

CONFIDENTIALITY AGREEMENT [POTENTIAL PURCHASER]

This Confidentiality Agreement ("Agreement") is made and entered into this _____ day of _____, 2016 ("Effective Date"), by _____ ("Confidant").

Recitals

(I) Ohio County Hospitality, LLC ("Provider") is the owner of Suburban Extended Stay Hotel - Triadelphia located at 40 Robinson Drive Triadelphia, WV ("Property").

(II) Confidant, or an entity the majority of which is controlled thereby, is interested in purchasing the Property.

(III) At Provider's discretion, Provider and Confidant are willing to exchange information necessary to facilitate negotiations of a potential purchase and sale of the Property ("Purchase/Sale"); provided, Provider has assurance from Confidant that such information will be handled with the utmost confidentiality and that Confidant will, in good faith and with all due diligence, continue negotiations regarding a purchase and sale with Confidant.

Agreement

For and in consideration of the foregoing, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby covenant and agree as follows:

(A) Confidential Information.

(1) "Confidential Information" means and includes all intellectual property, financial data, financial statements, books and records, production techniques, material and manufacturing specifications, drawings, data, plans, documents, reports, pricing information, sample products, models, prototypes, plans, other confidential information related to Provider's business, the Purchase/Sale, and Property (including but not limited to assets, products, operations, financial condition, contracts, customers, facilities, markets, capital structure, management, rent rolls, leases, tenant information, and other confidential aspects) disclosed to Confidant, and everything generated by the parties that contains, reflects, or is derived from confidential information disclosed by Provider to Confidant, whether before or after the execution of this Agreement, whether tangible or intangible, in whatever form or medium provided. Additionally, "Confidential Information" means and includes all past, present, and future negotiations, inquiries, and discussions between Provider and Confidant, and their representatives regarding the parties current or prospective business agreement regarding the Purchase/Sale, Property, and any other details, facts, or opinions that may arise from these negotiations, inquiries, and discussions. "Confidential Information" does not include information that becomes publicly available other than through acts or omissions by Confidant in violation of this Agreement.

(2) Provider has the sole discretion as to the amount and types of Confidential Information it discloses to Confidant in any manner whatsoever.

(B) Confidentiality.

(1) Confidant shall strictly maintain the confidentiality of this Agreement and all of Provider's Confidential Information that may be furnished to Confidant.

(2) Confidant shall not, during or after the term of this Agreement, disclose any Confidential Information to any other third person (except Confidant's attorneys, accountants, and employees who need access in order to perform their limited job duties strictly related to the Confidential Information as contemplated hereunder) without the prior written consent of Provider, unless required by a valid subpoena or order issued by a court of applicable jurisdiction.

(3) Confidant shall notify all persons and entities to which it properly discloses Confidential Information of the existence of this Agreement, and Confidant shall ensure such parties will not permit Confidential Information to be shared with unauthorized persons or entities in violation of this Agreement.

(4) Confidant is permitted to use the Confidential Information only to assist Confidant in analyzing the potential purchase of the Property from Provider. Unless otherwise provided in the Agreement, any other use of the Confidential Information by Confidant is a violation of the Agreement. Confidant assumes liability for any breach of this Agreement by Confidant or any third parties to which it furnishes Confidential Information, and Confidant shall take reasonable measures to prevent itself and others from breaching this Agreement.

(5) While in possession of Confidential Information, Confidant shall apply appropriate safeguards to prevent any inadvertent use or disclosure of the Confidential Information and Confidant shall notify Provider immediately of any unauthorized use or disclosure and cooperate with Provider to take prompt corrective action.

(6) Confidant shall maintain records of the location and character (including whether Confidant has made copies) of all Confidential Information.

(7) Confidant shall treat the details of information generated from its use of the Confidential Information as confidential, and shall not release the details of such information to any unauthorized third party without the written consent of Provider, unless required by a valid subpoena or order issued by a court of applicable jurisdiction. If Confidant is required by a valid subpoena or order issued by a court of applicable jurisdiction to disclose Confidential Information, Confidant shall, in good faith, give Provider as much notice as possible to enable Provider to attempt to avoid the required or requested disclosure. Confidant shall use its best efforts to cooperate with Provider throughout any attempt Provider undertakes to avoid the disclosure. If Confidant is required by a court to disclose any Confidential Information protected by this Agreement, Confidant shall only disclose those portions of the Confidential Information that in the opinion of its legal counsel are necessary to comply with the disclosure requirement.

(8) Confidant shall return all Confidential Information to Provider at the expiration or termination of this Agreement in accordance with section (D) hereof.

(9) Confidant shall neither record nor make general public record any Confidential Information, including this Agreement.

(10) Confidant shall not permit any third party to which Confidential Information was disclosed to retain any copies of Confidential Information, if the Purchase/Sale is not consummated.

(C) **Representations.**

(1) Confidant acknowledges that the Confidential Information that Provider provides or makes available to Confidant is to be deemed confidential proprietary information and is to be held by Confidant in good faith and in strict confidence for reasons pursuant to the parties current or prospective business agreement regarding the Purchase/Sale and Property. If any Confidential Information was to fall into the hands of a third party or become a matter of public knowledge, it could be materially detrimental to Provider.

(2) Confidant hereby represents and warrants to Provider that it is in good faith seriously considering entering into an agreement with Provider regarding the Purchase/Sale and Property. Confidant covenants that, if and to the extent that the foregoing representation ceases to be true and correct, Confidant shall (a) inform Provider of such changed intent, (b) not make any further requests for Confidential Information, (c) immediately return all Confidential Information and all copies thereof to Provider in accordance with section (D) hereof, and (d) certify in writing to Provider that it has fully performed each part of this covenant. However, this Agreement does not bind the parties to continue or consummate any proposed transactions, unless otherwise agreed by separate written instrument.

