

NON-EXCLUSIVE BUYER AGENCY AND CONFIDENTIALITY AGREEMENT

This agreement is made this _____ day of _____ by and between **Sirius Real Estate, LLC** (Hereinafter, collectively called "Agent") and _____ (Hereinafter called "Buyer") with respect to the following facts:

RECITALS

- A. Buyer desires to purchase or lease real property for use as golf course/driving range/development (hereinafter referred to as Property).
- B. Agent is a licensed real estate broker in the State of Florida and State of Texas and is in the business of representing prospective purchasers in locating real properties to purchase. Such properties are often not listed for sale or the sellers refuse to pay a commission upon a sale procured by Agent, therefore, Buyer agrees to protect Agent in payment of commissions for sales procured by him and in the use of information disclosed by Agent to Buyer, its employees or agents.
- C. Buyer (or its affiliates) is a sophisticated investor, and currently holds a substantial portfolio of real property or secured loans and is competent, qualified and interested in acquiring, the real property referenced herein.
- D. Buyer has requested that Agent provide to Buyer certain Confidential Information (as defined herein) related to the prospective acquisitions.
- E. Buyer agrees that all Confidential Information is confidential in accordance with this Agreement and if provided by seller of the Property (hereinafter referred to as "Seller") to be acquired, constitutes proprietary information. Buyer and Agent wish to enter into this Agreement to confirm that the Confidential Information will be treated as confidential in accordance with the terms of this Agreement, and to provide the parties hereto with certain rights and remedies and to protect the confidentiality of the Confidential Information.

AGREEMENTS

- 1. Buyer engages Agent on a non-exclusive basis to act as Buyer's Representative and to present to Buyer certain types of real property for possible purchase by Buyer. Those types of properties are golf courses/driving ranges or land for development.
- 2. As a Buyer's Agent, Agent is acting solely as the agent for the Buyer, and in this capacity:
 - (a) Is not acting as the agent or subagent of the Seller or the Listing Agent, unless otherwise disclosed to Buyer in writing;
 - (b) Is NOT acting as a dual agent for Seller and Buyer unless otherwise disclosed to Buyer in writing, and
 - (c) Owes fiduciary duties only to the Buyer [unless disclosed under (a) or (b) above], except to the degree mandated under applicable State real estate laws.

3. Agent agrees to:
 - (a) Provide to Buyer all information he has regarding the prospective property.
 - (b) At Buyer's request, act on the Buyer's behalf in any negotiations with seller with respect to the acquisition of the property.
 - (c) At Buyer's request, provide a personal evaluation of prospective property.
 - (d) Upon signing a contract for purchase, assist Buyer in conducting any due diligence investigation.

4. **Representations and Warranties of Buyer.**
 - A. Buyer has the ability to make its own assessments of the risk, benefit and value of the prospective acquisitions and that the Confidential Information is only being used to assist in making this independent assessment of the Property.
 - B. Buyer agrees that with respect to any property presented to Buyer by Agent, Buyer will not circumvent Agent in its contact with the owner or its representatives and will not negotiate directly with the owner or its representatives with the intent or the result of avoiding payment of the commission referred to herein.
 - C. Buyer agrees with Agent that to the extent any information is given to Buyer by Agent about real property that is within the contemplation of this Agreement, such information shall be deemed Confidential and Buyer will not share with any party other than its employees and agents such information, and as to those permitted parties, they shall be bound by this Agreement.

7. **Treatment of Confidential Information.**
 - A. Buyer agrees that this Agreement is designed to protect the legitimate business interest of Agent and seller of the Property and agrees (except to the extent otherwise provided in this Agreement):
 - 1) To not disclose the Confidential Information to any third party or entity other than Buyer's directors, partners, officers, employees, agents and representatives (including without limitation counsel, accountants, experts, consultants and financial advisors, collectively, "Representatives"), without first obtaining Agent's prior written consent.
 - 2) To only disclose Confidential Information to those of its Representatives and only to the extent necessary for Buyer to evaluate the Confidential Information with regard to Buyer's possible purchase of the Property.
 - 3) Prior to discussing any Confidential Information to any of its Representatives, that it shall direct the Representatives to comply with the terms of this Agreement;
 - 4) To not discuss the results of any studies, analysis, examination or investigations undertaken by Buyer in connection with the Property to any person or entity other than its Representatives without Agent's prior written consent. In addition, Buyer agrees not to disclose to any person or entity other than its Representatives the nature or terms of any agreement or letter of intent to purchase the Property, which Buyer and the Seller may enter into, unless and until Buyer acquires the Property.

