



GOLDEN PEAK

REAL ESTATE GROUP

CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (the “Agreement”), is made this date: _____, between **GOLDEN PEAK REAL ESTATE GROUP** (hereinafter “Disclosing Party”), and _____ (hereinafter “Receiving Party”).

BACKGROUND

The Disclosing Party and Receiving Party wish to discuss and exchange certain items and information related to business programs, products, applications, systems, components, technologies and business topics (the “Invention”) which the parties hereto consider highly confidential and proprietary. NOW THEREFORE, the parties hereto, intending to be legally bound in consideration of the mutual covenants and agreements set forth herein, hereby agree as follows:

1. DEFINITIONS

1.1 “Invention” shall mean all information relating to business programs, products, applications, systems, components, technologies and business topics associated with the items produced by Disclosing Party for retail sale by independent vendors.

1.2 “Confidential Information” shall mean all information and samples of products provided by Disclosing Party with respect to the Invention regardless of whether it is written, oral, audio tapes, video tapes, computer discs, machines, prototypes, designs, specifications, articles of manufacture, drawings, human or machine readable documents. Confidential Information shall also include any and all financial information provided by Disclosing Party to Receiving Party. Confidential Information shall not include any of the following:

- (a) Such information in the public domain at the time of the disclosure, or subsequently comes within the public domain without fault of the Receiving Party; provided further, however, that any of the Confidential Information derived by Receiving Party by “reverse engineering” any of the Invention(s) which is(are) available by retail sale shall be deemed

Confidential Information;

(b) Such information which was in the possession of Receiving Party at the time of disclosure that may be demonstrated by business records of Receiving Party and was not acquired, directly or indirectly, from Disclosing Party; provided further, however, that any of the Confidential Information derived by Receiving Party by “reverse engineering” any of the Invention(s) which is(are) available by retail sale shall be deemed Confidential Information;

(c) Such information which Receiving Party acquired after the time of disclosure from a third party who did not require Receiving Party to hold the same in confidence and who did not acquire such technical information from Disclosing Party; provided further, however, that any of the Confidential Information derived by Receiving Party by “reverse engineering” any of the Invention(s) which are available by retail sale shall be deemed Confidential Information.

1.3 “Disclosing Party” shall mean the party disclosing information to the other relating to the Invention. **1.4** “Receiving Party” shall mean the party receiving information from the other relating to the Invention.

1.5 “Affiliate” shall mean an owner of Receiving Party or an entity that, directly or indirectly, through one or more intermediaries, is controlled by or is under common control of the Receiving Party, or any entity not under the Receiving Party’s control that is made aware, by the Receiving Party or an Affiliate thereof, of makes known information of the Disclosing Party.

2. USE OF CONFIDENTIAL INFORMATION

The Receiving Party agrees to:

(a) Receive and maintain the Confidential Information in confidence;

(b) Not reproduce the Confidential Information or any part thereof without the express written consent of Disclosing Party;

(c) Not, directly or indirectly, make known, divulge, publish or communicate the Confidential Information to any person, firm or corporation without the express written consent of Disclosing Party;

(d) Limit the internal dissemination of the Confidential Information and the internal disclosure of the Confidential Information received from the Disclosing Party to those officers and employees, if any, of the Receiving Party who have a need to know and an obligation to protect it.

(e) Use at least the same degree of care to protect the Confidential Information as they use to protect their own confidential information, which they do not wish to have published or disseminated. However, in no event shall the Receiving Party or any Affiliate use less than a reasonable degree of care to protect such information. In the event that the terms of this Agreement are breached by any Affiliate of the Receiving Party or any of their consultants or advisors, the Receiving Party hereby agrees to be responsible and liable for any such breach.

(f) Not use or utilize the Confidential Information without the express written consent of Disclosing Party;

(g) Not use the Confidential Information or any part thereof as a basis for the design or creation of any method, system, apparatus or device similar to any method, system, apparatus or device embodied in the Confidential Information unless expressly authorized in writing by Disclosing Party;

(h) Utilize the best efforts possible to protect and safeguard the Confidential Information from loss, theft, destruction, or the like; and,

(i) Neither Receiving Party, nor any Affiliate will reverse engineer (nor has it reverse engineered) any Invention of Disclosing Party before, during or after the termination of this Agreement.

3. RETURN OF CONFIDENTIAL INFORMATION

All information provided by the Disclosing Party shall remain the property of the Disclosing Party. Receiving Party agrees to return all Confidential Information to Disclosing Party within five (5) days of written demand by Disclosing Party. When the Receiving Party has finished reviewing the information provided by the Disclosing Party and has made a decision as to whether or not to work with the Disclosing Party, Receiving Party shall return all information to the Disclosing Party without retaining any copies.

