

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

_____, 2019

STRICTLY PRIVATE AND CONFIDENTIAL

Company Name: _____

Address: _____

Attention: _____ (*Contact name*)

Dear _____ (*Contact name*)

In connection with your consideration of a possible negotiated transaction (the “**Potential Transaction**”) involving the listing of a real estate asset to be sold or assigned by us to a third party, as disclosed by us to you from time to time, Timbercreek Acquisitions Inc. (together with its affiliates, subsidiaries and managed accounts, “**Timbercreek**”) is prepared to furnish or cause to be furnished to you certain information that is non-public, confidential, personal or proprietary in nature. In this Agreement, the terms “you” and “your” mean _____ [*insert company name*] and any of its affiliates, and the terms “we”, “our” and “us” mean Timbercreek. As a condition to you being furnished Confidential Information (as defined below), you agree as follows (on behalf of yourself, your affiliates and your Representatives):

1. Defined Terms. As used in this Agreement, the following terms have the following meanings:

“**Agreement**” means this confidentiality and non-disclosure agreement as amended, modified, extended or supplemented from time to time.

“**Confidential Information**” means all information relating to Timbercreek, including information relating to its business, operations, assets, liabilities, plans, prospects, properties, affairs, employees, customers, suppliers or Transaction Information (as defined in Section 2), which has been or is furnished to you or your Representatives by or on behalf of Timbercreek or any of its representatives, regardless of whether such information is in oral, visual, electronic, written or other form and whether or not it is identified as “confidential” and any Recipient Work Product. Confidential Information does not include information which (i) is or becomes generally available to the public other than as a result of disclosure by you or any of your Representatives, (ii) can by documentary evidence be established to have been within your possession on a non-confidential basis prior to its being furnished to you by or on behalf of Timbercreek, (iii) is or becomes available to you on a non-confidential basis from a source other than Timbercreek or any of its representatives unless you (or any of your Representatives) know, after reasonable inquiry in respect thereof, that such source is prohibited from disclosing such information by any legal, contractual or fiduciary obligation, or (iv) is independently developed or acquired by you or your Representatives without the use of any Confidential Information or any breach by you or your Representatives of this Agreement (and such independent development or acquisition can be demonstrated by you).

“**Law**” means any applicable law, regulation, valid and effective legal process or any direction of a regulatory authority having jurisdiction over you.

“**Person**” means a natural person, partnership, corporation, limited liability company, unlimited liability company, trust, unincorporated association, joint venture or other or governmental entity.

“**Recipient Work Product**” means any notes, analyses, reports, compilations, forecasts, data, studies, interpretations, financial models and other material prepared by you or your Representatives that contain, reflect, summarize, analyze, discuss, review or are based on, in whole or in part, any Confidential Information.

“**Representatives**” means any of your directors, officers, trustees, employees, agents, representatives or advisors, including any accountants, counsel, consultants and financial advisors.

2. Non-Disclosure of Confidential Information. You shall keep confidential all Confidential Information and shall use the Confidential Information solely to evaluate, negotiate and complete the Potential Transaction. Except with the prior written consent of Timbercreek, you will not, and will not permit any of your Representatives to, disclose (except as permitted by this Agreement) to any other person (a) any Confidential Information, (b) that this Agreement has been entered into or that you or your Representatives have received Confidential Information, (c) that the parties are considering the Potential Transaction, (d) that discussions or negotiations are taking place or have taken place concerning the Potential Transaction, or (e) any of the terms, conditions or other facts with respect to the foregoing, including the status thereof (the information contemplated by (b), (c), (d) and (e) being referred to herein as “**Transaction Information**”). You may disclose Confidential Information to your Representatives who have a need to know the Confidential Information for the sole purpose of assisting you with the evaluation, negotiation and completion of the Potential Transaction and who (i) have been informed of the confidential nature of the Confidential Information and the confidentiality obligations set out in this Agreement, (ii) are directed to keep the Confidential Information confidential and (iii) with respect to your agents, representatives and advisors, agree to be bound by the terms of this Agreement to the same extent as if they were parties hereto. You agree to cause your Representatives to observe the terms of this Agreement and be responsible for any breach of this Agreement by you or any of your Representatives (it being understood that such responsibility shall be in addition to and not by way of limitation of any right or remedy Timbercreek may have against you or any of your Representatives with respect to such breach).

