

## MUTUAL NON-DISCLOSURE AGREEMENT

**THIS MUTUAL NON-DISCLOSURE AGREEMENT** (this "Agreement") is entered into effective the \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by and between Giambra Realty Corp, a New York Corporation with a place of business at 664 Columbus Pkwy, Buffalo, NY 14213, and \_\_\_\_\_, an \_\_\_\_\_ with a place of business at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (each a "Party" and, collectively, the "Parties")

### RECITAL:

In connection with discussions between the Parties regarding a potential business relationship between them and any subsequent agreement(s) entered into between the Parties (a "Related Agreement"), each Party (the "Receiving Party") understands that the other Party (the "Disclosing Party") has disclosed or may disclose certain confidential and/or proprietary information.

**NOW, THEREFORE**, for good and valuable consideration including, without limitation, the parties' willingness to enter into discussions and any access to Confidential Information of the other, the Parties agree as follows:

1. "Confidential Information" of the Disclosing Party shall consist of all confidential and/or proprietary information relating to the Disclosing Party's business that may be provided by or on behalf of the Disclosing Party in the course of Receiving Party's evaluation of the potential business relationship and/or in furtherance of any Related Agreement including, without limitation, business, financial, client and product development plans, forecasts, reports, agreements practices, methods, strategies and/or other information and shall be deemed to include all notes, analyses, compilations, summaries and other materials prepared by the Receiving Party containing or based in whole or in part on such information. Unless the Confidential Information is such that, due to its character or nature, a reasonable person in a like position and under like circumstances as Receiving Party would reasonably deem such as confidential and/or proprietary, Disclosing Party shall advise the Receiving Party of its confidential and/or proprietary nature or have such marks as confidential and/or proprietary; provided, however, that failure to mark any of the Confidential Information as confidential and/or proprietary, in and of itself, shall not affect its status as part of the Confidential Information under the terms and conditions of this Agreement.

2. The Receiving Party agrees: (a) to hold the Disclosing Party's Confidential Information in confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the Receiving Party employs with respect to its confidential materials), (b) not to divulge any such Confidential Information to any third person, (c) not to make any use whatsoever at any time of such Confidential Information except to evaluate internally its relationship with the Disclosing Party and/or in furtherance of any Related Agreement, and (d) to disclose the Confidential Information to its officers, directors, agents or

advisors only to the extent such disclosure is necessary to evaluate its potential business relationship with the Disclosing Party and/or in furtherance of any Related Agreement. Without the other Party's prior consent, both Parties agree not to divulge that discussions are taking place between the Parties. Notwithstanding the foregoing, the Receiving Party may make disclosures required by law or court order provided the Receiving Party first gives prompt notice of the necessity for such disclosures, uses diligent reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and has allowed the Disclosing Party to participate in the proceeding. The Receiving Party further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information which it in good faith reasonably considers to be legally required and, at the request and expense of the Disclosing Party, will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

3. The Disclosing Party agrees that Confidential Information shall not include any information that the Receiving Party can document (a) is or becomes (through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) generally available to the public through no fault of the Receiving Party, or (b) was in its possession or known by it without restriction prior to receipt from the Disclosing Party, provided the Receiving Party complies with restrictions imposed thereon by third parties, or (c) was rightfully disclosed to it by a third Party without restriction, provided the Receiving Party complies with restrictions imposed thereon by third parties, or (d) was independently developed without use of any Confidential Information of the Disclosing Party by agents or employees of the Receiving Party who have had no access to such information.

4. Immediately upon a request by the Disclosing Party, the Receiving Party will return to the Disclosing Party all Confidential Information of the Disclosing Party or, at the Disclosing Party's request, destroy and certify to the destruction of all documents or media containing any such Confidential Information and any and all copies or extracts thereof. Notwithstanding anything to the contrary in this Section 4, in the event of any dispute between the Parties in connection with the Confidential Information, this Agreement or any Related Agreement, the Receiving Party (upon written notice to the Disclosing Party) may retain with its legal counsel one (1) copy of the portion of the Confidential Information that is the subject of the dispute pending the outcome of such dispute.

5. The Receiving Party acknowledges and agrees that, due to the unique nature of the Disclosing Party's Confidential Information, any breach of its obligations hereunder may result in imminent and irreparable harm to the Disclosing Party, and therefore, that upon any such breach or any threat thereof the Disclosing Party shall be entitled to appropriate preliminary injunctive relief in addition to any claim the Disclosing Party may have for damages and/or a final injunction.

6. The Receiving Party acknowledges that the Disclosing Party makes no representations or warranties as to the accurateness of the confidential Information other than as subsequently set forth in a Related Agreement.

7. All confidential Information will remain the exclusive property of the Disclosing Party. Nothing in this Agreement shall be construed as granting any rights or licenses under any patent, copyright or other intellectual property right of either Party, nor shall this Agreement grant either Party any rights in or to the other Party's Confidential Information other than the limited right to review such Confidential Information for the purpose of determining whether to enter into the potential business relationship and/or in furtherance of any Related Agreement.

8. This Agreement shall remain in effect indefinitely until terminated as provided in this Agreement.

9. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

10. This Agreement shall be governed by the law of the State of New York without regard to the conflicts of law provisions thereof. The Parties agree that the federal and state courts located in Erie County, New York shall have exclusive jurisdiction over any dispute arising from or relating to this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be an original but which together shall constitute one and the same instrument. Signatures delivered by facsimile or electronically shall be deemed original signatures for purposes of this Agreement.

11. All notices and other communications made under this Agreement shall be in writing and delivered personally (by overnight delivery or courier) or be certified or registered mail to the Party at the address specified above, or at such other address as a Party may specify in writing in the future.

12. This Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the Parties with respect to the subject matter hereof. The prevailing party in any action to enforce this Agreement shall be entitled to costs and attorneys' fees. No waiver or modification of this Agreement will be binding upon a party unless made in writing and signed by a duly authorized representative of such party and no failure or delay in enforcing any right will be deemed a waiver. Neither Party shall have the right to assign its rights or obligations hereunder without the prior written consent of the other Party. The Receiving Party understands that nothing herein (a) requires the disclosure of any Confidential Information of the Disclosing Party or (b) requires the Disclosing Party to proceed with any transaction or relationship.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement effective as of the day first above written.

**Giambra Realty Corp**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature Page to Mutual Non-Disclosure Agreement]*