

**e-Merge Real Estate Unlimited**  
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[www.e-MergeRealEstateCommercial.com](http://www.e-MergeRealEstateCommercial.com)



## **Consumer's Guide to Agency Relationship & Non-Disclosure Agreement (NDA)**

We are pleased you have selected e-Merge Real Estate Unlimited to help you with your real estate needs. Whether you are selling, buying or leasing real estate, e-Merge Real Estate Unlimited can provide you with expertise and assistance. Because this may be the largest financial transaction you will enter into, it is important to understand the role of the agents and brokers with whom you are working. Below is some information that explains the various services that agents can offer and their options for working with you.

For more information on agency law in Ohio, contact the Ohio Division of Real Estate & Professional Licensing at (614) 466-4100, or online at [www.com.ohio.gov/real](http://www.com.ohio.gov/real).

### **Representing the Sellers**

Most sellers of real estate choose to list their home or business/real estate for sale with a real estate brokerage. When they do so, they sign a listing agreement that authorizes the brokerage and the listing agent to represent their interests. As the seller's agent, the brokerage and listing agent must: follow the seller's lawful instructions, be loyal to the seller, promote the seller's best interests, disclose material facts to the seller, maintain confidential information, act with reasonable skill and care, and account for any money they handle in the transaction. In rare circumstances, a listing broker may offer "subagency" to other brokerages, which would also represent the seller's interests and owe the seller these same duties.

### **Representing Buyers**

When purchasing real estate, buyers usually choose to work with a real estate agent as well. Often the buyers want to be represented in the transaction. This is referred to as buyer's agency. A brokerage and agent that agree to represent a buyer's interest in a transaction must: follow the buyer's lawful instructions, be loyal to the buyer, promote the buyer's best interests, disclose material facts to the buyer, maintain confidential information, and account for any money they handle in the transaction.

### **Dual Agency**

Occasionally, the same agent and brokerage that represent the seller also represent the buyer. This is referred to as dual agency. When a brokerage and its agents become "dual agents," they must maintain a neutral position between the buyer and the seller. They may not advocate the position of one client over the best interests of the other client, or disclose any personal or confidential information to the other party without written consent.

### **Representing Both the Buyer & Seller**

On occasion, the buyer and seller will each be represented by two different agents from the same brokerage. In this case, the agents may each represent the best interest of their respective clients. Or, depending on company policy, the agents may both act as dual agents and remain neutral in the transaction. When either of the above occurs, the brokerage will be considered a dual agent. As a dual agent, the brokerage and its managers will maintain a neutral position and cannot advocate for the position of one client over another. The brokerage will also protect the confidentiality of all parties.

### **Working With e-Merge Real Estate Unlimited**

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e-Merge Real Estate Unlimited does offer representation to both buyers and sellers. Therefore, the potential exists for one agent to represent a buyer who wishes to purchase property listed with another agent in our company. If this occurs, each agent will represent their own client, but e-Merge Real Estate Unlimited and its managers will act as a dual agent.

This means the brokerage and its managers will maintain a neutral position and not take any actions that will favor one side over the other. e-Merge Real Estate Unlimited will still supervise both agents to assure that their respective clients are being fully represented and will protect the parties' confidential information.

In the event that both the buyer and seller are represented by the same agent, the agent and e-Merge Real Estate Unlimited will act as a dual agent but only if both parties agree. As a dual agent, they will treat both parties honestly, prepare and present offers at the direction of the parties, and help the parties fulfill the terms of any contract. They will not, however, disclose any confidential information that would place one party at an advantage over the other or advocate or negotiate to the detriment of either party.

If dual agency occurs, you will be asked to consent to that in writing. If you do not agree to your agent acting as a dual agent, you can ask that another agent in our company be assigned to represent you or you can seek representation from another brokerage.

As a buyer, you may also choose to represent yourself on properties e-Merge Real Estate Unlimited has listed. In that instance, e-Merge Real Estate Unlimited will represent the seller and you would represent your own best interests. Because the listing agent has a duty of full disclosure to the seller, you should not share any information with the listing agent that you would not want the seller to know.

### **Working With Other Brokerages**

When e-Merge Real Estate Unlimited lists property for sale, it also cooperates with, and offers compensation to, other brokerages that represent buyers. e-Merge Real Estate Unlimited does reserve the right, in some instances, to vary the compensation it offers to other brokerages.

As a seller, you should understand that just because e-Merge Real Estate Unlimited shares a fee with a brokerage representing the buyer, it does not mean that you will be represented by that brokerage. Instead, that company will be looking out for the buyer and e-Merge Real Estate Unlimited will be representing your interests.

When acting as a buyer's agent, e-Merge Real Estate Unlimited also accepts compensation offered by the listing broker. If the property is not listed with any broker, or the listing broker does not offer compensation, we will attempt to negotiate for a seller-paid fee.

