

**DRAFTING CONFIDENTIALITY AGREEMENTS  
AND ACCESS AGREEMENTS**

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# DRAFTING CONFIDENTIALITY AGREEMENTS AND ACCESS AGREEMENTS

## I. INTRODUCTION

This paper covers the drafting of confidentiality agreements and access agreements from a real estate transactional perspective (Note: confidentiality agreements are also sometimes referred to as nondisclosure agreements or non-circumvention agreements). When these agreements are used in other contexts, they can contain very different provisions. For example, a confidentiality agreement in a corporate merger and acquisition transaction will vary greatly from a confidentiality agreement used to provide basic property information for the sale of improved property. There are 11 schedules representing forms of these agreements attached – 6 are confidentiality agreements and 5 are access agreements. These were gathered from various of my colleagues and are attached basically unaltered except to remove any proprietary information.

## II. CONFIDENTIALITY AGREEMENTS

### A. Real Estate Applications.

Confidentiality agreements are frequently used to protect due diligence materials provided by an owner to a potential buyer of improved real property (see Schedules 3-6). However, they can be used in connection with retaining consultants for a company's real estate business (see Schedule 1) or in connection with obtaining investors for recapitalizations or other investments (see Schedule 2).

### B. Confidentiality Agreement Drafting Points.

1. A good starting point is to define what confidential information is. This is frequently done with a very general description which is followed by exclusions from what is included (see Schedule 2, paragraph 4). For example, confidential information could be defined as all information, records, reports, financial statement projections, financial models, and software documentation furnished in any manner to the potential buyer. It is customary, however, to exclude items like the following: information which becomes generally available to the public other than as a result of disclosure by the recipient; information which becomes available to the recipient on a non-confidential basis from another source; information that was known by the recipient prior to its disclosure without any obligation to keep it confidential; or information that is reasonably developed independently by the recipient. Note that it is also customary to

include within the definition of confidential information, or at least within the obligation not to disclose, information regarding the particular transaction itself or that discussions are being held between the provider of information and the recipient regarding a transaction.

2. It is customary to establish a limited use for the confidential information, an obligation to keep confidential and a limitation on who the information may be additionally disclosed to (see Schedule 3, paragraph 2). For example, it is customary to provide that the recipient will use the confidential information exclusively for the purpose of evaluating the transaction in question, and that it will not disclose the information to any third party except those agents, employees, attorneys, etc. of the recipient who need to know the information for the purpose of evaluating the transaction, provided the recipient imposes upon those further parties the same obligation of confidentiality that is imposed upon it. The typical standard for confidentiality is for the recipient to keep the information confidential and treat it the same as it would treat its own proprietary confidential information.
3. As you will see from the schedules, most of the agreements do not provide for a term, although Schedule 2, paragraph 7 does impose a term. The question to consider is whether a term is necessary in this context. Some commentators have stated it is and have likened a confidentiality agreement to, for example, an employment agreement restriction on noncompetition. On the other hand, that does not seem to the author to be a particularly accurate analogy as the information does not lose its confidential status over time.
4. It is customary to provide that at the end of the contract negotiation period, if nothing comes to fruition, the recipient will either destroy the confidential information or return it to the disclosing party (see Schedule 5, paragraph 5).
5. One provision found in each of the confidentiality agreements attached is an obligation of the recipient to notify the providing party if it is required or requested to disclose any confidential information in a legal proceeding so that the providing party may seek a protective order.
6. In connection with confidentiality agreements used in respect to purchase and sale agreement types of transactions (i.e., where due diligence periods are being provided in connection with analyzing a proposed acquisition), it is a good idea to specifically negate any representation or warranty about the accuracy or completeness of the information. These are provisions that are

typically negotiated at great length in the purchase and sale agreement itself and an owner would not want to negate the carefully negotiated limitations on representations and warranties inadvertently through a second agreement regarding confidentiality (see Schedule 3, paragraph 5; Schedule 4, paragraph 4; and Schedule 5, paragraph 8).

7. Each of the agreements also provides for a remedy of specific performance or injunctive relief, damages being an inadequate remedy. These provisions, while typical, are somewhat problematic as one would need to find out about the disclosure in advance to really protect itself through injunction or specific performance and, as discussed below, damages may be a difficult proposition as well.
8. Confidentiality Agreements frequently place limitations on contacts with third parties (see Schedule 2, Section 2(b)). Schedule 2 represents an agreement used in connection with a recapitalization of an existing partnership and specifically restricts contacts with the existing equity investors. This was done so that the recipient could not do an end run around the providing party, and the existing equity investor was fully aware of the transaction or what was contemplated. When considering this kind of transaction, keep in mind the fiduciary issues involved – where one party to an existing limited liability company or partnership is providing information, it should be sure that all of its other constituent partners or members are aware of what is going on and of the disclosures.
9. Each of the agreements contains typical boilerplate, but they are uniform at providing for attorneys' fees for enforcement, limitations on assignments, and providing for the governing law.

### C. Enforcement and Remedies.

In the real estate context it may be difficult to prove any damage resulting from the breach of the confidentiality agreement. We discovered one Texas case providing for award of damages for violations of a confidentiality agreement, but that was in the context of requests for proposals for an oil field services contract with the recipient providing the information to competing vendors. *See, Total E&P USA, Inc. v. M-Vac Serv. Co.*, No. 13-10-00021-CV, 2012 WL 3612505 at 5-6 (Tex.App. – Edinburg August 23, 2012, pet. denied). In other cases, the courts have found that the proof offered to support damages was inadequate or nonexistent. *See, e.g., Sw. Energy Prod. Co. v. Berry-Helfand*, 411 S.W. 3d 581, 614 (no pet.h.).

## III. ACCESS AGREEMENTS

### A. Real Estate Applications

Access agreements are customarily used to allow a proposed buyer to enter property to do inspections prior to the time a definitive purchase and sale agreement is executed. In many real estate transactions the access right is included in the purchase and sale agreement and inspections are conducted during the due diligence period provided for in the agreement. However, in portfolio and other acquisitions some buyers refuse a post-execution due diligence period and thus access agreements will be necessary. Schedules 7, 8, 9 and 11 represent these kinds of access agreements. Schedule 10 is included for its uniqueness – it is an access agreement to provide a right to a party to enter property to perform site assessment work in advance to see if it wanted to accept a donation of the property.

### B. Access Agreement Drafting Points

1. Access agreements grant a revocable license for limited purposes, typically of inspection. They will include limitations on notifying any governmental agency of any potential violation of law or conducting any intrusive or invasive physical environmental investigation regarding the property other than a standard phase one environmental investigation (see Schedule 7, paragraph 1).
2. Access agreements typically provide for the proposed buyer to give prior notice of its intent to enter and to allow the owner the right to have a representative accompany the buyer during the inspection process (see Schedule 8, paragraph 4 and Schedule 9, paragraph 1).
3. Common to all the agreements are provisions allocating all risk of entry to the proposed buyer, an indemnity for any claims arising out of the buyer's entry and a release and waiver of any claims against the owner (see Schedule 9, paragraphs 3 and 4).
4. A very important part of any access agreement (and included in all the examples) is a provision that before entry the prospective buyer obtain liability insurance and name the owner and its agents and representatives as additional insureds (see Schedule 1, paragraph 4). This is arguably the most important part of the access agreement to protect the owner and the owner should be diligent in assuring insurance is in place before allowing access.
5. Another typical provision found in access agreements is an obligation to restore any damage caused by the prospective buyer during the inspection process (see Schedule 1, paragraph 5 and Schedule 8, paragraph 8).

6. Another provision worth considering including is a specific obligation that the proposed buyer keep the property free of any and all liens (see Schedule 10, paragraph 7). Arguably, the general indemnity against any claims arising out of the proposed buyer's entry should cover this, but consideration should be given to a specific obligation as to liens.
7. One of the access agreements makes provision for termination. When an agreement is entered into in the pre-purchase and sale agreement context this is a worthwhile consideration as the owner may want to break off negotiations with current potential buyer to deal with another potential buyer (see Schedule 9, paragraph 5).
8. A number of the agreements attached also include a confidentiality provision as to any information provided during the access (see Schedule 7, paragraph 16; Schedule 8, paragraph 6; and Schedule 9, paragraph 2(b)).
9. One good idea to consider in drafting an access agreement is to require the prospective purchaser to provide copies of all third party reports it obtains during the due diligence process to the owner upon any termination of the agreement (see Schedule 9, paragraph 2(c)). As part of that provision, it would be customary to provide that while the copies are furnished to the owner, it may not rely on them. In this context, as counsel, be sure that any third party reports obtained don't contain confidentiality provisions of their own restricting their further delivery.

#### **IV. SUMMARY**

Confidentiality agreements and access agreements are commonly executed prior to executing definitive purchase and sale agreement in many real estate transactions. The attached schedules provide different styles of drafting, although a review will reflect that they mirror each other as to the essential provisions.



SCHEDULE 1**CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement dated as of \_\_\_\_\_, 200\_, (this "**Agreement**") is made between \_\_\_\_\_ ("**Principal**"), a Delaware limited liability company and \_\_\_\_\_ ("**Consultant**").

WHEREAS, PRINCIPAL or its affiliates (together, the "**Protected Parties**") are prepared to furnish Consultant with certain information which is either confidential, proprietary or otherwise not generally available to the public in connection with Principal's obtaining Consultant's assistance in negotiating \_\_\_\_\_ agreements with respect to Principal's \_\_\_\_\_ business (the "**Transaction**").

NOW, THEREFORE, as a condition to the Protected Parties furnishing such information under this Agreement, Consultant and Principal agree as follows:

1. Nondisclosure of Confidential Information. Consultant shall use the Confidential Information (as defined in Section 4) solely in connection with providing services with respect to the Transaction and Consultant shall not disclose the Confidential Information to any person other than those of Consultant's employees, representatives, agents and counsel (collectively, the "**Recipient's Representatives**") who need to know the Confidential Information to assist with the Transaction. It is understood that (i) the Recipient's Representatives shall be informed by Consultant of the confidential nature of the Confidential Information and the requirement that it not be used other than for the purpose described above, and (ii) in any event, Consultant shall be responsible for any breach of this Agreement by any of the Recipient's Representatives. Consultant will safeguard the Confidential Information from unauthorized disclosure. The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company, partnership, individual or other entity.

2. Nondisclosure of Discussions. Except as may be required by applicable law, without the prior written consent of the Protected Parties, Consultant will not, and will direct the Recipient's Representatives not to, disclose to any person either the fact that the Confidential Information has been made available to Consultant, that Consultant has inspected any portion of the Confidential Information, the fact that discussions with respect to the Transaction are taking place, or other facts with respect to these discussions, including that status thereof.

Notwithstanding anything herein to the contrary, any party hereto (and any of its employees, representatives and other agents) may disclose to any and all persons, without limitation of any kind the tax treatment or tax structure of the Transaction. Furthermore, the parties hereto may disclose, as required by federal or state tax laws, any information required to comply with such federal or state laws.

3. Notice Preceding Compelled Disclosure. If the Recipient's Representatives are requested or required to disclose any Confidential Information, Consultant will promptly notify the Protected Parties of such request or requirement so that the Protected Parties may seek, at the cost and expense of the Protected Parties, an appropriate protective order or waiver in compliance with provision of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, legal counsel advises that the Recipient's Representatives are compelled to disclose the Confidential Information, Consultant may disclose only such of the Confidential Information to the party compelling disclosure as is necessary to comply with the request.

4. Definition of "Confidential Information." As used herein, "**Confidential Information**" means all information, software, documentation, know how, concepts and ideas as embodied therein whether oral or written, that are furnished to the Recipient's Representatives by the Protected Parties that relate to or concern the Transaction and are either confidential, proprietary or otherwise not generally available to the public. Without limiting the generality of the preceding sentence, the term "Confidential Information" includes information regarding corporate and property level expenditures of Principal and its affiliates. Any information furnished to the Recipient's Representatives by a director, officer, employee, agent or representative of the Protected Parties (collectively, the "**Protected Parties Representatives**") shall be deemed for the purpose of this Agreement furnished by the Protected Parties. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement: (a) information which is or becomes generally available to the public other than as a result of a disclosure by the Recipient's Representatives, (b) information which becomes available to Consultant on a non-

confidential basis from a source other than the Protected Parties if such source was not, to the knowledge of Recipient’s Representatives, subject to any prohibition against transmitting the information to Consultant, (c) was known by Consultant prior to its disclosure to Consultant without any obligation to keep it confidential, as reasonably demonstrated by Consultant, or (d) is independently developed by Consultant without reference to the Protected Parties' Confidential Information.

5. Return of Information. Consultant agrees to return the Confidential Information to the Protected Parties promptly upon the Protected Parties’ request. If not so requested and returned, Consultant agrees to hold the Confidential Information and keep it subject to the terms of this Agreement or destroy it.

6. No Waiver. No failure or delay 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 thereof or the exercise of any right, power or privilege hereunder.

7. Remedies, Headings, Jurisdiction and Governing Law. Money damages may not be a sufficient remedy for any breach of this Agreement by the Recipient’s Representatives, and the Protected Parties shall be entitled to seek specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement by the Recipient’s Representatives but shall be in addition to all other remedies available at law or in equity to the Protected Parties. Any rights conferred on the Protected Parties by this Agreement shall also inure to the benefit of each of the Protected Parties Representatives and the successors (by merger or otherwise) of the Protected Parties to the extent that such person is affected by the breach or would be affected by the threatened breach of this Agreement. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without regard to conflicts-of-laws rules or principles.

