

NEWMARK

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This "Confidentiality and Non-Disclosure Agreement" (the "NDA") is entered into on _____, 2021 (the "Effective Date"), by and between Newmark of Southern California, Inc., a California corporation doing business as Newmark, together with its affiliates and subsidiaries (collectively, "Newmark"), and _____, a _____ ("Recipient"), with reference to the following facts:

A. Newmark is the real estate broker for the owner of certain real property located at 126 East Haley Street and 417 Santa Barbara Street (the "Property" or the "Platform") and has received certain information about the Property and its owner ("Owner"), which Owner deems to be confidential.

B. In connection with Newmark's efforts to procure a purchaser of the Property, Newmark has been authorized by Owner to release that confidential information to Recipient, which is a potential purchaser of the Property.

C. Newmark is unable and unwilling to provide such Confidential Information unless Recipient agrees to maintain the confidentiality thereof, pursuant to this NDA.

NOW, THEREFORE, in consideration of the mutual promises contained herein, Newmark and Recipient (each, individually, a "Party" and, jointly, the "Parties") hereby agree as follows:

1. **CONFIDENTIAL INFORMATION**

A. **"Confidential Information" Defined.** As used in this NDA, Confidential Information includes, without the need to mark it as such, any of Client's non-public information, whether oral, written, visual or otherwise, disclosed by Newmark to Recipient, or to Recipient's directors, partners, officers, employees, agents or advisors, including attorneys, accountants, technical consultants, real estate broker, or investment bankers (collectively, the "Representatives") of Recipient. Recipient shall be responsible for disclosures of Confidential Information made by its Representatives in violation of this NDA. Confidential Information includes but is not limited to, without the need to mark it as such, any requests for proposals, requests for information, project plans, designs, drawings, analysis, research, price lists, product lists, processes, methods, ideas, auction information, "know how" and the like, strategies, forecasts, employee and vendor information, software (including all documentation, code and specifications), hardware and system designs, environmental information, architectures, structure and protocols.

B. **Treatment of Confidential Information.** Recipient must: (i) at all times maintain the confidentiality of the Confidential Information; (ii) use the Confidential Information only in connection with the evaluation of the potential purchase of the Property (the "Permitted Use"), (iii) restrict disclosure of the Confidential Information to those of its Representatives who have a need to know the Confidential Information for and in connection with the Permitted Use; (iv) advise its Representatives of the obligation not to disclose the Confidential Information and require each such Representative to acknowledge, in writing, his or her awareness of that obligation and agreement to honor the same; (v) copy the Confidential Information only as necessary for and in connection with the Permitted Use, and ensure that confidentiality is maintained in the copying process; and (vi) use, and require its Representatives to use, the same degree of care as is used with Recipient's own confidential information, which level of care shall in no event be less than reasonable care.

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C. **Exceptions to Confidential Treatment.** The restrictions on the use and disclosure of the Confidential Information set forth in Paragraph 1.B above do not apply to Confidential Information that: (i) was in possession of Recipient prior to disclosure by Newmark, without an obligation of confidentiality; (ii) is or becomes publicly available without breach of this NDA by Recipient; (iii) is independently developed by Recipient without the use of any Confidential Information; or (iv) is rightfully received by Recipient from a third party without an obligation of confidentiality to Newmark or to Client.

D. **Disclosure in Legal Proceeding.** If Recipient or any of its Representatives are required pursuant to legal process to disclose any Confidential Information, Recipient shall promptly notify Newmark to permit it to seek a protective order or take other appropriate action. Recipient shall cooperate in Newmark's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded the Confidential Information. If, in the absence of a protective order, Recipient or any of its Representatives is, in the written opinion of the counsel addressed to it, compelled as a matter of law to disclose the Confidential Information, Recipient may disclose to the party compelling disclosure only that part of the Confidential Information or the discussion as is required by law to be disclosed.

E. **Notice of Disclosure.** Recipient shall notify Newmark promptly upon the discovery of the loss, unauthorized disclosure or unauthorized use of the Confidential Information and shall indemnify Newmark and hold Newmark harmless for such loss, unauthorized disclosure or unauthorized use, including attorneys' fees.

2. **EFFECTIVE PERIOD.** Recipient's obligation to protect the confidentiality of the Confidential Information shall survive until two (2) years after the later of (i) the Effective Date; or (b) the expiration or termination of any contract that may result from the negotiations described in Recital C, above.

3. **DESTRUCTION/RETURN OF CONFIDENTIAL INFORMATION**

A. If Recipient elects not to enter into negotiations for the purchase of the Property, then within ten (10) business days after demand by Newmark, Recipient shall, at Newmark's option, either: (a) return the Confidential Information to Newmark, or (b) certify in writing to Newmark that the Confidential Information has been destroyed in such a manner that it cannot be retrieved.

B. If Recipient enters into negotiations for the purchase of the Property, and if such negotiations do not result in the creation of a contract between Owner and Recipient, then within ten (10) business days after either Party declares such negotiations to be concluded, Recipient shall, at Newmark's option, either: (a) return the Confidential Information to Newmark, or (b) certify in writing to Newmark that the Confidential Information has been destroyed in such a manner that it cannot be retrieved.