- 5) To return to Agent all Confidential Information disclosed by Agent at the earliest of (i) termination of this agreement, (ii) sale of Property to another party, or (iii) completion of the Buyer's due diligence or (iv) upon written request of Agent or Seller. If the information is digital, then Buyer shall delete all copies and direct its Representatives to do the same.
- B. Notwithstanding the foregoing, information shall not be deemed Confidential Information and Buyer shall have no obligation with respect to any such information which
- 1) Is already known to Buyer, and such prior knowledge can be demonstrated through physical evidence that pre-dates this Agreement, or
 - 2) Is or becomes publicly known through publication or otherwise and through no wrongful act of Buyer, or
 - 3) Is received from a third party without similar restriction and without breach of this Agreement, or
 - 4) Is independently developed by Buyer, or
 - 5) Is furnished to a third party by Owner without a similar restriction on the third party's rights, or
 - 6) Is approved for release by written authorization of Owner (so long as such release complies with any requirements of the authorization), or
 - 7) Is disclosed pursuant to a lawfully imposed requirement of a governmental agency or disclosure is required by operation of law.
8. **In the event Agent presents a property to Buyer and Buyer purchases the property, Agent shall be deemed to have earned a commission equal to 5% of the purchase price on properties not listed with another broker and 3% of the purchase price on properties listed through another broker, unless otherwise mutually agreed in advance by the parties.** Agent shall initially look to the seller for payment of its commission. The above commission is independent of any commission due to Seller's agent. *If Agent has or acquires a written listing or commission agreement with the seller of the property, Agent will credit the amount of commission received from the seller to the amounts due hereunder.* Buyer shall ultimately be responsible to ensure payment to Agent the commission stated above. Buyer agrees that the agreed commission due Agent, meeting the requirements of this agreement, shall be paid in full in money or money equivalents at time of closing.
9. This Agreement shall not terminate for a period of twelve (12) months. At the end of the initial 12-month period, it shall automatically be extended thereafter for six-month periods until either party shall give the other written notice of termination at least two weeks prior to the end of such period. With respect to any property presented by Agent to Buyer during the term hereof, if the Buyer shall enter into a contract of purchase for such property within six months after the termination hereof and such contract results in a purchase of the property by Buyer, a commission shall be due hereunder.

10. To the extent Buyer, through other brokers or as the result of its own efforts, has been presented or has acquired information on properties of the type referred to above, those will be disclosed to Agent verbally and in writing before Agent discloses any information other than name and location of property. For those properties so disclosed by Buyer, it will be assumed, unless written notice is given by Buyer to the contrary, that the Buyer does not want to engage Agent to represent Buyer, in which case no commission shall be due to Agent. To the extent any properties of which Buyer has knowledge are not so disclosed, Agent shall be entitled to a commission hereunder on any property presented by Agent and purchased by Buyer within the term of this Agreement, even though Buyer had prior knowledge thereof.
11. For the purposes of this Agreement, presentation of a property to Buyer means disclosure by Agent to the Buyer of sufficient information about the property or its owner that Buyer could contact the owner directly and negotiate a purchase of the property. Presentation for the purposes hereof requires no certain formality or writing and occurs as the result of disclosures of information to Buyer.
12. For the purposes of this Agreement, a purchase of property shall refer to the acquisition of real property, or an interest therein, such as a lease or license, and any personal property or other rights associated with such real property, such as non-compete agreements, for which payment or other consideration is given in addition to the purchase of the real property.
13. Conduct of Due Diligence. Buyer agrees that in conducting its due diligence and investigation or analysis of the Property, Buyer will:
 - (a) not interfere or attempt to interfere with the operation or management of the Property; and
 - (b) not initiate contact (except for those contacts made in the ordinary course of business) with any person known to Buyer to be the current owner or any manager, lender, developer or tenant of the Property regarding the Property or the proposed transaction, without the prior consent of Agent, Seller or Seller's representatives.
14. Equitable Relief. Buyer agrees that it would be difficult or impossible to measure damage suffered by Agent or Seller resulting from any breach by Buyer of any of its undertakings and that monetary damages would not be an adequate remedy for such breach. Buyer therefore agrees that Agent and/or Seller of the Property shall be entitled, in addition to any other remedy available to Agent or Seller at law or in equity to (a) an injunction restraining any breach or threatened breach of any Buyer's obligations hereunder, (b) specific performance of Buyer's obligations hereunder, and (c) to such other relief as the court may find appropriate to restrain any such breach or threatened breach. Though not signatories hereto, Buyer agrees that this Agreement is for the benefit of each partner or owner of Buyer and that they are each an intended third party beneficiary hereto.
15. Authority of Agent. Buyer and Agent acknowledge that Agent does not have the authority to bind and make any representation or warranty on behalf of Seller without Seller's express written consent.

16. **General Provisions**

16.1 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefits of the parties hereto and their respective successors and assigns.

16.2 **Amendment.** No amendment or modification hereto, or waiver of the terms hereof, shall be valid unless in a written instrument executed by each of the parties hereto.

16.3 **Severability.** If any provision hereof, or the application thereof to any circumstances, is found unenforceable, invalid, or illegal, such provision shall be deemed deleted from this Agreement or not applicable to such circumstances, as the case may be, and the remainder of this Agreement shall not be affected or impaired thereby.

16.4 **Attorney's Fees.** If any action, including, without limitation, arbitration, should arise among the parties hereto to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be reimbursed for all reasonable expenses incurred in connection with such action, including reasonable attorney's fees.

16.5 **Integration.** This Agreement expresses the entire agreement and understanding of the parties hereto with respect to the matters set forth herein and supersedes all prior agreements, arrangements, and understandings among the parties hereto with respect to the matters set forth herein.

16.6 **Choice of Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Florida, without regard to conflicts of law principles.

IN WITNESS HEREOF, this Agreement has been executed as of the date set forth above.

"BUYER" _____ **Date** _____
signature

Name: _____

Company: _____

Title: _____

Buyer Information:

Address: _____

Buyer Agency and Confidentiality Agreement

Email: _____

Telephone: _____ Fax: _____

"AGENT" _____ Date _____
John S. Wait, Sirius Real Estate, LLC

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Midland, GA 31820

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