

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “Agreement”) is made and entered into as of _____ by and between **PEACHTREE HOTEL GROUP II, LLC** together with its affiliates, subsidiaries, investment vehicles, or investment funds managed or controlled by or under common management and control with such parties (collectively, “PHG”), and _____ **[RECIPIENT LEGAL ENTITY NAME]** (“Recipient”).

W I T N E S S E T H:

WHEREAS, PHG and Recipient are considering entering into a business relationship involving the sale of certain assets owned, managed, or controlled by PHG (the “Proposed Transaction”) and, in order to assist the Recipient to evaluate the Proposed Transaction, PHG is prepared to make available and cause its affiliates to make available to Recipient certain Confidential Information (as defined below);

WHEREAS, PHG and Recipient have a substantial interest in ensuring that Confidential Information (defined below) is not made public; and

WHEREAS, PHG would suffer harm if Recipient were to disclose any of the Confidential Information to anyone other than its Representatives (defined below).

NOW, THEREFORE, in consideration of the agreement by PHG to provide Recipient access to certain Confidential Information, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PHG and Recipient hereby agree as follows:

1. **Preambles**. The preambles to this Agreement are incorporated herein by this reference.
2. **Definition of Confidential Information**. As used in this Agreement, “Confidential Information” means any and all information and data disclosed by PHG to Recipient, including information related to PHG’s pipeline of prospective investments and discussions related to, or the analysis of the Proposed Transaction delivered on or after the date of this Agreement, including, but not limited to: (i) information concerning the business plans, strategies, financial condition, projections, operations, processes, assets, condition and/or liabilities of PHG; (ii) information concerning the business plans, strategies, financial condition, personal data, projections, operations, processes, assets, condition and/or liabilities of any current or potential borrowers or any affiliate of current or potential borrowers; (iii) information concerning the management and operation of the hotels, including, without limitation, franchise information, revenue projections, operating budgets, designs, schematics, layouts, drawings, plans, and any information contained in any “Property Improvement Plan” that PHG or its representative collects, conducts or prepares for the properties; (iv) information relating to the organization of PHG; and (v) the fact that such Confidential Information exists or has been made available, that this Agreement exists, either party hereto is considering the Proposed Transaction, and that investigations, discussions or negotiations are taking or have taken place (including the status thereof) concerning the Proposed Transaction.
3. **Agreement to Keep Information Confidential**. Recipient hereby agrees that the Confidential Information is the confidential, proprietary property of PHG and that Recipient acquires no interest

in the Confidential Information, other than the right to use certain Confidential Information to evaluate the Proposed Transaction pursuant to the terms of this Agreement. Recipient therefore agrees to use the Confidential Information solely for the purpose of evaluating the Proposed Transaction and to exercise the same degree of care and protection with respect to the Confidential Information that it exercises with respect to its own confidential and proprietary information (and in no event less than a commercially reasonable degree of care and protection). Until such time as this Agreement is terminated, Recipient shall, subject to the provisions of Section 4 below, hold the Confidential Information in strictest confidence and shall not in any way use, copy, disclose, or otherwise make available to any other person or entity any of the Confidential Information.

The duty of confidentiality shall not apply to information which: (a) was in the public domain at the time it was communicated to Recipient or subsequently entered the public domain through no fault of Recipient; (b) Recipient can prove was independently developed by Recipient without use of or reference to the Confidential Information or was already known to Recipient at the time of receipt; or (c) is required to be disclosed by Recipient pursuant to judicial order or other compulsion of law, provided that Recipient shall provide to PHG prompt notice of any such order, take all steps to assure that any available protective or similar orders or procedures are obtained and comply with any protective or similar order imposed on such disclosure. In the event of unauthorized disclosure of Confidential Information by Recipient, Recipient shall bear the burden of proof of demonstrating that the information falls under one of the above-described exceptions.

4. **Representatives.** Recipient may disclose Confidential Information to its Representatives, provided that Recipient discloses the confidential nature of such information to such Representatives and ensures that all Representatives comply with the terms and conditions of this Agreement. In this Agreement, the term “Representatives” shall mean all of the Recipient’s employees, agents and professional advisors (including, but not limited to, attorneys, consultants and accountants). Recipient shall be liable for any breach of this Agreement caused by any of its Representatives.
5. **Return or Destruction of Confidential Information.** Within ten (10) days after receiving written notice from PHG of its termination of this Agreement or upon its determination not to pursue the Proposed Transaction, the Recipient shall return to or, at PHG’s option, destroy and confirm the destruction of) all copies (whether in written, electronic, or other tangible or intangible form) of all Confidential Information then under the control of the Recipient or its Representatives.
6. **Absence of Representations or Warranties.** Recipient understands and acknowledges that PHG is not making any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information, and neither PHG nor any of its officers, directors, owners, employees, agents or affiliates will have any liability to Recipient or any other person resulting from Recipient’s use of Confidential Information.
7. **Remedies.** Recipient acknowledges that any unauthorized use or disclosure of any item of Confidential Information may cause irreparable damage to PHG for which monetary damages could not be adequate, and that PHG may be entitled to preliminary and permanent injunctive relief to restrain any actual or threatened conduct in violation of these provisions. Any injunctive relief shall be in addition to any other relief to which PHG may be entitled at law or in equity. If an unauthorized use or disclosure occurs, such disclosure shall be promptly notified to PHG.

8. **Miscellaneous.**

- a. Any parties' failure in any one or more instances to insist upon performance of any of the terms and covenants of this Agreement, or to exercise any right or privilege conferred in this Agreement, or the waiver by such party of any breach of any of the terms, covenants or conditions of this Agreement, shall not be construed as a subsequent waiver of any such terms, covenants, conditions, rights or privileges, which shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. No waiver shall be effective unless it is in writing and signed by an authorized officer of the respective party hereto.
- b. The validity, enforcement, interpretation, construction, effect and all other aspects of this Agreement, and all claims arising from or relating directly or indirectly to this Agreement, shall be governed and controlled by the internal laws of the State of Georgia, without regard to its conflicts of laws rules.
- c. Each provision of this Agreement is severable. If any covenant is deemed unenforceable for any reason, but would be enforceable if modified, PHG and Recipient agree that the covenant will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant's validity.
- d. Without the prior written consent of PHG, Recipient shall not, directly or indirectly, communicate or attempt to communicate with, or contact or seek or attempt to contact, any seller, borrower, guarantor, partner, counterparty or other person or entity identified in the Confidential Information, or any of their respective agents, employees, accountants or attorneys regarding any items contained in the Confidential Information or a Proposed Transaction.
- e. This Agreement and the obligations of the parties hereunder are personal to the parties hereto and may not be assigned, except by written consent. References to the masculine and neuter pronouns shall include the other and the feminine.
- f. This Agreement represents the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous communications, agreements and understandings relating thereto, whether written or oral.

[Signature Page Follows]

Agreed to and accepted as of the date first set forth above.

[OUTSIDE BROKERS HEREBY ACKNOWLEDGES THAT OUTSIDE BROKER'S PROSPECT WILL BE PAYING OUTSIDE BROKER'S FEE IN THE EVENT A TRANSACTION FOR THE REFERENCED PROPERTY IS COMPLETED WITH OUTSIDE BROKER'S PROSPECT.]

[RECIPIENT LEGAL ENTITY NAME] _____

BY: _____

NAME: _____

TITLE: _____

EMAIL: _____

PHONE: _____

STREET ADDRESS: _____

CITY, STATE, ZIP: _____