



## CONFIDENTIALITY AGREEMENT

(Note: This Confidentiality Agreement is intended to be executed by a potential party to a transaction and/or their agent where they may be provided with information that should be treated as confidential.)

In connection with the  sale  lease of that certain property known as: 36 Broadway St - Windsor Hotel ("Property"), the undersigned ("Interested Party") and/or Interested Party's affiliates, employees, or agents signing below (collectively, the "Interested Party's Representatives") will be provided with certain information concerning the owner of the Property ("Owner") and the Property which is either non-public, confidential or proprietary in nature concerning the financial condition of the Owner and the Property. As a condition to being furnished such information, Interested Party and the Interested Party's Representatives agree with Owner, individually as follows:

1. (i) Interested Party and the Interested Party's Representatives agree to treat any information, written or oral (whether or not marked or otherwise designated to be confidential) concerning the Property or Owner (whether such information is prepared by or obtained from Owner or affiliated companies) which is furnished to Interested Party or the Interested Party's Representatives by or on behalf of Owner or reflects or is derived or generated from any such information furnished to Interested Party or the Interested Party's Representatives (herein collectively referred to as the "Confidential Information") in accordance with the provisions of this Confidentiality Agreement and to take or abstain from taking certain other actions herein set forth.

(ii) For the purposes hereof, Confidential Information shall include any and all information which is not public knowledge and which relates to the Property or is proprietary to Owner. All information which Interested Party or the Interested Party's Representatives has reason to believe is confidential or which is treated by Owner as confidential shall be presumed to be Confidential Information. Interested Party and the Interested Party's Representatives agree that any Confidential Information acquired by it is the property of Owner.

(iii) For the purposes of this Confidentiality Agreement, the term "Confidential Information" does not include information that:

(a) is now or hereafter becomes known to the public or in the public domain other than through Interested Party's or Interested Party's Representatives' fault or breach or as a result of a disclosure or other act by Interested Party or the Interested Party's Representatives; or

(b) was independently developed or acquired by Interested Party or the Interested Party's Representatives from a third party who rightfully obtained such Confidential Information and was not itself bound by a confidentiality agreement with or other obligation of secrecy to Owner.

2. Interested Party and the Interested Party's Representatives acknowledge and agree that except as specifically permitted by the terms hereof, Interested Party further agrees to not use, directly or indirectly, any such Confidential Information for it or any other person or entity's benefit.

3. Interested Party and the Interested Party's Representatives agree that:

(i) the Confidential Information is non-public, proprietary and confidential to Owner;

(ii) the Confidential Information shall be kept confidential by Interested Party and the Interested Party's Representatives and they shall use their best efforts to protect and safeguard the Confidential Information and to prevent the unauthorized, negligent or inadvertent use or dissemination thereof;

(iii) the Confidential Information shall be used for the purpose of assessing the above described transaction and the Property;

(iv) Interested Party and the Interested Party's Representatives will not, without the prior written approval of Owner, disclose the Confidential Information to any person or business entity except for attorneys, accountants, lenders and other professional advisors, in which case Interested Party and the Interested Party's Representatives shall inform such parties of this agreement and obtain such parties' agreement to treat the Confidential Information as confidential.

4. Without the prior written approval of the other party, neither Owner, the Interested Party nor the Interested Party's Representatives shall disclose to any person the fact that the Confidential Information has been made available to Interested Party or Interested Party's Representatives, that any discussion is taking place concerning the transaction which is the subject of this Confidentiality Agreement or any of the terms, conditions or other facts with respect to any such transaction, including the status thereof.



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5. Interested Party and the Interested Party's Representatives agree that, upon demand of Owner, Interested Party or the Interested Party's Representatives shall promptly return to Owner or destroy all written Confidential Information and any copies or reproductions thereof and any other written materials based thereon.

6. Interested Party and the Interested Party's Representatives shall promptly notify Owner in writing of any unauthorized, negligent or inadvertent use or disclosure of the Confidential Information of which Interested Party or the Interested Party's Representatives has knowledge.

7. Interested Party and Interested Party's Representatives understand that neither Owner nor any of its representatives have made or make any representation or warranty as to the accuracy or completeness of the Confidential Information.

8. This Confidentiality Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Confidentiality Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Confidentiality Agreement contains the entire agreement of the parties and supercedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged herein. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Confidentiality Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Confidentiality Agreement. No amendment or modification to this Confidentiality Agreement shall be effective unless it is in writing and executed by all parties hereto. No waiver of any breach of any obligation or promise contained herein shall be regarded as a waiver of any future breach of the same or any other obligation or promise. The invalidity of one or more provisions of this Confidentiality Agreement shall not affect the validity of any other provisions hereof and this Confidentiality Agreement shall be construed and enforced as if such invalid provisions were not included. If legal proceedings are instituted to enforce any provision of this Confidentiality Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney's fees and court costs incurred in connection with the proceeding.

9. This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

**NOTE:** A broker may not use a confidentiality agreement with a party to a transaction to avoid disclosure to other parties (or prospective parties) of material facts that must be disclosed under North Carolina Real Estate License Law or other laws.

Executed this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Interested Party:**

Individual: \_\_\_\_\_

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

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

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

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

E-mail: \_\_\_\_\_

**Business Entity:**

Name of Entity: \_\_\_\_\_

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

Name/Title: \_\_\_\_\_

**Interested Party's Representative:**

Individual: \_\_\_\_\_

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

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

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

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

E-mail: \_\_\_\_\_

**Business Entity:**

Name of Entity: \_\_\_\_\_

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

Name/Title: \_\_\_\_\_