

CONFIDENTIALITY, NON-CIRCUMVENTION AND FEE AGREEMENT

THIS CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT (the “Agreement”) is dated as of _____, _____. The Agreement is between _____ (the “Wholesaler”) with an address of _____ and _____ the (“Buyer”) with an address of _____ who may also be referred to as “Party” and/or “Parties.”

WHEREAS, the Wholesaler is seeking real estate to wholesale to buyers, (the “Wholesale Properties” or the “Wholesale Property”); and

WHEREAS, the Parties contemplate that Wholesaler intends to inform Buyer about Wholesale Properties the Wholesaler has located and which the Wholesaler may or may not have under some form of contract (such as letter of intent, option or agreement of sale) for the purpose of Wholesaler selling his or her interest in the contract to Buyer for a fee;

WHEREAS, Wholesaler intends to disclose and furnish to Buyer information that should be treated as confidential and proprietary (to Wholesaler) about Wholesale Properties;

WHEREAS, Buyer agrees that Buyer will receive and use such information to make a decision regarding the purchase by Buyer as an assignment of Wholesaler’s interest and which Wholesaler has under some form of contract,;

WHEREAS, Buyer agrees not to use the information from Wholesaler with an intent to circumvent the Wholesaler by dealing with any person or entity other than Wholesaler, such as the owner of the Wholesale Property; and

FURTHERMORE, whenever this Agreement is referenced in any subsequent written agreement(s), the terms and conditions of this Agreement shall apply and shall apply to any exchange of confidential information.

NOW, THEREFORE, the Parties agree as follows:

1. **Fees.** Buyer agrees that unless another written agreement is executed between Wholesaler and Buyer, Buyer shall pay Wholesaler a fee equal to _____ (_____) upon consummation of the contract. Buyer shall reimburse Wholesaler for any deposits Wholesaler has placed on account of the purchase of the Wholesale Property and reimburse Wholesaler for any out-of-pocket expenses directly related to the Property. Wholesaler shall actually assign its interest in the agreement on the Wholesale Property at the time Buyer pays the wholesaling fee and all deposits and other out-of-pocket expenses.
2. **Non-Compete.** Buyer will not share or use any information about the Wholesale Property provided by Wholesaler where the Buyer is acting as a principal, consultant, executive, shareholder, partner, joint venturer, lender, board member, employee, independent contractor, agent or representative of any other buyer.
3. **Non-Circumvent.** The Parties hereby legally, wholly, and irrevocably bind themselves and shall not directly or indirectly interfere with, circumvent or attempt to circumvent, avoid, by-pass or obviate each others’ interest by any means for the purpose of changing, increasing or avoiding, directly or indirectly, the payment of fees charged by Wholesaler per Section 1 above. The Parties also agree not to circumvent or attempt to circumvent this Agreement.

4. Proof of Funds. Buyer agrees to provide a proof of funds upon request by Wholesaler. Wholesaler agrees to provide sufficient financial and descriptive information about the Wholesale Property to allow Buyer to determine its interest in the Wholesale Property, and Buyer will get first opportunity regarding the Wholesale Property.
5. Breach; Liquidated Damages. If one Party circumvents the other or breaches confidentiality and another person or entity benefits from the breach of confidentiality, then the breaching Party shall owe as **liquidated damages ____ percent (__%) of the purchase price** of the Wholesale Property to the damaged Party. The breaching Party is responsible for direct expenses incurred by the non-breaching party in pursuing.
6. Confidential and Proprietary Information. The Parties acknowledge that Wholesaler will obtain confidential information about Wholesale Properties, which may previously or subsequently be made public. This Agreement is made to protect such confidential and proprietary information, hereinafter referred to as “Confidential Information” and/or “Proprietary Information” until it is released to the public.
7. Confidential Information.
 - a. Buyer acknowledges that any non-public information or data regarding a Wholesale Property to be treated as Confidential Information.
 - b. Confidential and/or Proprietary Information shall not include information that was in a Party’s possession before receipt from the other Party, except to the extent that such information was unlawfully appropriated. If Buyer has previous information about the Wholesale Property, then when Wholesaler tells Buyer about the Wholesale Property Buyer will inform Wholesaler it possesses Confidential Information about the Wholesale Property, and will share it with Wholesaler if it is not Confidential Information. Buyer’s failure to so disclose within twenty-four (24) business hours of receipt of such information from Wholesaler will result in Buyer’s automatic acceptance of this Agreement.
8. Court-Ordered Disclosure. Each Party may make disclosures as required by law if the disclosing Party and notifies the other Party of the contemplated disclosure promptly upon receipt of such request for disclosure.
9. Non-Disclosure of Confidential Information and/or Proprietary Information. The Parties agree:
 - a. To take all reasonable precautions to protect Confidential Information and/or Proprietary;
 - b. Not to disclose, share or discuss any Confidential Information and/or Proprietary Information without prior consent of the disclosing Party;
9. No Warranty. A Party receiving Confidential Information and/or Proprietary is responsible for making its own evaluation of such Confidential Information and/or Proprietary Information.

10. Waiver, Severability, and Assignability. The failure of a Party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. If any part of this Agreement is determined to be illegal or unenforceable the remainder of this Agreement shall not be affected. No Party shall assign or transfer its rights under this Agreement without the written consent of the other Party.
11. Successors. This Agreement is binding upon the Parties, their employees, agents, associates, transferees and assignees or designees. This Agreement does not create a joint venture or partnership. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
12. No Third Party Beneficiaries. No other person or entity except for the Parties: (i) shall have any rights or obligations arising from this Agreement: (ii) shall be able to enforce the terms, conditions or provisions herein, or (iii) will be a third-party beneficiary of this Agreement.
13. Entire Agreement. The Parties hereby acknowledge that this Agreement constitutes the entire understanding between the Parties. There are no other representations, arrangements, understandings, or agreements.
14. Modification and Waiver. This Agreement may only be amended, modified and/or supplemented in writing signed by both Parties.
15. Applicable Law. This Agreement is governed by and construed under the laws of the State in where the Wholesale Property is located.
16. Counterparts; Electronic Transmissions. This Agreement may be executed in multiple copies and/or by electronic transmission, each of which shall be deemed an original and together which shall constitute one and the same instrument.
17. Arbitration of Disputes. Any controversy or claim arising out of or relating to this contract, or any breach thereof, shall be settled by binding arbitration in the state where the Wholesale Property is located. The arbitrator shall have the authority to grant all appropriate relief, including but not limited to compensatory, exemplary, declaratory or injunctive. The parties agree a single, mutually acceptable arbitrator shall conduct the arbitration. The prevailing party shall be entitled to recover its reasonable attorney's fees and legal costs.
18. Notice. Each party agrees to service by either Certified Mail, return receipt requested or nationally recognized overnight courier service or personal delivery and is deemed delivered when received or refused. Email is not a notice delivery method.

IN WITNESS WHEREOF, the Parties execute this Agreement and warrant and represent that their respective signatory whose signature appears below is on the date of this Agreement duly authorized by all necessary and appropriate corporate action to execute this Agreement, if not signing in his or her individual capacity.

Signatures of Parties:

Buyer

Wholesaler
