

Non-Circumvention, Non-Competition, Confidentiality and Non-Disclosure Agreement

This Non-Circumvention, Non-Competition, Confidentiality and Non-Disclosure Agreement (the “**Agreement**”) is made and entered into this ___ day of _____ 2021 (the “**Effective Date**”) by and between LH MOUNTAIN VENTURES, LLC (together with its affiliates and members, collectively, the “**Owner**”) and _____ (together with its affiliates and members, collectively, the “**Recipient**”). (Owner and Recipient may also be referred to herein individually, as a “**Party**” and collectively, as the “**Parties**”).

WHEREAS, Owner currently owns real property commonly referred to as the “East Peak 8 Site” (the “**Property**”);

WHEREAS, Recipient is considering the possibility of a potential investment and/or joint venture partnership in the Project (hereinafter, the “**Potential Transaction**”), and wishes to receive certain confidential information from Owner regarding the Property to assess and evaluate the Property and the Potential Transaction;

WHEREAS, Recipient desires that Owner introduce Recipient to certain parties associated with/involved in/having an interest in the Potential Transaction or the Property (individually, “**Owner Introduced Party**”, collectively, the “**Owner Introduced Parties**”); and

WHEREAS, Owner and Recipient wish to define herein the rights and obligations of Recipient’s handling of Confidential Information.

NOW, THEREFORE, in consideration of the foregoing and the mutual undertakings of the Parties as set forth below, the Parties hereto mutually agree as follows:

1. Confidential Information

(a) “**Confidential Information**” for the purposes of this Agreement shall consist of and include, without limitation, any information, whether in written, oral, visual, electronic or other form, relating to the Owner, the Property, the Project, or the Potential Transaction, whether disclosed orally or in writing, learned by Recipient through observation or examination of the Property, features of the Property, development plans and visions for the Project, market research and data, plans, marketing, and financial data, cost data, know-how, trade secrets, ideas and other information of an architectural, technical, scientific, environmental, or economic nature related to the Property or the Project, Owner’s Project expectations and specifications, any documents, books, records, data or products of Owner disclosed to Recipient through observation or examination, research and development materials, or any information otherwise learned in any manner from or through Owner in any way related to the Property or the Project. Confidential Information includes the existence of negotiations regarding the Potential Transaction and the existence of this Agreement.

(b) Confidential Information shall not include any information which (i) was in the public domain at the time of the disclosure, (ii) was already known to Recipient prior to the time of disclosure by Owner, as shown by documentary evidence, (iii) is available or

becomes generally available to the public other than through a breach of this Agreement by Recipient, (iv) is acquired or received rightfully and without confidential limitation by Recipient from a third party, as shown by documentary evidence, or (v) is disclosed by the Recipient with the Owner's prior written approval.

(c) Confidential Information shall include the identity of third party financing sources, including commercial banks, that have an interest in the Property or the Project, or with whom Owner is discussing a potential interest in the Property or the Project, including mortgage debt on any portion of the Property (collectively, "**Financial Interest Holders**") and all obligations under, and documents evidencing, debt or equity financing for any portion of the Property or the Project provided or held, or potentially to be provided or held, by such Property Financial Interest Holders, including, without limitation, any loan or participation agreements, recorded mortgage indebtedness on any portion of the Property, and any term sheets or letters of intent relating to such debt or equity financing for any portion of the Property or the Project (collectively, "**Financing Documents**").

2. Ownership of Confidential Information. Owner shall remain the sole owner of all Confidential Information. Nothing contained in this Agreement shall be construed as granting or conferring any right or license in the Confidential Information or in any patents, software or other technology, either expressly or by implication, to Recipient.

