

Blakeley Commercial Real Estate

4040 Broadway, Suite 240

San Antonio, Texas 78209

&

Simply Marinas

4000 Ponce De Leon Blvd, Suite 479, Coral Gables, FL 33146

fax: (888) 456-3068

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ash1@simplymarinas.com

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**CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT**

**Confidential Texas Gulf Coast Marina and Restaurant - Offering ID: SM39**

This confidentiality and non-circumvention agreement (the "Agreement") will govern the treatment of information to be provided to the undersigned below ("PROSPECTIVE PURCHASER") in connection with an investigation of **Confidential Texas Gulf Coast Marina and Restaurant - Offering ID: SM39** (the "Property"), an exclusive listing of Simply Marinas and Blakeley Commercial Real Estate ("BROKER").

The undersigned below, agree to the following:

Buyer desires to participate in discussions regarding the purchase of the Property. During these discussions, Seller and BROKER may share certain proprietary, confidential information with the Buyer.

Therefore, the undersigned Buyer, below, agrees to the following:

For purposes of this Agreement, 'Confidential Information' means not to disclose that the Property is for sale, and includes any data or information that is proprietary to the Seller and not generally known to the public, that should reasonably be recognized as Seller's confidential information including, but not limited to financial information, financial projections and sales estimates, present or future business activities, and plans or products or services. Confidential information shall be used solely in connection with consummation of the sale of Seller's Property to PROSPECTIVE PURCHASER and may be disclosed to the Potential Purchaser's partners, employees, legal counsel and institutional lenders ("Related Parties"), for the purpose of evaluating the potential purchase of the Property; such Representatives shall be informed of the confidential nature of such information, shall be directed to treat such information with strict confidence and shall agree to be bound by the provisions of this Agreement. The Potential Purchaser is liable for any Representative's breach of this Agreement.

All Informational Materials pertaining to the Property, which may be furnished to the undersigned by BROKER, shall continue to be the property of the Seller and BROKER. The Informational Materials will be used solely for the purpose of the PROSPECTIVE PURCHASER and may not be copied or duplicated, or shared without BROKER's written consent and must be returned to BROKER immediately upon BROKER's request or when the PROSPECTIVE PURCHASER terminates negotiations with respect to the Property. Neither the enclosed materials nor any information contained herein is to be used for any other purpose or made available to any other person without the express written consent of Seller.

By executing this Agreement, PROSPECTIVE PURCHASER represents that no outside broker is representing PROSPECTIVE PURCHASER in this transaction and PROSPECTIVE PURCHASER acknowledges that BROKER is representing the Seller only. In states where permitted, BROKER may represent both Seller and PROSPECTIVE PURCHASER, but only upon the approval of Seller and request of PROSPECTIVE PURCHASER. Therefore, PROSPECTIVE PURCHASER agrees to pay all brokerage commissions, finder's fees, and other compensation to which any outside broker, finder, or other person may be entitled in connection with the sale of the Property if such claim or claims for commissions, fees or other compensation are based in whole or in part on dealings with PROSPECTIVE PURCHASER or any of PROSPECTIVE PURCHASER'S representatives (except BROKER, whose compensation is paid by Seller); and agrees to indemnify and hold harmless BROKER and Seller, their respective affiliates, agents, successors and assigns, employees, officers, and directors against and from any loss, liability or expense, including reasonable attorney's fees, arising out of any claim or claims by any broker, finder or similar agent for commissions, fees or other compensation from bringing about any sale of the Property to PROSPECTIVE PURCHASER if such claim or claims are based in whole or in part on dealings with PROSPECTIVE PURCHASER or any representatives of PROSPECTIVE PURCHASER. If either party institutes legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs so incurred.

BROKER and the Seller do not make any representations or warranties as to the accuracy or completeness of the information or materials provided. The information used in the preparation of these materials was furnished to BROKER by others and has not been independently verified by BROKER and is not guaranteed as to completeness or accuracy. Neither BROKER nor Seller shall have any liability whatsoever for the accuracy or completeness of the information contained herein or any other written or oral communication or information transmitted or made available or for any action taken or decision made by the recipient with respect to the Property. Interested parties are to make their own investigations, projections, and conclusions without reliance upon the material contained herein.

