



## CONFIDENTIALITY AGREEMENT

In connection with your consideration of the possible acquisition of **777 Gloucester Street, Brunswick, GA.** (the "Possible Transaction"), you have requested certain Confidential Information and Material (as defined below) from Newmark Phoenix Realty Group acting in their capacity as Broker for the owner of this property. Meaningful discussions will require the owner to disclose to you material proprietary information about its business, properties, systems and operations. As a condition to any such disclosure, the owner requires that you agree to treat such material confidentially and in accord with the terms set forth below. If you agree to be bound by these terms, please sign the enclosed copy of this Confidentiality Agreement ("Agreement") where indicated and return that copy to Newmark Phoenix Realty Group (NPRG) at your earliest convenience.

1. **Subject Matter.** "Confidential Information and Material" as used in this Agreement shall mean all non-public information disclosed to you (the "Investigating Party") relating to the owner, its subsidiaries and affiliates and their business and affairs, including, without limitation, tenant names, lease and tenant improvement terms, capital expenditures, market, real property, and financial information, operational and marketing information, the capability and nature of software assets and technology, reports and the manner of their interpretation and any record of any of the above, in any medium, regardless of by whom prepared. Any reports or other records prepared by the Investigating Party relating to Confidential Information and Materials are therefore also Confidential information and Material and are similarly restricted. Notwithstanding the above, Confidential Information and Material shall not include information which

- (i) is or becomes publicly known, or is or becomes known to the Investigating Party, in either case without breach of this Agreement or any other obligation of confidentiality or secrecy or
- (ii) was known to the Investigating Party at the time of disclosure by the owner. As between the parties hereto, Confidential Information and Material is the property of the owner (and such material, as reduced to tangible form, is the copyrighted property of the owner), and title thereto shall remain in the owner. No implied right, interest or license shall be deemed granted hereby or by the disclosure contemplated herein.

2. **Permitted Use.** The Confidential Information and Material shall be used by the Investigating Party solely and exclusively for the purpose of reviewing the Possible Transaction in order to determine whether to enter into a written contractual relationship with the owner (the "Permitted Purpose") and shall be utilized for no other purpose whatsoever, at any time, without the owner's prior written consent.

3. **Non-Disclosure.** Confidential Information and Material shall be kept in strict confidence by the Investigating Party and shall not be disclosed, in whole or in part, to anyone other than

- (i) officers, directors or full time employees of the Investigating Party having a need to know such information to serve the Permitted Purpose and
- (ii) agents of the Investigating Party who are bound by professional obligations of confidentiality, such as lawyers and accountants.

Without the prior written consent of the owner, the Investigating Party shall not disclose to any third party the fact that we are discussing the Possible Transaction or the subject matter, terms or conditions of this Non-Disclosure Agreement, or except with the owner's consent or pursuant to its request, the fact of disclosure by the owner to the Investigating Party of the Confidential Information and Material, regardless of whether an agreement is executed with the Investigating Party.

**4. Duty of Internal Notice.** To prevent unauthorized disclosure by persons coming into possession of Confidential Information and Material through the Investigating Party, the Investigating Party shall apprise all such persons to whom Confidential Information and Material may be disclosed in accordance with the first sentence of paragraph three of

- (i) the confidential and proprietary nature of such material,
- (ii) the limitations on use and disclosure contained herein and
- (iii) that the defined term "Confidential Information and Material" may include reports or other records of their own making.

**5. Disposition of Materials.** Promptly upon request by the owner at any time, or upon the earlier determination by the Investigating Party of its lack of interest in entering into a written contractual relationship with the owner (the "Inquiry Period"), the Investigating Party will return all Confidential Information and Material in its possession in tangible form, whether originated by the owner or the Investigating Party, to the owner without retaining copies, extracts or other reproductions thereof in whole or in part. At the end of the Inquiry Period, all reports or copies of Confidential Information and Material which may be stored on devices which are part of the Investigating Party's computers or are part of mass storage containing primarily other material, whether created for back-up or other purposes, shall be written over or otherwise expunged from such devices so they cannot be restored.