3. Handling of Confidential Information. You shall exercise the same efforts to safeguard the Confidential Information as you exercise to safeguard your own confidential and proprietary business information, or all commercially reasonable efforts to safeguard the Confidential Information if such efforts would impose on you a higher standard of care. You may only reproduce or take copies of any Confidential Information as are reasonably necessary for the purposes of evaluating the Potential Transaction.

4. Compelled Disclosure. If you or any of your Representatives becomes required or compelled by Law to disclose any Confidential Information, you will, to the extent not prohibited by such Law, provide us with prompt notice so that we may seek, at our sole expense, a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver from Timbercreek, you or your Representatives, as applicable, are nonetheless legally compelled to disclose Confidential Information, you or your Representatives, as applicable, may furnish only that portion of the Confidential Information that is required to be disclosed, based on the advice of your counsel, without any liability hereunder; provided that you or your Representatives, as applicable, exercise commercially reasonable efforts to obtain reliable assurances that confidential treatment will be accorded to the Confidential Information so furnished.
5. Ownership of Confidential Information. All Confidential Information is and will remain the exclusive property of Timbercreek. No express or implied right or interest is granted with respect to any Confidential Information.
6. No Representation or Warranty. You acknowledge and agree that (i) neither Timbercreek nor any of its representatives has made or makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information, (ii) Timbercreek expressly disclaims any and all liability to you and any other person that may be based upon or relate to the use of the Confidential Information by you or any of your Representatives or any errors in or omissions from the Confidential Information and (ii) you are not entitled to rely on the accuracy or completeness of the Confidential Information and that you will be entitled to rely solely on the representations and warranties, if any, in a definitive agreement relating to a Potential Transaction when, as, and if it is executed, and subject to any limitations and restrictions as may be specified in any such definitive agreement. For purposes of this Agreement, the term “definitive agreement” does not include an executed letter of intent or any other preliminary written agreement, nor does it include any written or oral acceptance of any offer or bid.
7. No Definitive Agreement. You understand and agree that (a) no contract or agreement providing for the Potential Transaction shall be deemed to exist unless and until a definitive agreement has been executed and delivered by the parties (or their applicable affiliates) and (b) unless and until a definitive agreement has been executed and delivered by the parties (or their applicable affiliates), neither party has any obligation of any kind whatsoever to complete the Potential Transaction by virtue of this Agreement or any other written or oral expression with respect to the Potential Transaction that may be made prior to entering into a definitive agreement. The terms and conditions of any definitive agreement between the parties (or their applicable affiliates) in respect of a Potential Transaction will supersede the terms of this Agreement to the extent they are inconsistent with this Agreement. We reserve the right, in our sole and absolute discretion, to reject any and all proposals made by you regarding a Potential Transaction and to terminate negotiations and discussions with you at any time. You hereby confirm that you are not acting as a broker for any person and are considering the Potential Transaction only for your own account.

8. Return or Destruction of Confidential Information. If you determine that you do not wish to proceed with the Potential Transaction, you will promptly notify us of that determination. If any such notice is given, or at any time upon our written request, you will, within five (5) business days of the notice or request: (a) return to us or destroy (at our option) all original copies of Confidential Information (other than any Recipient Work Product) furnished to you or to any of your Representatives, together with all copies of such Confidential Information and (b) destroy all Recipient Work Product; provided, however, that you and your Representatives may retain data or electronic records containing the Confidential Information solely for the purpose of permitting you and your Representatives to satisfy your obligations under applicable Law, and you and your Representatives will not be required to return or destroy any permanent electronic archives that are “backed-up” on your or your Representatives’ electronic information management and communications systems or servers that are not available to end users and that cannot be expunged without extraordinary effort. You will certify to us that you and your Representatives have complied with the obligations set forth in the foregoing sentence within five (5) business days of a written request by us for such certification. Your and your Representatives’ confidentiality obligations under this Agreement shall continue perpetually with respect to any retained Confidential Information.
9. Remedies. You acknowledge and agree that, due to the unique and sensitive nature of the Confidential Information, there can be no adequate remedy at law for any breach of this Agreement by you or any of your Representatives, that any such breach will result in irreparable harm to Timbercreek and that monetary damages would not be a sufficient remedy for any such breach, and, therefore, that upon any such breach or any threat thereof, we shall be entitled to seek without proof of actual damages (and without the requirement of posting a bond or other security), and you shall not oppose the granting of, appropriate equitable relief in addition to whatever remedies we might have at law. You will notify us promptly upon your discovery of any breach of this Agreement (including any unauthorized use or disclosure of Confidential Information) by you or any of your Representatives and shall immediately take all necessary steps to limit the extent of the breach. You further agree to indemnify and hold harmless Timbercreek from, and shall pay for, any cost, loss, expense, liability, claim, demand or damage (including reasonable legal fees and the cost of enforcing this indemnity) arising out of or resulting from any breach of this Agreement (including unauthorized use or disclosure by you or your Representatives of any Confidential Information). No failure or delay by us in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.
10. Employee Non-Solicit. You agree that, for a period of two (2) years from the date of this Agreement, neither you nor any of your Representatives will, without obtaining our prior written consent, solicit for hire or employ (directly or indirectly) or otherwise contract for the services of, any director, officer or employee of Timbercreek who is involved in the operation of the Company’s business or who you come into contact with or become known to you in connection with the Potential Transaction, other than (i) pursuant to general solicitations of employment not specifically directed toward such persons or (ii) individuals identified by an employee search firm where such firm was not directly or indirectly directed to target such person.