EXECUTED as of the date first above written.

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE 2**CONFIDENTIALITY AND NON-CIRCUMVENT AGREEMENT**

This Confidentiality and Non-Circumvent Agreement dated as of \_\_\_\_\_, 201\_, (this "**Agreement**") is made between \_\_\_\_\_ ("**Principal**") and \_\_\_\_\_ ("**Recipient**").

WHEREAS, PRINCIPAL or its Affiliates, as defined below, (together, the "**Protected Parties**") are prepared to furnish Recipient with certain information which is either confidential, proprietary or otherwise not generally available to the public in connection with the potential recapitalization of \_\_\_\_\_ ("**Target**") (the "**Transaction**").

NOW, THEREFORE, as a condition to the Protected Parties furnishing such information under this Agreement, Recipient and Principal agree as follows:

1. Nondisclosure of Confidential Information. Recipient shall use the Confidential Information (as defined in Section 4) solely in connection with performing due diligence with respect to the Transaction and Recipient shall not disclose the Confidential Information to any person other than those of Recipient's employees, representatives, agents and counsel (collectively, the "**Recipient's Representatives**") who need to know the Confidential Information to assist with the Transaction. It is understood that: (i) the Recipient's Representatives shall be informed by Recipient of the confidential nature of the Confidential Information and the requirement that it not be used other than for the purpose described above, and (ii) in any event, Recipient shall be responsible for any breach of this Agreement by any of the Recipient's Representatives. Recipient will safeguard the Confidential Information from unauthorized disclosure. The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any individual and any corporation, company, partnership, individual or other entity.

2. Nondisclosure of Discussions; Contract Restrictions.

(a) Except as may be required by applicable law, without the prior written consent of the Protected Parties, Recipient will not, and will direct the Recipient's Representatives not to, disclose to any person either the fact that the Confidential Information has been made available to Recipient, that Recipient has inspected any portion of the Confidential Information, the fact that discussions with respect to the Transaction are taking place, or other facts with respect to those discussions, including that status thereof. Notwithstanding anything herein to the contrary, any party hereto (and any of its employees, representatives and other agents) may disclose to any and all persons, without limitation of any kind the tax treatment or tax structure of the Transaction. Furthermore, the parties hereto may disclose, as required by federal or state tax laws, any information required to comply with such federal or state laws.

(b) During the Term of this Agreement (as defined below) Recipient shall not contact or communicate with (i) \_\_\_\_\_, a \_\_\_\_\_ that is currently an equity investor in Target, any shareholder in \_\_\_\_\_, any person owning or holding a direct or indirect interest in any such shareholder, any Affiliate of \_\_\_\_\_ or any officer, employee, or agent of \_\_\_\_\_ or its Affiliates; or (ii) any person (or any such person's officers, employees, or agents) with which Target or any of its Affiliates has made an equity investment or otherwise has a relationship relating to the real estate related business and affairs of Target. As used herein, the term "**Affiliate**" shall mean, with respect to any person, any other person that is controlling, controlled by, or under common control with such person.

3. Notice Preceding Compelled Disclosure. If the Recipient's Representatives are requested or required to disclose any Confidential Information, Recipient will promptly notify the Protected Parties of such request or requirement so that the Protected Parties may seek, at the cost and expense of the Protected Parties, an appropriate protective order or waiver in compliance with provision of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, legal counsel advises that the Recipient's Representatives are compelled to disclose the Confidential Information, Recipient may disclose only such of the Confidential Information to the party compelling disclosure as is necessary to comply with the request.

4. Definition of "Confidential Information." As used herein, "**Confidential Information**" means all information, records, reports, financial statements, projections, financial models, agreements, software, documentation, know how, concepts and ideas as embodied therein whether oral or written, that are furnished in any manner to the Recipient's Representatives by the Protected Parties that relate to or concern the Transaction and are either confidential, proprietary or otherwise not generally available to the public. Any information furnished to the Recipient's Representatives by a director, officer, employee, agent or representative of the Protected Parties (collectively, the "**Protected Parties Representatives**") shall be deemed for the purpose of this Agreement furnished by the Protected Parties. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement: (a) information which is or becomes generally available to the public other than as a result of a disclosure by the Recipient's Representatives, (b) information which becomes available to Recipient on a non-confidential basis from a source other than the Protected Parties if such source was not, to the knowledge of Recipient's Representatives, subject to any prohibition against transmitting the information to Recipient, (c) was known by Recipient prior to its disclosure to Recipient without any obligation to keep it confidential, as reasonably demonstrated by Recipient, or (d) is independently developed by Recipient without reference to the Protected Parties' Confidential Information.

5. Return of Information. Recipient agrees to return the Confidential Information to the Protected Parties promptly upon the Protected Parties' request. If not so requested and returned, Recipient agrees to hold the Confidential Information and keep it subject to the terms of this Agreement or destroy it.

6. Non-Circumvent. In consideration of the time, effort, and expense that Principal has devoted thus far in connection with the business opportunity represented by the Transaction, and the additional effort and expense to be devoted by Principal and its Affiliates with respect to the same, Recipient agrees to work with Principal exclusively with regard to the Transaction and agrees for itself, and agrees to cause its Affiliates to agree, not to engage in discussions or negotiations with, or provide any information to, or enter into any other agreement with, any other person with regard to the Transaction, and further agrees that no effort shall be made to circumvent this Agreement or the terms hereof to gain economic benefit outside of the contemplated Transaction.

7. Term. This Agreement shall be effective immediately upon execution, and shall continue in effect for two (2) years thereafter (the "**Term**"), whether or not a Transaction occurs and whether or not discussions between Principal and Recipient are terminated at any time prior thereto.

8. No Waiver. No failure or delay 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 thereof or the exercise of any right, power or privilege hereunder.

9. Remedies, Headings, Jurisdiction and Governing Law. Money damages may not be a sufficient remedy for any breach of this Agreement by the Recipient's Representatives, and the Protected Parties shall be entitled to seek specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement by the Recipient's Representatives but shall be in addition to all other remedies available at law or in equity to the Protected Parties. Any rights conferred on the Protected Parties by this Agreement shall also inure to the benefit of each of the Protected Parties Representatives and the successors (by merger or otherwise) of the Protected Parties to the extent that such person is affected by the breach or would be affected by the threatened breach of this Agreement. This Agreement shall be governed and construed in accordance with the laws of the State of Texas without regard to conflicts-of-laws rules or principles.

EXECUTED as of the date first above written.

\_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

\_\_\_\_\_

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

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

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

**SCHEDULE 3****CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT**

This Confidentiality and Non-Circumvention Agreement (this "Agreement") is entered into on \_\_\_\_\_, 201\_, by \_\_\_\_\_, a \_\_\_\_\_ ("Prospective Investor") for the benefit of \_\_\_\_\_, together with all parties holding any interest in any of such entity (each such entity an "Owner" and collectively, the "Owners") and their representatives, including, any director, officer, employee, agent, attorney, accountant, real estate broker or other advisors ("Owners' Representatives"). The Owners are the direct or indirect owners of certain real estate described on Exhibit A to this Agreement (collectively, the "Property"). The Prospective Investor is evaluating a potential transaction (the "Potential Transaction") involving the Property and the Owners. In consideration of being provided Confidential Information (defined below), Prospective Investor agrees as follows, intending to be legally bound:

1. When used in this Agreement, the term "Confidential Information" shall include (i) all information furnished to Prospective Investor relating to the Property or the Owners, as well as written memoranda, notes, analysis, reports, compilations, or studies prepared by Prospective Investor which contain, or are derived from, such information furnished by or on behalf of Owners, whether in writing, computer storage, other medium or oral communication and (ii) the existence of the Potential Transaction as well as the terms and conditions of such Potential Transaction. Notwithstanding the foregoing, information provided by or on behalf of Owners shall not constitute Confidential Information if such information (i) is or becomes generally available to the public other than as a result of a disclosure by or through Prospective Investor or its Representatives (defined below) in contravention of this Agreement, (ii) was already available to, or in the possession of, Prospective Investor on a non-confidential basis prior to its disclosure by, or at the direction of, Owners in connection with Prospective Investor's evaluation of a possible transaction, or (iii) is or becomes available to Prospective Investor on a non-confidential basis from a source (other than Owners) not bound by any legal or other obligation prohibiting the disclosure of Confidential Information by such source to Prospective Investor.
2. Prospective Investor agrees that it will not use the Confidential Information in any way detrimental to Owners and will use the Confidential Information exclusively for the purpose of evaluating the Potential Transaction. Prospective Investor further agrees that it will not disclose Confidential Information to any third party; provided, however, that Prospective Investor may without liability disclose Confidential Information (i) to any director, officer, employee, attorney, accountant, or other advisor of Prospective Investor (collectively, "Representatives") who needs to know such Confidential Information for the purpose of evaluating the Potential Transaction (it being understood and agreed that (a) Prospective Investor shall advise its Representatives of the confidential nature of such Confidential Information, (b) as a condition to the release of such Confidential Information to such Representatives, such persons shall agree to maintain the confidentiality of such Confidential Information in accordance with the terms hereof and (c) Prospective Investor shall maintain a list of all persons who are furnished with the Confidential Information), and (ii) to the extent required by a subpoena, judicial, or administrative process. Prospective Investor agrees to be responsible for enforcing the confidentiality provisions herein with respect to its Representatives and shall be responsible for any breach of this Agreement by any of its Representatives.
3. If Prospective Investor desires to disclose Confidential Information under the circumstances contemplated by clause (ii) of the preceding paragraph, Prospective Investor will (a) provide Owners with prompt notice thereof, (b) consult with Owners on the advisability of taking steps to resist or narrow such disclosure, and (c) reasonably cooperate with Owners in any attempt that Owners may make to obtain an order or other reliable assurance that confidential treatment will be accorded to designated portions of the Confidential Information. However, Prospective Investor shall not be obligated to suffer civil or criminal liability to prevent disclosure of Confidential Information required by a subpoena, judicial, regulatory or administrative process.
4. At anytime upon the written request of Owners, Prospective Investor must return to Owners, or destroy, the Confidential Information (without retaining any copies thereof). Such return or destruction must occur within five (5) business days after Owners' request. If Prospective Investor chooses to destroy the Confidential Information, then such destruction must be certified to in writing and such certification delivered to Owners within such five (5) business day period. Notwithstanding the return and/or destruction of the Confidential Information, Prospective Investor and its Representatives will continue to be bound by the obligations of confidentiality hereunder. Within

five (5) business days following Owners' request, Prospective Investor will provide the names and addresses of all Representatives to whom Prospective Investor has provided Confidential Information. Neither Prospective Investor, nor any of its Representatives, shall directly or indirectly communicate with any tenants, property manager, leasing agents, service contractors, lien holders or other parties with any interest in or contractual relationship affecting the Property, except in the ordinary course of business unrelated to the Potential Transaction. Prospective Investor and its Representatives shall not contact any governmental authority regarding any Property without the prior written consent of the applicable Owner.

5. Prospective Investor for itself and on behalf of its Representatives, acknowledges and agrees that, except as may be set forth in a fully executed, definitive agreement, neither Owners nor Owners' Representatives, their affiliates, agents or advisors, and none of their respective officers, directors, employees, agents or controlling persons, have made or hereby make any express or implied representations or warranties as to the accuracy or completeness of the Confidential Information. None of the foregoing persons shall have any liability to Prospective Investor or its Representatives relating to or arising from the use of any Confidential Information or for any errors therein or omissions. Prospective Investor and its Representatives are not entitled to rely on the accuracy or completeness of the Confidential Information. Prospective Investor and its Representatives agree to rely solely on their own independent investigation, analysis, appraisal and evaluation of the facts and circumstances in connection with the Potential Transaction. Any fee, commission or other compensation which may be due or claimed to be due to any such Representative of Prospective Investor shall be the responsibility of Prospective Investor, and neither Owners nor Owners' Representatives shall have any liability therefor. Prospective Investor agrees to indemnify and defend Owners and Owners' Representatives with respect to any such claim for a fee, commission or other compensation by any Representative or alleged Representative of Prospective Investor.

6. Owners may conduct the process that may or may not result in the Potential Transaction in such manner as Owners, in their sole discretion, may determine (including, without limitation, negotiating and entering into a definitive agreement with any third party without notice to Prospective Investor). Owners reserve the right to change (in their sole discretion, at any time and without notice) the procedures relating to Owners' and Prospective Investor's consideration of the Potential Transaction. This Agreement is not an offer to sell and shall not be construed as such. Owners are under no obligation to allow Prospective Investor to invest in the Property by virtue of this Agreement. Owners may discontinue the marketing of the prospective investment at any time for any reason or no reason in Owners' sole discretion and without notice to Prospective Investor.

7. Except as otherwise expressly approved in advance in writing by Owners on a case by case basis, which approval may be granted or withheld by Owners in their sole and absolute discretion, neither the Prospective Investor nor any of its Representatives will in any manner, directly or indirectly (i) contact or communicate \_\_\_\_\_ ("Lender") or any of its Representatives, with respect to the Properties or any loan held by Lender secured by the Properties, (ii) seek to create a venture with Lender, (iii) seek to acquire all or any portion of or interest in any loan held by Lender secured by the Properties, or (iv) otherwise interfere with or adversely affect the relationship between Owners and Lender.

