Blakeley Commercial Real Estate
4040 Broadway, Suite 240
San Antonio, Texas 78209
&
Simply Marinas
4000 Ponce De Leon Blvd, Suite 479, Coral Gables, FL 33146
fax: (888) 456-3068
phone: (305) 439-9581
ash1@simplymarinas.com



**CONFIDENTIALITY, NONDISCLOSURE AND NON-CIRCUMVENTION AGREEMENT**

## Confidential Texas Marina Resort Development - Offering ID: SM94

This Confidentiality and Nondisclosure and Non-Circumvention Agreement ("Agreement") will govern the treatment of Informational Material (as hereafter defined) to be provided to the undersigned ("PROSPECTIVE PURCHASER") in connection with an investigation of **Confidential Texas Marina Resort Development - Offering ID: SM94** (the "Property"), an exclusive listing of Simply Marinas and Blakeley Commercial Real Estate ("BROKER"), presented on behalf of the owner of the Property ("Seller").

The undersigned PROSPECTIVE PURCHASER agrees as follows:

1. PROSPECTIVE PURCHASER desires to participate in discussions regarding the purchase of the Property. During these discussions, Seller and BROKER may share certain proprietary, confidential information with PROSPECTIVE PURCHASER. All Informational Material (as defined below) provided to PROSPECTIVE PURCHASER, including that the Property is for sale, shall remain confidential. All Informational Material pertaining to the Property furnished to the PROSPECTIVE PURCHASER by BROKER on behalf of Seller, shall continue to be the property of the Seller and BROKER. The Informational Material will be used solely for the purpose of the PROSPECTIVE PURCHASER and its affiliates and its directors, managers, officers, members, equity holders, employees, agents and advisors (including, without limitation, attorneys, accountants, engineering and environmental consultants, and financial advisors) (collectively "Representatives") and may not be copied or duplicated, or shared without BROKER's written consent (email being sufficient) and must be returned to BROKER immediately upon BROKER's written (email being sufficient) request. Such Representatives shall be informed of the confidential nature of such information, shall be directed to treat such information with strict confidence and shall agree in writing to be bound by all of the provisions of this Agreement applicable to the PROSPECTIVE PURCHASER. The PROSPECTIVE PURCHASER is legally responsible and liable for any Representative's breach of this Agreement. **PROSPECTIVE PURCHASER AS WELL AS ANYONE AFFILIATED WITH PROSPECTIVE PURCHASER SHALL REFRAIN FROM DISCLOSING THAT PROPERTY IS FOR SALE. PROSPECTIVE PURCHASER SHALL BE HELD FINANCIALLY RESPONSIBLE FOR ANY DAMAGES THAT OCCUR AS A RESULT OF SUCH DISCLOSURE.**

2. The term "Informational Material" shall mean all proprietary information relating, directly or indirectly, to the Property (including business plans, financial data and reports, customer or client information, marketing plans, contracts, etc.), trade secrets, technology, products, services, markets, condition (financial or other), operations, assets, liabilities, ownership, results of operations, cash flows or prospects of the Seller (whether prepared by the Seller, its advisors or otherwise) which is delivered, disclosed or furnished by BROKER to PROSPECTIVE PURCHASER or to its Representatives, before, on or after the date hereof. Notwithstanding the foregoing, the term Informational Materials shall not include information which: (a) is or becomes generally available to the public other than as a result of a disclosure by the BROKER; (b) was in the PROSPECTIVE PURCHASER's possession or developed by the PROSPECTIVE PURCHASER prior to its being furnished to the PROSPECTIVE PURCHASER by BROKER pursuant hereto; (c) becomes available to the PROSPECTIVE PURCHASER on a non-confidential basis from a source other than the BROKER; or (d) has been independently developed by the PROSPECTIVE PURCHASER without reference to any Informational Materials.

3. In the event that PROSPECTIVE PURCHASER or any of its Representatives is compelled (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand, regulatory process or other similar legal process) to disclose any of the Informational Material, the PROSPECTIVE PURCHASER or any of its Representatives may, without liability hereunder, disclose to such court or other tribunal the Informational Material; provided, however, that PROSPECTIVE PURCHASER shall as soon as reasonably practicable upon learning of such legally compelled disclosure provide BROKER and SELLER with written notice of such legally compelled disclosure including by delivery to BROKER and SELLER all documents creating such legally compelled disclosure.

4. BROKER and the Seller do not make any representations or warranties as to the accuracy or completeness of the Informational Materials furnished to PROSPECTIVE PURCHASER. The information used in the preparation of these materials was furnished to BROKER by others and has not been independently verified by BROKER and is not guaranteed as to completeness or accuracy. Neither BROKER nor Seller shall have any liability whatsoever for the accuracy or completeness of the information contained herein or any other written or oral communication or information transmitted or made available or for any action taken or decision made by the recipient with respect to the Property. Interested parties are to make their own investigations, projections, and conclusions without reliance upon the material contained herein.