### **Fair Housing Statement**

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It is illegal, pursuant to the Ohio Fair Housing Law, division (H) of Section 4112.02 of the Revised Code and the Federal Fair Housing Law, 42 U.S.C.A. 3601, as amended, to refuse to sell, transfer, assign, rent, lease, sublease or

finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services. It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes. (Effective: 9/28/11)

We hope you find this information to be helpful to you as you begin your real estate transaction. When you are ready to enter into a transaction, you will be given an Agency Disclosure Statement that specifically identifies the role of the agents and brokerages. Please ask questions if there is anything you do not understand.

Because it is important that you have this information, Ohio law requires that we ask you to sign below to acknowledge receipt of this pamphlet. Your signature will not obligate you to work with our company if you do not choose to do so.

Revised: 9/2011

## **CONFIDENTIALITY, NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT**

In consideration of disclosures of confidential and/or proprietary information to be made by e-Merge Commercial Real Estate on behalf of seller of investments including but not limited to the hotels or other properties ("Company") to ("Recipient"), in connection with Recipient's consideration of making one or more investments in real estate and real estate secured indebtedness owned and/or managed and/or represented by Company's client or its affiliates (the "Business Opportunity"), and other good and valuable consideration, the parties hereby agree to all of the following terms and conditions:

### **1. DEFINITIONS**

(a) "Agreement" means this Confidentiality, Non-Disclosure and Non-Circumvention Agreement by and between Company and Recipient.

(b) "Confidential Information" means all technical, marketing, financial and other business information and material that is confidential and/or proprietary to Discloser, whether or not marked as "confidential" or "proprietary," that is disclosed to or obtained by the Recipient, whether in oral, written, electronic or other form, and all reports, notes, analyses, compilations, studies or other documents whether prepared by Recipient, which contain or otherwise reflect or are prepared based on any such information. Confidential Information does not include any information which: (a) the Recipient can demonstrate was in the lawful and unrestricted possession of the Recipient prior to its disclosure by the Discloser; (b) is or becomes generally available to the public by acts other than those of the Recipient after receiving it; (c) is or has been received lawfully and in

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good faith by the Recipient from a third party (other than a third party in a Protected Relationship with Discloser) who is not known by the Recipient, after inquiry, to be bound by any obligations of confidentiality relating to such information; or (d) has been independently developed by Recipient or any other third party (other than a third party in a Protected Relationship with Discloser) without any use of, reliance on, or reference to any Confidential Information, and the Recipient can present proof thereof.

(c) "Discloser" means Company, any affiliated entity that directly or indirectly controls, is controlled by, or is under common control with Company and their respective employees, officers and directors, agents, consultants or independent contractors who disclose information for the purposes of this Agreement.

2. Recipient shall hold in complete confidence, unless consented to in writing by Discloser, and shall not, and shall not permit any third party to, disclose, produce, publish, permit access to, or reveal any Confidential Information without the express prior written consent of the Discloser; provided, however, that such Confidential Information may be disclosed to Recipient's directors, officers, employees, agents, advisors or other representatives (collectively "Representatives") who need to know such information solely in connection with the Business Opportunity; provided that all such Representatives shall be informed by Recipient of the confidential nature of such Confidential Information and shall agree to be bound by the terms of this Agreement.

3. Recipient shall not, and shall not permit any third party to, copy, photograph, photocopy, alter, modify, disassemble, reverse engineer, decompile, or in any other manner reproduce any materials containing or constituting Confidential Information without the express prior written consent of the Discloser and will return or destroy, at Discloser's option, all Confidential Information, together with any copies thereof in Recipient's and/or its Representatives' possession, promptly upon conclusion of the Business Opportunity, or upon the request of the Discloser. Recipient shall also, within 10 days of a written request by Discloser, certify in writing that it has satisfied its obligations under this paragraph.

4. Disclosure of Confidential Information is not precluded if such disclosure is in compliance with a valid subpoena or order of a court or other governmental body of the United States or any political subdivision thereof; provided that Recipient will first give advance notice to the Discloser of any such request for disclosure as promptly as feasible in order that Discloser may, at its discretion, seek a protective order or such other appropriate remedy as the Discloser deems necessary.

5. Without the prior written consent of the Discloser, Recipient shall not, and shall direct its Representatives not to, disclose to any person the fact that Confidential Information has been made available to Recipient or that Recipient has inspected any portion of the Confidential Information, the fact that discussions or negotiations between Recipient and Discloser are taking place concerning the Business Opportunity or a possible transaction between them, or other facts with respect to those discussions or negotiations including the status thereof.