4. LEGAL PROCEEDINGS

In the event that the Receiving Party or an Affiliate is requested or is required by deposition, interrogatories, requests for information, documents or admissions, subpoenas, civil investigative demands or similar process, to disclose any Confidential Information, it is agreed that the Receiving Party will provide the Disclosing Party with a notice of such request(s) promptly, so that the Disclosing Party may seek an appropriate protective order and/or waive the Receiving Party or Affiliate's obligation to comply with the requirements of Section 1.2(d) hereof. It is further agreed that if, in the absence of either a protective order or the receipt of a waiver hereunder, within two (2) business days prior to the time the Receiving Party or an Affiliate is required to disclose Confidential Information or else stand liable for contempt or suffer other censure or penalty, the Receiving Party or his Affiliate may disclose such Confidential Information without liability under Section 1.2(d). The Receiving Party, and/or Affiliate(s) thereof, will fully cooperate with the Disclosing Party in connection with the Disclosing Party's efforts to obtain any such order or other remedy.

5. NON-ASSIGNABLE

This agreement shall be non-assignable by the Receiving Party unless prior written consent of the Disclosing Party is received. If this Agreement is assigned or otherwise transferred, it shall be binding on all successors and assigns.

6. GOVERNING LAW

This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the State of South Carolina, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary, and without the aid of any canon, custom or rule of law requiring construction against the draftsman.

7. OWNERSHIP

The Disclosing Party warrants that it believes itself to be the owner of the Confidential Information. The Disclosing Party makes no other warranty relating to the Confidential Information and the use to be made thereof by the receiving party and their Affiliates and disclaims all implied warranties. Confidential Information may be preliminary or incomplete and relate to products under development or that are planned for development.

OTHER THAN AS EXPRESSLY SET FORTH HEREIN NO WARRANTIES ARE MADE BY THE DISCLOSING PARTY. "CONFIDENTIAL INFORMATION" IS PROVIDED "AS IS". THE DISCLOSING PARTY ACCEPTS NO RESPONSIBILITY FOR ANY EXPENSES, LOSSES OR ACTIONS INCURRED OR UNDERTAKEN BY THE RECEIVING PARTY AS A RESULT OF ITS USE OF CONFIDENTIAL INFORMATION.

8. EQUITABLE RELIEF

It is further understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement and that Disclosing Party shall be entitled to equitable relief without obligation to post bond, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed the exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or equity to Disclosing Party. In the event of litigation relating to, or arising out of, this Agreement, if a court of competent jurisdiction determines that this Agreement has been breached then the Receiving Party, and/or its Affiliate(s) shall be liable and pay to Disclosing Party the reasonable legal fees and costs incurred by Disclosing Party in connection with such litigation, including any appeal therefrom.

9. NO LICENSE

Neither party does, by virtue of disclosure of the Confidential Information, grant, either expressly or by implication, estoppel or otherwise, any right or license to any patent, trade secret, invention, trademark, copyright, or other intellectual property right.

10. PUBLICITY

Neither the Disclosing Party nor the Receiving Party shall be permitted to use the name of the other party, or any of the other party's Affiliates in any publicity, advertising, public announcement or third party disclosure concerning this Agreement or the subject matter hereof without the prior express written consent of the other party.

11. BINDING NATURE OF AGREEMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

12. PROVISIONS SEPARABLE

The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

13. WAIVER

The failure of either the Disclosing Party or the Receiving Party to insist upon strict performance of any provision of this Agreement or to exercise any right hereunder shall not constitute a waiver of that provision of or right under this Agreement or of any other provision of or right under this Agreement.

14. ENTIRE AGREEMENT

This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings between the parties and there are no covenants, promises, agreements or conditions, either oral or written, between them other than herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party unless reduced in writing and signed by them.

15. SURVIVABILITY

The parties expressly agree that the obligations of Receiving Party and its Affiliates concerning the Confidential Information and provisions of this Agreement survive the termination of this Agreement. Specifically, and without limitation or exception, neither Receiving Party nor any Affiliate will violate the provisions of Section 2 or any other provision of this Agreement. Additionally, the rights of Disclosing Party to enforce legal and equitable relief as set forth in this Agreement against the Receiving Party and its Affiliates shall survive in perpetuity.

IN WITNESS OF THEIR AGREEMENT, the parties have set their hands to it below effective the day and year first written above.

RECEIVING PARTY

By: _____

Print Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

Initials (agreement to terms): _____

GOLDEN PEAK REAL ESTATE GROUP (Disclosing Party)

3550 Northgate Dr. Unit A

Myrtle Beach, SC 29588

By: _____

Print Name: _____

Title: _____