

## **CONFIDENTIALITY AGREEMENT**

THIS CONFIDENTIALITY AGREEMENT (this “Agreement”) is made as of the \_\_\_ day of \_\_\_\_\_, 2017, by the person acting on behalf of Reviewer on the signature page hereof (“Reviewer”).

### **Recitals:**

PNL Phoenix, LLC (the “Company”) is the record owner of certain property (the “Asset”), which Reviewer has expressed an interest in purchasing. In strict accordance with the terms and conditions set forth herein, the Company has agreed to permit the Reviewer to review and inspect certain non-public documents, files and other information relating to the Asset, which information, including the fact that the Company is considering disposing of the Asset (collectively, the “Evaluation Materials”), may include economic, commercial, marketing and financial information that is confidential and/or proprietary in nature. Therefore, the Company has required the Reviewer to execute and deliver this Agreement as a condition to any right of review and inspection of the information.

In consideration of being granted the opportunity to review and inspect the Evaluation Materials, the Reviewer agrees as follows:

### **Agreement**

**Section 1. Purpose.** The Reviewer agrees that its review and inspection of the Evaluation Materials shall be solely to conduct due diligence on behalf of Reviewer and not as an agent, representative or broker of any undisclosed party. The Reviewer agrees that nothing contained herein shall constitute a commitment to sell all or any portion of the Asset unless and until a definitive agreement is entered into between the parties.

### **Section 2. Non-Disclosure and Use of Evaluation Materials.**

- (a) The Reviewer agrees that, except as set forth below, all Evaluation Materials shall be used by the Reviewer solely for the purpose stated in Section 1 hereof. The Reviewer further agrees to keep confidential all of the Evaluation Materials and, except with the prior written consent of the Company, not to disclose any of the Evaluation Materials to any person other than to (i) employees, officers, and directors and (ii) agents and representatives (collectively, the “Representatives”), in each case who (i) have a need to know the Evaluation Materials solely in connection with the purpose stated in Section I hereof and (ii) have agreed to be bound by the terms hereof, and by executing this agreement, Reviewer agrees that all of its Representatives are to be bound by the provisions of this Agreement.

Notwithstanding anything to the contrary contained herein, Evaluation Materials shall not include information which (i) is or becomes available in the public domain other than as a result of a disclosure by Reviewer in violation of the obligations contained in this Agreement, (ii) is in the possession of Reviewer as of the date hereof, (iii) becomes available to Reviewer on a non-confidential basis from a source not known by Reviewer to be bound by any non-disclosure obligation, or (iv) is independently developed by Reviewer without violating this Agreement.

- (b) Any of the Evaluation Materials required to be disclosed by law or by regulatory or judicial process may, after notice to the Company and an opportunity for the Company to contest such disclosure, be disclosed without Reviewer being in breach of its obligations hereunder.
- (c) In the event the Reviewer, or any of its Representatives, fails in any respect to comply with its obligations under this Agreement, the Reviewer shall be liable to the Company for breach of this Agreement.
- (d) The rights, powers and remedies provided for in the preceding subsection (c) shall be in addition to and do not preclude the exercise of any other right, power or remedy available to the Company under law or in equity. No forbearance, failure or delay in exercising any such right, power or remedy shall operate as a waiver thereof or preclude its further exercise.

**Section 3. Review of Evaluation Materials.** The Evaluation Materials will be made available for review, in the location, time and manner determined by the Company, to Representatives of the Reviewer.

**Section 4. Duplication.** The Reviewer agrees to refrain and to direct its Representatives to refrain from making any reproduction, other than handwritten summaries or notes and self-generated copies and computer records, or any items of Evaluation Materials without the prior written consent of the Company.