5. PROSPECTIVE PURCHASER shall not communicate, directly or indirectly, with the Seller, its management, representatives, staff or employees except through BROKER. All negotiations regarding the Property shall be initiated exclusively through BROKER. All showings shall be by appointment only, and all appointments shall be coordinated by and exclusively through BROKER. All offers are to be made through BROKER. PROSPECTIVE PURCHASER further agrees not to circumvent or interfere with BROKER's contract with Seller in any way.

6. The Property has been offered for sale subject to withdrawal from the market, prior sale or rejection of any offer because of the terms thereof, lack of satisfactory credit references of PROSPECTIVE PURCHASER, or for any other reason whatsoever, without notice. Seller or BROKER shall have no commitment or obligation to any interested party to provide confidential information until, if the Seller so chooses, that PROSPECTIVE PURCHASER has been pre-qualified by BROKER and PROSPECTIVE PURCHASER has submitted an acceptable offer.

7. By executing this Agreement, PROSPECTIVE PURCHASER represents that no outside broker is representing PROSPECTIVE PURCHASER in this transaction and PROSPECTIVE PURCHASER acknowledges that BROKER is representing the Seller only. In states where permitted, BROKER may represent both Seller and PROSPECTIVE PURCHASER, but only upon the approval of Seller and request of PROSPECTIVE PURCHASER. Therefore, PROSPECTIVE PURCHASER agrees to pay all brokerage commissions, finder's fees, and other compensation to which any outside broker, finder, or other person may be entitled in connection with the sale of the Property if such claim or claims for commissions, fees or other compensation are based in whole or in part on dealings with PROSPECTIVE PURCHASER or any of PROSPECTIVE PURCHASER'S representatives (except BROKER, whose compensation is paid by Seller); and agrees to indemnify and hold harmless BROKER and Seller, their respective affiliates, agents, successors and assigns, employees, officers, and directors against and from any loss, liability or expense, including reasonable attorney's fees, arising out of any claim or claims by any broker, finder or similar agent for commissions, fees or other compensation from bringing about any sale of the Property to PROSPECTIVE PURCHASER if such claim or claims are based in whole or in part on dealings with PROSPECTIVE PURCHASER or any representatives of PROSPECTIVE PURCHASER. If either party institutes legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs so incurred.

8. This Agreement terminates in two (2) years from the date hereof except as to written claims by Seller and BROKER against the PROSPECTIVE PURCHASER. The Seller and BROKER are entitled to equitable relief, including injunction and specific performance, in the event of any breach of the provisions of this Agreement beyond the two-year termination period.

9. This Agreement shall be governed by and construed in accordance with the laws of the state and county in which the Property is located, without regard to the conflict of law provisions thereof or of any other jurisdiction that would result in the application of the laws of any other jurisdiction. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the state and county and the United States District Court in which the Property is located for any actions, suits or proceedings arising out of or relating to this Agreement.

10. This Agreement contains the entire agreement between the parties regarding the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, arrangements and discussions between the parties regarding such subject matter.

11. Any notice under this Agreement shall be in writing and shall be effective and deemed given or delivered (a) when delivered personally or by nationally recognized overnight courier service (costs prepaid), (b) when sent by electronic mail or other electronic transmission with confirmation of transmission (or, the first business day following such transmission if the date of transmission is not a business day), or (c) received by the addressee, if sent by certified or registered mail, return receipt requested, postage prepaid, in each case addressed to the appropriate party at its address set forth on the signature page of this letter agreement.

12. No provision in this Agreement can be waived, modified or amended except by written agreement of the parties, which consent shall specifically refer to the provision to be waived, modified or amended and shall explicitly make such waiver, modification or amendment.

13. This Agreement may be signed by facsimile or by pdf signature and in one or more counterparts, each of which shall be deemed an original but all of which shall be deemed to constitute a single instrument.

14. If any provision of this Agreement is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this letter agreement, and such invalid provision shall be deemed deleted here from to the minimum extent necessary to cure such violation.

15. If any party institutes legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs so incurred.

16. PROSPECTIVE PURCHASER shall indemnify, defend, and hold BROKER and Seller and each of their representatives, principals, employees, agents, successors, assigns, and affiliated entities, harmless from and against any and all losses, damages, liabilities, costs and expenses (including, without limitation, attorney's fees and costs) arising as a result of any breach of any of the terms of this Agreement.

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**Confidential Texas Marina Resort Development - Offering ID: SM94**

If in agreement with the foregoing, please sign this Agreement and return one signed copy to BROKER: Fax: 888-456-3068 or email to: ash1@simplymarinas.com

**ACKNOWLEDGED AND AGREED TO BY:**

(All information below must be completed fully and legibly)

PROSPECTIVE PURCHASER'S Name (Print Clearly): _____

PROSPECTIVE PURCHASER'S Signature (Print Clearly): _____

Date: _____

PROSPECTIVE PURCHASER'S Company: _____

PROSPECTIVE PURCHASER'S Address: _____

PROSPECTIVE PURCHASER'S Phone Number: _____

PROSPECTIVE PURCHASER'S Email Address: _____