

**CONFIDENTIALITY, NON-DISCLOSURE
AND NON-CIRCUMVENTION AGREEMENT**

THIS CONFIDENTIALITY, NON-DISCLOSURE and NON-CIRCUMVENTION AGREEMENT, (“Agreement”) is made and entered into as of the ___ day of _____, 20___ by and between _____ and _____ (collectively, “Disclosing Party”), and _____ and _____ **[BROKER] and all their members, principals, consultants, representatives, assignees, employees and agents** (“Receiving Party”). The Disclosing Party and Receiving Party are individually referred to herein as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Parties desire to enter into confidential discussions regarding a potential purchase real estate located at _____ (the “Potential Transaction” or the “Opportunity”); and

WHEREAS, in the course of such discussions, the Receiving Party will have access to Confidential Information (as hereinafter defined) belonging to the Disclosing Party with the understanding that such Confidential Information will be kept strictly confidential in accordance with the terms and conditions of this Agreement. Hereafter, “Disclosing Party” shall refer to the Party which discloses or provides “Confidential Information” and the “Receiving Party” shall refer to the Party that receives or to which “Confidential Information” is disclosed.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Confidentiality and Non-Circumvention

A. As used in this Agreement, the term “Confidential Information” shall mean and include any information, the proposed agreement, contract terms, parties involved in the Opportunity, due diligence documentation, documents or ideas, whether printed, written, oral or electronic, including, without limitation: any analysis, opinions or conclusions; studies or reports; strategic, financial or operational plans; or other documents or information related to the Opportunity. “Confidential Information” does not include (a) information that has become or hereafter becomes generally available to the public other than as a result of a disclosure by the Receiving Party and/or any of its representatives; (b) information that is furnished to Receiving Party on a non-confidential basis from a source other than the Disclosing Party that is not under any obligation of confidentiality to the Disclosing Party, or (c) information that is within the Receiving Party’s possession prior to its being furnished to Receiving Party by the Disclosing Party.

B. Receiving Party agrees not to contact or initiate contact at any time for any purpose, either directly or indirectly, with anyone regarding the Confidential Information or the Opportunity.

C. Since the unauthorized disclosure of Confidential Information could cause the Disclosing Party to suffer irreparable harm, loss and damage, the Parties agree that:

(i) Receiving Party shall use its best efforts and the utmost diligence to guard and protect the Confidential Information from any unauthorized disclosure, other than to the Receiving Party's employees, agents and advisors: (a) who need to know the Confidential Information in connection with the Opportunity; (b) who are informed of the confidential nature of the information the Receiving Party discloses to them; (c) who are instructed to treat such information confidentially; and (d) who have agreed in writing to keep such information confidential;

(ii) Unless Disclosing Party gives Receiving Party prior express written permission, Receiving Party shall not divulge to any other person, except as provided for herein, the Confidential Information which Receiving Party may obtain as a result of its discussions with Disclosing Party related to the Opportunity; and

(iii) The existence of this Agreement and review of the Opportunity shall itself be considered Confidential Information.

D. Receiving Party acknowledges and agrees that all Confidential Information provided by Disclosing Party is to be utilized exclusively and solely to assist Receiving Party in considering and evaluating the Potential Transaction and for no other purpose.

E. The Receiving Party agrees that the Receiving Party shall not communicate in any manner with the Disclosing Party, lender, service provider, tenant or other party having an interest (direct or indirect) in the Opportunity, or any of such Disclosing Party's owners, officers, employees, attorneys, on-site managers, without the prior written consent of the Disclosing Party. Receiving Party shall not (a) interfere with, circumvent, avoid, bypass or obviate, or permit any of its members, principals, consultants, representatives, assignees, employees or agents to interfere with, circumvent, avoid, bypass or obviate the Disclosing Party's rights and agreements in respect of the Opportunity; or (b) without Disclosing Party's prior written consent (i) enter into discussions with any third party disclosed or introduced to the Receiving Party by the Disclosing Party having an interest in the Opportunity or with which the Disclosing Party has a joint venture, financing, equity, finder, brokerage or other business relationship in connection with the Opportunity, or (ii) initiate and negotiate in respect to any transactional relationship with any such third party in connection with the Opportunity; or (c) circumvent or attempt to circumvent the discussions and negotiations currently underway or hereafter entered into by the Disclosing Party and any such third party with respect to the Opportunity; or (d) take any action or fail to take any action that would circumvent this Agreement, make use of a scheme, artifice, device or third party to circumvent this Agreement or make any effort to circumvent this Agreement.

