

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “*Confidentiality Agreement*”) is made and entered into as of \_\_\_\_\_, 2024 (the “*Effective Date*”) by and between Serac Capital Partners, LLC (“*Disclosing Party*”), and \_\_\_\_\_ (“*Receiving Party*”).

WHEREAS, Disclosing Party intends to provide, and Receiving Party desires to receive, confidential information of Disclosing Party with regard to ongoing Disclosing Party projects (the “*Project*” or “*Projects*”) at 5405 – 5435 S Cooper Street, Arlington TX and

WHEREAS, the parties desire to set forth the terms and conditions of the disclosure of such confidential information;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

**1. Definitions.** The following terms, when used in this Confidentiality Agreement, shall have the respective meanings set forth in this Section 1.

(a) Disclosing Party. The term “Disclosing Party” shall include Disclosing Party as defined above, each partner or member of Disclosing Party, and each corporation, partnership, limited liability company, other entity or person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, Disclosing Party or any partner or member of Disclosing Party.

(b) Confidential Information. The term “Confidential Information” shall mean all information (whether specifically labeled or identified as “confidential”), in any form or medium, whether oral, written or electronic, that is disclosed to, or learned by, Receiving Party in connection with this Confidentiality Agreement and that relates to the Potential Transaction or Disclosing Party. Confidential Information shall include, without limitation, all technical, financial or business information of Disclosing Party.

Confidential Information shall not include any information that Receiving Party can demonstrate (i) is or becomes publicly available through no wrongful act or breach of obligation of confidentiality by Receiving Party, (ii) that was lawfully known by Receiving Party prior to the Effective Date, (iii) was independently developed by Receiving Party without reference to the Confidential Information, or (iv) that was rightfully received by Receiving Party from a third party without the knowledge of Receiving Party of a breach of any obligation of confidentiality by such third party.

**2. Non-Disclosure and Non-Use.**

(a) Confidential Information. Receiving Party hereby acknowledges the competitive value and confidential nature of the Confidential Information and that damage would result to Disclosing Party if information contained therein is used or disclosed in violation of this Confidentiality Agreement. Accordingly, Receiving Party hereby agrees that, at all times, Receiving Party:

- (i) shall use the Confidential Information solely to evaluate a potential purchase of the Projects under this Confidentiality Agreement;
- (ii) shall use its best efforts and diligence to safeguard the Confidential Information and to protect it against disclosure, misuse, loss, and theft; and
- (iii) shall keep and maintain in strict confidence and shall not disclose to any third party any Confidential Information other than (a) to employees or other representatives of Receiving Party who require access to such Confidential Information to perform their duties for Receiving Party and who have been notified of the obligations of confidentiality contained herein, and (b) to third parties to the extent required by law or order of a court of competent jurisdiction.

(b) Required Disclosures. In the event that Receiving Party is required by law or order of a court of competent jurisdiction to disclose any Confidential Information, Receiving Party shall (i) notify Disclosing Party in writing as soon as possible, but in no event later than ten (10) days prior to any such disclosure, (ii) cooperate with Disclosing Party to preserve the confidentiality of such Confidential Information consistent with applicable law, and (iii) use its reasonable efforts to limit any such disclosure to the minimum disclosure necessary to comply with such law or order of a court of competent jurisdiction.

(c) Remedy. Receiving Party acknowledges that breach of this Confidentiality Agreement would cause immediate and irreparable harm to Disclosing Party for which money damages would be inadequate. Therefore, Disclosing Party shall be entitled to injunctive relief for any breach by Receiving Party of this Confidentiality Agreement without proof of actual damages and without the posting of bond or other security. Such remedy shall not be deemed to be the exclusive remedy for breach of this Confidentiality Agreement, but shall be in addition to all other remedies available at law or in equity.

**3. Return of Materials.** Upon the request of Disclosing Party, Receiving Party shall promptly deliver to Disclosing Party or, at Disclosing Party's request destroy, all Confidential Information in its possession and control, and all copies thereof, in whatever form or medium, including without limitation, written records, optical and magnetic media and all other materials containing any Confidential Information. If Disclosing Party requests, Receiving Party shall provide written confirmation that Receiving Party has returned or destroyed all such materials.

**4. Term.** The term of this Confidentiality Agreement shall commence from the Effective Date and shall not expire unless, i) all Confidential Information has been destroyed or returned to Disclosing Party AND, ii) Receiving Party is no longer engaged by Disclosing Party and such disengagement has continued for greater than one (1) year.

## **5. General.**

(a) Entire Agreement. This Confidentiality Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any previous understandings or agreements, whether written or oral, in respect of such subject matter.

(b) Assignment. This Confidentiality Agreement is personal to each party hereto and may not be assigned or otherwise transferred without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed

(c) No Waiver. No waiver or delay in enforcement of any breach of any term, covenant or condition of this Confidentiality Agreement shall be construed as a waiver of any preceding or succeeding breach of any other term, covenant or condition of this Confidentiality Agreement.

(d) Relationship of Parties. Except as specifically provided herein, neither party shall act or represent or hold itself out as having authority to act as an agent or partner of the other party, or in any way bind or commit the other party to any obligations. Any such act will create a separate liability of the party so acting to any and all third parties affected thereby. The rights, duties, obligations and liabilities of the parties shall be several and not joint or collective, and nothing contained in this Confidentiality Agreement shall be construed as creating a partnership, joint venture, agency, trust or other association of any kind, each party being individually responsible only for its obligations as set forth in this Confidentiality Agreement.

(e) Severability. Should any provision of this Confidentiality Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision may be modified by such court in compliance with the law and, as modified, enforced. All other terms and conditions of this Confidentiality Agreement shall remain in full force and effect and shall be construed in accordance with the modified provision, as if such illegal, invalid or unenforceable provision had not been contained herein.

(f) Governing Law and Venue. This Confidentiality Agreement, and all rights and obligations of the parties relating to this Confidentiality Agreement, shall be governed by and construed in accordance with the domestic laws of the State of Texas and the federal laws of the United States, without giving regard to the conflicts of law principles thereof. Exclusive venue for any dispute arising out of this Confidentiality Agreement shall be in Harris County, Texas.

(g) Attorneys' Fees. Should either party bring suit to enforce this Confidentiality Agreement, the prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit. The term "prevailing party" is defined to mean the party who obtains a determination of wrongful conduct by the other party regardless of whether actual damages are awarded.

(h) Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be served upon the other at the address of such party set forth on the signature page hereto either personally, by Federal Express or other overnight delivery service of recognized standing, by United States Mail, certified mail, return receipt requested, or by fax.

(i) Headings. The headings to the Sections contained herein are for identification purposes only and are not to be construed as part of this Confidentiality Agreement.

(j) Counterparts; Electronic Copies. This Confidentiality Agreement may be signed in counterparts which taken together shall constitute the complete agreement. Electronic copies of the parties' signatures will suffice as originals.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Confidentiality Agreement as of the Effective Date.

DISCLOSING PARTY:

Serac Capital Partners

By: \_\_\_\_\_  
Name: Wm. Roger Gregory  
Title: CEO

Address for Notice:

5051 Westheimer Rd. Ste. 1750  
Attn: Wm. Roger Gregory  
Phone: 832-460-7690  
E-Mail: rgregory@seraccapital.com

RECEIVING PARTY:

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for Notice:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_