8. In the event of any breach of this Agreement by Prospective Investor or its Representatives, Owners would be irreparably and immediately harmed and could not be made whole by monetary damages. Accordingly, it is agreed that, without prejudice to any rights and remedies otherwise available to Owners, Owners shall be entitled (i) to equitable relief by way of injunction in the event of a breach of any provision of this Agreement, and (ii) to compel specific performance, in each case without the need for proof of actual damages. Prospective Investor agrees to indemnify Owners and Owners' Representatives for any losses, claims, damages, costs and expenses, including reasonable attorneys' fees, that Owners and Owners' Representatives may incur or suffer in connection with the breach of this Agreement and/or its enforcement.

9. This Agreement shall be binding upon Prospective Investor's successors and assigns and shall inure to the benefit of and be enforceable by the respective successors and assigns of Owners. Owners and their successors and assigns shall be deemed the beneficiaries of this Agreement, and shall be entitled to all the rights and remedies accorded to such parties at law or in equity. This Agreement may be waived, amended or modified only by a written instrument signed by both Owners and Prospective Investor, which shall set forth specifically the provisions of this Agreement that are to be so waived, amended or modified. Time is of the essence in connection with the performance of Prospective Investor's and its Representative's obligations pursuant to this Agreement.

10. This Agreement shall be governed by Texas law. Prospective Investor irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Texas or the United States located in the City of \_\_\_\_\_, Texas for any actions, suits or proceedings arising out of or relating to the terms of this Agreement and the transactions contemplated hereby (and Prospective Investor agrees not to commence any action, suit or proceeding relating thereto except in such courts), and further agrees that service of any process, summons, notice or document by United States certified mail to the address set forth below shall be effective service of process for any action, suit or proceeding brought against Prospective Investor in any such court. Prospective Investor hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of the terms of this Agreement or the transactions contemplated hereby in the courts located in the City of \_\_\_\_\_, Texas, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

**Owner:**

\_\_\_\_\_

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

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

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

**Prospective Investor:**

\_\_\_\_\_

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

Name: \_\_\_\_\_  
(Please Print)

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_



**SCHEDULE 4**

\_\_\_\_\_, 201\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Re: Real estate consisting of approximately \_\_\_\_\_ acres of land, located at \_\_\_\_\_, (the "Property")

Ladies and Gentlemen:

In connection with our potential purchase of the Property from \_\_\_\_\_ (the "Transaction"), you and/or your brokers, affiliates, agents and attorneys have, are or will be furnishing to us certain information with respect to the Property and its condition. All such information furnished to us or our members, directors, officers, employees, agents or representatives, including, without limitation, our attorneys, accountants, consultants, lenders and real estate brokers (collectively, "our representatives"), and all analyses, compilations, data, studies or other documents prepared by you or your representatives or by us or our representatives containing or based, in whole or in part, upon such furnished information or reflecting our review of, or interest in, the Transaction, is hereinafter referred to as "Information". As a condition to your furnishing Information to us or our representatives with respect to the Property and/or the Transaction, the undersigned hereby agree as follows:

1. The undersigned will keep the Information (which is non-public and proprietary) confidential and in trust and confidence in the same manner as the undersigned treats its own confidential and proprietary information, and will not otherwise disclose or allow others to disclose the Information or to use the Information to your detriment. The undersigned and our representatives will only use the Information for the purpose of evaluation of the Transaction. The undersigned will permit access to the Information only to those of our representatives who need to review it for such purpose and who will keep it confidential pursuant hereto.
2. Without your prior written consent, neither the undersigned nor our representatives will disclose to any other person or entity the fact that the Information has been made available, that discussions or negotiations are taking place concerning a possible Transaction involving the Property, or any of the terms, conditions or other facts with respect to the Information or the Transaction, including the status thereof.
3. If the undersigned determines not to consummate the Transaction, the undersigned will promptly advise you of that fact, whereupon the undersigned and our representatives will promptly deliver to you all written, electronic or other embodiments of the Information (collectively, "Copies") to which the undersigned or our representatives have received or have access and inform you promptly of the location of any other Copies known by the undersigned or our representatives to exist.
4. The undersigned acknowledges that neither you nor any of your representatives shall have any liability to the undersigned or to any of our representatives as a result of the use of the Information, it being understood that only those particular representations and warranties which may be made by you in a definitive agreement, when, as and if it is executed, and subject to such limitations and restrictions as may be specified in such definitive agreement, shall have any legal effect.

5. In the event that the undersigned, our representatives or anyone to whom the undersigned or our representatives transmits Information pursuant to this agreement becomes legally compelled to disclose any Information, the undersigned and our representatives will provide you with prompt written notice thereof so that you have an adequate opportunity to seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, the undersigned and our representatives will cause only the portion of the Information to be furnished which is legally required to be furnished and the undersigned and our representatives will exercise our best efforts to obtain reliable assurance that confidential treatment will be accorded the Information so furnished.
6. The undersigned acknowledges and agrees that you would not have any adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this agreement were breached. Accordingly, the undersigned agrees that you shall be entitled to injunctive relief to prevent the breach of this agreement and to specifically enforce the terms hereof, in addition to any other remedy to which you may be entitled, at law or in equity. Additionally, the undersigned shall indemnify and hold \_\_\_\_\_ and its affiliates, directors, officers, employees, agents and representatives harmless from and against any and all claims, losses, suits, damages, liabilities, penalties, costs and expenses (including court costs and attorneys' fees) incurred as a result of the breach of this agreement by the undersigned or our representatives.
7. In the event you become involved in any action or proceeding arising out of or in connection with enforcement of our duties or obligations hereunder, you shall, subject to the provisions of local law, be entitled to recover from the undersigned, upon demand, jointly and individually, all attorneys' fees, costs, expenses and disbursements incurred by you in any such action or proceeding, without the necessity for a cross-action by you. Such reimbursement shall include all such expenses incurred prior to and at any such trial or proceeding and at all levels of appeal and post judgment proceedings.

This letter will constitute our agreement with respect to the subject matter hereof.

Very truly yours,

\_\_\_\_\_

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

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

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

SCHEDULE 5CONFIDENTIALITY AGREEMENT

In connection with a proposed transaction (the "Proposed Transaction") between \_\_\_\_\_ (the "Company"), and \_\_\_\_\_ (the "Disclosing Party"), the Disclosing Party is prepared to provide the Company with certain Confidential Information (as hereinafter defined) relating to the building located at \_\_\_\_\_ (the "Building"). In consideration of the Disclosing Party's furnishing the Company with the Confidential Information and as a condition precedent thereto, the Company hereby agrees, for the benefit of the Disclosing Party and its Representatives (as hereinafter defined), as follows:

1. In connection with the Proposed Transaction, it is understood that the Disclosing Party and its Representatives are prepared to furnish the Company with certain oral and written information that is or may be nonpublic, confidential and/or proprietary in nature, which may include, without limitation, contracts, documents, files, appraisals, site plans, reports, operating information, rent rolls, analysis (financial or otherwise) and studies and computer data or files. All such information, as well as the Company's interest in the Proposed Transaction and any discussions between the Disclosing Party and the Company or its or their Representatives, shall, except as otherwise permitted hereunder, be kept strictly confidential by the Company; all such information, interest and discussions are hereinafter referred to, collectively, as the "Confidential Information." The Confidential Information shall be used by the Company and its Representatives solely for purpose of evaluating the Proposed Transaction. Without the prior written consent of the Disclosing Party, the Company will not, nor will it permit its Representatives to, contact any of the Disclosing Party's Representatives, investors, lenders, lessors, tenants or property managers in connection with, or otherwise with respect to, the Confidential Information or the Proposed Transaction. For the purposes hereof, the "Representatives" of each party hereto (each, a "Party"; and collectively, the "Parties") shall mean (i) with respect to the Disclosing Party, its officers, directors, advisors, agents, partners, employees, attorneys, accountants, consultants and third-party professionals who may prepare or provide Confidential Information directly or indirectly to the Company and its Representatives, and (ii) with respect to the Company, its officers, directors, controlling persons, affiliates, members, employees, attorneys and accountants who need to know the Confidential Information for the express purpose of assisting the Company with its evaluation of the Proposed Transaction. The Company may disclose the Confidential Information, on a limited basis, only to those of its Representatives who need access to the Confidential Information for purposes of evaluating the Proposed Transaction on behalf of the Company. The Company shall inform each of its Representatives that receives any of the Confidential Information of the requirements of this agreement and shall require each such party to comply with such requirements. The Company agrees that it will be responsible for any breach of the terms of this agreement by any of the Company's Representatives, and will be responsible to the Disclosing Party for any loss, cost, expense claim or liability arising from a breach of this agreement by the Company or its Representatives. The Company agrees to notify the Disclosing Party, upon request, as to the identity of any Representatives to whom the Company has or is to provide any Confidential Information.
2. If any person seeks to compel the Company or any of its Representatives to disclose any Confidential Information under compulsion of law (by oral questions, interrogatories, requests for documents subpoena, civil investigative demand or similar process), the Company shall promptly notify the Disclosing Party thereof prior to any such disclosure so that the Disclosing Party may have an opportunity to seek a protective order or other appropriate remedy. The Company agrees to cooperate with the Disclosing Party in any manner which may be reasonably requested by the Disclosing Party in order to seek any such protective order or other appropriate remedy.
3. The Company (on behalf of itself and its Representatives) acknowledges that remedies at law

may be inadequate to protect the Disclosing Party against a breach of this agreement by the Company or its Representatives. The Company therefore agrees that in the event that the Company or its Representatives breach the terms of this agreement, Disclosing Party shall be entitled to equitable relief (in addition to the any other rights and remedies otherwise available to the Disclosing Party) without proof of actual damages or any obligation to post a bond or other security therefor.

4. The Company agrees not to provide, communicate, or disclose to any third party other than the Company's Representatives as provided for herein, directly or indirectly, the Confidential Information, except as required by judicial process as provided in Section 2 above, without in each instance the prior written consent of the Disclosing Party, which consent may be withheld in its sole discretion, and then only after such third party executes a confidentiality agreement in favor of the Disclosing Party substantially in the form of this agreement.
5. The Company agrees that, promptly upon the Disclosing Party's request, the Company and its Representatives shall surrender to the Disclosing Party the Confidential Information and all derivatives thereof. The Company acknowledges that all such items are the exclusive property of the Disclosing Party and agrees to (i) return all Confidential Information and its derivatives in tangible form within five (5) business days after written request therefor, such request given at any time at the sole option of the Disclosing Party and (ii) erase any copies of any of the foregoing recorded on any electronic media or optical device. Such return of Confidential Information and all derivatives thereof, and the erasing of any copies of the foregoing recorded on any electronic media or optical device, shall, upon the written request of the Disclosing Party, be certified in writing to the Disclosing Party by the Company.
6. The Company further acknowledges and agrees that: (a) neither the disclosure of the Confidential Information by the Disclosing Parties nor any conversations between any of the Disclosing Party or its Representatives, on the one hand, and the Company, or any of its respective Representatives, on the other hand, shall in any manner create any liability or obligation on the part of the Disclosing Party or any of its Representatives; (b) the Disclosing Party makes no representation or warranty to Company as to the accuracy or completeness of the Confidential Information; and (c) the Disclosing Party shall have no liability to Company or any of its Representatives resulting from the use of or reliance on the Confidential Information.
7. This agreement contains the entire agreement by the Company concerning the confidentiality of the Confidential Information and shall be enforceable by the Disclosing Party in accordance with the terms hereof. No modification of the obligations of the Company set forth herein or waiver of the terms and conditions hereof shall be permitted or binding upon the Disclosing Party, unless approved in writing by the Disclosing Party, which writing shall refer specifically to this agreement.
8. The illegality, invalidity or unenforceability of any provision of this agreement under the laws of any jurisdiction shall not affect its legality, validity or enforceability under the laws of any other jurisdiction, nor the legality, validity or enforceability of any other provision.
9. This agreement shall be governed and construed in accordance with the laws of the State of \_\_\_\_\_ applicable to agreements made and to be performed within such state without regard to principles of conflicts of law. In the event of any dispute related to this agreement, the Parties shall and hereby do waive any right to trial by jury in connection therewith.
10. Redress for any claim against Disclosing Party under this Agreement shall be limited to and enforceable only against and to the extent of Disclosing Party's interest in the Building. The obligations of Disclosing Party under this Agreement are not intended to be and shall not be personally binding on, nor shall any resort be had to the private properties of, any of its or its investment manager's trustees, directors, officers, partners, beneficiaries, members, stockholders, employees, or agents, and in no case shall Disclosing Party be liable to the Company hereunder for any lost profits, damage to business, or any form of special, indirect or consequential damages.

IN WITNESS WHEREOF, the undersigned has caused this agreement to be executed and delivered on this \_\_\_\_ day of \_\_\_\_\_, 201\_.