F. Receiving Party also acknowledges and agrees that upon the termination of Receiving Party's discussions with Disclosing Party regarding the Potential Transaction for any reason, Receiving Party shall immediately, without request of the Disclosing Party, return or

destroy all documents or other tangible Confidential Information in its possession, custody, or control, and will not make or keep any copies, notes, abstracts, summaries, tapes or other record of the Confidential Information; provided, however, that Receiving Party may retain Confidential Information if required by applicable law. In the event the Receiving Party is unable to return and/or destroy any Confidential Information, the Receiving Party shall identify such Confidential Information to the Disclosing Party in writing and (i) specify the reason why the retention of Confidential Information is required and (ii) confirm that the retained Confidential Information shall remain subject to the terms and conditions of this Agreement.

2. Ownership of Confidential Information. The Parties agree that all Confidential Information is and will remain the sole and exclusive property of the Disclosing Party, and access to and use of such Confidential Information shall in no way be construed as a license to use or transfer ownership of the Confidential Information.

3. Obligation to Enter Into Potential Transaction. It is understood that neither this Agreement nor any prior or subsequent communications between the Parties either has or does constitute or give rise to any obligation on the part of any Party to enter into the Potential Transaction except as specifically set forth in a definitive written agreement signed by the Parties. Either Party may, upon written notice, terminate discussions related to the Potential Transaction.

4. Notice of Disclosure. Receiving Party acknowledges and agrees that if Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil or regulatory investigative demand or other process) to disclose any Confidential Information, Receiving Party will provide Disclosing Party with prompt written notice of such request or requirement and provide the Disclosing Party a reasonable opportunity to review such request and seek, at its option, an appropriate protective order or other remedy and/or waive its rights under this Agreement with respect to that portion of the Confidential Information that comes within the scope of the request or requirement. If, in the absence of a protective order, Receiving Party is lawfully compelled to disclose any Confidential Information, Receiving Party may disclose such information without liability under this Agreement.

5. Indemnification. The Receiving Party hereby agree to indemnify, defend and hold harmless the Disclosing Party and its owners, directors, managers, officers, employees and agents, from and against all claims, demands, suits, causes of action, proceedings, losses, costs, filings, penalties, judgments, damages (including, without limitation, consequential damages by whomever suffered) and expenses (including, without limitation, attorneys' fees and expenses) of every kind and nature whatsoever arising, directly or indirectly, from, as a result of, or in connection with the violation of the terms of this Agreement by the Receiving Party or any of its respective officers, directors, shareholders, employees, representatives or agents.

6. Injunctive Relief. Receiving Party acknowledges and agrees that the Confidential Information is sensitive, and that violation of any of the covenants contained in this Agreement would cause immediate, immeasurable and irreparable harm, loss and damage to the Disclosing Party not adequately compensable by a monetary award. Accordingly, Receiving Party agrees, without limiting any of the other remedies available to the Disclosing Party, that any actual or

threatened violation of said covenants may be enjoined or restrained by any court of competent jurisdiction, and that any temporary restraining order or emergency, preliminary or final injunctions may be issued by any court of competent jurisdiction, without notice and without bond. The Disclosing Party shall be entitled to its attorneys' fees and costs incurred in any enforcement action, along with all other remedies, including injunctive relief and specific performance, available under the Illinois Trade Secret Act or any other applicable law.