3. Limits on Use and Disclosure of Confidential Information. Recipient covenants and agrees that:

(a) Confidential Information shall be used only for purposes of discussing and evaluating the Proposed Transaction and for no other reason;

(b) Confidential Information may not be used by Recipient or its Representatives to the detriment of Owner. "**Representatives**" for purposes of this Agreement shall mean any affiliate, director, officer, employee, agent, advisor or consultant of either of the Parties or their subsidiaries or affiliates;

(c) Recipient shall take all reasonable steps to safeguard and protect Confidential Information from any theft, loss, unauthorized access, unauthorized use or disclosure and accord it at least the same degree of confidential and proprietary treatment as it gives its own Confidential Information. Unless otherwise required by law, Recipient will disclose Confidential Information only to those Representatives on a need-to-know basis and take all necessary steps, including entering into an appropriate confidentiality agreement with the Representative, to direct such Representatives who are provided any Confidential Information, or who are involved in any discussions or evaluations in which Confidential Information is disclosed, or who may otherwise have occasion to view, handle or obtain any Confidential Information, to keep all such information in the strictest confidence and to use such information only in connection with the Proposed Transaction and in accordance with the terms of this Agreement. In any event, Recipient will be responsible to Owner for the Representatives' compliance with the confidentiality provisions hereof and any breach of its provisions by any Representatives.

(d) Recipient shall not, without the prior written consent of Owner, which consent may be withheld in Owner's sole discretion, use any Confidential Information related to the Proposed Transaction except in connection with existing or potential transactions between the Parties;

(e) Recipient shall not, without the prior written consent of Owner, disclose by itself or by any of its Representatives, any Confidential Information to any third party; and

(f) Recipient shall notify Owner in writing of any actual or threatened misuse or misappropriation of the Confidential Information of which Recipient may become aware during the term of this Agreement.

4. Non-Circumvention and Non-Competition.

(a) All communications, whether written, oral or electronic, whether pertaining to the Potential Transaction or any other matter, between Recipient or its Representatives and Owner or Owner Introduced Parties shall be conducted through Owner, unless Owner gives its express written consent permitting direct communications. The grant of any such permission shall apply only to the specific individuals and/or entities listed in the written consent provided by Owner, which can be withheld at Owner's sole and absolute discretion, or withdrawn at any time, at Owner's sole and absolute discretion. Recipient or its Representatives shall not, directly or indirectly, contact any Owner Introduced Party, nor shall Recipient allow, enable, cause, encourage or help, either directly or indirectly, any third party to contact any Owner Introduced Party. Recipient or its Representatives shall not, directly or indirectly, reveal the identity or contact information of any Owner Introduced Party to any third party, nor shall Recipient allow, enable, cause, encourage or help, either directly or indirectly, any third party to reveal or obtain such information.

(b) For a period of three (3) years following the Effective Date of this Agreement, Recipient shall not, without the prior written consent of Owner, which consent may be withheld in Owner's sole discretion, (i) circumvent, interfere with, or disrupt any relationship, contractual or otherwise, between Owner or its Representatives and any Owner Introduced Party, or any other party; (ii) interfere with, negate or disrupt any earnings opportunity of Owner or its Representatives; (iii) take any action to circumvent Owner's involvement in the Potential Transaction or any other transaction involving the Property; (iv) directly or indirectly influence or attempt to influence customers or suppliers of Owner to divert their business from Owner, or (v) directly or indirectly solicit any of Owner's employees, former employees or independent contractors to work for any business or entity in competition with Owner.

(c) So long as Owner (or any of the principals thereof) shall have a direct (or indirect) legal interest in the Property, Recipient and its Representatives agree that: (i) they will proceed with the Potential Transaction, or any other transaction involving the Property or any portion thereof, only with the participation of Owner, on mutually agreeable terms; (ii) neither Recipient nor its Representatives will, directly or indirectly, alone or with others

(x) acquire any interest in the Property or any portion thereof, (y) participate in the acquisition, joint venture, development and/or financing of all or any part of the Property, or (z) acquire or participate in any option or right to acquire an interest in the Property or any portion thereof or in any entity owning an interest in the Property, except with the involvement of Owner; and (iii) neither Recipient nor its Representatives will enable, cause, encourage or help, either directly or indirectly, any other person or entity to do any of the items set forth in 5(c)(ii)(x)-(z) above, except with the involvement of Owner.

(d) Recipient and its Representatives agree not to use the Confidential Information, introductions to Owner Introduced Parties, or any knowledge or information gained as a result of the Recipient's evaluation of, or involvement in the Potential Transaction to the detriment of Owner or its Representatives, or to gain any complete advantage over Owner or its Representatives in any future transaction or business dealing.

