

## **CONFIDENTIALITY AGREEMENT**

THIS CONFIDENTIALITY AGREEMENT (this "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, **2020** by and between The Boerke Company, Inc. ("Boerke") and \_\_\_\_\_ (the "Prospect/Ownership" or "Ownership").

### **RECITALS**

**WHEREAS**, Boerke and the Prospect/Ownership/Ownership are conducting discussions concerning a potential sale and/or lease of real estate (a "Possible Transaction") constituting a purchase transaction for the property located at **331 Riverview Rd. Hustisford, Wisconsin, known as Berlon Industries & 1100 S. Prairie Ave. in Waukesha, Wisconsin known as Schaefer Brush** (the "Real Estate"), and in connection with such discussions Boerke is providing the Prospect/Ownership/Ownership with certain financial and other business information in written and oral form concerning the Real Estate and/or Tenant being represented by Boerke (the "Information"); and

**WHEREAS**, the parties wish to set forth in this Agreement their agreement concerning the use and protection of the Information.

**NOW, THEREFORE**, in consideration of the Recitals and the mutual covenants and promises contained herein, the parties hereby agree as follows:

1. **The Information.**

(a) The Prospect/Ownership shall use the Information solely in connection with the Possible Transaction and shall not use the Information in any way detrimental to Boerke or any owner or tenant of the Real Estate.

(b) The Prospect/Ownership shall hold the Information in strict confidence and shall not disclose any Information to any third party, except that the Prospect/Ownership may disclose the Information to those of its directors, officers and employees, and to those of its bankers, accountants, attorneys and other advisors (all such individuals being collectively referred to herein as the "Representatives") who need to evaluate the Information in connection with the Possible Transaction. The Prospect/Ownership shall inform the Representatives of the confidential nature of the Information and shall be responsible for any action by a Representative which is prohibited by this Agreement.

(c) The Prospect/Ownership shall not, and will direct the Representatives to not, disclose to any third party the fact that any discussions or negotiations are taking place between the Prospect/Ownership and Boerke, that Boerke has made the Information available to the Prospect/Ownership or that the Real Estate is being offered for sale and/or lease.

(d) If the Prospect/Ownership decides not to enter into a contractual relationship with Boerke or otherwise at any time upon Boerke's request, the Prospect/Ownership shall promptly return to Boerke or destroy or cause to be destroyed (with certificates of such destruction reasonably satisfactory to Boerke) all of the Information, together with all copies, summaries, analysis, compilations, extracts and other documents prepared by it or for its use containing or reflecting the Information. Notwithstanding the return or destruction of the Information or any other document containing or reflecting the Information, the Prospect/Ownership shall continue to be bound by its obligations hereunder.

(e) Although Boerke will endeavor to include in the Confidential Information provided to the Prospect/Ownership those materials which it believes to be reliable and relevant for the purpose of the Prospect/Ownership's evaluation, neither Boerke nor any owner or tenant of the Real Estate, nor any of their directors, officers, employees or agents, makes any representation or warranty as to the accuracy or completeness of the Confidential Information and none of them shall have any liability to the Prospect/Ownership resulting from its use, except as may otherwise be expressly provided in a definitive written agreement.

2. Exceptions. The foregoing obligations shall not apply to Information that: (i) at the time of disclosure to the Prospect/Ownership is generally available to the public other than as a result of a disclosure by the Prospect/Ownership or any of its Representatives; (ii) is known to the Prospect/Ownership prior to disclosure to the Prospect/Ownership by Boerke; (iii) is disclosed to the Prospect/Ownership by a third party which does not owe any confidentiality obligation to Boerke with respect to such Information; or (iv) is legally required to be disclosed.

3. No Agreement. No contract or agreement shall be deemed to exist until a definitive agreement has been executed and delivered by the parties. Nothing in this Agreement shall obligate either Boerke or the Prospect/Ownership to enter into any further agreement.

4. Miscellaneous.

(a) This Agreement contains the entire agreement and understanding between the parties concerning the Information. No provision of this Agreement may be waived or amended except by written consent of the party sought to be bound.

(b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(c) If the Prospect/Ownership should engage, or cause any other person or entity to engage, in any act in violation of any provision hereof, Boerke shall be entitled, in addition to such other remedies, damages and relief as may be available to it under applicable law, to an injunction prohibiting the Prospect/Ownership from engaging in any such act, or specifically enforcing the terms of this Agreement, as the case may be.

(d) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date set forth above.

**THE BOERKE COMPANY, INC.**

**(Prospect/Ownership)**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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