

**COMMERCIAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

(C.A.R. Form CML-CNDA, Revised 12/23)
(Not For Use With One to Four Residential Properties)

This COMMERCIAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Confidentiality Agreement") is given in connection with or in contemplation of that certain: ☐ Commercial Purchase Agreement and Joint Escrow Instructions, ☐ Business Purchase Agreement and Joint Escrow Instructions, ☐ Residential Income Property Purchase Agreement and Joint Escrow Instructions, ☐ Other _____ dated _____ ("Agreement"),

in which _____ is referred to as "Buyer"
and David W. Clements Trust is referred to as "Seller"

and, if checked, ☐ that certain lease dated _____, by and between Seller, as Tenant, and _____, as Landlord which lease shall be assigned to Buyer, pursuant to the Agreement. For purposes of this Confidentiality Agreement, the leased premises shall be included within the definition of "Agreement." The implementation of the applicable Agreement as it relates to the Property or the Business, as the case may be, shall be referred to as the "Transaction".

1. DELIVERY OF CONFIDENTIAL INFORMATION:

- A. ☐ Seller, OR ☐ Buyer, OR ☐ Both Seller and Buyer shall each be delivering information to the other party ("Delivering Party").
- B. Delivering Party has furnished, is furnishing, or will be furnishing, either directly or indirectly through a representative, to the other party ("Receiving Party") or to the Receiving Party's representatives, including without limitation, any agents, brokers, lender, appraisers, escrow, professional advisors, consultants, affiliates, officers, directors, partners, shareholders, accountants, legal counsel and employees (collectively, "Representatives") of the Receiving Party, certain information, in whatever form or by whatever mode or medium whatsoever, about the Delivering Party, the Delivering Party's Property or the Delivering Party's Business, which, at the time of such delivery, was, is or will be identified as confidential information because it is either nonpublic, confidential or proprietary in nature. Such information provided, whether provided in documentary, oral, visual, electronic, tangible or any other form, including without limitation, in the form of designs, sketches, drawings, photographs, videotapes, specification, blueprints, plans, studies, findings, computer printouts, computer disks, documents, memoranda, reports, notebooks, manuals, notes, contracts, correspondence, files, lists and other records, and all photocopies or other reproductions, together with any analysis, compilations, forecasts, studies, reports or other documents or information prepared, developed or concluded by the Receiving Party or its Representatives, which contains, is derived from, or otherwise reflects such information about the Property or the Business, is hereinafter collectively referred to as the ("Confidential Information"). Non-tangible information will be deemed Confidential Information only to the extent that when it is first disclosed in non-tangible form is orally identified at the time of disclosure as Confidential Information and within 30 days of the non-tangible disclosure the information is summarized in tangible form conspicuously marked as "Confidential Information" and delivered to Receiving Party. The parties acknowledge that the unauthorized disclosure to or use by any person or organization of the existence and content of Confidential Information by Receiving Party would be detrimental and damaging to the Delivering Party. Accordingly, the parties wish to ensure that Confidential Information provided by the Delivering Party will only be disclosed or used in strict accordance with the provisions of this Confidentiality Agreement.

2. DISCLOSURES INCLUDED AND NOT INCLUDED IN INFORMATION:

- A. **INCLUDED:** Any Confidential Information disclosed, provided or delivered by Delivering Party to Receiving Party or its Representatives relating to the Transaction prior to the date of this Confidentiality Agreement shall also be subject to and governed by the terms of this Confidentiality Agreement to the same extent as any Information disclosed, provided or delivered after execution of this Confidentiality Agreement.
- B. **NOT INCLUDED:** The term "Confidential Information" shall not include any Information which:
- (1) The Receiving Party can show, by suitable written documentation, was already in its possession prior to receipt of such Information by Delivering Party;
 - (2) The Receiving Party can show is or becomes public information or is otherwise generally available to the public, other than as a result of a disclosure by the Receiving Party or its Representatives;
 - (3) The Receiving Party can show becomes or became available to the Receiving Party on a non-confidential basis from a source lawfully in possession of such information (other than the Delivering Party or a Representative of the Delivering Party) which is not, to the knowledge of the Receiving Party, in breach of any agreement or prohibited from disclosing such information to Receiving Party by a legal, contractual or fiduciary obligation to the Delivering Party; OR
 - (4) Receiving Party can show was independently developed by the Receiving Party entirely without reference to or under any further investigation of Confidential Information.