5. Destruction of Confidential Information. At any time, upon written request of Owner, Recipient shall promptly, within five (5) business days of (i) Owner's request; or (ii) expiration or termination of this Agreement, return or destroy, as directed by Owner, all Confidential Information in the possession or control of Recipient or its Representatives, including all copies thereof. Upon Owner's request, Recipient shall furnish to Owner a signed confirmation providing assurances as to the return or destruction of Owner's Confidential Information. Confidential Information held in electronic form shall be deemed destroyed when deleted from local hard drives so long as no attempt is made to recover such information from backup tapes, servers, or other sources.

6. Expiration of Obligations. Except as provided in Section 5 hereof, all obligations of confidentiality and all restrictions on the use of Confidential Information under this Agreement shall remain in effect for a period of three (3) years following the Effective Date of this Agreement, and with respect to Confidential Information that constitutes a trade secret under applicable law, for as long as such information remains a trade secret. Such time period may be extended upon written agreement of the Parties. Notwithstanding the foregoing, the Sales Information shall remain Confidential Information notwithstanding the expiration or termination of this Agreement. This Section 7 shall survive the termination of this Agreement.

7. Responsibility for Representatives. Each Party shall be solely responsible for any breach of this Agreement by its Representatives, including without limitation, any improper use or disclosure by its Representatives of the other Party's Confidential Information or the disclosure to any third party of the existence of this Agreement or that discussions between the Parties will or have occurred with respect to the Proposed Transaction.

8. Representation as to Accuracy. While Owner believes that all information furnished to Recipient, including all Confidential Information, will be accurate, no representation or warranty is made by Owner as to its accuracy or completeness.

9. Injunctive Relief. It is agreed that money damages would not be a sufficient remedy for any breach of this Agreement by Recipient or by its Representatives. Accordingly, Owner shall be entitled to seek specific performance, injunctive relief, or any other forms of equitable relief as a

remedy for any breach of this Agreement by Recipient or its Representatives; provided however, that such remedy(ies) shall not be deemed to be the exclusive remedy(ies) for a breach of this Agreement, but shall be in addition to all other remedies available at law or equity. In the event of litigation relating to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party the prevailing Party's reasonable attorneys' fees and costs (whether incurred before or in litigation and upon appeal).

10. General Provisions.

(a) Publicity. Neither Party may issue a press release or make a public statement concerning this Agreement or the Purpose without the approval of the other Party.

(b) Governing Law. This Agreement is governed by Florida law, without regard to its conflicts of laws principles.

(c) Jurisdiction and Venue. Exclusive jurisdiction and venue for any legal action under this Agreement is the Miami-Dade County District Court or the U.S. District Court for the District of Florida. The Parties waive their rights to trial by jury in any legal action under this Agreement.

(d) Remedies Cumulative. The rights and remedies in this Agreement are cumulative and are in addition to all rights and remedies available under law (unless waived in this Agreement). By exercising any right or remedy a Party does not waive any other available right or remedy.

(e) Relationship of Parties. Nothing in this Agreement creates a partnership, joint venture, or similar relationship between the Parties. Neither Party may bind the/any other Party or hold itself out as having authority to bind the other Party.

(f) Counterparts. This Agreement may be executed in counterparts and delivered by facsimile or other electronic method, which taken together form the Agreement and will be binding as if the original signatures are on one document.

(g) Expenses. Except as may be specifically agreed to in writing, each of the Parties shall bear its own costs and expenses (and those of its Representatives) associated with the furnishing, evaluation and return or destruction of Confidential Information and involving any subsequent discussion and negotiations concerning the Potential Transaction.

(h) Non-binding. The Parties acknowledge and agree that this Agreement in no way constitutes an agreement by either party to enter into any transaction, and until and unless the Parties enter into a definitive written agreement with respect to a transaction relating to the Property, the Parties obligations to each other are limited to the matters specifically addressed herein.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first written above.

OWNER:

LH MOUNTAIN VENTURES, LLC

By: FLAGLER HOLDING GROUP, INC.
Manager

By: _____
Ricardo Dunin, President

RECIPIENT:

By: _____
Name: _____
Title: _____