**Section 5. Reliance on Third Party Appraisal and Environmental Reports and Other Evaluation Materials.**

- (a) Reviewer acknowledges and agrees that Company makes no warranties or representations, whether express or implied, in fact or in law, with respect to the content, accuracy or completeness of financial statements, property documents and any of the Evaluation Materials. Unless otherwise expressly provided therein, all Evaluation Materials including, without limitation, the appraisal and environmental reports of third party appraisal and environmental firms, have been prepared for use solely and exclusively by Company or Company's predecessors in interest, as well as, in certain circumstances, certain other lending institutions. Such reports and other Evaluation Materials are provided for information purposes only and Reviewer hereby agrees that such reports and other Evaluation Materials shall not be relied upon as indicators of the value of the Asset. Company has not directed the

manner or method any such firm or other person utilized in performing its work or producing its report or other Evaluation Materials, and Reviewer shall make its own independent determination as to the adequacy or correctness thereof or the assumptions used and conclusions reached therein. Reviewer also acknowledges that conditions at the Asset and the surrounding area may have changed since such reports were performed.

- (b) Reviewer shall not have the right to rely upon, and hereby agrees not to rely upon, the conclusions or other data set forth in any reports or any other Evaluation Materials and shall have no recourse against Company, or its advisors, counsel or agents, including the preparers of such reports or other Evaluation Materials, in the event of any errors therein or omissions therefrom or for any other reason. Company shall not (i) have any obligation or responsibility whatsoever, or (ii) make any representation or warranty or assume any duty or obligation, for the adequacy, completeness, accuracy, form or content of the scope of any work or any such report or other Evaluation Materials, the existence or non-existence of any facts related thereto, the performance or quality of any work performed or the absence of defects therefrom, or the financial condition or professional qualifications of or the reporting thereof by any such firm or other person unless otherwise agreed to by the parties hereto in a written agreement. Company's acceptance, review or use of any such report or other Evaluation Materials shall not constitute (i) an approval of any such report or other Evaluation Materials, (ii) a waiver of any of its rights under any agreements it has relating to environmental matters, or (iii) a release of any person of its obligations under any agreements it has relating to environmental matters.

**Section 6. Limited Access.** The Reviewer shall inform each of its Representatives receiving any of the Evaluation Materials of the requirements of this Agreement and shall require each such Representative to comply with such requirements, including all requirements and obligations of the Reviewer and shall be responsible for the failure of any such Representative to comply with such obligations and requirements.

**Section 7. Return or Destruction of Evaluation Materials.** The Reviewer agrees that promptly upon Company's request all copies of Evaluation Materials furnished to Reviewer or its Representatives, or provided by Reviewer or its Representatives to any other person will be promptly returned to Company or destroyed, and Reviewer will certify that all reproductions, reports, summaries and analyses thereof have been destroyed. All of Reviewer's obligations hereunder and all of the Company's rights and remedies hereunder shall survive any such return or destruction.

**Section 8. Third-Party Contact:** The Reviewer agrees not to, and to direct its Representatives not to, communicate with respect to any of the Evaluation Materials with any property manager, engineer, contractor, consultant or other person having rights and/or responsibilities with respect to the Asset without the prior written consent of the Company, which consent may be withheld in the Company's sole and absolute discretion.

**Section 9. Asset Inspection.** The Reviewer agrees that without the prior written consent from the Company, which consent may be withheld in the Company’s sole and absolute discretion, Reviewer will not seek, and will not permit its Representatives to seek to gain access to all or any portion of the Asset.

**Section 10. Termination.** Notwithstanding anything to the contrary set forth herein, the terms and conditions of this Agreement shall remain in full force and effect for twenty four (24) months from the date hereof.

**Section 11. Governing Law.** This Agreement shall be governed by and construed in all respects in accordance with the law of the State of Texas.

**Section 12. Legal Remedy.** In the event Reviewer or any of its Representatives fails in any respect to comply with its obligations under this Agreement, Company shall be entitled to exercise any right, power or remedy available to Company at law or in equity, which may include, without limitation, the right to sue for specific performance, injunctive relief and/or damages.

**Section 13. Entire Agreement.** This Agreement represents the entire agreement between the Reviewer and the Company relating to the treatment of Evaluation Materials hereafter reviewed or inspected by the Reviewer or its Representatives, and this Agreement supersedes all other agreements, understandings or representations relating to such matters.

IN WITNESS WHEREOF, a duly authorized representative of the Reviewer has executed this Agreement as of the date first set forth above.

**REVIEWER:**

\_\_\_\_\_  
Signature of Reviewer

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Company Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date of Execution