3. NO OBLIGATION TO EFFECT POTENTIAL TRANSACTION: Except for the provisions of this Confidentiality Agreement, which shall be binding upon full and due execution hereof, neither party shall be committed in any way with respect to the Property or the Business, unless and until a Transaction is entered into, and nothing provided herein shall be construed to imply or require that any agreements with respect to such a Transaction be executed.**4. OBLIGATIONS REGARDING CONFIDENTIAL INFORMATION:** In consideration of being furnished with Confidential Information, the Receiving Party expressly agrees that:

- A. **NO REPRESENTATION OR WARRANTIES:** The Receiving Party agrees that it will use its own independent judgment in assessing Confidential Information, and understands and acknowledges that the Delivering Party is not making any representations or warranties, of any kind whatsoever, express or implied, oral or written, as to the truth, accuracy or completeness of Confidential Information, all such representations and warranties being hereby expressly disclaimed. The Receiving Party agrees that the Delivering Party and its Representatives shall have no liability to the Receiving Party and its Representatives or to any other entity resulting from the use of, or reliance upon, Confidential Information by any person or entity.



- B. MAINTAINING CONFIDENTIALITY:** Confidential Information shall be kept confidential in perpetuity, and in strict accordance with the provisions of this Confidentiality Agreement. The Receiving Party shall take all reasonable precautions to prevent the disclosure of Confidential Information to any third party, without the prior written consent of the Delivering Party. The Receiving Party and its Representatives shall not, without the prior written consent of the Delivering Party, (except as such disclosure is required by law, regulation, government regulatory authority, court order or other legal process, and then only strictly pursuant to the terms of this Confidentiality Agreement), disclose Confidential Information in any manner whatsoever, in whole or in part. The Receiving Party and its Representatives shall not use Confidential Information, or otherwise appropriate Confidential Information for its own benefit, either directly or indirectly, for any purpose other than the consideration, contemplation and evaluation of the Transaction. The Receiving Party agrees to reveal Confidential Information only to those Representatives who need to know Confidential Information for the purpose of the consideration, contemplation and evaluation of the Transaction and who are informed by the Receiving Party of the confidential nature of the Information. The Receiving Party shall be responsible for any breach of this Confidentiality Agreement by its Representatives.
- C. WRITTEN RECORDS:** The Receiving Party shall keep a record of the written Confidential Information furnished to the Receiving Party and of the location of all such Confidential Information, including all photocopies or other reproductions, a copy of which record shall be made available to the Delivering Party upon written request.
- D. RETURN OF CONFIDENTIAL INFORMATION:** All copies of Confidential Information, in documentary or other tangible form, shall be returned to the Delivering Party immediately upon the earlier to occur of: **(i)** the abandonment of the Transaction; or **(ii)** the written request of the Delivering Party; provided, however, that the Receiving Party may retain the Receiving Party's work product in investigating Confidential Information and any Confidential Information which it is required to retain pursuant to law, regulation, government regulatory authority, court order or legal process, as determined by the reasonably supported written opinion of its legal counsel, an original of which legal opinion shall be delivered to the Delivering Party. The retained work product of the Receiving Party or its Representatives and any Confidential Information shall be held by the Receiving Party and its Representatives and kept confidential in strict accordance with the terms of this Confidentiality Agreement, or shall be destroyed, unless the Receiving Party or its Representative is prohibited from destroying it. Any such destruction shall be confirmed in writing to the Delivering Party upon the Delivering Party's request. Any and all oral Information shall continue to be held in strict accordance with this Confidentiality Agreement.
- E. COMPELLED DISCLOSURE:** In the event that the Receiving Party or anyone to whom the Receiving Party transmits Confidential Information pursuant to this Confidentiality Agreement, becomes legally compelled to disclose any of the Information, the Receiving Party shall provide the Delivering Party with prompt Notice so that the Delivering Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Confidentiality Agreement. In the event that such protective order or other remedy is not sought, or if sought, is not obtained, or that the Delivering Party waives in writing compliance with the Receiving Party is compelled to disclose or else stand potentially liable for contempt or suffer any other censure or penalty, as determined by the reasonable supported within legal opinion of its legal counsel, an original of which legal opinion shall be delivered to the Delivering Party, and the Receiving Party shall exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded the Information required to be disclosed.
