

# CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Commercial Real Estate



This Confidentiality and Non-Disclosure Agreement (the “**Agreement**”) is made as of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), by and between \_\_\_\_\_, a \_\_\_\_\_ (“**Owner**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Recipient**”).

Owner owns or controls the commercial real property commonly known as \_\_\_\_\_ (together with all improvements, fixtures, leases, and related rights, the “**Property**”). Owner is willing to provide Recipient with certain non-public information about the Property so that Recipient may evaluate a possible purchase, lease, financing, joint venture, or similar transaction involving the Property (the “**Transaction**”). In exchange for receiving that information, Recipient agrees as follows:

**1. Confidential Information.** “**Confidential Information**” means all non-public information that Owner provides to Recipient about the Property or the Transaction, in any form (written, oral, electronic, or otherwise), including: offering memorandums and marketing materials; rent rolls, leases, and tenant correspondence; operating statements, budgets, and projections; tax bills and assessments; service contracts; environmental, engineering, and physical condition reports; surveys, title reports, and zoning information; loan documents; employee, vendor, and tenant lists; and any notes, analyses, or summaries that Recipient or its Representatives prepare that contain or reflect such information. The fact that the Property is being marketed, the identity of any prospective purchaser, and the terms of any offer are also Confidential Information.

Confidential Information does *not* include information that: (a) is or becomes publicly available through no fault of Recipient; (b) Recipient already lawfully possessed before disclosure, without a duty of confidentiality; (c) Recipient lawfully receives from a third party who is free to disclose it; or (d) Recipient develops independently without using Confidential Information.

**2. Use and Protection.** Recipient will: (a) use Confidential Information solely to evaluate the Transaction; (b) hold it in strict confidence and protect it with at least the same care it uses for its own confidential information, and in no event less than reasonable care; and (c) not use Confidential Information for any other purpose, including competing with Owner or the Property or soliciting Owner’s tenants, employees, or vendors.

**3. Permitted Disclosure.** Recipient may share Confidential Information only with its directors, officers, employees, attorneys, accountants, consultants, lenders, investors, joint venture partners, and brokers (collectively, “**Representatives**”) who (i) need to know it to evaluate the Transaction, (ii) are informed of its confidential nature, and (iii) agree (or are already bound) to keep it confidential on terms at least as protective as this Agreement. Recipient is responsible for any breach of this Agreement by its Representatives as if it were Recipient’s own breach.

- 4. No Contact.** Without Owner's prior written consent, Recipient and its Representatives will not contact, or attempt to contact, any tenant, on-site employee, property manager, lender, neighbor, or governmental official regarding the Property or the Transaction. All questions, requests for information, tours, and offers will be directed to Owner or to the person Owner designates in writing.
- 5. Required Disclosure.** If Recipient is required by law, subpoena, or court order to disclose any Confidential Information, Recipient will (to the extent legally permitted) promptly notify Owner in writing so that Owner may seek a protective order or other remedy. Recipient will disclose only that portion of the Confidential Information that it is legally required to disclose and will use reasonable efforts to ensure confidential treatment.
- 6. Return or Destruction.** If the parties do not proceed with the Transaction, or upon Owner's written request at any time, Recipient will promptly return or destroy all Confidential Information in its and its Representatives' possession, including all copies and derivative materials, and (if requested) certify the destruction in writing. Recipient may retain one archival copy solely to comply with legal, regulatory, or internal records-retention requirements, which copy will remain subject to this Agreement.
- 7. No Representations.** Owner provides Confidential Information "as is" and makes no representation or warranty as to its accuracy or completeness. Recipient will rely solely on its own investigation and on representations and warranties made in a definitive written agreement, if any, executed by the parties. Owner is not obligated to proceed with the Transaction or to provide any particular information, and either party may terminate discussions at any time.
- 8. Release of Brokers.** Recipient acknowledges that any real estate broker or agent involved with the Property or the Transaction, whether engaged by Owner or by Recipient (each a "**Broker**"), acts solely as a conduit for the transmission of Confidential Information and has not independently verified its accuracy, completeness, or sufficiency. Recipient releases each Broker, and each Broker's affiliates, parents, subsidiaries, officers, directors, employees, agents, and independent contractors, from any and all liability arising out of or relating to the Confidential Information, including any inaccuracy, omission, or incompleteness. Recipient will rely solely on its own investigation and on representations and warranties of Owner contained in a definitive written agreement, if any. Each Broker is an intended third-party beneficiary of this Section and may enforce it directly.
- 9. Remedies.** Recipient acknowledges that money damages may not be a sufficient remedy for a breach of this Agreement and that Owner is entitled to seek injunctive and other equitable relief, in addition to any other remedies available at law or in equity, without posting bond. In any action to enforce this Agreement, the prevailing party is entitled to recover its reasonable attorneys' fees and costs.
- 10. Term.** This Agreement begins on the Effective Date and Recipient's obligations continue for two (2) years thereafter, except that obligations regarding any information that qualifies as a trade secret continue for as long as it remains a trade secret.

**11. Miscellaneous.** This Agreement is the entire agreement of the parties on this subject and may be amended only in a writing signed by both parties. It is governed by the laws of the State of Wisconsin, without regard to its conflict-of-laws rules, and the parties consent to the exclusive jurisdiction of the state and federal courts located in Wisconsin and waive any right to a jury trial. Neither party may assign this Agreement without the other's written consent. Failure to enforce any provision is not a waiver of it. This Agreement may be signed in counterparts and by electronic signature (including DocuSign or PDF), each of which is deemed an original.

The parties have signed this Agreement as of the Effective Date.

**OWNER:**

\_\_\_\_\_

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

**RECIPIENT:**

\_\_\_\_\_

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_