The undersigned shall not communicate, directly or indirectly, with the Seller, its management, representatives, staff or employees except through BROKER. All negotiations regarding the Property shall be initiated exclusively through BROKER. All showings shall be by appointment only, and all appointments shall be coordinated by and exclusively through BROKER. All offers are to be made through BROKER. The undersigned further agree not to circumvent or interfere with Listing Broker's contract with Seller / Landlord in any way.

The Property has been offered for sale subject to withdrawal from the market, prior sale or rejection of any offer because of the terms thereof, lack of satisfactory credit references of any PROSPECTIVE PURCHASER, or for any other reason whatsoever, without notice. Seller or BROKER shall have no commitment or obligation to any interested party to provide confidential information until, if the Seller so chooses, that the PROSPECTIVE PURCHASER has been pre-qualified by BROKER and the PROSPECTIVE PURCHASER has submitted an acceptable offer.

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**CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT**  
**Confidential Texas Gulf Coast Marina and Restaurant - Offering ID: SM39**

This Agreement terminates in two (2) years from the date hereof except as to written claims by Seller and BROKER against the undersigned. The Seller and BROKER shall remain to be entitled to equitable relief, including injunction and specific performance, in the event of any breach of the provisions of this Agreement beyond the two-year termination period.

If either party institutes legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs so incurred.

The undersigned shall indemnify, defend, and hold BROKER and Seller and each of their representatives, principals, employees, agents, successors, assigns, and affiliated entities, harmless from and against any and all losses, damages, liabilities, costs and expenses (including, without limitation, attorney's fees and costs) arising as a result of any breach of any of the terms of this Agreement.

If in agreement with the foregoing, please sign this Agreement and return one signed copy to BROKER: Fax: 888-456-3068 or email to: ash1@simplymarinas.com

**ACKNOWLEDGED AND AGREED TO BY:**

(All information below must be completed fully and legibly)

PROSPECTIVE PURCHASER'S Name (Print Clearly): \_\_\_\_\_

PROSPECTIVE PURCHASER'S Signature (Print Clearly): \_\_\_\_\_

Date: \_\_\_\_\_

PROSPECTIVE PURCHASER'S Company: \_\_\_\_\_

PROSPECTIVE PURCHASER'S Address: \_\_\_\_\_

PROSPECTIVE PURCHASER'S Phone Number: \_\_\_\_\_

PROSPECTIVE PURCHASER'S Email Address: \_\_\_\_\_



**Information About Brokerage Services**

Texas law requires all real estate license holders to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.

**TYPES OF REAL ESTATE LICENSE HOLDERS:**

- **A BROKER** is responsible for all brokerage activities, including acts performed by sales agents sponsored by the broker.
- **A SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

**A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):**

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

**A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:**

**AS AGENT FOR OWNER (SELLER/LANDLORD):** The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

**AS AGENT FOR BUYER/TENANT:** The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

**AS AGENT FOR BOTH - INTERMEDIARY:** To act as an intermediary between the parties the broker must first obtain the written agreement of *each party* to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with, provide opinions and advice to, and carry out the instructions of each party to the transaction.
- Must not, unless specifically authorized in writing to do so by the party, disclose:
  - o that the owner will accept a price less than the written asking price;
  - o that the buyer/tenant will pay a price greater than the price submitted in a written offer; and
  - o any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

**AS SUBAGENT:** A license holder acts as a subagent when aiding a buyer in a transaction without an agreement to represent the buyer. A subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first.

**TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARLY ESTABLISH:**

- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

**LICENSE HOLDER CONTACT INFORMATION:** This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

Blakeley Commercial Real Estate, LLC	9002467	lynn@blakeleycre.com	210-349-6111
Licensed Broker / Broker Firm Name or Primary Assumed Business Name	License No.	Email	Phone
Lynn Blakeley	0384478	lynn@blakeleycre.com	210-349-6111
Designated Broker of Firm	License No.	Email	Phone
Lynn Blakeley	0384478	lynn@blakeleycre.com	210-349-6111
Licensed Supervisor of Sales Agent/ Associate	License No.	Email	Phone
Brian Blakeley	632210	brian@blakeleycre.com	210-349-6111
Sales Agent/Associate's Name	License No.	Email	Phone

Buyer/Tenant/Seller/Landlord Initials

Date