**COMPANY:**

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

Name (Print): \_\_\_\_\_

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

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

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

**DISCLOSING PARTY:**

\_\_\_\_\_

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

Name (Print): \_\_\_\_\_

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

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

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

**SCHEDULE 6**

## NON-DISCLOSURE AGREEMENT

[Date]

[Company Name and Address]

Dear \_\_\_\_\_:

In connection with the evaluation by you of a possible transaction and/or contractual relationship with (either, a "Transaction") \_\_\_\_\_ (the "Company"), there may be made available to you and your Representatives (as hereinafter defined) (you and your Representatives are hereinafter sometimes referred to collectively as "Your Group") certain information relating to the Company and/or its subsidiaries or affiliates, including information that is either confidential or proprietary in nature. Such information, whether previously or hereafter furnished to any member of Your Group by the Company, us or our respective Representatives (the Company, we and our respective Representatives are hereinafter sometimes referred to collectively as the "Company Group") or others, whether or not marked as "confidential", and whether made available in writing (including through electronic media), orally, or by visual inspection, together with analyses, compilations, summaries, forecasts, studies or other materials prepared by members of Your Group that contain, are based on or otherwise incorporate, in whole or in part, such information, is hereinafter referred to as "Confidential Information". In consideration for our making Confidential Information available, you hereby agree as follows:

1. Your Group shall keep the Confidential Information strictly confidential and shall not directly or indirectly disclose Confidential Information without the prior written consent of the Company or us, except that, subject to the following sentence, you may disclose Confidential Information to your Representatives to the extent that they need to know such Confidential Information for purposes of your evaluation of a Transaction (the "Evaluation") and who shall be informed by you of the confidential nature of the Confidential Information and the terms of this agreement and who shall be directed by you to (a) not disclose the Confidential Information and (b) otherwise act in accordance with this agreement. It is understood and agreed that the Company or we may, in its or our discretion, from time to time determine that disclosure of certain of the Confidential Information to certain of your Representatives may be inappropriate, in which event at the Company's or our request you shall refrain from disclosing such Confidential Information to such Representatives. Your Group shall use the Confidential Information solely for purposes of the Evaluation, and not for any other purpose.

Without limiting any other provision of this agreement, you shall (i) cause your Representatives to act in accordance with this agreement, (ii) restrain your Representatives from any prohibited or unauthorized use or disclosure of Confidential Information, and (iii) be responsible and liable for any and all breaches of this agreement (and any prohibited or unauthorized use or disclosure of Confidential Information made) by any member of Your Group.

2. In the event you decide not to pursue a Transaction, you shall promptly notify the Company or us in writing of that decision. In that event, or at any other time upon the request of the Company or us to you for any reason, Your Group shall return promptly to the Company all Confidential Information, together with all copies and other reproductions thereof wherever located, except for that portion of the Confidential Information which consists of analyses, compilations, forecasts or studies prepared by Your Group (collectively, "Your Analyses"). That portion of the Confidential Information which consists of Your Analyses shall be destroyed, and any oral Confidential Information or Confidential Information acquired by visual inspection (and any Confidential Information not otherwise returned to the Company or destroyed) shall continue to be subject to the terms of this agreement. Upon

request by the Company or us, such return and destruction shall be promptly certified to the Company in writing by one of your authorized officers supervising such return and destruction.

3. If any member of Your Group becomes obligated under any applicable law, regulation or legal process (including by deposition, interrogatory, request for documents, subpoena, civil investigation, demand, order or similar process) to disclose any of the Confidential Information, or the fact that discussions or negotiations are taking place concerning a possible transaction between you and the Company, or any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof, you shall promptly provide the Company with notice prior to any such disclosure to the extent practicable (including the circumstances relating to such obligation and the information sought to be disclosed) so as to permit the Company to (at its sole discretion) seek a protective order or other appropriate remedy and Your Group shall cooperate with the Company in the Company's efforts in connection therewith. If any member of Your Group becomes compelled by such applicable law, regulation or legal process to disclose any of the Confidential Information, such Person (as hereinafter defined) shall be permitted under this agreement to disclose only that portion of the Confidential Information that you are advised by your outside legal counsel that such Person is legally required to disclose, and you and such Person shall exercise reasonable best efforts to obtain reliable assurances that the Confidential Information will be accorded confidential treatment.

4. The provisions of Sections 1, 2 and 3 of this agreement shall not apply to portions of the Confidential Information that (a) are, or become, generally known by the public, other than as a result of a disclosure by any member of Your Group in breach of this agreement, (b) become available to you on a non-confidential basis from a Person, other than the Company or any of its Representatives, who is not known by you to be otherwise bound by a confidentiality agreement, or is not otherwise prohibited from transmitting the information, or (c) are developed by any member of Your Group independently of any disclosure by the Company hereunder and without violating any of your obligations under this agreement.

5. The Confidential Information shall remain the property of the Company. No rights to use, license or otherwise exploit the Confidential Information are granted to any member of Your Group, by implication or otherwise. Your Group will not by virtue of our disclosure of the Confidential Information and/or your use of the Confidential Information acquire any rights with respect thereto, all of which rights shall remain exclusively with the Company.

6. You and we agree that unless and until a definitive agreement between the Company and you with respect to a Transaction shall have been executed and delivered, neither the Company nor you will be under any legal obligation of any kind with respect to such a transaction by virtue of this or any written or oral expression with respect to such a transaction, except, in the case of this agreement, for the matters specifically agreed to herein. You further understand and agree that (a) the Company or we (i) may terminate Your Group's access to the Confidential Information at any time, (ii) shall be free to conduct or not conduct any process for a transaction involving the Company, as it in its or we in our sole discretion shall determine (including commencing, changing or terminating any such process, providing any information to any other Person, negotiating with any other Person or entering into a definitive agreement with any other Person with respect to any transaction, in each case, at any time and without notice to you or any other Person) and (iii) shall be free at its or our sole discretion to at any time accept or reject any proposal relating to the Company for any reason without notice to you or any other Person, and (b) Your Group shall have no claim against any member of the Company Group in connection with any of the foregoing. All expenses incurred by a party in connection with the evaluation and negotiation of a Transaction shall be borne by such party.

7. Without the Company's prior written consent, the members of Your Group shall not (a) disclose to any Person the fact that the Confidential Information has been made available to Your Group, that you (or the Company or us) are considering a Transaction or that discussions or negotiations are taking place or have taken place concerning a Transaction, or any of the terms, conditions or other facts with respect to any such transaction, including the status and/or timing thereof or the Company's role therein, or (b) make any contact of any nature regarding the Transaction (including inquiries or requests concerning Confidential Information, requests for facility tours or management meetings and discussions or questions regarding process or procedures) with any Person other than those designated by the Company, including without limitation any employee, stockholder, supplier, customer, contract counterparty, landlord or lender of or to the Company or any of its affiliates.

8. You acknowledge and agree that (a) this agreement does not create any obligation on the Company or us to provide any Confidential Information, but rather defines the duties and obligations of Your Group (and the rights of the Company Group) with respect to Confidential Information to the extent it may be disclosed or made available, (b) the Company Group does not make any express or implied representation or warranty as to the accuracy or the completeness of any information disclosed, (c) no member of the Company Group shall have any liability to any member of Your Group or any of their respective Representatives resulting from the use or evaluation of the information disclosed or materials made available or resulting from any errors in such information or materials or omissions therefrom and (d) Your Group is not entitled to rely on the accuracy and completeness of such information and materials and you shall be entitled to rely solely on the representations and warranties of the Company, if any, made in a definitive agreement regarding a Transaction to which you and the Company may become a party, if any, to such extent, and subject to such limitations, as may be set forth therein. You further confirm and agree that you are not acting as a broker for or representative of any Person or group (within the meaning of Section 13(d)(3) of the Exchange Act) of which you are a part, and are considering a Transaction only for your own account.

9. You acknowledge that the value of the Confidential Information to the Company Group is unique and substantial, but may be impractical or difficult to assess in monetary terms. In the event of an actual or threatened violation of this agreement, you expressly consent to the enforcement of this agreement by injunctive relief or specific performance, without proof of actual damages or any requirement to post a bond, in addition to any and all other remedies available to the Company Group.

10. You agree that you shall not (a) cause, induce or encourage any actual or prospective client, contract counterparty, customer or supplier of the Company or any other Person who has a business relationship with the Company or any of its subsidiaries, to terminate or modify any such actual or prospective relationship or (b) solicit or hire for employment any current employee of the Company, for a period of six (6) months from the date hereof. Notwithstanding the above, Your Group agrees not to solicit, offer employment, or hire for employment any current executive officer of the Company who comes in contact with Your Group as a result of your evaluation of the Transaction, for a period of two (2) years from the date hereof. Further, Your Group agrees not to solicit, offer employment, or hire for employment any employee who is then (i) subject to an employment agreement with the Company Group, or (ii) during any time during which such individual is subject to a restrictive covenant, non-compete or similar contractual provision with the Company Group.

11. No failure or delay by the Company or us 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. You may not assign this agreement or any part thereof (by operation of law or otherwise) without our prior written consent, and any purported assignment without such consent shall be null and void. This agreement shall be binding upon and inure to the benefit of the parties hereto and the Company and their respective successors and permitted assigns. This agreement sets forth the entire agreement between the parties with respect to the subject matter hereof. This agreement may not be amended or modified in any respect except by a written instrument signed by all of the parties hereto. This agreement supersedes and cancels any and all prior agreements between the parties hereto, express or implied, relating to the Transaction. This agreement may be executed in counterparts and by facsimile signatures.

12. This agreement shall be governed by and interpreted under the law of the State of \_\_\_\_\_. You irrevocably and unconditionally (a) consent to submit to the jurisdiction of the courts of the State of \_\_\_\_\_ and of the United States of America located in the State of \_\_\_\_\_ for any action, suit or proceeding arising out of or relating to this agreement (and you irrevocably and unconditionally agree not to commence any such action, suit or proceeding except in such courts), (b) waive any objection to the laying of venue of any such action, suit or proceeding in any such courts and (c) waive and agree not to plead or claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

13. Your obligations under this agreement regarding the Confidential Information shall terminate upon the earlier to occur of (i) the closing of a Transaction, and (ii) three (3) years after the date hereof.

14. In the event that any term or provision of this agreement is determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, in whole or in part, the remaining terms and provisions of this agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by

applicable law, and such invalid or unenforceable term or provision shall be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the Company’s intention with respect to such invalid or unenforceable term or provision.

15. For purposes of this agreement: (a) “including” shall mean “including, without limitation,”; (b) “Person” shall be broadly interpreted to include any individual, corporation, partnership, limited liability company, trust or other entity (including any court or government (including any agency, commission, board or authority thereof), federal, state or local, domestic, foreign or multinational); and (c) “Representatives” of a Person shall mean such Person’s officers, directors, employees, accountants, attorneys, and financial advisors (for the avoidance of doubt, “Representatives” shall not include any potential co-investor, financial sponsor or other financing source unless specifically consented to in advance by the Company or us).

If the foregoing is acceptable to you, please execute and return one copy of this letter, whereupon this letter shall constitute our binding agreement with respect to the subject matter hereof.

Very truly yours,

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed as of the  
date first set forth above:

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 7****ACCESS AGREEMENT**

This ACCESS AGREEMENT (this "**Agreement**"), is made as of \_\_\_\_\_, 201\_, by and between \_\_\_\_\_ ("**Owner**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Purchaser**").

**RECITALS:**

A. Owner owns certain property and improvements thereon commonly known as \_\_\_\_\_ located in \_\_\_\_\_ ([individually and collectively as the context may require,] the "**Property**").

B. Owner and Purchaser are negotiating a Purchase and Sale Agreement (the "**Purchase and Sale Agreement**") pursuant to which Purchaser would purchase the Property.

C. The parties want to provide Purchaser with the right to enter upon the Property to conduct due diligence and inspect the Property pursuant to the terms and conditions of this Agreement.

**AGREEMENT**

For and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Purchaser hereby agree as follows:

1. **Grant of Access.** Owner grants to Purchaser and to Purchaser's employees, agents, representatives and contractors (collectively, "**Purchaser's Agents**"), a non-exclusive, temporary, revocable license to enter upon the Property and to review the records, if any, maintained by Owner or by Owner's property management company, in each case during normal business hours. Such access shall be for the sole purposes of (a) reviewing leases and contracts and any records relating thereto; (b) reviewing records relating to the operating expenses; (c) inspecting the physical condition of the Property; and (d) conducting non-intrusive physical and environmental inspections of the Property. Notwithstanding anything contained herein to the contrary, without first obtaining Owner's written consent, which may be withheld or conditioned in Owner's sole discretion, neither Purchaser nor any of Purchaser's Agents shall (i) contact any tenant of the Property, (ii) notify any governmental agency of any actual or potential violation of any zoning, environmental or other law, rule, or regulation, or (iii) conduct any intrusive or invasive physical or environmental investigation regarding the Property. The foregoing license may be revoked by Owner with or without cause effective immediately upon written notice thereof to Purchaser.

2. **Notification.** In exercising its right of access hereunder, Purchaser will use, and will cause Purchaser's Agents to use, commercially reasonable efforts not to unreasonably interfere with the activities of tenants or other persons occupying or providing services at the Property. Purchaser will give at least one business days' prior notice to \_\_\_\_\_, on behalf of Owner, of its intention to conduct any inspection and the nature of such inspection. Owner expressly reserves the right to have a representative present during any inspection at the Property. Purchaser agrees to cooperate with any reasonable request by Owner in connection with the timing or conduct of any inspection.