C. If the negotiations described in Paragraph 3.B above do result in the creation of a contract between Owner and Recipient, then within ten (10) business days after either Owner or Recipient declares such negotiations to be concluded, Recipient shall, at Newmark's option, either: (a) return the Confidential Information to Newmark, or (b) certify in writing to Newmark that the Confidential Information has been destroyed in such a manner that it cannot be retrieved.

D. Any Confidential Information that is not returned or destroyed, including without limitation any oral Confidential Information, shall remain subject to the confidentiality obligations set forth in this NDA.

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E. Recipient's obligations under this NDA shall survive any return or destruction of the Confidential Information.

4. **DISCLAIMER OF WARRANTIES.** No warranties of any kind are given with respect to the Confidential Information, except that Newmark warrants that it has the authority to make the disclosures contemplated under this NDA.

5. **DISCLAIMER OF LICENSE.** Recipient acknowledges and agrees that Newmark is not granting Recipient a license to use any patents, copyrights, trademarks or other proprietary rights or information contained in the Confidential Information, other than in connection with the Permitted Use.

6. **NO WAIVER.** No failure or delay by either Party in exercising any right under this NDA is a waiver of its rights, nor does any single or partial waiver of its rights preclude any other or further exercise of its rights or the exercise of any other right under this NDA.

7. **INJUNCTIVE RELIEF.** Recipient acknowledges and agrees that in the event of any breach of this NDA, Newmark would be irreparably and immediately harmed and could not be made whole by monetary damages alone. Accordingly, the Parties agree that in the event Recipient or any of its Representatives uses, discloses, or (in Newmark's sole opinion) any such person is likely to use or disclose any Confidential Information in breach of this NDA, Newmark shall be entitled to seek, in addition to any other remedy to which it maybe entitled in law or equity, equitable relief including temporary and permanent injunctive relief and specific performance without the requirement of having to post a bond or other security and shall be entitled to the recovery of its attorney's costs, fees and expenses as part of any such action. Newmark shall also be entitled to the recovery of any pecuniary gain realized by Recipient from the unauthorized use or disclosure of any Confidential Information.

8. **NOTICES.** Notices under this NDA shall be in writing, addressed as provided on the signature page hereto and deemed properly given (a) if hand delivered, on the day so delivered; (b) if sent by certified mail, postage prepaid, return receipt requested, three (3) business days after being placed in the U.S Mail; or (c) if by any reputable nationally recognized express courier service, on the next business day after delivery to such express courier. Notices shall be addressed as follows:

If to Newmark: Newmark
1875 Century Park East, Suite 1380
Los Angeles, California 90067
Attention: _____

with copies to:

Newmark
19700 Fairchild, Suite 300
Irvine, California 92612
Attention: Legal Department

If to Recipient: _____

Attention: _____

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9. **ENTIRE AGREEMENT; SEVERABILITY.** This NDA represents the entire understanding between the Parties with respect to the Confidential Information and supersedes all prior communications, agreements and understandings relating to the disclosure of Confidential Information. The provisions of this NDA may not be modified, amended or waived, except by a written instrument duly executed by both Parties. If any provision of this NDA is held invalid or unenforceable, in a final non-appealable order issued by a court of competent jurisdiction, the provision shall be deleted from this NDA and replaced by a valid and enforceable provision which so far as possible achieves the Parties' intent in agreeing to the original provision. The remaining provisions of this NDA will continue in full force and effect.

10. **GOVERNING LAW.** This NDA, its interpretation and any dispute arising out of or in connection with it (including disputes arising out of non-contractual obligations) shall be governed by the laws of the State of California.

11. **INDEMNIFICATION.** Recipient shall indemnify and hold Newmark harmless from, against, and in respect of any and all liabilities, damages, losses, deficiencies, costs, judgments, amounts paid in settlement, interest, penalties, assessments and out-of-pocket expenses (including attorneys' fees, including in connection with the defense of or any proceeding with respect to any claims, whether accrued, contingent or otherwise) incurred in connection with or arising out of any breach of this NDA by Recipient or any of its Representatives, and any action, proceeding or threatened third-party action in connection with any such breach.

12. **NO ASSIGNMENT.** This NDA may not be assigned by either Party without the prior written consent of the other Party. No permitted assignment will relieve Recipient of its obligations under this NDA with respect to Confidential Information disclosed to it prior to the assignment. Any assignment in violation of this Section 11 is void. This NDA is binding upon the Parties' respective permitted successors and assigns.

13. **EXECUTION.** This NDA may be executed in any number of separate counterparts, all of which, when taken together, shall constitute one and the same instrument, notwithstanding the fact that all Parties did not sign the same counterpart. Each of the Parties agrees that a signature transmitted to the other Parties by facsimile transmission shall be effective to bind the Party whose signature was transmitted.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have caused this NDA to be executed by their authorized representatives as of the Effective Date.

_____,
a _____

By: _____

Its: _____