- F. PROHIBITED CONTACTS:** Absent the Delivering Party's prior written consent, unless and until the transaction is consummated, if ever, neither the Receiving Party nor its Representatives shall make (other than to its Representatives on a need to know basis, and except as may be required under **paragraph 4E**: **(i)** any statement, or any public announcement, or any release to trade publications or to the press; **(ii)** any statement to any competitor, customer, supplier or any third party; **(iii)** contact with or otherwise engage in any discussion or other contacts or communications with any person or entity, including without limitation any state or federal governmental entity or agency; **(iv)** any statement, comment, or posting on the internet or otherwise which includes any social media platform or anything that may result in information becoming available on the internet; which statements, contacts or communications are about the Transaction or Delivering Party or its Property or Business, or are intended to or likely would result in a person who or entity which has had contractual or business relations with the Delivering Party ceasing or refusing to do any further business with the Delivering Party. Notwithstanding the foregoing, the prohibited contacts shall not include discussions or other contacts or communications, which do not directly or indirectly reveal Confidential Information and are not directly or indirectly based upon the Information.
- 5. INDEMNIFICATION:**
- A. CLAIMS:** Each of the Seller and the Buyer, and if applicable, Landlord, ("Indemnifying Party") shall indemnify, defend, with counsel reasonably satisfactory to the other party, and hold the other party free, clear and harmless from and against any and all claims, demands, liens, agreements, contract, covenants, actions, suits, causes of action, obligations, controversies, debts, fees, penalties, costs, expenses, damages, losses, taxes, fines, injuries, judgments, orders and liabilities, (including, without limitation, damage to property and injuries to or death of any person, reasonable attorneys' fees and expenses, consultants' fees and expenses, expert witness fees and expenses and court fees and costs), of whatsoever character, whether known or unknown, suspected or unsuspected (collectively, "Claims") arising out of or related to the failure by the Indemnifying Party or its Representatives to strictly and fully comply with the provisions of this Confidentiality Agreement.
- B. INDEMNIFIED PARTIES:** The following parties shall be referred to herein, collectively, as the "Indemnified Parties" and, each individually, as an "Indemnified Party": (a) where the Indemnifying Party is the Seller, then the Buyer and the Buyer's Representatives; and (b) where the Indemnifying Party is the Buyer, then the Seller and the Seller's Representatives.
- C. PROCEDURE GOVERNING CLAIMS:** The following obligations are imposed upon each Indemnified Party:
- (1) **NOTICE OF CLAIM:** Give prompt, Notice to the Indemnifying Party of any Claim, suit or proceeding for Claims of which an Indemnified Party becomes aware, provided that such Indemnified Party's failure to give prompt Notice shall not relive the Indemnifying Party from its obligations hereunder; and
 - (2) **SETTLEMENTS OF CLAIMS:** Refrain from entering into any settlements without the Indemnifying Party's prior written consent, which consent shall not be unreasonably withheld or delayed.
- D. COUNSEL:** Each Indemnified Party shall have the right to be represented by additional legal counsel of its own selection; provided, however, that such representation is at each Indemnified Party's own expense. If any Claim arises as to which the indemnity provided for in **paragraph 5** applies, and the Indemnifying Party fails to assume, within thirty (30) days after being notified in writing of the Claim, the defense of the Indemnified Party, the Indemnified Party may contest and settle the Claim, at the Indemnifying Party's expense, using legal counsel selected by such Indemnified Party; provided, however, if the Indemnifying Party fails to provide a defense within thirty (30) days after such written Notice, but subsequently takes diligent steps to provide such a defense, then the Indemnified Party agrees to permit the Indemnifying Party to assume the defense, so long as the assumption does not prejudice the Indemnified Party's position in the proceeding and, concurrently with such assumption, the indemnifying Party shall reimburse each and every Indemnified Party for all reasonable costs and expenses theretofore incurred by them in connection with such proceeding.

