

# CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

## I PARTIES

**THIS CONFIDENTIAL AND NON-DISCLOSURE AGREEMENT** is made between \_\_\_\_\_ (“REVIEWER”), and \_\_\_\_\_ (“DISCLOSER”), on the date both parties have signed this agreement. DISCLOSER and REVIEWER are referred to jointly in this agreement as the “parties.”

## II RECITALS

**WHEREAS**, the parties are interested in exploring sale possibilities of the \_\_\_\_\_ located in Franklin County, Washington; and in furtherance of such purpose DISCLOSER will reveal various Confidential Information to REVIEWER. Before DISCLOSER will reveal such Confidential Information, DISCLOSER requires that REVIEWER enter into this Confidentiality and Non-Disclosure Agreement.

## III AGREEMENTS

**NOW THEREFORE**, in consideration of the mutual promises and performances of the parties to this agreement, and DISCLOSER’S disclosure of Confidential Information to REVIEWER, the parties contract and agree as follows:

### 1. NO DISCLOSURE OF CONFIDENTIAL INFORMATION.

- a. REVIEWER agrees to retain all Confidential Information received from DISCLOSER in confidence, and not to disclose any such information to any third party or parties, and not to use any such information for its own benefit to DISCLOSER’S detriment or for any purpose other than the purpose recited above. All information which REVIEWER and any of its Agents (as defined below) receives at any time from DISCLOSER or any of DISCLOSER’S agents shall be deemed Confidential Information and subject to the provision of this agreement, whether the information shall be received orally, in writing, visually, by inspection of documents, products or processes, by electronic transmission, or in any other form or manner, excepting only information which REVIEWER establishes was generally available to the public at the time of disclosure or subsequently became generally available to the public other than as a result, directly or indirectly, of disclosure by DISCLOSER or DISCLOSER’S agents. Information provided by DISCLOSER or DISCLOSER’S agents. Information provided by DISCLOSER shall be Confidential Information and shall be subject to this agreement even if it is not marked or designated “confidential” at the time of disclosure.
- b. Notwithstanding the provisions above, REVIEWER may disclose Confidential Information to its Agents only to the limited extent necessary to consider seller financing with DISCLOSER, provided that (a) REVIEWER shall require each such Agent to give written acknowledgement that he or she has read this agreement and agrees to maintain the disclosed information in confidence, and (b) REVIEWER shall be fully responsible for any use or disclosure of Confidential Information by any of its Agents in violation of this agreement.

Initials\_\_\_\_\_ Date\_\_\_\_\_

- c. Confidential Information shall include but not be limited to the following:
  - i. Financial Information
  - ii. Rent Rolls
  - iii. Lease Agreements

**2. SAFEGUARD OF CONFIDENTIAL INFORMATION.**

REVIEWER agrees to exercise the highest degree of care in safeguarding Confidential Information against loss, theft, or other disclosure, and agrees to take all steps necessary to ensure the maintenance of confidentiality.

**3. RETURN OF CONFIDENTIAL INFORMATION.**

Upon the request of DISCLOSER, or within thirty (30) days after negotiations have ended concerning a possible sale—whichever date is earlier—REVIEWER and its Agents shall immediately return to DISCLOSER all documents, notes, and other materials, including all copies thereof, constituting or containing any Confidential Information furnished by DISCLOSER. In addition, REVIEWER and its Agents shall erase or caused to be erased all Confidential Information from any computer memory or storage medium. Upon the request of DISCLOSER, REVIEWER shall give DISCLOSER a written verification that any and all Confidential Information has been returned or erased.

**4. “AGENT” DEFINED; LIABILITY FOR DISCLOSURES OF AGENT.**

- a. “Agent” of REVIEWER as used in this agreement, means any officer, director, manager, employee, agent, representative, adviser, consultant, attorney, accountant, or prospective lender of REVIEWER or any other person or party REVIEWER has provided Confidential Information about DISCLOSER.
- b. If any of REVIEWER’S Agents disclose any Confidential Information, REVIEWER shall be liable for those disclosures as though REVIEWER made the disclosures himself.

