompile or disassemble or otherwise use any software code, designs, and/or hardware disclosed by the other Party under the terms of this Agreement.

2.4. Each Party may disclose Confidential Information in accordance with a judicial or other governmental order; provided; however, that a Receiving Party hereunder first gives written notice to the Party that owns the Confidential Information prior to such disclosure, if permissible under applicable law, to allow the owning Party a reasonable opportunity to object or seek a protective order or equivalent form of relief.

2.5. Each Party may disclose the other's Confidential Information to their employees, advisors, consultants, Affiliates, attorneys, bankers, investors, and CPA's ("Advisors") solely: 1) on a need-to-know basis when and to the extent necessary to evaluate, implement or conduct the Project, 2) who are advised of the confidential and proprietary nature of such Confidential Information and 3) who are either bound by a professional obligation of confidentiality or by written confidentiality obligations (which are at least as strong as this Agreement) prohibiting the further use and disclosure of such

Confidential Information. Any Advisors who are receiving Confidential Information shall never use the Confidential Information for any other purpose except the furtherance of the Project. Prior to disclosure to any other Advisor under this provision, the party wishing to share the other's Confidential Information to their Advisor shall notify the Party owning the Confidential Information and afford them the time and opportunity to ask questions and ascertain the nature of that Advisor's confidentiality obligations. Each Party reserves the right to require any Advisor to enter into a separate agreement with it prior to such person receiving any Confidential Information of such Party.

2.6. Each Party shall immediately upon discovery of any unauthorized use or disclosure of the other's Confidential Information or any other breach of this Agreement by them or their Advisors, and shall cooperate with the Party who owns the Confidential Information in every reasonable way to help such Party who owns the Confidential Information to regain possession of the Confidential Information and prevent its further unauthorized use or disclosure. Such notice shall include a detailed description of the circumstances of the disclosure and the person(s) involved.

2.7. Each Party shall, at the other Party's request, return all originals, copies, reproductions and summaries of the other's Confidential Information and all other tangible materials and devices provided to the Receiving Party.

2.8 Both Parties agree that the existence of the Project and the identity of the Parties hereto (and their Affiliates or Advisors) is highly confidential and that, if disclosed such Parties (and their Affiliates and/or Advisors) would likely be irreparably harmed. Therefore, each Party agrees to not to contact or initiate contact during the term of this Agreement for any purpose, either directly or indirectly, with any past, current or future officers, directors, shareholders, consultants, attorneys, employees, buyers, sellers, clients, investors, contractors, agents or other affiliates or related persons of the other Party in connection with the other Party or the Project or any other leads, partners, or marketing channels, to the extent such current or prior relationship is revealed in writing by either Party or reasonably known by the Party making contact with such a person (by way of example, a person with a Company business card or uniform), unless approval is first specifically granted in written form by the Disclosing Party (i.e., by the Party with the current or prior relationship) on a case-by-case basis, and in its sole discretion.

For clarity, the purpose of this provision is not to: 1) prohibit inadvertent contact with persons who are unknown by a Party to be related to the other Party and who are contacted for purposes completely unrelated to the Project or proposed transactions thereunder, or 2) hinder internal communications of a Party among its Advisors in compliance with this Agreement. Instead, the purpose of this provision is to limit contact by one Party with third parties who are known to be related to the other Party and, in any event, to not disclose the identity of the other Party and the existence of the Project or proposed transactions thereunder. This provision shall be construed in such manner. In any event, the identity of the other Party and its principals or Affiliates, along with the existence of the Project or proposed transactions thereunder, will be considered Confidential Information of each Party under this Agreement and will not be disclosed by the other or its Affiliates, except to Advisors in compliance with this Agreement, without the prior written consent of the other Party on a case-by-case basis.

Both Parties understand and agree that this Paragraph is a material provision of this Agreement and that any breach of this Paragraph shall be a material breach of this Agreement, and that such Party would be irreparably harmed by violation of this provision.