- E. NON-PAYMENT:** Any amount to which an Indemnified Party is entitled hereunder which is not paid by the Indemnifying Party within ten (10) days after written demand from the Indemnified Party (the "Default Date"), shall bear interest at ten percent (10%) per annum, or such lesser amount as shall be required by law, for each day from the Default Date until payment in full thereof (after, as well as before, judgment).
- F. THIRD PARTY BENEFICIARIES:** Those parties comprising the Indemnified Parties who are not signatories to this Confidentiality Agreement shall be deemed third party beneficiaries hereof, but their signatures or consent shall not be required for any modification of this Confidentiality Agreement.
- 6. MISCELLANEOUS:**
- A. ABSENCE OF LICENSE:** The provisions of this Confidentiality Agreement shall not be deemed by implication or otherwise to grant or convey to Receiving Party or its Representatives, any license or similar ownership right, title or interest in and to any Information.
- (1) **NOTICES:** Any notice or communication required or permitted by this Confidentiality Agreement ("Notice") shall be deemed sufficiently given if it is Delivered in writing addressed as provided in the contact information on the signature pages, and if applicable, the Designated Electronic Deliver Address on the Broker's signature section, and the Definition paragraph, if applicable, in the Agreement. Notwithstanding the Agreement, Delivery shall be deemed effective as specified below:
- (a) If deposited with the U.S. Mail, post prepaid, as registered or certified mail and addressed to the party to receive it, seven (7) days after such deposit;
- (b) If sent by recognized delivery service (e.g. Federal Express) addressed to the party at the address set forth below, upon delivery or refusal of delivery, as evidenced by such delivery service's records.
- (2) Each party may change its Notice information, by giving Notice of the change to the other parties as provided herein, and the new Notice information shall become effective as provided above.
- B. CUMULATIVE REMEDIES:** The rights and remedies of the parties as provided in this Confidentiality Agreement shall be cumulative and not alternative and are in no way intended to limit or waive, but are in addition to, any other rights or remedies available under applicable law or otherwise.
- C. INJUNCTIVE RELIEF:** The parties acknowledge that if a party should default in any of its obligations under this Confidentiality Agreement, it would be impracticable to measure the resulting damages to the aggrieved party and it may not be possible to adequately compensate the aggrieved party for the resulting injury by means or monetary damages. Accordingly, without prejudice to the right to seek and recover monetary damages, the aggrieved party shall be entitled to seek and obtain specific performance of this Confidentiality Agreement or other injunctive relief, and the parties each waive any defense that a remedy only in damages would be adequate and any requirement or the aggrieved party to post any bond or other security in order to obtain such relief.
- D. WAIVER:** Any party may in writing waive any provision of this Confidentiality Agreement to the extent such provision is for the sole benefit of the waiving party. No waiver by any party of a breach of any provision of this Confidentiality Agreement shall be construed as a waiver of any subsequent or different breach, and no forbearance by a party to seek a remedy for noncompliance or breach by another party shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.
- E. COUNTER PARTS:** This Confidentiality Agreement may be executed in one or more separate counterparts, each of which shall be deemed an original instrument, but all of which, taken together shall constitute one and the same entire agreement.
- F. APPLICABLE LAW:** The Confidentiality Agreement shall be construed in accordance with the laws of the State of California.
- G. ENFORCEABILITY:** It is the intention of the parties that the provisions of this Confidentiality Agreement shall be enforced to the maximum extent possible. Accordingly, if any of the provisions of this Confidentiality Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such provisions shall be reformed by the court and enforced to the maximum extent possible. The invalidity or unenforceability of any particular provision of this Confidentiality Agreement shall not affect the validity or enforceability of any other provisions of this Confidentiality Agreement.
- H. ATTORNEY'S FEES:** In the event that any party hereto brings a judicial action or proceeding for a declaration of the rights of the parties under this Confidentiality Agreement, for injunctive relief, for an alleged breach or default, or for any other action related to the prosecution or defense of any claim, dispute or controversy between the parties arising out of this Confidentiality Agreement or the transactions contemplated hereby, whether or not suit is filed or prosecuted to final judgment, the prevailing party shall be entitled to reasonable attorneys' fees and costs, in addition to any other court costs incurred and any other damages or relief awarded.
- I. AMENDMENTS:** No amendment, change or modification of this Confidentiality Agreement shall be valid, unless it is in writing, is signed by all of the parties hereto, and expressly states that an amendment, change or modification of this Confidentiality Agreement is being made.
- J. ASSIGNMENT:** This Confidentiality Agreement is not assignable, except with the prior consent of the Delivering Party(ies).
- K. CONSENTS AND APPROVALS:** Unless expressly provided otherwise, wherever in this Confidentiality Agreement the consent or approval of a party is required, such consent or approval must be in writing, and it may be given or withheld in the sole and absolute discretion of such party.
- L. SUCCESSORS AND ASSIGNS:** Subject to the limitation set forth in Paragraph 6K above, this Confidentiality Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 7. ENVIRONMENTAL DOCUMENTATION AND ISSUES:**
- UNLESS THE BOX BELOW IS CHECKED AND THE COMMERCIAL – ENVIRONMENTAL ISSUES ADDENDUM (C.A.R. FORM CML-EIA) IS ATTACHED HERETO, this Confidentiality Agreement does not address any environmental reports, documentation or information, nor does it confer any right in the Receiving Party to cause to be done any environmental assessments, testing or investigations of any kind or character regarding the Property or the Business, nor does it confer any right in the Receiving Party to access the Property or any Leased Property upon which the Business is conducted, for the purpose of collecting any environmental information or conducting any environmental investigations.
- ☐ COMMERCIAL – ENVIRONMENTAL ISSUES ADDENDUM (C.A.R. Form CML-EIA) IS ATTACHED AND MADE PART OF THIS CONFIDENTIALITY AGREEMENT.