3. **Activities.** The access granted hereunder is intended to convey and grant to Purchaser a temporary right to enter the Property to conduct the activities stated herein. Purchaser shall be responsible for, and shall bear the full cost and expense of, any such activities. Purchaser and Purchaser's Agents shall enter and occupy the Property at their own risk, and Owner shall not assume or bear any risk, liability, responsibility or duty of care as to Purchaser or Purchaser's Agents while on the Property.

4. **Insurance.** Purchaser and each of Purchaser's Agents entering on the Property shall carry not less than Two Million Dollars (\$2,000,000.00) commercial general liability insurance (on an occurrence basis) insuring all activity and conduct of Purchaser and Purchaser's Agents while exercising the right of access provided for in this Agreement and naming Owner and Owner's property manager as additional insureds. Purchaser hereby represents

and warrants that it carries not less than Two Million Dollars (\$2,000,000.00) commercial general liability insurance with contractual liability endorsement which insures Purchaser’s indemnity obligations in this Agreement. At Owner’s request, Purchaser will provide or cause Purchaser’s Agents to provide Owner with written evidence, satisfactory to Owner, of the insurance required under this Section 4.

5. **Restoration of Property.** Purchaser shall take commercially reasonable precautions to avoid or minimize any damage to the Property as a result of any inspection or other activity conducted by Purchaser or Purchaser’s Agents, and Purchaser shall be responsible for any loss or damage caused to the Property resulting from the acts or negligence of Purchaser or Purchaser’s Agents. Purchaser shall, at its sole cost and expense and in strict accordance with all requirements of applicable law, promptly restore any damage or alteration of the physical condition of the Property that results from any inspection or other activity conducted by Purchaser or any Purchaser’s Agent.

6. **Indemnification.** Purchaser agrees to indemnify, defend and hold Owner, its property manager, and their respective shareholders, members, partners, officers, employees, agents and contractors free and harmless from any loss, injury, damage, claim, lien, cost or expense (including reasonable attorneys’ fees and costs) arising out of a breach of this Agreement by Purchaser or Purchaser’s Agents, or otherwise resulting from or related to the exercise by Purchaser or any of Purchaser’s Agents of the rights granted herein.

7. **Notice.** Except as otherwise provided herein, any notice required or permitted to be given hereunder shall be deemed to be given when hand delivered or one (1) business day after pick-up by overnight express service, in either case addressed to the parties at their respective addresses referenced below:

If Owner: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

If Purchaser: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

8. **Liens.** Purchaser shall keep the Property free from, and shall immediately cause the discharge of, any liens or claims of lien arising out of any work performed or obligations incurred by or on behalf of, or materials furnished to, Purchaser or Purchaser’s Agents with respect to any inspection or testing of the Property.

8. **Entire Agreement.** No representations or covenants of any kind, other than those of Purchaser expressly contained herein, have been made by either party hereto. This Agreement may only be modified or amended by an agreement in writing duly executed and delivered by each of the parties hereto. This Agreement supersedes any provisions of any letter of intent between the parties. It is understood and agreed that this Agreement shall not in any way constitute a Purchase and Sale Agreement or an offer by Owner to sell the Property to Purchaser. Owner has no obligation to sell the Property to Purchaser and no such obligation shall exist unless and until a Purchase and Sale Agreement is executed by and between Owner and Purchaser and, then, only upon the terms and conditions set forth therein. Neither party shall be required to enter into a Purchase and Sale Agreement or to negotiate, in good faith or otherwise, a Purchase and Sale Agreement.

9. **Assignment.** This Agreement shall not be assigned by Purchaser without the prior written consent of Owner, unless otherwise expressly permitted under an executed Purchase and Sale Agreement, and any attempted assignment by Purchaser shall be void. No assignment shall release or relieve Purchaser of its obligations hereunder.

10. **Termination.** Unless terminated either by agreement of the parties, or otherwise, this Agreement and the rights granted herein shall terminate upon the earliest of: (a) the parties ceasing negotiations to enter into the

Purchase and Sale Agreement, (b) written notice of termination given by Owner for any reason whatsoever, or (c) the consummation of the transaction contemplated by the Purchase and Sale Agreement. Immediately upon any such termination, Purchaser's rights of access granted hereunder shall cease.

11. **No Merger; Survival.** This Agreement shall not merge into the Purchase and Sale Agreement unless otherwise provided in the Purchase and Sale Agreement. The provisions of Sections 5, 6, 8, 14, 15 and 16 of this Agreement shall survive the termination of this Agreement.

12. **Miscellaneous.** If any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstances shall to any extent be deemed invalid or unenforceable under applicable law, then the remainder hereof and the application of such a term, covenant, or condition to the person, entity or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and the application of such a term, covenant, or condition to the person, entity or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby. The rights and privileges granted herein shall accrue to the benefit of each of the parties hereto.

13. **Governing Law; Attorneys' Fees.** This Agreement shall be governed by the laws of the State of \_\_\_\_\_, without regard to its principles of conflict of laws, and any applicable laws of the United States of America. In the event of any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs.

14. **Jury Waiver.** PURCHASER AND OWNER DO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

15. **Confidentiality.** Purchaser agrees that (a) the results of all inspections, analyses, studies and similar reports relating to the Property prepared by or for Purchaser utilizing any information acquired in whole or in part through the exercise of Purchaser's inspection rights (the "**Reports**"); and (b) all information (the "**Proprietary Information**") regarding the Property made available to Purchaser by Owner or Owner's agents or representatives, is confidential and shall not be disclosed to any other person or party. Purchaser agrees not to use, or allow to be used, any such information for any purpose other than to determine whether to proceed with the contemplated purchase, or if same is consummated, in connection with the operation of the Property post-closing. Further, if a Purchase and Sale Agreement is not executed, or if the transaction thereafter fails to close, for any reason other than a default by Seller, Purchaser agrees to promptly return or deliver to Owner, or cause to be returned or delivered to Owner, all Proprietary Information and, without any representation or warranty, copies of all Reports.

16. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or PDF by email shall be as effective as delivery of an original executed counterpart of this Agreement.

IN WITNESS WHEREOF, Owner and Purchaser have caused this Agreement to be executed by their duly authorized representative as of the date first written above.

**OWNER:**

\_\_\_\_\_,  
a \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PURCHASER:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 8****ACCESS AGREEMENT  
(Buyer Form)**

This Access Agreement (the "**Agreement**") is made as of \_\_\_\_\_, 201[\_] between \_\_\_\_\_, a \_\_\_\_\_ ("**Owner**") and \_\_\_\_\_, a \_\_\_\_\_ ("**Proposed Purchaser**") with reference to the following Recitals.

WHEREAS, Owner owns certain real property commonly known as \_\_\_\_\_, located in \_\_\_\_\_ (the "**Property**"); and

WHEREAS, Owner and Proposed Purchaser are negotiating to enter into a purchase and sale agreement (the "**Contract**") whereby Owner would sell the Property to Proposed Purchaser (the "**Proposed Transaction**"); and

WHEREAS, Proposed Purchaser has requested access to the Property to commence certain due diligence investigations; and

WHEREAS, Owner is willing to permit such access provided it is limited to certain situations and provided certain conditions are met.

NOW, THEREFORE, with the intent to be legally bound and for consideration the existence and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. OWNER SHALL ALLOW PROPOSED PURCHASER AND PROPOSED PURCHASER'S ENGINEERS, ARCHITECTS, CONSULTANTS, INSPECTORS AND OTHER EMPLOYEES AND AGENTS REASONABLE ACCESS TO THE PROPERTY DURING NORMAL BUSINESS HOURS FOR THE PURPOSES PROVIDED HEREIN.**

2. Proposed Purchaser and its engineers, architects, consultants, inspectors, potential investors, affiliates and other employees and agents may exercise such access for the purposes of (a) reviewing contracts, leases, reports, books and records relating to Property (other than any privileged or confidential records), soil reports, environmental studies and reports, surveys, and building and systems plans; (b) reviewing records relating to operating expenses and other instruments and correspondence relating to the Property; and (c) inspecting the physical condition of the Property and conducting non-intrusive physical and environmental tests and inspections thereof.

3. Proposed Purchaser agrees that it will cause any person engaged by Proposed Purchaser described above accessing the Property hereunder to be covered by not less than \$1,000,000 commercial general liability insurance, insuring all activity and conduct of such person while exercising such right of access, issued by a licensed insurance company.

4. Proposed Purchaser agrees that, in the exercise of the right of access granted hereby, it will not unreasonably interfere with or permit unreasonable interference with any person occupying or providing service at the Property.

5. Proposed Purchaser agrees to give Owner reasonable prior notice of its intent to conduct any inspections or tests so that Owner will have the opportunity to have a representative present during any such inspection or test. Owner expressly reserves the right to have a representative present during any inspection or test. Proposed Purchaser agrees to cooperate with any reasonable request by Owner in connection with the timing of any such inspection or test.

6. Proposed Purchaser agrees that all documents and information regarding the Property of whatsoever nature made available to it by Owner or its consultants, agents or representatives and the results of all tests and studies of the Property, other than matters that are known to the public or commonly known (collectively, the "**Proprietary Information**") are proprietary and confidential. Proposed Purchaser further agrees that all such Proprietary Information will be used solely for the purpose of evaluating the possible acquisition of the Property by Proposed Purchaser and will not be used or duplicated for any other purpose. Proposed Proposed Purchaser shall keep all Proprietary Information strictly confidential; provided, however, that such Proprietary Information may be disclosed to such persons or entities who, because of their involvement with the Proposed Transaction, need to know such information for the purpose of giving advice with respect to, or consummating, the Proposed Transaction,

including but not limited to Proposed Purchaser's and its affiliates respective directors, members, partners, officers, employees, counsel, subsidiaries, affiliates, financial advisors, existing lenders, potential lenders or other potential sources of capital, accounting firms and financial institutions (collectively, the "**Related Parties**"). Upon written request of Owner, Proposed Purchaser will promptly deliver to Owner all Proprietary Information. Notwithstanding anything to the contrary contained herein, Proposed Purchaser and its Related Parties may retain copies of the Proprietary Information to the extent it is included in e-mails, computers or electronic media and cannot practicably be expunged, or to the extent required to comply with any internal document retention policies or procedures or public law, provided that the retention of such Proprietary Information shall remain subject to the provisions of this Agreement. All obligations of Proposed Purchaser under this Paragraph 6 shall be referred to as the "**Confidentiality Obligations**". Proprietary Information shall not include (A) information that was already in Proposed Purchaser or any of its Related Parties' possession prior to the date received from Owner; (B) information that is or becomes publicly available other than as a result of a disclosure by Proposed Purchaser or any of its Related Parties in violation of this Agreement; (C) information that is independently developed by Proposed Purchaser or any of its Related Parties without violating this Agreement and without using information from any source actually known by Proposed Purchaser to be breaching any contractual, legal or fiduciary obligation of confidentiality in disclosing information; and (D) information made available to Proposed Purchaser or any of its Related Parties on a non-confidential basis from a source other than Owner, provided such source is not known by Proposed Purchaser to be breaching any contractual, legal or fiduciary obligation of confidentiality in disclosing such information.

7. Proposed Purchaser agrees that any inspection, test or other study or analysis of the Property shall be performed at Proposed Purchaser's expense and in strict accordance with applicable law.

8. Proposed Purchaser agrees at its own expense to promptly restore the Property if any inspection or test performed by or at the direction of Proposed Purchaser requires or results in any damage to or alteration of its condition.

9. This Agreement will automatically terminate if the parties discontinue their negotiations of the Contract being discussed by the parties.

10. Notwithstanding anything to the contrary contained herein, in no event shall Proposed Purchaser or any of its Related Parties be liable for special, punitive, consequential or similar damages.

11. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located which is applicable to contracts made and to be performed wholly within such State.

12. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall collectively constitute one Agreement. This Agreement may be executed by facsimile signatures which shall be binding on the parties hereto, with original signatures to be delivered as soon as reasonably practical thereafter.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

OWNER:

\_\_\_\_\_

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

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

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

PROPOSED PURCHASER:

\_\_\_\_\_

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

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

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

**SCHEDULE 9****PROPERTY ACCESS AGREEMENT**

**THIS PROPERTY ACCESS AGREEMENT** (this “Agreement”) is entered into as of \_\_\_\_\_, 201\_\_\_\_, by and between [INSERT NAME OF BUYER], [INSERT ORGANIZATIONAL INFO FOR BUYER] (“Buyer”), and [INSERT NAME OF SELLER], [INSERT ORGANIZATIONAL INFO FOR SELLER] (“Seller”).

**WITNESSETH:**

- A. The “Property” is commonly known as \_\_\_\_\_.
- B. Buyer is interested in conducting due diligence with respect to the Property and information regarding the Property in connection with its desire to acquire the Property.
- C. Seller has required that Buyer execute this Agreement prior to permitting Buyer access to the Property and the information about the Property.