### **3. Remedies; Term**

3.1. Each Party hereby acknowledges and agrees that (a) the other Party will be irreparably harmed and there is no adequate remedy at law in the event of an actual or threatened violation of any obligation of a Party hereunder, and (b) it is aware that the unauthorized disclosure of the Confidential Information may be highly prejudicial to the owning Party, an invasion of such Party's privacy, and an improper disclosure of Trade Secrets or other Confidential Information. In the event of a breach or threatened breach by either Party of any provision of this Agreement, the other Party shall be entitled to (i) injunctive relief by temporary restraining order, temporary injunction, and/or permanent injunction, (ii) specific performance, (iii) recovery of the attorney's fees and costs incurred by the Party in obtaining such relief and in enforcing its rights under this Agreement, and (iv) any other legal and equitable relief to which such Party may be entitled, including any and all monetary damages which such Party may incur as a result of said breach or threatened breach.

3.2. This Agreement shall remain in effect for a period of five (5) years following the written termination of the Project relationship by either Party, provided that all obligations with respect to Confidential Information and Trade Secrets shall continue indefinitely.

### **4. Miscellaneous**

4.1. All Confidential Information is and shall remain the property of the Party to whom it belongs. By disclosing Confidential Information to the other Party, the Disclosing Party does not grant any express or implied right to the Receiving Party to any license, consent, intellectual property, patents, pending patent application, subject matter, copyrights, trademarks, or trade secret information except as may be otherwise provided herein. Each Party reserves without prejudice the ability to protect its rights under such items. No license, assignment or other similar right, express or implied, in the Confidential Information is granted to a Receiving Party other than to use the information in the manner and to the extent authorized herein and solely in the furtherance of the Project. Each Party shall execute all documents and take all actions reasonably necessary or reasonably requested by the a Disclosing Party to document, obtain, maintain, protect, perfect or assign its rights to the other's Confidential Information.

4.2. Unless otherwise consented to in writing, neither Party may use the name of the other in connection with any advertising or publicity materials or activities, including those done in furtherance of the Project, without the prior written consent of the other Party.

4.3. Unless otherwise agreed by a Disclosing Party, all Confidential Information and other information, data, and any samples made available to the Receiving Party are provided "as is" without any warranties of any kind, express or implied. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY USE OF INFORMATION OR DATA DISCLOSED BY A PARTY TO THE OTHER ARE DISCLAIMED AND EXPRESSLY EXCLUDED FROM THE TERMS OF THIS AGREEMENT. Under no circumstances shall the Disclosing Party be liable to the Receiving Party or any of its Affiliates for any damages whatsoever, whether consequential, indirect, incidental, special, or punitive damages, including, but not limited to, any damages resulting from loss of principal, loss of profit, loss of business, or any other loss that may be caused, directly or indirectly, by any use by the Receiving Party or by any defect, inability to use, insufficiency or deficiency in any information, data, or samples disclosed hereunder.

4.4. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter contemplated herein. It may not be modified except by a written agreement signed by both Parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of the Parties, or their Affiliates, but only by an instrument in writing signed by the Parties.

4.5. If any term or provision of this Agreement shall be found to be illegal or unenforceable this Agreement shall nonetheless remain in effect and, if possible, such illegal or unenforceable provision will be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the original intention of the Parties. The phrase "Party" or "Parties" herein shall be construed broadly and applies to the Parties themselves and further extends to any or all of their Affiliates. The phrase "Affiliates" includes any person, partnership, joint venture, entity, or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, employees, officers, consultants, Advisors, or others that directly or indirectly, influence, manage, control, are controlled by, or are under common control with a Party. Provided that an Affiliate came to receive Confidential Information as a result of this relationship between the Parties regarding the Project, the Receiving Party shall be responsible for any breach of this Agreement by any of its Affiliates.