8. ENTIRE AGREEMENT:

This Confidentiality Agreement, together with the Commercial – Environmental Issues Addendum, if attached, is intended to be the entire and complete understanding and agreement of the parties with respect to the subject matter of this Confidentiality Agreement, and any and all other prior agreements, understandings, discussions, negotiations or representations and warranties between the parties hereto, whether oral or written, express or implied, are hereby terminated, superseded and cancelled in their entirety, and are of no further force or effect.

THIS CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT HAS SIGNIFICANT LEGAL CONSEQUENCES. BROKERS ARE NOT ATTORNEYS AND DO NOT PROVIDE LEGAL ADVICE. PRIOR TO SIGNING BELOW, EACH PARTY SHOULD SEEK THE ADVICE OF THEIR OWN QUALIFIED CALIFORNIA ATTORNEY AS TO THE CONSEQUENCES OF THIS CONFIDENTIALITY AGREEMENT.

EACH PARTY ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF LEGAL COUNSEL PRIOR TO EXECUTION OF THIS CONFIDENTIALITY AGREEMENT AND HAS EITHER DONE SO OR HAS DECIDED NOT TO DO SO.

By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a copy of this Commercial Confidentiality and Non-Disclosure Agreement.

Seller: _____ *David W. Clements Trust* Date _____

Seller: _____ Date _____

Buyer: _____ Date _____

Buyer: _____ Date _____

Seller's Brokerage Firm: _____ *Compass California II, Inc* Lic. # *01527235*

By: _____ *Alexander Kent* Lic. # *01718732* Date _____

Buyer's Brokerage Firm: _____ Lic. # _____

By: _____ Lic. # _____ Date _____

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Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, LLC.
a subsidiary of the California Association of REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020

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