In consideration of the foregoing recitals and the mutual covenants set forth herein, the parties hereby agree as follows:

1. Conditions to Access. Seller will make or cause to be made available (whether at a designated physical or on-line location) property files of Seller and Seller’s property manager [**OPTIONAL:** as well as those files of Seller located at \_\_\_\_\_ **end OPTION**] (other than those files that Seller reasonably deems confidential, proprietary or privileged) and will allow Buyer’s Representatives (as hereinafter defined) access to the Property for the purpose of conducting any due diligence reasonably related to the purchase of the Property, subject to the following limitations:

(a) Such access shall be at reasonable times during regular business hours and shall not interfere with the operation of the Property or the rights of tenants.

(b) Buyer shall coordinate with Seller and Seller’s property manager prior to and during each visit to the Property by any Buyer’s Representatives and representatives of Seller may accompany Buyer’s Representatives during each such visit.

(c) Buyer’s Representatives (as hereinafter defined) shall not contact any tenant without Seller’s prior written consent (which consent may be given by e-mail) and Seller or its designated representative shall have the right to be present (whether telephonically or in person) during any conversations between Buyer and any tenant.

(d) Seller or its designated representative shall have the right to (i) be present for any physical inspections or testing of the Property, and (ii) pre-approve any invasive or destructive testing of the Property.

(e) Prior to such time as any Buyer’s Representatives enter the Property, Buyer shall (i) obtain policies of general liability insurance which insure Buyer’s Representatives with liability insurance limits of not less than \$2,000,000 combined single limit for personal injury and property damage and name Seller and Seller’s property manager as additional insureds and which are with such insurance companies, provide such coverages and carry such other limits as Seller shall reasonably require, and (ii) provide Seller with certificates of insurance evidencing that Buyer has obtained the aforementioned policies of insurance.

(f) All due diligence shall be at Buyer’s sole expense and shall be conducted in accordance with applicable laws, including without limitation, laws relating to worker safety and the proper disposal of discarded materials.

As used herein, “Buyer’s Representatives” shall mean Buyer and any officers, directors, employees, agents, consultants, representatives and attorneys of Buyer or any direct or indirect owner of any beneficial interest in Buyer who conduct due diligence or are otherwise involved in the transaction.

2. Covenants.

(a) Buyer shall repair promptly any physical damage caused by its due diligence and shall immediately return the Property to the condition existing prior to Buyer’s due diligence.

(b) Buyer shall hold, and shall cause each of the other Buyer’s Representatives and Buyer’s prospective investors to hold, in strict confidence and not disclose to any other person without the prior written consent of Seller: (i) the terms of any letter of intent or term sheet negotiated by the parties for the sale and purchase of the Property, (ii) any of the information in respect of the Property delivered or made available to any Buyer’s Representatives (whether at a designated physical or on-line location), and (iii) the identity of any direct or indirect owner of any beneficial interest in Seller. In the event this Agreement is terminated, Buyer shall promptly return to Seller all copies of documents containing any of such information without retaining any copy thereof or extract therefrom. Notwithstanding anything to the contrary hereinabove set forth, Buyer may disclose such information (x) on a need-to-know basis to its employees, agents, consultants and members of professional firms serving it or potential lenders or investors, (y) as any governmental agency may require in order to comply with applicable laws or court order, and (z) to the extent that such information is a matter of public record. The provisions of this Section 2(b) shall survive any termination of this Agreement. As used herein, the term “Seller Parties” shall mean and include, collectively, (A) Seller; (B) its counsel; (C) Seller’s broker; (D) Seller’s property manager; (E) any direct or indirect owner of any beneficial interest in Seller; (F) any officer, director, employee, or agent of Seller, its counsel, Seller’s broker, Seller’s property manager or any direct or indirect owner of any beneficial interest in Seller; and (G) any other entity or individual affiliated or related in any way to any of the foregoing.

(c) Upon the request of Seller, Buyer shall deliver promptly to Seller copies of the written results of any inspections, tests, studies, appraisals, evaluations and/or investigations prepared by or for or otherwise obtained by any Buyer’s Representatives in connection with Buyer’s due diligence, excluding any drafts, attorney-client privileged communications, or internally generated work product. Notwithstanding the delivery of such written results, Seller acknowledges that it shall not be entitled to rely upon the same.

(d) Buyer shall complete the due diligence at the Property by 5:00 pm Eastern Time on \_\_\_\_\_, 201\_\_\_\_.

(e) Except in connection with the preparation of a so-called “Phase I” environmental report with respect to the Property, Buyer’s Representatives shall not contact any governmental official or representative regarding the Property without Seller’s prior written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed. In addition, if Seller consents to any such governmental contact, Seller shall be entitled to receive at least five (5) days prior written notice of the intended contact and to have a representative present (whether telephonically or in person) when any Buyer’s Representatives has any such contact with any governmental official or representative.

(f) Buyer shall cause all Buyer’s Representatives to be aware of this Agreement and the obligations of such parties hereunder.

3. Indemnity. Buyer hereby agrees to indemnify, defend, and hold Seller and each of the other Seller Parties free and harmless from and against any and all conditions, losses, costs, damages, claims, liabilities, expenses, demands or obligations, of any kind or nature whatsoever (including reasonable attorneys’ fees, expenses and disbursements) arising out of or resulting from (a) the breach of the terms of Section 2(b), or (b) the entry on the Property and/or the conduct of any due diligence by any Buyer’s Representatives; provided, however, that Buyer’s obligations under this clause (b) shall not apply to the mere discovery of a pre-existing environmental or physical condition at the Property. The foregoing indemnity shall survive any termination of this Agreement.

4. Waiver and Release. Buyer, for itself and all of the other Buyer’s Representatives, hereby waives and releases Seller and each of the Seller Parties from all claims resulting directly or indirectly from access to, entrance

upon, or inspection of the Property by Buyer's Representatives, except to the extent caused by the gross negligence or willful misconduct of Seller. The provisions of this Section 4 shall survive the termination of this Agreement.

5. Termination. Notwithstanding that either or both parties may expend substantial efforts and sums in anticipation of entering into a binding contract for the sale and purchase of the Property (including the efforts and sums involved in Buyer's due diligence), each party acknowledges and accepts the risk that no such contract will be executed. Buyer shall be free to terminate its due diligence, and each party shall be free to terminate negotiations with the other, for any reason whatsoever, at any time prior to the execution of a binding contract, without incurring liability to the other, except with respect to the provisions hereof which expressly survive the termination of this Agreement.

6. Miscellaneous.

(a) This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements with respect thereto. This Agreement may not be modified, changed, amended, supplemented or terminated, except by a written instrument signed by both parties.

(b) This Agreement shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State where the Property is located.

(c) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

(d) Signatures to this Agreement transmitted by electronic means shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original to this Agreement with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement.

*[Remainder of page intentionally blank]*

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

**SELLER:**

**[INSERT NAME OF SELLER], [INSERT ORGANIZATIONAL INFO FOR SELLER]**

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

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

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

**BUYER:**

**[INSERT NAME OF BUYER], [INSERT ORGANIZATIONAL INFO FOR BUYER]**

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

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

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

**SCHEDULE 10****TEMPORARY ACCESS AGREEMENT**  
**(Access For Site Assessment Work)**

**THIS TEMPORARY ACCESS AGREEMENT** (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 201\_ by and between \_\_\_\_\_ ("LICENSOR"), and \_\_\_\_\_ ("LICENSEE"). In consideration of Ten Dollars (\$10.00) in hand paid, the mutual promises herein contained and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**1. LICENSE AND PREMISES.** LICENSOR HEREBY GRANTS UNTO LICENSEE A NON-EXCLUSIVE LICENSE (THE "LICENSE"), FOR SO LONG AS LICENSEE IS NOT IN DEFAULT UNDER THE PROVISIONS HEREOF, TO TEMPORARILY ENTER UPON, FOR THE PURPOSES SET FORTH HEREIN, THAT CERTAIN APPROXIMATELY \_\_\_\_\_ ACRE PARCEL OF UNIMPROVED PROPERTY SITUATED IN \_\_\_\_\_ AND DEPICTED ON EXHIBIT A ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF (THE "PREMISES"). LICENSEE MAY NOT ASSIGN THE LICENSE NOR GRANT ANY RIGHTS HEREUNDER WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF LICENSOR, WHICH CONSENT MAY BE GRANTED OR DENIED IN LICENSOR'S SOLE DISCRETION. AT REASONABLE TIMES AND FOR REASONABLE DURATIONS, LICENSOR AGREES TO MAKE PERSONNEL AVAILABLE TO LICENSEE TO GRANT LICENSEE PHYSICAL ACCESS TO THE PREMISES PROVIDED THAT \_\_\_\_\_, THE DESIGNEE OF LICENSOR, OR ANOTHER DESIGNEE APPOINTED BY LICENSOR (THE "DESIGNEE"), RECEIVES WRITTEN NOTICE THEREOF FROM LICENSEE AT LEAST TWO (2) BUSINESS DAYS PRIOR TO SUCH PROPOSED ACCESS.

**2. No Warranty.** THIS LICENSE IS GRANTED WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED. The License is subject to any and all existing leases, rights-of-way, easements and encumbrances affecting the Premises. LICENSEE acknowledges and agrees that, as of the date hereof, the surface of the Premises is in good order and condition of repair. LICENSEE shall enter upon and occupy the Premises at its own risk, and LICENSOR shall not be liable to LICENSEE, LICENSEE's employees, officers, directors, agents, representatives, invitees, or contractors for any loss, damage or injury to person or property caused by any act, omission or neglect by LICENSOR, LICENSEE or their respective members, employees, officers, directors, agents, representatives, invitees, licensees or contractors, or any of their respective successors or assigns, or by reason of any defect in the Premises, whether apparent or latent.

**3. Term.** The term of this Agreement (the "Term") shall commence upon the date hereof and shall terminate upon the earlier of (a) the date upon which either LICENSOR or LICENSEE validly exercises its right to terminate the \_\_\_\_\_ dated \_\_\_\_\_, 201\_ (the "Donation Agreement"), by and between LICENSOR and LICENSEE, pursuant to and in accordance with the terms thereof, or (b) upon the closing of the donation and conveyance of the Premises from LICENSOR to LICENSEE pursuant to the Donation Agreement. If either party exercises its right to terminate the Donation Agreement as referenced in subpart (a) of this Section, LICENSEE shall, at its sole cost and expense, remove from the Premises any and all temporary installations, temporary facilities, trash, waste, garbage, equipment, property of LICENSEE, its employees, officers, directors, agents, representatives, invitees or contractors and any and all other items placed or temporarily installed thereon by or on behalf of LICENSEE, and shall otherwise restore the Premises substantially to its original condition, failing which LICENSOR may do the same at LICENSEE'S sole cost and expense and for which LICENSEE shall reimburse LICENSOR within ten (10) days of LICENSOR'S written demand therefor.

**4. Purpose and Permitted Activities.** The License shall be for the sole purpose of permitting LICENSEE, its employees, agents, contractors, subcontractors and consultants to conduct certain site assessment site work (the "Work") at the Premises related to the proposed donation and conveyance thereof in the manner described in the work plan attached hereto as Exhibit B and incorporated herein (the "Plan"), and for no other purpose whatsoever. LICENSEE shall comply with such requirements that LICENSOR may impose from time to time. LICENSEE shall not make, or permit to be made, any structure, improvements or alterations upon or to the Premises. LICENSEE shall exercise due care and caution in protecting the Premises against any and all damage that may result, directly or indirectly, from the performance of the Work, and shall not commit waste or create or permit a nuisance in, upon or about the Premises. LICENSEE'S Work shall not present or cause a material adverse impact upon (i) LICENSOR'S

ongoing remediation, or any other activities of LICENSOR, at the Premises, or (ii) any existing encumbrances on the Property. LICENSEE shall maintain the Premises in its current condition throughout the Term and shall return same to LICENSOR in substantially the condition required pursuant to Section 3 above.

LICENSEE specifically agrees that it shall undertake all of the Work, and any and all testing to be performed in connection with the Work, at the Premises in accordance with the Plan. Any invasive testing or other work to be performed pursuant to the Plan shall be performed strictly in accordance with the Plan, and only by such approved agents or contractors as identified in the Plan. LICENSOR shall have the right to require that a representative of LICENSOR accompany LICENSEE and its agents, employees and/or contractors during the entry upon, or the performance of any Work at, the Premises, invasive or otherwise. LICENSEE shall provide LICENSOR with copies of any and all reports, tests, inspections and studies completed as part of the Work within five (5) days of LICENSEE'S receipt thereof. In no event shall this Agreement be construed (i) as any sort of representation, warranty or guaranty by LICENSOR that the work under the Plan complies with any or all applicable laws and regulations, including, but not limited to, any applicable Resource Conservation and Recovery Act permit, or (ii) as a limit, in any way, of LICENSEE'S obligations herein, including to provide insurance.

5. Laws, Regulations and Permits. In addition to the terms and conditions set forth herein, LICENSEE'S use of the Premises shall at all times comply with all applicable federal, state and local laws and regulations. Prior to the commencement of the Work, LICENSEE, at its sole cost and expense, shall secure in LICENSEE'S name all necessary permits, licenses and approvals (including, but not limited to, those related to health, safety or environmental matters), and letters or certificates of approval or authorization (collectively, the "Authorizations") for the activities it contemplates performing at the Premises pursuant to and in accordance with the Plan. LICENSEE expressly warrants and represents that it shall conform and limit its activities to the scope of such Authorizations and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority having jurisdiction over the Premises or LICENSEE'S use thereof. LICENSEE assumes all liability for its failure to so comply or to secure such necessary Authorizations, including, but not limited to, any violation, penalty, levy, fine, assessments or charge, however denominated, and any and all costs of compliance with any citation, summons, order or violation notice(s), including any such citation, order, etc. issued after the expiration or any earlier termination of this Agreement for any such failure.