4.6. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas without regard to its conflict of law provisions. Except as may be necessary to enforce a judgment or compel jurisdiction/venue, the Parties consent to exclusive jurisdiction in any state or federal court located in Travis County, Texas. The Parties hereunder agree that in any court action or other legal proceeding relating to this Agreement, they mutually WAIVE TRIAL BY JURY of any or all issues arising in court or other legal proceeding. The existence of any claim or cause of action of one Party against the other Party, or any of said Party's Affiliates, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by either Party of the covenants contained in this Agreement. Each Party consents to personal jurisdiction and further agrees, upon notice to the other, to immediately appoint an agent to accept service of process in Travis County, Texas, and that service upon such person shall constitute proper service to the Party.

4.7. Neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement to any third party without the prior written consent of the other Party. In any event, each Party shall not unreasonably withhold, delay, or condition its consent to the assignment of this Agreement by the other. Any assignment in breach of this Agreement shall be deemed null and void.

4.8. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one instrument. The Parties agree that signatures transmitted and received via facsimile or other electronic means shall be treated as original. No bias shall be applied against one party by virtue of the fact that it was the drafter hereof and, instead, it shall be treated as if both parties drafted this Agreement and negotiated such at arms-length and with proper representation. No failure by any Party to insist upon the strict performance of this Agreement shall constitute waiver of any breach or any other covenant, duty, agreement or condition. While this document may be translated into multiple languages, English shall be the governing language with respect to this Agreement and the Parties are responsible for understanding its English implications upon execution. Any misunderstanding from poor translation shall be at the fault of the Party needing such translation and their intent in signing this Agreement shall be as if they understood fully the English implications of such Agreement.

4.9. BY SIGNING, THE PARTIES AGREE AND ACKNOWLEDGE THAT (1) EACH HAS CAREFULLY READ THIS THIS AGREEMENT; (2) EACH AGREES TO BE BOUND BY ALL OF ITS TERMS WITHOUT RESERVATION; (3) EACH AGREES THAT THE RESTRICTIVE COVENANTS CONTAINED HEREIN ARE FAIR AND REASONABLE; (4) THAT THIS AGREEMENT IS NOT IN ANY WAY TO BE VIEWED AS A CONTRACT FOR ANY OTHER TRANSACTIONS OR RELATIONSHIPS (INCLUDING THE CONSUMMATION OF THE PROJECT, WHICH WILL BE DEALT WITH IN OTHER AGREEMENTS, IF SUCH OCCURS) EXCEPT AS EXPLICITLY AGREED HEREIN, THAT IT SHOULD NOT BE CONSTRUED AS A GUARANTEE OF ANY RELATIONSHIP FOR ANY PERIOD OF TIME EXCEPT FOR THE TERM LISTED HEREIN, AND THAT IT SHALL NOT BE CONSTRUED TO OBLIGATE THE PARTIES IN ANY WAY OTHER THAN AS CONTEMPLATED HEREIN; (5) EACH HAS HAD THE OPPORTUNITY TO OBTAIN ADVICE FROM LEGAL COUNSEL OF CHOICE IN ORDER TO INTERPRET ANY AND ALL PROVISIONS OF THIS AGREEMENT; (6) EACH HAS HAD THE OPPORTUNITY TO ASK QUESTIONS OF THE OTHER PARTY ABOUT THIS AGREEMENT AND ANY SUCH QUESTIONS HAVE BEEN SATISFACTORILY ANSWERED; AND (7) THAT THIS AGREEMENT WAS EXECUTED VOLUNTARILY AND OF EACH PARTY'S OWN ACCORD UPON ADVICE OR WAIVER OF THE RIGHT TO COUNSEL.

**IN WITNESS HEREOF**, the Parties hereto have executed this Agreement to be effective as of the Effective Date.

Effective Date: \_\_\_\_\_

Property: \_\_\_\_\_

<b>DISCLOSING PARTY</b>	<b>RECEIVING PARTY:</b>
_____	_____
By (print name): _____	By (print name): _____
Title / Individually: _____	Title / Individually: _____
Address: _____	Address: _____
_____	_____
Email: _____	Email: _____