

**[CONFIDENTIALITY AGREEMENT – LONG FORM - FOR USE WITH
COMMERCIAL PROPERTY]**

Editor's Comments: The following Confidentiality Agreement is suitable for use when you are seeking to review or are being asked to disclose private and confidential information in advance of settlement of an offer to purchase. A written Confidentiality Agreement should be used by anyone seeking to protect confidential information, notwithstanding that it is difficult and often impractical to enforce such agreements. It is suggested that the information which is considered to be confidential should be specifically listed in a Schedule to be attached to the Agreement. Editor's comments and additional or alternate provisions are italicized. This form is intended to create binding obligations. A short form Confidentiality Agreement is also available on this site.

Confidentiality Agreement

PRIVATE & CONFIDENTIAL

To: ♦
[address]

Dear ♦:

Re: ♦ (the "Property")

♦ (the "Provider") has agreed to make certain Confidential Information available to you, to enable you to determine whether you wish to make a proposal to acquire the Property.

1. Defined Terms. In this Agreement:

- (a) "Available Information" means information which:
 - (i) is or becomes generally available to the public other than as a result of a disclosure in violation of this Agreement;
 - (ii) is or becomes available to you on a non-confidential basis from a source other than the Provider unless you know or should reasonably know that such source is prohibited from disclosing the information to you by a contractual, fiduciary or other legal obligation to the Provider; or
 - (iii) was known to you on a non-confidential basis prior to its disclosure to you by the Provider;
- (b) "Confidential Information" means all information, including [tenant] files, data, reports, interpretations, forecasts, records and models in the possession or control

of the Provider and relating to the Property or to the Provider's business, operations, assets, liabilities, prospects or plans *[with respect thereto]*, and includes *[the information listed in Schedule A and]* all copies, reproductions and extracts thereof *[and all Work Papers]*, but excludes the Available Information;

- (c) "Permitted Representatives" means those of your employees, agents, advisors, lenders, consultants and other representatives who "need to know" *[all of whom will be directed to keep such information confidential in accordance herewith] or [and who have agreed in writing to be bound by the terms of this Agreement];*
 - (d) *["Work Papers" means all notes, analyses, financial models, studies, interpretations or other documents prepared by you or your Permitted Representatives which use, contain, reflect, analyze, discuss or review any Confidential Information.]*
2. No Liability. The Confidential Information is given to you without liability on the part of the Provider *[or its directors, officers and employees]* or its agents and advisers and no representation or warranty with respect to the Confidential Information is given by the Provider or any of such other persons.
3. Use of Confidential Information. In consideration of the Provider making the Confidential Information available to you, you agree on your own behalf and on behalf of your *[directors, officers, employees,]* agents and advisers:
- (a) not to use or allow the use of any of the Confidential Information for any purpose, except in connection with the evaluation or acquisition of the Property;
 - (b) not to disclose or allow disclosure to others of any of the Confidential Information, except to your Permitted Representatives and then only for the purpose described in paragraph 3(a);
 - (c) *[not to disclose or allow disclosure to any person other than your Permitted Representatives that the Confidential Information has been made available to you or that you have reviewed any of the Confidential Information;]*
 - (d) *[not to make or allow to be made copies of or otherwise reproduce the Confidential Information or any part thereof, or remove any of the Confidential Information from the place where it is made available, except:*
 - (i) *in the form of Work Papers made by you or your Permitted Representatives during your review of the Confidential Information to assist you in evaluating a possible acquisition of the Property; or*
 - (ii) *as permitted with the specific written consent of the Provider;]*
 - (e) to deliver to the Provider, within ♦ business days after its request for it, the Confidential Information *[and your Work Papers]*, without retaining any copies or extracts *[or, in the case of the Work Papers, to destroy them]* and to certify to

the Provider that all Confidential Information has been returned *[and that the Work Papers have been destroyed]*.

4. Ownership of Confidential Information. The Confidential Information will remain the property of the Provider.
5. [Non-Disclosure of Negotiations. *Except as otherwise provided in this Agreement, you will not disclose to any other person:*
 - (a) *that this Agreement has been executed;*
 - (b) *that Confidential Information has been made available to, or inspected by, you or your Permitted Representatives;*
 - (c) *that you are involved in discussions with respect to a purchase of the Property; or*
 - (d) *the content of your discussions with the Provider or its representatives in respect of the structure, terms or conditions of your proposed purchase of the Property].*
6. [List of Permitted Representatives. *You will provide to the Provider a list of your Permitted Representatives who receive or are expected to receive Confidential Information.]*
7. [Exclusive Opportunity: *Following the execution of this Confidentiality Agreement, the Provider will not negotiate or enter into discussions with any other party or offer the Property or any interest therein for sale [or long-term lease] to any other party for a period of ♦ [days] during which time you will be afforded the first opportunity to make a proposal to purchase the Property.]*
8. Remedies. You acknowledge that the disclosure or use of Confidential Information contrary to this Agreement or your failure to comply with the terms and conditions of this Agreement will give rise to irreparable injury to the Provider. Accordingly, in addition to using any other remedy available at law, the Provider may enforce the performance of this Agreement by injunction or specific performance without proof of actual damages (and without the requirement of posting security), and notwithstanding that damages may be readily quantifiable, you agree not to plead sufficiency of damages as a defence in any proceeding.
9. [Disclosure Pursuant to Legal Requirements. *Nothing in this Agreement will preclude you from disclosing or releasing the Confidential Information if, and only to the extent, that such disclosure is required by applicable law or by any order, decree or directive of any competent judicial, legislative or regulatory body or authority or by the rules of any relevant stock exchange. If you are required to make such disclosure:*
 - (a) *you will give the Provider prompt notice of the requirement so that the Provider may have the opportunity to seek an appropriate protective order or pursue such legal action, remedy or assurance as it deems necessary to preserve the confidentiality of the Confidential Information;*

- (b) *you will refrain from opposing, and will co-operate in the prosecution of, any action by the Provider to obtain a protective order or other remedy or assurance;*
- (c) *you will take all reasonable steps (after consultation with the Provider and at the Provider's request and expense) to preserve the confidential nature of the Confidential Information, including requesting that the Confidential Information not be released to third parties or the public and disclosing only that part of the Confidential Information that, in the opinion or your counsel, you are legally compelled to disclose; and*

you will provide the Provider with as much prior notice as is reasonably possible of the fact and proposed content of any permitted disclosure and will co-operate in ensuring consistency in disclosure and communications.]

- 10. Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the Province of British Columbia.
- 11. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings between the parties with respect to the subject matter hereof.
- 12. Waiver. No waiver of or delay by the Provider in enforcing any provision of this Agreement will be deemed to constitute a waiver of such or any other provision (whether or not similar) nor will any waiver be binding on the Provider unless executed in writing.
- 13. Severability. If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid or void, the remaining provisions will remain in full force and effect.
- 14. Binding on Successors. This Agreement is not assignable, except by the Provider, and will be binding upon the respective successors of the parties.

◆ *[the Provider]*

By: _____

Name:

Title:

Acknowledged and accepted this

_____ day of _____, 200__.

By: _____

Name:

Title: