

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement ("Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date") by and between **SVN Commercial Partners**, ("Disclosing Party") and \_\_\_\_\_, ("Receiving Party"). The Disclosing Party and Receiving Parties are referred to herein as the "Parties" and individually as a "Party".

### RECITALS

WHEREAS, the Receiving Party has requested or may be receiving from the Disclosing Party Confidential Information (defined below) for use by the Receiving Party in connection with the Receiving Party's evaluation of a further possible commercial arrangement involving and/or purchase of that certain real property located at **Fisherman's Village / 1200 W. Retta Esplanade Punta Gorda, FL 33950**, and being more particularly described on attached Exhibit "A" attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, the Disclosing Party is willing to provide such Confidential Information (defined below) to the Receiving Party for the limited purpose and under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

1. As used herein, "Confidential Information" means any and all information, financial, legal, or otherwise, about, related to, or in any way pertaining to the Property (including and any and all assets, businesses, claims or causes of action associated therewith) disclosed or made available by the Disclosing Party to the Receiving Party (including its Representatives), whether provided in oral, written, electronic or any other form. Without limiting the foregoing, Confidential Information shall also include: non-public and confidential information from, about, or related to the developer of the Property, fee owner of the Property, and lienholders, including but not limited to technical, financial and business plans and models, names of customers or partners, proposed business deals, reports, market projections, software programs, data or any other confidential and proprietary information disclosed or made available by the Disclosing Party to the Receiving Party (including its Representatives), whether provided in oral, written, electronic or any other form.

Further, any Confidential Information supplied by the Disclosing Party to the Receiving Party (including its Representatives) prior to the execution of this Agreement shall be considered in the same manner and be subject to the same treatment as the Confidential Information made available after the execution of this Agreement, and the parties represent that up to the making of this Agreement, any such Confidential Information that has previously been supplied by the Disclosing Party has been treated as confidential and proprietary. "Representatives" means the attorneys, consultants, agents and accountants of the Receiving Party.

2. The term "Confidential Information" as used herein does not include any data or information (a) which is already known to the Receiving Party at the time it is disclosed to the Receiving Party, (b) which before being divulged by the Receiving Party (i) has become generally known to the public through no wrongful act of the Receiving Party; (ii) has been rightfully received by the Receiving Party from a third party without restriction on disclosure and without, to the knowledge of the Receiving Party, a breach of a contractual, statutory or fiduciary obligation of confidentiality running directly or indirectly to the other party hereto; (iii) has been approved for release by a written authorization by the other party hereto; (iv) has been disclosed pursuant to a requirement of a governmental agency or of law without similar restrictions or other protections against public disclosure, or is required to be disclosed by operation of law; (v) is independently

developed by the Receiving Party without use, directly or indirectly, of the Confidential Information received from the other party hereto; or (vi) is furnished to a third party by the Disclosing Party hereunder without restrictions on the third party's right to disclose information. In any litigation alleging breach of this Agreement, a party seeking to rely upon any of these exceptions in defense shall carry the burden of proof with respect to such defenses.

3. Receiving Party agrees: (a) to keep such Confidential Information in confidence and protect the Confidential Information of the Disclosing Party from unauthorized disclosure to any third party by Receiving Party, by using the same degree of care that Receiving Party uses to prevent the unauthorized disclosure of its own confidential information of a like nature (but no less than a reasonable degree of care); (b) not to use any Confidential Information for any purpose other than making a determination whether to enter into a contractual arrangement involving the acquisition of the Property or in the performance of services related thereto; (c) not to copy the Confidential Information, in whole or part, except to disseminate to Representatives who have a need to know to perform tasks associated with 2(b) (provided, however, it being agreed and understood that such Representatives shall be informed by the Receiving Party of the confidential nature of the information and shall be required by the Receiving Party to agree, in writing, to treat the information confidentially); and (d) to return the Confidential Information, including all copies and records thereof, to Disclosing Party upon receipt of request therefor from Disclosing Party or upon a decision of the Receiving Party not to proceed with a contractual arrangement, whichever occurs first.

4. In the event the Receiving Party is legally requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process or in the opinion of counsel for the Receiving Party, by federal or state securities or other statutes, regulations or laws) to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement prior to disclosure so that the Disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Agreement.

5. Neither party shall disclose the existence of or specific details of communications between the parties which are the subject of or related to this Agreement or issue any press release or other public announcement regarding the existence of such communications between the parties.

6. Promptly following the request of the Disclosing Party, Receiving Party will deliver to the Disclosing Party, or certify in writing to the Disclosing Party as to the destruction of (without retaining any copy), all Confidential Information (and copies and extracts thereof) furnished to, or created by or on behalf of, Receiving Party. Notwithstanding the return or destruction of the Confidential Information, Receiving Party will continue to be bound by its obligations of confidentiality and other obligations hereunder.

7. Nothing in this Agreement will be construed in any manner to affect or limit Receiving Party's present and future business activities of any nature. This Agreement imposes no obligation on either party to enter into any agreement, license, transfer, or otherwise pursue a business relationship. This Agreement does not create any agency or partnership relationship.

8. THE DISCLOSING PARTY MAKES NO WARRANTIES AND REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION AND ASSUMES NO RESPONSIBILITY AND SHALL HAVE NO LIABILITY FOR ANY LOSS OR DAMAGES TO THE RECEIVING PARTY, ITS CUSTOMERS OR ANY THIRD PARTIES CAUSED BY OR ARISING FROM THE CONFIDENTIAL INFORMATION OR THE USE THEREOF.

9. Receiving Party acknowledges that the unauthorized disclosure or use of such Confidential Information may cause irreparable harm and significant injury to Disclosing Party, the degree of which may be difficult to ascertain. Accordingly, the Receiving Party agrees that the Disclosing Party may have the right to obtain

injunctive relief in the event of any breach of this Agreement by the Receiving Party, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

10. No failure or delay by any party in exercising any right, power or privilege hereunder 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.

11. In the event any action is instituted by either party hereto to enforce its rights under any of the terms or provisions hereof, the prevailing party in such action shall be entitled to recover from the other party all of its reasonable costs and expenses, including reasonable attorney's fees, incurred in such litigation (including appellate litigation).

12. This Agreement is made under and shall be construed according to the laws of the State of Florida. Venue of any action brought here under shall lie in Charlotte County, Florida. This Agreement may be executed in counterparts and delivered by facsimile transmission, each of which shall be deemed an original and both of which together shall constitute one and the same document. Neither Party shall assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the parties, their successors and assigns.

IN WITNESS WHEREOF, each of the parties has executed this Agreement by its duly authorized officer or representative:

**BUYER RECEIVING PARTY:**

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

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

Email: \_\_\_\_\_

Date: \_\_\_\_\_

**BROKER RECEIVING PARTY:**

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

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

Email: \_\_\_\_\_

Date: \_\_\_\_\_

**DISCLOSING PARTY: SVN COMMERCIAL PARTNERS**

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

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

Date: \_\_\_\_\_