(3) Confidant shall diligently and efficiently pursue and use its best efforts to timely utilize the Confidential Information for the purposes contemplated by the parties.

(4) In the case of a prospective business agreement regarding the Purchase/Sale and Property, if Provider and Confidant cannot agree upon acceptable terms and conditions, Confidant shall comply with section (D) of this Agreement.

(5) Provider makes no representation or warranty about the accuracy or completeness of any Confidential Information. Confidant releases and holds Provider harmless from and against any loss or damage Confidant may sustain due to its reliance on any of the Confidential Information.

(D) **Return of Confidential Information.** Within ten (10) days of expiration or termination of this Agreement, Confidant shall promptly gather all Confidential Information it has received (including Confidential Information in Confidant's possession and distributed to authorized third parties by Confidant) and return it, and all copies thereof, to Provider or, unless otherwise notified by Provider, Confidant may destroy all such Confidential Information. Additionally, within said ten (10) day period, Confidant shall certify in writing to Provider that it has fully performed its duties under this section or, if Confidant's duties hereunder are incomplete, Confidant shall notify Provider of all unreturned or non-destroyed Confidential Information held by Confidant or any third parties.

(E) **Merger or Termination of Use.** This Agreement may be merged into a later written agreement executed by the parties that incorporates the terms and conditions of this Agreement. Otherwise, Confidant's permitted use of Confidential Information terminates upon the earlier of 45 days from the Effective Date, or receipt by Confidant of written notification of termination by Provider.

(F) **Expiration or Termination & Survival.** This Agreement automatically expires upon final consummation of the Purchase/Sale. In the event no Purchase/Sale is consummated, this Agreement terminates upon Confidant's compliance with Section (D); however, notwithstanding the foregoing, unless otherwise agreed to in writing by the parties hereto, the terms and conditions under sections (B)(1)-(2), (B)(7)-(10), and (D) of this Agreement are to survive and not terminate.

(G) **Governing Law, Forum, & Venue.** This Agreement is to be interpreted according to the laws of the State of West Virginia. West Virginia is the only forum available to the parties for any litigation resulting from this Agreement, and the Circuit Court of Monongalia County is the exclusive venue. Confidant consents to personal jurisdiction in the state courts of West Virginia for any dispute arising out of this Agreement, and Confidant waives its right to invoke the forum non conveniens objection.

(H) **Injunctive Relief & Specific Performance.** If it appears that Confidant has disclosed or imminently will disclose Confidential Information in violation of this Agreement, or if there is any breach or threatened breach by Confidant, Provider is entitled to an injunction to restrain the disclosing party from disclosing the Confidential Information in whole or in part, and Provider is entitled to all other legal remedies and any such equitable relief as may be necessary, including specific performance, to protect against any such breach or threatened breach. Provider is entitled to these equitable remedies without proof of actual damages.

(I) **Attorneys' Fees and Costs.** If any legal action is necessary to enforce or interpret the terms of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and costs in addition to any other relief to which the prevailing party may be entitled.

(J) **Cumulative Remedies.** The remedies provided in this Agreement are cumulative. The assertion by a party of any right or remedy does not preclude the assertion by that party of any other rights or the seeking of any other remedies. If Confidant breaches this Agreement, Provider is entitled to costs it incurs in remedying Confidant's breach and all other legal and equitable remedies allowed by law.

(K) **Applicability.** As referenced herein and as a party to this Agreement, the definition of "Confidant" applies to the specific entity and generally applies to and means all of the owners, employees, agents, officers, directors, members, partners, employees, affiliates, and any related or affiliated individuals and entities of Confidant.

(L) **Authority.** The undersigned representative of Confidant represents and warrants to Provider that it has authority to execute this Agreement on behalf of all such entities or individuals.

(M) **Cooperation.** The parties shall do, execute, acknowledge, and deliver all such further acts, instruments, documents, and assurances, and take all such further action before or after the Effective Date, as may be reasonably necessary to fully carry out this Agreement.

(N) **Computation of Days.** Unless otherwise stated, in computing the number of days for any purpose under this Agreement, all days are counted, including Saturdays, Sundays, and holidays.

(O) **Incorporation.** The background recitals are hereby incorporated herein.

(P) **Notices.** Any notice required or permitted by this Agreement is to be deemed duly given if sent to the following addresses in writing by certified or registered mail with return receipt requested:

To Confidant: Company: _____
 Attn: _____

 Phone: _____
 Fax: _____
 Email: _____

To Provider: Ohio County Hospitality, LLC.
 Attn: _____

 Phone: _____
 Fax: _____
 Email: _____

(Q) **Counterparts.** This Agreement may be executed in several counterparts, which may include faxed or scanned signatures, and each counterpart is to, for all purposes, be treated as an original and binding upon the parties hereto and their respective heirs, devisees, personal representatives, successors, and assigns.

(R) **No Amendment.** This Agreement may not be altered, enlarged, modified, or changed except by an instrument in writing executed by all of the parties hereto. Any changes or modifications made to this Agreement must be reduced to writing, signed by all parties hereto, and attached hereto and made a part hereof.

(S) **Assignment.** Confidant shall not assign this Agreement without Provider's written consent.

(T) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and it may not be modified except by an instrument signed by Confidant and Provider.

Confidant and Provider have caused their names to be signed hereto, by their duly-authorized representatives, as of the day and year first hereinabove written.

CONFIDANT:

By: _____
Print: _____
Title: _____
Date: _____

PROVIDER:

By: _____
Print: _____
Title: _____
Date: _____