**5. TERM; CEASING TO PROVIDE CONFIDENTIAL INFORMATION.**

- a. This agreement shall begin when this agreement is signed and shall have no termination date. Any Confidential Information provided before the date this agreement is signed shall be subject to this agreement.
- b. At any time and for any reason DISCLOSER can cease to provide any Confidential Information to REVIEWER

**6. COMPELLED DISCLOSURES.**

In the event that REVIEWER or any of its Agents are requested by subpoena, order, or any other manner by any third party to disclose any Confidential Information received from DISCLOSER, REVIEWER shall give DISCLOSER prompt notice of such request and DISCLOSER may seek an appropriate protective order. If REVIEWER or any of its Agents is nevertheless compelled by legal process to disclose any of the Confidential Information, REVIEWER may make such disclosure without liability, provided that REVIEWER has provided notice to DISCLOSER as required herein and provided that REVIEWER cooperates as reasonably requested by DISCLOSER in seeking to obtain a protective order or assurance of confidential treatment by the third party seeking disclosure.

**7. ACKNOWLEDGEMENT OF IRREPARABLE HARM.**

REVIEWER acknowledges and agrees that any disclosure of Confidential Information will cause irreparable harm to DISCLOSER.

Initials\_\_\_\_\_ Date\_\_\_\_\_

**8. REMEDIES.**

If REVIEWER breaches this agreement, DISCLOSER shall be entitled to any and all remedies available to it under Washington law including equitable relief. DISCLOSER shall be entitled to specific performance, including immediate issuance of a temporary restraining order or preliminary injunction enforcing this agreement, and for a judgment for damages caused by REVIEWER'S breach.

**9. WAIVER.**

The failure of a party to insist upon strict or timely performance of any duty or obligation in this agreement shall not be a waiver or relinquishment of any right, but that right shall remain in full force and effect.

**10. CAPTIONS.**

The captions in this agreement are only for reference and shall not limit any provisions in this agreement.

**11. JOINT AND SEVERAL LIABILITY AND RIGHTS.**

If any party consists of more than one person, entity, etc., their liability and rights shall be joint and several.

**12. CONSTRUCTION.**

In construing this agreement, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this agreement shall apply equally to corporations, limited liability companies, partnerships, individuals and other entities.

**13. NEUTRAL CONSTRUCTION.**

The parties acknowledge and agree that this agreement has been negotiated with each party having the opportunity to consult with legal counsel and to negotiate its terms and accordingly this agreement will be construed without regard to which party drafted all or part of this agreement.

**14. COMPLETE UNDERSTANDING; MODIFICATION.**

This writing constitutes the full and complete agreement of the parties concerning the matters contained herein. There are no other agreements concerning these matters, be they written, oral or otherwise. This agreement may only be modified by written agreements signed by the parties. Oral modifications are not binding.

**15. SUCCESSORS AND ASSIGNS.**

This agreement is binding on REVIEWER and on REVIEWER'S heirs, legal representatives, successors and assigns, and shall be for the benefit of DISCLOSER, their affiliates, successors and assigns.

**16. TIME OF THE ESSENCE.**

Time is of the essence of this agreement.

**17. CHOICE OF LAW.**

This agreement and covenant shall be governed and interpreted under Washington law and is deemed to have been entered into in Washington.

Initials\_\_\_\_\_ Date\_\_\_\_\_

**18. JURISDICTION AND VENUE.**

In the event that any litigation is filed arising out of or related to this agreement, the parties agree that the State of Washington shall have sole and exclusive jurisdiction over the parties to this agreement, and that venue for all litigation shall lie solely in Franklin County, Washington. However, DISCLOSER may file actions or suits against REVIEWER in other jurisdictions and in other courts to enforce his rights and remedies under this agreement if DISCLOSER in his sole discretion feels he cannot be accorded full and complete relief through the Washington courts and jurisdiction would lie in that non-Washington jurisdiction.

**19. ATTORNEY’S FEES.**

In the event that any litigation is filed to enforce this agreement or otherwise arising out of or related to this agreement, the prevailing party shall be entitled to his reasonable attorney’s fees, attorney’s expenses and costs from the other both at trial and on appeal and in arbitration.

**20. AGREEMENT VIA COUNTERPART SIGNATURES.**

This agreement may be entered into via the exchange of copies of signed counterparts-faxed, emailed or otherwise.

**READ AND AGREED TO:**

**BY DISCLOSER**

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

Signed on \_\_\_\_\_, 2018

**BY REVIEWER**

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

Signed on \_\_\_\_\_, 2018