7. Other Remedies and Attorneys' Fees. All remedies for breach of this Agreement shall be cumulative. If either Party seeks to enforce its rights or remedies hereunder by litigation or otherwise, the prevailing Party shall be entitled to reasonable attorneys' fees, expenses, and costs incurred in connection herewith. The failure of a Party to enforce any of the provisions hereof shall not be construed as a waiver of that right or of any other provision or right.

8. Payment of Fees. Each Party shall pay their own fees and expenses and those of their agents and consultants and, with respect to conducting any analysis of the Potential Transaction, the expenses related to any due diligence or negotiations for a definitive agreement, if any, unless otherwise agreed to by the Parties.

9. Severability and Modification.

A. Should any of the covenants or provisions of this Agreement be held unenforceable or invalid, the Parties hereby agree that the remaining provisions shall continue in full force and effect and that this Agreement shall be construed as if such invalid or unenforceable covenant or provision were not herein contained.

B. If any restriction of this Agreement is held overly broad or unreasonable such restriction shall be modified or revised to include the maximum reasonable restriction allowed by law by a court of appropriate jurisdiction.

C. This Agreement contains, and is intended as, a complete statement of all of the terms of the agreement between the Parties with respect to the matters provided for herein, supersedes any previous agreements and understandings (whether written or oral) between the Parties with respect to those matters and cannot be amended or changed except by a written instrument duly executed by or on behalf of all of the Parties hereto.

10. Commission. This Agreement does not bind the Disclosing Party to the payment of a commission to the Receiving Party's broker. Any commission payments arising from the Transaction shall be subject to a separate agreement between the Disclosing Party, the Disclosing Party's broker, the Receiving Party and the Receiving Party's broker.

11. Miscellaneous.

A. The headings in this Agreement are included for convenience only and are not to be considered in the construction or interpretation of the provisions hereof.

B. This Agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, but all of which shall together

constitute one and the same instrument. As used herein, "facsimile signature" means a reproduction by electronic and/or photographic means of the manual signature of a person authorized to execute this Agreement.

C. Each person signing this Agreement on behalf of a Party warrants that it has authority to bind said Party

D. This Agreement shall inure to the benefit of and be binding upon the undersigned and upon their respective executors, administrators, legal representatives, successors and assigns. This Agreement may not be assigned by a Party without the other Party's prior written consent.

E. This Agreement shall be governed solely and exclusively by the laws of the State of Illinois. The Parties further agree that any action or suit to enforce this Agreement shall be brought only in a federal or state court of competent jurisdiction in the State of Illinois.

F. The Parties acknowledge that they have had the opportunity to consult with their own independent counsel concerning all matters set forth herein. The Parties warrant that they have read this Agreement, intend to be legally bound by it, and have entered into it freely, voluntarily, and willingly. The Parties further warrant that this Agreement is the joint product of arm's-length negotiations by and between them through their duly authorized counsel and that, in the event of any dispute between them, this Agreement shall be deemed to have been jointly-drafted by the Parties, and they expressly waive all defenses based on the doctrine of *contra proferentem* in the event of any such dispute.

G. This Agreement shall survive completion of negotiations and discussions whether or not the Disclosing Party and Receiving Party enter into an agreement covering the Potential Transaction. Nothing in this agreement shall be deemed to be, nor shall it create, a joint venture or partnership between the Disclosing Party and the Receiving Party.

H. This Agreement may only be amended by a writing signed by each of the Disclosing Party and Receiving Party. No failure or delay by either of the Parties in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power, or privilege hereunder.

I. The Receiving Party's obligations under this Agreement are in addition to any other obligations which they may have to the Disclosing Party, under separate contracts or otherwise, and shall not be construed as limiting any such obligations.

[SIGNATURE PAGE TO FOLLOW;

BALANCE OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DISCLOSING PARTY:

RECEIVING PARTY:

Disclosing Party

Receiving Party

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Disclosing Party Broker

Receiving Party Broker

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____