11. Expenses. Except as otherwise expressly provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated in this Agreement shall be paid by the party incurring such expenses.
12. Termination. Unless otherwise extended by the parties in writing, this Agreement and all obligations hereunder shall automatically terminate two (2) years from the date hereof, except as otherwise provided in this Agreement.
13. Governing Law; Jurisdiction. This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the province of Ontario and the laws of Canada applicable therein. Each party attorns and submits to the exclusive jurisdiction of the Courts of Ontario situated in the City of Toronto, and waives any arguments, under conflict of laws or otherwise, removing such exclusive venue, jurisdiction or governing law (and agrees not to commence any such actions, suits or proceedings except in such courts).
14. Notices. Any notice, direction or other communication given regarding the matters contemplated by this Agreement must be in writing, sent by personal delivery, courier or facsimile and addressed:

(a) to us at:

Address: Timbercreek Acquisitions Inc.
25 Price St.
Toronto, ON M4W 1Z1

Attention: Peter Hawkings
Email: phawkings@timbercreek.com

(b) to you at:

Address: _____ *[Company Name]*
_____ *[Company Address]*

Attention: _____ *[insert contact name]*
Email: _____ *[insert contact email address]*
Facsimile: _____ *[insert fax number]*

A notice, direction or other communication is deemed to be given and received (i) if sent by personal delivery or courier, on the date of delivery if it is a business day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next business day, or (ii) if sent by facsimile, on the business day following the date of confirmation of transmission by the originating facsimile. A party may change its address for service from

time to time by providing a notice in accordance with the foregoing. Any subsequent notice, direction or other communication must be sent to the party at its changed address. Any element of a party's address that is not specifically changed in a notice will be assumed not to be changed.

15. Miscellaneous. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered will be deemed to be an original and all of which, when taken together, will constitute one and the same Agreement. Each of the parties to this Agreement will be entitled to rely on delivery of a facsimile or other electronic copy of this Agreement and acceptance by each party of any such facsimile or other electronic copy will be legally effective to create a valid and binding agreement between the parties to this Agreement in accordance with the terms of this Agreement. This Agreement will be for the benefit of and be binding upon the parties hereto and their respective successors and assigns. Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by a party without the prior written consent of the other party; provided, however, that we may assign all of our rights, powers and privileges under this Agreement (including, without limitation, the right to enforce the terms of this Agreement) to any of our affiliates or to any person who consummates a transaction similar to the Potential Transaction. Where a court of competent jurisdiction declares any provision of this Agreement to be invalid or unenforceable, the remaining provisions shall continue in full force and effect and all rights accrued under the enforceable provisions shall survive such declaration. No modifications of this Agreement or waiver of any term or condition hereof will be binding upon the parties unless approved in writing by each of the parties. Time will be of the essence of this Agreement and, following any waiver or indulgence by any party, time will again be of the essence of this Agreement. This Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the parties with respect to the subject matter hereof.

[Remainder of page intentionally left blank. Signature page follows.]

Please indicate your acceptance of this Agreement by signing, dating and returning a copy of this Agreement to us, which will constitute a legally binding agreement between the parties with respect to the subject matter of this Agreement

Yours truly,

TIMBERCREEK ACQUISITIONS INC.

By: _____

Name:

Title:

Accepted and agreed to as of this
___ day of _____, 2019.

_____ ***[INSERT COMPANY NAME]***

By: _____

Name:

Title: