

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (the “Agreement”) is dated as of October \_\_\_\_\_, 2019, by and between Toby P. Smalley and Tonya R. Swayne, as co-trustees under the Phyllis Y. Smalley Declaration of Trust dated January 4, 2005, as amended (the “Phyllis Y. Smalley Trust”), and William L. Smalley, trustee under the William L. Smalley Declaration of Trust dated January 4, 2005, as amended (the “William L. Smalley Trust”) (the Phyllis Y. Smalley Trust and the William L. Smalley Trust shall collectively be referred to as the “Seller”) and \_\_\_\_\_ (“Recipient”).

1. **Confidential Information, Representatives.** In connection with Recipient potentially purchasing certain real estate and other property from Seller (the “Transaction”), Seller may provide certain business information, including operations, assets, liabilities, business prospects, acquisitions, financial projections and financial condition and other confidential, proprietary and non-public information (the “Confidential Information”) to Recipient in order to assist Recipient in the evaluating the Transaction. As a condition to the Confidential Information being furnished to Recipient and its directors, officers, employees, agents, advisors and attorneys (collectively, “Representatives”), Recipient agrees to treat the Confidential Information in accordance with the provisions of this Agreement and to take or abstain from taking certain other actions hereinafter set forth.

2. **Excluded Information.** The Confidential Information shall not include information that (i) is or becomes publicly available other than as a result of acts by Recipient or its Representatives in breach of this Agreement, or (ii) is in Recipient’s possession prior to disclosure by Seller (other than as a result of prior disclosure to Recipient or its Representatives by or on behalf of Seller) or becomes available to Recipient or its Representatives, provided that the source of such information, insofar as is known to Recipient or any of its Representatives receiving such information after due inquiry, was not prohibited from transmitting such information to Recipient or its Representatives by a contractual, legal, fiduciary or other obligation, or (iv) is independently developed by Recipient or its Representatives without breach of their obligations hereunder.

3. **Non-Disclosure of Confidential Information.** Recipient and its Representatives shall use the Confidential Information solely for the purpose of the Transaction. Recipient shall keep the Confidential Information strictly confidential and shall not disclose, in whole or in part, or use, directly or indirectly, any of the Confidential Information in any other manner whatsoever; provided, however, that (i) Recipient may make any disclosure of information contained in the Confidential Information to which Seller gives its prior written consent, and (ii) any information contained in the Confidential Information may be disclosed only to Recipient’s Representatives who need to know such information for the purpose of the Transaction, who are informed by Recipient of the confidential nature of the Confidential Information and who agree to abide by the terms of this Agreement. Recipient agrees that it shall be responsible for any breach of this Agreement by any of its Representatives.

4. **Non-Disclosure of Existence of Negotiations.** Without the prior written consent of Seller, or except as may be required by law, neither Recipient nor any of its Representatives shall disclose to any person that discussions or negotiations are taking place between Seller and Recipient concerning the Transaction, including the status of such discussions or negotiations.

5. **Return of Confidential Information.** Promptly upon the written request of Seller, Recipient shall return or destroy all copies of the Confidential Information to Seller and will not retain any copies, extracts or other reproductions in whole or in part of such material, and all notes, studies, reports,

memoranda and other documents prepared by Recipient or its Representatives that contain or reflect the Confidential Information shall be destroyed (except for any copies which Recipient and its Representatives are required to retain pursuant to applicable law or regulation). Notwithstanding the return or destruction of the Confidential Information, Recipient and its Representatives will continue to be bound by their obligations of confidentiality and other obligations hereunder.

6. **Subpoena or Court Order.** In the event that Recipient or anyone to whom it discloses the Confidential Information receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena or other order issued by a court of competent jurisdiction or by another governmental agency, Recipient shall (i) to the extent permissible promptly notify Seller of the existence, terms and circumstances surrounding such a request, (ii) reasonably consult with Seller on the advisability of taking steps to resist or narrow such request, (iii) if disclosure of such Confidential Information is required, furnish only such portion of the Confidential Information as Recipient is advised by counsel is legally required to be disclosed, and (iv) reasonably cooperate with any action reasonably requested by Seller in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information that is required to be disclosed. Notwithstanding the foregoing, Recipient and its Representatives may disclose Confidential Information in connection with a request or examination of you or your Representatives by governmental bodies or self-regulatory authorities (including, without limitation, bank and securities examiners) with regulatory oversight over Recipient or its Representatives without complying with the disclosure requirements described above.

7. **Inside Trading.** Recipient hereby acknowledges that it is aware, and that it shall advise its Representatives who are informed as to the matters which are the subject of this Agreement, that securities laws, as applicable, may prohibit any person who has received material, non-public information regarding an issuer (or its subsidiaries or affiliates) in respect of the matters which are the subject of this Agreement from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

8. **Definitive Agreement.** Unless and until a definitive written agreement between Seller, the Recipient or any other person or entity with respect to the Transaction has been executed and delivered, neither Seller nor the Recipient shall be under any legal obligation of any kind whatsoever with respect to such an Transaction by virtue of this or any other written or oral expression by either of them or any person acting on their behalf, except, in the case of this Agreement, for the matters specifically agreed to herein.

9. **Representations and Warranties.** This Agreement will not constitute any representation, warranty or guarantee by Seller with respect to the accuracy or completeness of the Confidential Information and none of Recipient or any of its Representatives will be entitled to rely on the accuracy or completeness of the Confidential Information, or any of it. Seller will not have any liability for any errors or omissions in the Confidential Information or the use or the results of the use of the Confidential Information.

10. **Remedies.** Recipient acknowledges that in the event of any breach of this Agreement, Seller could not be made whole by monetary damages. Accordingly, Seller, in addition to any other remedy to which it may be entitled in law or in equity, shall be entitled to an injunction to prevent breaches of this Agreement, and to an order compelling specific performance of this Agreement. Recipient will be responsible for reimbursing any costs and expenses that Seller incurs enforcing its rights under this Agreement.

11. **Entire Agreement.** This Agreement represents the entire understanding and agreement of the parties hereto with respect to the matters contained herein, and may be modified or waived only by a separate writing executed by Seller and Recipient expressly so modifying or waiving this Agreement.

12. **No Waiver.** No failure or delay by Seller 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. If any provision of this Agreement is held to be invalid or unenforceable in whole in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

13. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Ohio, without regard to the laws of conflict of laws.

14. **No Assignment.** Neither Seller nor Recipient may assign any or all rights, powers, privileges and obligations under this Agreement without the other party's prior written consent. Subject to the limitations set forth in this Agreement, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

15. **Term.** This terms of this Agreement with respect to Confidential Information shall expire one (1) year from the date hereof.

16. **Captions.** The captions contained in this Agreement are for convenience only and shall not affect the construction or interpretation of any provisions of this Agreement.

17. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement.

18. **Excluded Parties.** Nothing in this Agreement shall be binding upon, or restrict the activities of, any of Recipient's portfolio companies, affiliates, investment professionals or affiliated investment funds that do not receive Confidential Information provided pursuant to this Agreement.

**IN WITNESS WHEREOF, THIS AGREEMENT** is executed and delivered effective as of the date first above written.

\_\_\_\_\_

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

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

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