6. Liabilities and Insurance.

(a) LICENSEE hereby assumes, and shall be responsible for, any and all claims, costs, damages, expenses and liabilities, whether for injuries to person, damage to property or otherwise, arising out of, in whole or in part, any acts or omissions of LICENSEE, its partners, contractors, agents, employees, invitees, guests or patrons, or by reason of any breach or default by LICENSEE hereunder relating to the Premises, including any claim or liability arising from LICENSEE'S failure to comply with the Plan, except to the extent that LICENSOR has by its sole negligence or willful misconduct caused such claims, costs, damages, expenses and liabilities.

(b) Without limiting the foregoing, LICENSEE hereby assumes, and shall be responsible for, any and all claims, costs and expenses as a consequence of any incident resulting in the pollution of air, water, land and/or groundwater arising from or in connection with this Agreement, or from LICENSEE'S or LICENSEE'S employees, agents, contractors, invitees, guests and patrons, use or occupation of, or acts or omissions relating to, the Premises, including any claim or liability arising under federal, state or local law dealing with the pollution of air, water, land and/or groundwater or the remedy thereof, from LICENSEE'S failure to secure and comply with any Authorizations required hereunder, from LICENSEE'S failure to comply with the approved Plan, from LICENSEE'S failure to secure the approval of Designee, or from LICENSEE'S exacerbation of any adverse environmental condition existing on or at the Premises prior to the date of this Agreement (a "Pre-Existing Environmental Condition"); provided however, LICENSOR assumes, and shall be responsible for, any and all claims, costs and expenses arising from or in connection with any Pre-Existing Environmental Condition.

(c) Further, LICENSEE shall be responsible for LICENSEE'S exacerbation of conditions existing upon or under the Premises prior to the date of this Agreement, including, but not limited to, the exacerbation of any Pre-Existing Environmental Conditions, provided however, LICENSOR shall be responsible for any Pre-Existing Environmental Conditions.

(d) The liability obligations under this Agreement shall survive the expiration or earlier termination hereof, or the closing of the donation and conveyance of the Premises as contemplated under the Donation Agreement; provided, however, that LICENSEE shall not be obligated for liabilities to the extent caused by LICENSOR's acts or omissions, including, but not limited to, its sole negligence or willful misconduct.

(e) LICENSEE shall procure and maintain insurance coverage, and/or cause its contractors or agents to procure and maintain insurance coverage on its behalf, in the manner and amounts described on the form of insurance certificate attached hereto as Exhibit C throughout the Term. LICENSEE, its contractors and agents shall have their respective insurance policies issued in such form as to waive any right of subrogation which might otherwise exist, and, upon request by LICENSOR, LICENSEE shall provide LICENSOR with reasonable evidence of the insurance carrier's consent to such waiver of subrogation; further, such insurance policies shall name LICENSOR as an additional insured (except for worker's compensation coverage). Prior to the entry of any of LICENSEE's contractors or agents upon the Premises, LICENSEE shall deliver to LICENSOR the certificates of general liability and other insurance required hereunder; provided, further, that no party shall be permitted on the Premises without insurance coverage under which such party is a policy holder.

(f) Subject to LICENSOR's indemnification of the Licensee Indemnified Parties as described in Section 18 of this Agreement, LICENSEE, and its successors and assigns, hereby release, waive and covenant not to sue LICENSOR with respect to any and all claims, rights, remedies or causes of action that any of LICENSEE, its successors, assigns, agents, officers, employees, elected officials and trustees (the "Licensee Parties"), or their successors or assigns, may have now or in the future, or that may arise against any of the Licensee Parties or LICENSOR, its shareholders and its and their respective affiliates, subsidiaries and parent companies, its and their respective partners, members, officers, directors, shareholders, employees, agents and successors and assigns of each of the foregoing (individually and collectively, the "Licensor Parties"): (i) for damage to the Premises, damage to or loss of personal property or equipment on the Premises, and loss of business or revenues that are covered by the LICENSEE's property insurance or that would have been covered by the required insurance if LICENSEE fails to maintain the insurance coverage required by this Agreement; and (ii) arising out of LICENSEE's, or its consultants', contractors', agents', officers', employees', elected officials' and trustees' failure to comply with any Authorizations, the requirements of any applicable laws, including, but not limited to, any Environmental Laws, relating to the Premises, or the terms of this Agreement. If LICENSEE incurs any damage or loss, LICENSEE shall be responsible for any deductible or self-insured retention under its property insurance. LICENSEE shall notify the issuing property insurance company of the release set forth in this Section 6(f) and shall have the property insurance policy or policies endorsed, if necessary, to prevent invalidation of coverage. **TO THE EXTENT PERMITTED BY LAW, THE RELEASE IN THIS SECTION 6(f) SHALL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LICENSOR BUT SHALL NOT APPLY TO THE EXTENT THAT THE DAMAGE OR LOSS IS CAUSED BY THE SOLE AND GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR.**

As used in this Agreement, the term "Environmental Law" shall mean any federal, state or local law, ordinance, regulation, rule or common law imposing liability or standards relating to Hazardous Materials. The term "Hazardous Materials" shall mean any substance, material or waste that, because of the toxicity, explosiveness, ignitability, corrosiveness or reactivity thereof, or because of other characteristics that pose a potential for injury to human health or the environment, is regulated by any federal, state, or local governmental authority having jurisdiction over the Premises, including, without limitation, those substances, materials or wastes: (i) containing petroleum, petroleum fractions or petroleum distillates; (ii) defined as, or having the characteristics of, a "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste", or "toxic substance" under any provision of any statute, regulation or ordinance of the United States, the State of Illinois or the County of Madison; (iii) defined as, or having the characteristics of, "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; or (iv) defined as, or having the characteristics of, a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, et seq.

The provisions of this Section 6 shall survive the expiration or early termination of this Agreement, or the closing of the donation and conveyance of the Premises as contemplated under the Donation Agreement.

7. Lien. LICENSEE shall not create or permit to be created any lien, encumbrance or charge upon the Premises by reason of work, labor, services or materials supplied or claimed to have been supplied to LICENSEE, or anyone holding by, through or under LICENSEE, and LICENSEE is specifically denied the right, authority or power to create a lien upon the Premises or any title, interest or portion thereof under the mechanic's lien laws of the State of Illinois or otherwise. If any such lien is filed, LICENSEE shall, within fifteen (15) days after the filing thereof, cause such lien to be released of record by payment, bond or otherwise, and LICENSEE shall provide LICENSOR with proof that the lien has been so discharged. In the event of LICENSEE'S failure to release of record any such lien within said period of time, LICENSOR may do so by any means LICENSOR deems appropriate, and LICENSEE shall pay, upon ten days' prior written demand, the amount so paid by LICENSOR in connection with the discharge of said lien, as set forth herein. Within ten (10) days of the date of entry onto the Premises by any agent or contractor, LICENSEE shall submit to LICENSOR executed final lien waivers for each of the agents and contractors identified in the Plan for the full amount of each contract for the work to be performed thereunder by such agents and contractors.

8. Costs of Work. LICENSEE shall perform the Work or cause the Work to be performed at its sole cost and expense. All requests for payment by any contractor, subcontractor or third party in connection with the performance of the Work shall be submitted to LICENSEE and shall be the sole and exclusive responsibility of LICENSEE. LICENSEE hereby releases LICENSOR from any and all existing or future claims in connection therewith.

9. Claim of Title. LICENSEE shall not at any time own or claim any right, title or interest in or to the Premises, and LICENSEE acknowledges that the exercise of the License for any length of time does not give rise to any right, title or interest in or to the Premises (including, without limitation, an easement, lease or right of possession), other than the License herein created.

10. Conditions to Begin Work. LICENSEE shall not begin, or cause to be begun, the Work until such time as LICENSEE has completed the requirements in Paragraphs 4, 5 and 6(e) hereof and has provided LICENSOR with written evidence of the same, as applicable.

11. Waiver. No waiver by either party of any breach of any covenant, condition or agreement herein contained shall operate as a permanent waiver of such covenant, condition or agreement itself, or of any subsequent breach thereof or of any remedy available hereunder or at law or equity.

12. Notice. Notices hereunder shall be sent by U.S. Registered or Certified Mail, postage prepaid, return receipt requested, or by a nationally recognized overnight air courier service that provides receipts, and shall be addressed to LICENSOR and LICENSEE as follows:

If to LICENSOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to LICENSEE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Law. This Agreement shall be governed by the laws of the State of \_\_\_\_\_ and LICENSEE and LICENSOR hereby consent to the exclusive jurisdiction of the courts of record of the State of Illinois or any federal court located in the State of \_\_\_\_\_, and to service by registered mail, return receipt requested.

14. Authority. Each party hereto represents and warrants to the other that it has full power and authority to enter into this Agreement, that this Agreement has been duly executed on behalf of such party and that this Agreement constitutes the valid and binding obligations of such party.

15. Confidentiality. LICENSEE agrees to treat all Information (as defined in Exhibit D attached hereto and incorporated herein) in a confidential manner in accordance with the provisions contained in Exhibit D. The provisions of this Section 15 and Exhibit D shall survive the expiration or early termination of this Agreement or the closing of the donation and conveyance of the Premises as contemplated under the Donation Agreement.

16. Complete Agreement. This Agreement represents the entire agreement between LICENSOR and LICENSEE with respect to LICENSEE'S right of entry onto the Premises, the Work and with respect to the Premises. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties hereto. No change or addition shall be made to this Agreement except by a written agreement executed by LICENSOR and LICENSEE, including, but not limited to, any donation agreement entered into by LICENSOR and LICENSEE.

17. Counterparts. To facilitate execution of this Agreement, this Agreement may be executed in multiple counterparts, each of which, when assembled to include an original signature for each party contemplated to sign this Agreement, will constitute a complete and fully executed original. All such fully executed original counterparts will collectively constitute a single agreement. Each counterpart may be delivered by facsimile or pdf transmission.

18. Indemnity. To the extent not expressly prohibited by law, LICENSEE hereby agrees to indemnify, defend (with counsel chosen by LICENSEE and reasonably acceptable to LICENSOR) and hold harmless the Licensor Parties from and against any and all debts, liens, losses, liabilities, claims, interest, demands, administrative orders and notices, personal injuries, injuries, causes of actions, penalties, fines, damages, costs (including, without limitation, investigation, response and/or remedial costs) and expenses (including, without limitation, reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs, and all other out-of-pocket expenses) (collectively, the "Claims") which Licensor Parties may incur or pay out caused in whole or in part by (a) any acts or omissions of LICENSEE, its guests, patrons, employees, agents, consultants, contractors or invitees on or related to the Premises from and after the date of this Agreement, or (b) by reason of any breach or default by LICENSEE hereunder. Without limiting the foregoing, to the fullest extent permitted by law, LICENSEE agrees to defend, indemnify and hold the Licensor Parties harmless from any and all Claims as a consequence of any incident occurring following the date of this Agreement which results in the contamination or pollution of air, water and/or land on the Premises or the groundwater under the Premises, or the exacerbation of any Pre-Existing Environmental Condition, arising from or in connection with any acts or omissions of LICENSEE or LICENSEE's employees, agents, contractors, invitees, guests, patrons or consultants on or related to the Premises from and after the date of this Agreement, including any Claim arising under any Environmental Law. The foregoing indemnification shall not be limited by the amount of any insurance carried by or available to LICENSEE.

Notwithstanding any other provisions of this Agreement, LICENSOR hereby agrees to defend, indemnify and hold the LICENSEE, its successors, assigns, agents, officers, employees, elected officials and trustees (the "Licensee Indemnified Parties") harmless from and against any and all third-party Claims which the Licensee Indemnified Parties may incur or pay out caused in whole or in part by (a) any Pre-Existing Environmental Condition, including any Claim resulting from a Pre-Existing Environmental Condition arising under any Environmental Law (except any such Claims that arise out of any Licensee Indemnified Party's exacerbation of any Pre-Existing Environmental Condition), or (b) the actions of LICENSOR, or of LICENSOR's guests, patrons, employees, agents, consultants, contractors or invitees, in the exercise of its continuing right of access to the Premises during the term of this Agreement, subject to the LICENSEE's waiver and release of its own Claims as set forth in Section 6(f) of this Agreement.

The provisions of this Section 18 shall survive the expiration or early termination of this Agreement, or the closing of the donation and conveyance of the Premises as contemplated under the Donation Agreement. .

19. No Recording. Neither party shall record this Agreement with any governmental or other public keeper of records.

20. Severability. If any provision of this Agreement or the application thereof to any person or circumstance is or shall be deemed illegal, invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect and this Agreement shall be interpreted as if such legal, invalid or unenforceable provision did not exist herein.

21. Conflicts. If the donation and conveyance of the Premises as contemplated under the Donation Agreement closes, then to the extent that the terms of the Donation Agreement conflict with the terms of this Agreement as they relate to the division of liabilities among the parties, the terms of the Donation Agreement shall govern.

