



## **MUTUAL CONFIDENTIALITY AGREEMENT**

### **ERES Real Estate Fund LP**

This Confidentiality Agreement (this "Agreement") is dated as of \_\_\_\_\_ by and between ERES Capital LLC ("Sponsor") on behalf of ERES FUND GP, LLC and ERES REAL ESTATE FUND LP and \_\_\_\_\_ ("Receiving Party"). ERES Capital LLC and Receiving Party are referred to in this Agreement collectively as the "Parties" and individually as a "Party".

1. Confidential Information, Representatives. ERES Capital LLC and Receiving Party have been discussing a real estate-oriented service (s), involving each Party and/or their respective affiliates (the "Transaction"). As a condition to being furnished with such confidential information, both Parties agree to treat any information concerning the Transaction, whether furnished before or after the date of this letter and regardless of the manner in which it is furnished, together with analyses, compilations, designs, studies, financials, models, memorandums, along with certain oral and written information concerning each Party and their respective affiliates and its and their respective businesses and assets (collectively, the "Confidential Information") may be furnished (irrespective of the form of communication) by such Party (in such capacity, "Disclosing Party") to the other Party (in such capacity, "Recipient") and to Recipient's affiliates and its and their directors, officers, employees, agents or advisors (including attorneys, accountants, consultants, lenders, investment bankers and financial advisors) (collectively, "Representatives"). The Confidential information shall remain the property of the Disclosing Party. Notwithstanding the foregoing, the term Confidential Information with respect to either Disclosing Party does not include any information which (a) at the time of disclosure is generally known or available to the public (other than as a result of a disclosure directly or indirectly by Recipient or its Representatives in violation of this Agreement), (b) was available to Recipient on a non-confidential basis from a source other than Disclosing Party or its Representatives; provided, that such source is not known to Recipient to be bound by a confidentiality agreement with Disclosing Party or its Representatives, or (c) has been independently acquired or developed by Recipient without violating any of its obligations under this Agreement. The term Confidential Information will include the following: (i) the fact that any investigations, discussions or negotiations are taking place concerning the Transaction, (ii) the fact that Recipient has requested or received any Confidential Information or (iii) all of the terms, conditions or other facts with respect to the Transaction, including the status thereof.

2. Each Recipient will be responsible for any breach of this Agreement by its Representatives and shall immediately notify the Disclosing Party of the breach.

3. Destruction of Confidential Information. At any time upon request of the applicable Disclosing Party, Recipient will promptly destroy, and direct its Representatives to destroy, all written Confidential Information in its possession or in the possession of its Representatives and all reports or other materials prepared by Recipient or its Representative that contain any Confidential Information. Upon request, Recipient shall confirm in writing to the

applicable Disclosing Party that all such destruction has occurred. Notwithstanding anything to the contrary in this Agreement, each Recipient may retain copies of the Confidential Information or any reports or other materials containing Confidential Information solely to the extent necessary to comply with its written, internal document retention policies and/or applicable laws or regulations; provided, however, that any such Confidential Information shall be retained by Recipient in accordance with the terms and conditions of this Agreement.

4. Legally Required Disclosures. If a Recipient or its Representatives become legally compelled (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process by a court of competent jurisdiction or by any administrative, legislative, regulatory or self-regulatory authority or entity) to disclose any Confidential Information, Recipient will provide the applicable Disclosing Party with prompt notice thereof (to the extent practicable and unless prohibited by law) so that Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provision of this Agreement. Recipient shall reasonably cooperate with the applicable Disclosing Party, at Disclosing Party's expense, in its efforts to seek any such protective order or other remedy. In the event that such protective order or other remedy is not timely obtained Recipient will furnish only that Confidential Information which is required or necessary based on the advice of its legal counsel.

5. No Representation or Warranty; Property Rights. Other than as may be contained in definitive documentation entered into between the Parties, neither Party is making any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. All Confidential Information disclosed by or on behalf of Disclosing Party to Recipient or its Representatives shall remain the property of the applicable Disclosing Party. No licenses or rights under any patent, copyright, trademark, trade name, trade secret or other intellectual property are granted to either Recipient or its Representatives or are to be implied by reason of this Agreement.

6. No Agreement as to Transaction. The execution of this Agreement by the Parties shall not be deemed to constitute an agreement or commitment on the part of either Party to enter into any type of transaction or agreement with the other Party.

7. No Waiver. No failure or delay by either Disclosing Party 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 right, power or privilege hereunder.

8. Remedies. For purposes of seeking equitable relief, each Recipient agrees that monetary damages may not be a sufficient remedy for any breach of this Agreement. In addition to all other remedies, each Disclosing Party will be entitled to seek specific performance of Recipient's obligations relating to this Agreement and to seek injunctive or other equitable relief as a remedy for any such breach.

9. Litigation. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final, non-appealable order that a Party has breached this Agreement, then such Party shall be liable and pay to the non-breaching party the reasonable legal fees such non-breaching party has incurred in connection with such litigation, including any appeal therefrom. Neither party shall be liable for any punitive or consequential damages,

10. Miscellaneous.

(a) Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party, and any such assignment without such prior written consent shall be null and void.

(b) This Agreement may be signed in multiple counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic transmission shall be effective as delivery of a manually executed counterpart hereof.

(c) This Agreement may not be amended except in writing signed by both Parties.

(d) This Agreement shall terminate upon the first (1<sup>st</sup>) anniversary of the date hereof (“Term”).

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without giving effect to the principles of conflict of laws thereof.

(f) EACH PARTY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING UNDER OR PURSUANT TO THIS AGREEMENT. BY THEIR EXECUTION HEREOF, EACH PARTY HEREBY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF FLORIDA AND FEDERAL COURTS SITTING IN THE STATE OF FLORIDA IN ANY ACTION, MATTER OR PROCEEDING RELATING HERETO.

*Signature Page Follows*



**IN WITNESS WHEREOF**, this Agreement is executed and delivered effective as of the date first written above.

**ERES Capital LLC**

By: \_\_\_\_\_  
Name: Michael Elliott  
Title: CEO

**Receiving Party**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_