6. The Recipient agrees that the Recipient will not communicate with any owner, investor, lender, tenant or other party having an interest (direct or indirect) in any real estate or loan included in the Business Opportunity, or any of such party's owners, officers, employees, or agent without the prior written consent of the Discloser. Recipient will not (a) interfere with, circumvent, avoid, bypass or obviate; or permit any of its Representatives to interfere with, circumvent, avoid, bypass or obviate Discloser's (or any of its Representatives') rights and agreements in respect of the Business Opportunity; or (b) without Discloser's prior written consent (i) enter into discussions with any third party disclosed or introduced to Recipient by Discloser (or any of its Representatives) having an interest in the Business Opportunity or with which Discloser has a joint

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venture, financing, equity, finder, brokerage or other business relationship in connection with the Business Opportunity (a "Protected Relationship"), or (ii) initiate and negotiate in respect to any transactional relationship with any such third party (or any of its Representatives) in connection with the Business Opportunity; or (c) circumvent or attempt to circumvent the

discussions and negotiations currently underway or hereafter entered into by Discloser (or any of its Representatives) and any such third party (or any of its Representatives) with respect to the Business Opportunity; or (d) take any action or fail to take any action that would circumvent this Agreement, make use of a scheme, artifice, device or third party to circumvent this Agreement or make any effort to circumvent this Agreement.

7. Nothing in this Agreement shall be construed to obligate Discloser to disclose any Confidential Information to Recipient, or to preclude Discloser from disclosing any Confidential Information to any third party. DISCLOSER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE CONFIDENTIAL INFORMATION OR OTHERWISE UNDER THIS AGREEMENT, AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES.

8. The Confidential Information and Discloser's relationships with third parties relevant to the Business Opportunity (including, without limitation, third parties in a Protected Relationship with Discloser) have been developed or obtained by the investment of significant time, effort and expense by the Discloser, and provides the Discloser with a significant competitive advantage in its business. Accordingly, if the Recipient fails to perform any of its obligations hereunder or otherwise fails to comply with any terms or conditions hereof, the Discloser will suffer immediate, irreparable harm for which monetary damages are not adequate compensation. Accordingly, the Discloser shall be entitled, in addition to any other remedies available to it at law or in equity, to injunctive relief to specifically enforce the terms of this Agreement. It is further understood and agreed that no failure or delay by the Discloser in exercising any right, power or privilege hereunder shall operate as a waiver hereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

9. This Agreement sets forth the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings. This Agreement may only be amended or modified by a writing signed in advance by the parties. No rights or obligations other than those expressly recited herein are to be implied from this Agreement. No license is hereby granted, directly or indirectly, to any of the Confidential Information. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be eliminated or limited to the minimum extent such that the legality, validity and enforceability of the remaining provisions will not be affected or impaired. This Agreement is binding upon the successors, assigns and legal representatives of the parties, and protects Confidential Information of any successors or assigns of Discloser. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio without reference to its choice of law rules and as if wholly performed within the State of Ohio. Any litigation regarding the interpretation, breach, or enforcement of this Agreement will be filed in and heard by the state or federal courts with jurisdiction to hear such disputes in Columbus, Ohio, and both parties hereby submit to the jurisdiction of such courts. If any litigation is brought by either party regarding the interpretation or enforcement of this Agreement, the prevailing party will recover from the other all costs, attorneys' fees and other expenses incurred by the prevailing party. This Agreement and all of the terms, conditions and provisions hereof will terminate in their entirety three (3) years from the date hereof and the initial date of Disclosure of any Confidential Information hereunder.

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10. The confidential materials covered by this agreement will be sent only to Principals of the prospective Purchasers. Should any materials be shared with agents; then prospective Purchasers are responsible for the confidentiality of the agent.

**11. By signing this Agreement you are authorizing e-Merge Real Estate to add your email address to the available properties and any future properties that are added lists and receive emails from e-Merge Real Estate. To opt-out simply email [buckeyehotelguy@gmail.com](mailto:buckeyehotelguy@gmail.com) with the word "Unsubscribe" in the message.**

12. EACH OF THE PARTIES HERETO UNCONDITIONALLY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN THE PARTIES PURSUANT HERETO. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT. THIS WAIVER IS IRREVOCABLE MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

The signatory hereto warrants and represents that s/he has the authority to enter into this Agreement on behalf of the party listed above the signatory's name.

RECIPIENT:

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_, 2018      25% down payment proof of funds: \_\_\_\_\_ attached \_\_\_\_\_ will submit with LOI

Please identify your investment position:

\_\_\_\_\_ Principal/Owner/Developer      \_\_\_\_\_ Broker / Agent      \_\_\_\_\_ Other (please specify)

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

\_\_\_\_\_ Email: \_\_\_\_\_

Please identify properties you are interested in: \_\_\_\_\_

\_\_\_\_\_