[Signature page follows]

**IN WITNESS WHEREOF**, the parties hereto have duly signed these presents as of the day and year first above written.

**LICENSOR:**

\_\_\_\_\_

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

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

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

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

**LICENSEE:**

\_\_\_\_\_

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

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

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

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

EXHIBIT A

DEPICTION OF THE PREMISES

**[TO BE INSERTED]**

EXHIBIT B

WORK PLAN

**[TO BE INSERTED]**

EXHIBIT C

INSURANCE

**[TO BE INSERTED]**

EXHIBIT D

## CONFIDENTIALITY PROVISIONS

1. “Information” shall be defined as the following: (1) proprietary and non-public information received or acquired with respect to the Premises through documents, observations, inspections of facilities, assets or properties or discussions with employees and agents of LICENSOR, regardless of whether such information is obtained from LICENSOR or from LICENSEE’s own due diligence investigations and which information shall include, but is not limited to, any information acquired through discussions with employees or agents of LICENSOR and any information acquired from any parent, subsidiary or affiliated company of LICENSOR; and (2) the existence and terms of this Agreement and the Donation Agreement, and the fact and substance of discussions and correspondence between the parties concerning transactions contemplated by this Agreement and the Donation Agreement (the “Subject Matter”).

As used herein, the term "affiliated company" shall include LICENSOR’S ultimate parent company and any company controlled directly or indirectly by such ultimate parent company or by LICENSOR.

2. With respect to Information disclosed under Section 15 of the Agreement and this Exhibit D, LICENSEE, its officers and employees and their respective agents and consultants shall:

- a. hold the Information in confidence, exercising a degree of care not less than the care used by LICENSEE to protect its own proprietary or confidential information that it does not wish to disclose;
- b. restrict disclosure of the Information solely to those officers, employees, agents and consultants with a need to know and not disclose it to any other person;
- c. advise those persons to whom the Information is disclosed of their obligations with respect to the Information; and
- d. use the Information only in connection with continuing discussions by the parties concerning the Subject Matter, except as may otherwise be mutually agreed upon by both parties in writing.

3. The Information shall be deemed the property of LICENSOR and, upon request, LICENSEE shall return all Information received in tangible form to LICENSOR or will destroy all such Information at LICENSOR’S direction. If LICENSEE loses or makes an unauthorized disclosure of Information it has received, it shall notify LICENSOR immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed Information.

4. LICENSEE shall have no obligation to keep confidential or to preserve the proprietary nature of any Information which:

- a. was previously known to or developed by LICENSEE independent of any Information furnished herein;
- b. is or becomes generally available to the public through no wrongful act of LICENSEE;
- c. is developed by or on behalf of LICENSEE independent of any Information furnished under this Agreement; or
- d. is disclosed pursuant to law or the requirement or request of a governmental agency or court of competent jurisdiction and reasonable notice is given by LICENSEE to LICENSOR of any such requirement or request to permit LICENSOR to seek an appropriate protective order or exemption from such requirement or request.

5. The parties acknowledge that in the event of an unauthorized disclosure, the damages incurred to LICENSOR due to the disclosure of any Information may be difficult if not impossible to ascertain, and that

LICENSOR may seek injunctive relief as well as monetary damages against LICENSEE in the event LICENSEE breaches this Agreement. LICENSEE shall be liable to LICENSOR for any use or disclosure of Information in violation of this Agreement by LICENSEE or by any of LICENSEE's officers and employees and their respective agents and consultants.

6. LICENSOR makes no warranty, express or implied, with respect to the accuracy or completeness of the Information.

7. Without limiting the generality of the foregoing, LICENSEE shall use reasonable efforts to prevent its respective agents, contractors, licensees, consultants and representatives from making any disclosures in violation of Section 15 of the Agreement and Exhibit D.

**SCHEDULE 11****TEMPORARY ACCESS AGREEMENT**

**THIS TEMPORARY ACCESS AGREEMENT** (this "Agreement"), is made this \_\_\_\_ day of \_\_\_\_\_, 201\_ by and between \_\_\_\_\_, hereinafter referred to as "Licensor", and \_\_\_\_\_, hereinafter referred to as "Licensee". Licensor and Licensee intend to enter into a purchase and sale agreement (the "Purchase Agreement") pursuant to which Licensor shall sell to Licensee and Licensee shall purchase from Licensor that certain property (the "Property") legally described and depicted on Exhibit A attached hereto and made a part hereof. In consideration of Ten Dollars (\$10.00) in hand paid, the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**1. LICENSE AND PROPERTY. LICENSOR GRANTS UNTO LICENSEE A NON-EXCLUSIVE LICENSE ("LICENSE") TO TEMPORARILY ENTER UPON THE PROPERTY FOR THE PURPOSES AND ON THE TERMS AND CONDITIONS SET FORTH HEREIN. LICENSEE MAY NOT ASSIGN THIS LICENSE NOR GRANT ANY RIGHTS HEREUNDER WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF LICENSOR.**

**2. No Warranty. THIS LICENSE IS MADE WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED.** The License is subject to any and all existing easements and encumbrances affecting the Property. Licensee acknowledges and agrees that, as of the date hereof, the surface of the Property is in good order and condition of repair. Licensee shall enter upon and occupy the Property at its own risk, and Licensor shall not be liable to Licensee, Licensee's employees, officers, directors, agents, representatives, invitees, licensees or contractors for any damage or injury to person or property caused by any act, omission or neglect by Licensor, Licensee, or their respective employees, officers, directors, agents, representatives, invitees, licensees or contractors, or any of their respective successors or assigns, or by reason of any defect in the Property, whether apparent or latent.

**3. Term.** The term of this License (the "Term") shall commence on the date hereof and shall terminate on the earlier of (a) the date upon which Licensee notifies Licensor in writing that Licensee does not intend to proceed with the purchase of the Property, (b) the date upon which Licensor and Licensee enter into the Purchase Agreement, at which time the terms and conditions of such Purchase Agreement shall supersede the terms and conditions set forth herein, except to the extent of any indemnities and warranties set forth herein which shall survive the expiration or earlier termination hereof, and (c) \_\_\_\_\_, 201\_. At the expiration or earlier termination of this License (unless Licensor and Licensee shall have entered into the Purchase Agreement), at Licensor's option, Licensee shall, at its sole cost and expense, remove from the Property any and all installations, temporary facilities, trash, waste, garbage, equipment and any and all other items placed or installed thereon by or on behalf of Licensee, and shall otherwise restore the Property to its original condition, failing which Licensor may do same at Licensee's sole cost and expense and for which Licensee shall reimburse Licensor within ten (10) calendar days of Licensor's written demand therefor.

**4. Purpose and Permitted Activities.** This License shall be for the sole purpose of allowing Licensee to inspect the Property. Licensee shall comply with such reasonable requirements that Licensor may impose from time to time. Except as expressly set forth herein, Licensee shall not make, or permit to be made, any structure, improvements or alterations upon or to the Property without the prior written consent of Licensor. Licensee shall not commit waste or create or permit a nuisance in, upon or about the Property.

**5. Laws, Regulations and Permits.** In addition to the terms and conditions set forth herein, Licensee's use of the Property is expressly subject to all applicable federal, state and local laws and regulations. Licensee, at its sole cost and expense, shall secure all necessary permits, licenses and approvals (including but not limited to those related to health, safety or environmental matters), and letters or certificates of approval or authorization (collectively, the "Authorizations") for the activities it contemplates performing at the Property. Licensee expressly warrants and represents that it shall conform and limit its activities to the scope of such Authorizations, and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority having jurisdiction over the Property or Licensee's use thereof. Licensee assumes all liability for its failure to so comply or to secure such necessary Authorizations, and shall defend, indemnify and hold Licensor, its affiliates, subsidiaries, parent companies, partners, officers, directors and employees harmless from any violation, penalty, levy, fine, assessments

or charge, however denominated, and any and all costs of defense of or compliance with any citation, summons, order or violation notice(s), including any such citation, order, etc. issued after the expiration or any earlier termination of this License for any such failure.

6. Indemnification and Insurance.

(a) Licensee shall save, indemnify and hold Licensor, its affiliates, subsidiaries, parent companies, partners, officers, directors and employees harmless from and against any and all actual costs, damages, expenses and liabilities, including but not limited to reasonable attorneys' fees, on a time and charges basis, which Licensor may incur or pay, whether for injuries to person, damage to property or otherwise, caused in whole or in part by any acts or omissions of Licensee, its partners, contractors, agents, employees, invitees, guests or patrons or by reason of any breach or default by Licensee hereunder.

(b) Without limiting the foregoing, Licensee agrees to save, indemnify and hold Licensor, its affiliates, subsidiaries, parent companies, partners, officers, directors and employees harmless from any and all claims, costs and expenses (including reasonable attorneys' fees on a time and charges basis) as a consequence of any incident resulting in the pollution of air, water, land and/or ground water arising from or in connection with this License or Licensee's or Licensee's employees, agents, contractors, invitees, guests and patrons, use or occupation of, or acts or omissions relating to, the Property, including any claim or liability arising under federal, state or local law dealing with the pollution of air, water, land and/or ground water or the remedy thereof from Licensee's failure to secure and comply with any Authorizations required hereunder.

(c) Further, Licensee shall save, indemnify and hold Licensor harmless from Licensee's exacerbation of conditions existing upon or under the Property.

(d) The indemnification obligations under this Agreement shall survive the expiration or earlier termination hereof.

(e) Prior to entering upon the Property, Licensee shall deliver to Licensor certificates of general liability insurance from both Licensee and each and every agent and contractor retained by Licensee to enter upon or perform testing at the Property, in form and substance and written by companies authorized to transact business in the State of Indiana and otherwise acceptable to Licensor. Such insurance coverage shall: (i) be primary and any insurance maintained by Licensor shall be excess and noncontributory, and (ii) include contractual liability coverage with respect to Licensee's indemnity obligations set forth in this Agreement (it being understood, however, that the availability of such insurance shall not serve to limit or define the scope of Licensee's indemnity obligations hereunder in any manner whatsoever). Licensee shall have its insurance policies issued in such form as to waive any right of subrogation which might otherwise exist, and upon request by Licensor, Licensee shall provide Licensor with reasonable evidence of its insurance carrier's consent to such waiver of subrogation.

(f) Notwithstanding anything contained herein to the contrary, the indemnified party hereunder, as applicable, shall have the right, which right shall not be unreasonably withheld, conditioned or delayed, to approve counsel designated or appointed by the indemnifying party hereunder in connection with any matter arising pursuant to this Section 6 or elsewhere in this Agreement.

7. Waiver. No waiver by either party of any breach of any covenant, condition or agreement herein contained shall operate as a permanent waiver of such covenant, condition or agreement itself, or of any subsequent breach thereof.

8. Notice. Notices hereunder shall be sent by U.S. Registered or Certified Mail, postage prepaid, return receipt requested, or by a nationally recognized overnight air courier service that provides receipts, and shall be addressed to Licensor and Licensee as follows:

If to Licensor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Licensee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Claim of Title. Licensee shall not at any time own or claim any right, title or interest in or to the Property, nor shall the exercise of this License for any length of time give rise to any right, title or interest in or to the Property, other than the License herein created.

10. Law. This Agreement shall be governed by the laws of the State of Indiana, and Licensee and Licensor hereby consent to the exclusive jurisdiction of the courts of record of the State of Indiana or any federal court located in the State of Indiana, and to service by registered mail, return receipt requested.

11. Lien. Licensee is specifically denied the right, authority or power to create a lien upon the Property or any title, interest or portion thereof under any state mechanic's lien law or otherwise. If any such lien is filed, Licensee shall, within thirty (30) days after the filing thereof, cause such lien to be released of record by payment, bond or otherwise. In the event of Licensee's failure to release of record any such lien within said period of time, Licensor may do so by any means Licensor deems appropriate and Licensee shall pay, upon receipt of written demand, the amount so paid by Licensor in connection with the discharge of said lien, as set forth herein. Licensee shall save, indemnify and hold Licensor harmless from and against any and all legal costs and charges, including reasonable attorneys' fees on a time and charges basis, in any suit involving any such lien, the enforcement, discharge or removal thereof, or any encumbrance caused by the same, with respect to the Property or any part thereof.

12. Scope of Indemnification. All obligations of Licensee hereunder to release, defend, indemnify and hold Licensor harmless shall also extend to all officers, directors, agents and employees of Licensor, and the companies and other legal entities that control, are controlled by, are subsidiaries of, or are affiliated with, Licensor and respective officers, directors, agents and employees of such companies or entities. Said obligations shall survive the expiration or earlier termination of this Agreement.

13. Authority. Each party represents and warrants to the other that it has full power and authority to enter into this Agreement, that this Agreement has been duly executed on behalf of such party, and that this Agreement constitutes the valid and binding obligations of such party.

**THE REMAINDER OF THIS PAGE LEFT BLANK**

IN WITNESS WHEREOF, the parties hereto have duly signed these presents as of the day and year first above written.

**LICENSOR:**

\_\_\_\_\_

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

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

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

Date Signed: \_\_\_\_\_, 2012

**LICENSEE:**

\_\_\_\_\_

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

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

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

Date Signed: \_\_\_\_\_, 2012

**EXHIBIT A**