**6. Covenant Not to Solicit Tenants.** For a period of eighteen (18) months, the Investigating Party shall not, without the owner's prior written consent, solicit any current tenant involved in the Possible Transaction for the purpose of entering into a lease for real property with the Investigating Party or any of its affiliates.

**7. Equitable Relief.** The Investigating Party hereby acknowledges and agrees that in the event of any violation, or pending violation of this Agreement, the owner shall be authorized and entitled to obtain from any court of competent jurisdiction preliminary and permanent injunctive relief as well as an equitable accounting of all profits and benefits arising out of such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which the owner may be entitled hereunder.

**8. Law; Integration; Amendment.** This Agreement is made under, and shall be construed in accordance with, the laws of the State of Florida without reference to the conflicts of laws provision of any jurisdiction, and constitutes the entire understanding between parties with respect to non-disclosure of the Confidential Information and Material, superseding and merging all prior understandings between the parties with respect thereto. This Agreement may be modified only in writing, signed by a duly authorized representative of each party.

**9. Indemnity.** You hereby agree to indemnify and hold the owner, the owner's Representatives and their respective successors and assigns harmless from and against any and all liabilities, claims, causes of action, proceedings, demands, losses, filings, penalties, judgments, damages (including, without limitation, consequential damages), costs and expenses of every kind and nature (including, but not limited to, attorneys' fees) relating in any manner to, or arising out of, directly or indirectly, a breach of this Agreement by you or your representatives.

**10. Principal.** You acknowledge that you are a principal or authorized advisor and not an agent of or acting on behalf of any other party in connection with the purchase of the Property.

**11. Brokerage.** You hereby authorize \_\_\_\_\_ to represent you as your real estate advisor ("Real Estate Advisor") with respect to the Possible Transaction of the Property. Upon execution of this Agreement by you and your Real Estate Advisor, you are hereby authorized to provide the Confidential Information to your Real Estate Advisor subject to your Real Estate Advisor agreeing that his/her authorization to act in any capacity with respect to the Possible transaction is limited to you. Your Real Estate Advisor further agrees that he/she will not discuss or distribute the Confidential Information or excerpts regarding the Confidential Information to any other party, and will otherwise be bound by the terms hereof.

12. **Notices.** All notices, requests and other communications required pursuant to this Agreement shall be addressed to the owner's broker as indicated herein. Either party may, by notice to the other, change its notice address herein.

13. **Binding Effect.** This Agreement shall be binding upon the parties' respective successors and assigns, but the Investigating Party may not assign its rights to know or receive Confidential Information and Material. Assignment shall neither diminish the duties of the assignor nor give rise to a license in the assignor to disclose Confidential Information and Material to the assignee.

14. **Disclaimer.** Any information contained in material provided to the Investigating Party by NPRG or the owner has been gathered from sources deemed to be reliable. Investigating Party will be responsible to verify all information independently. The Possible Transaction is subject to withdrawal from the market, prior sale, errors or omissions, changes in price or terms, all without notice to Investigating Party.

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**THE OWNER**

**By: Newmark Phoenix Realty Group,  
Broker and Agent**

**Investigating Party:**

Name: Kirk Watson  
Title: Executive VP  
Address: 561 Ocean Blvd.  
St. Simons Island, GA 31522  
  
E-mail: kwatson@phoenixrealty.net  
Phone: 904.399.5222  
Fax: 904.399.0330

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
City: \_\_\_\_\_  
State, Zip: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

*If you have inserted the name of a Real Estate Advisor in paragraph 11 of this Agreement, your Real Estate Advisor must sign this Agreement, and agree to be bound by all of the terms, condition and provisions of this Agreement. However, Confidential Information and Material will only be sent to the Investigating Party.*

**Real Estate Advisor:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Phone: \_\_\_\_\_