

Confidentiality Agreement Form – U.S. Private Bank

CONFIDENTIAL

February 25, 2020

JPMorgan Chase Bank, NA
Jeff Milligan, Executive Director
1111 Polaris Parkway, Floor 3F
Columbus, OH 43240

Re: Confidentiality Agreement (this “Agreement”)

Ladies and Gentlemen:

In connection with the administration of the Helen Lubin Trust by the private banking business of JPMorgan Chase Bank, N.A. and its subsidiaries and affiliates (“J.P. Morgan Private Bank”) (“Disclosing Party”), of the prospective sale of a 12.881 percent interest in White Oaks Mall Company, Limited Partnership (the “Permitted Purpose”) involving _____ (“Receiving Party”), Disclosing Party will disclose to Receiving Party certain information which is confidential and proprietary to Disclosing Party. In consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Receiving Party and Disclosing Party (each individually, a “Party” and collectively, the “Parties”) each agree as follows:

1. For purposes of this Agreement:
 - (a) “Representatives” means collectively each and all of the directors, officers, employees, agents, auditors, consultants, attorneys or other advisors of a Party.
 - (b) “Confidential Information” means: (i) any business, financial or other information provided in written or electronic media by Disclosing Party to Receiving Party in connection with the Permitted Purpose which is confidential and proprietary to Disclosing Party; (ii) the substance of any discussions or communications between Disclosing Party and Receiving Party or any of their Representatives relating to the foregoing; and (iii) any analyses, studies or other documents prepared by Receiving Party or any of its Representatives in connection with the Permitted Purpose to the extent they contain identifying information that is unique to Disclosing Party (“Evaluation Material”).
2. All right, title and interest in and to the Confidential Information (other than Evaluation Material) shall remain the exclusive property of Disclosing Party. Nothing in this Agreement will grant to Receiving Party or its Representatives, any patent, copyright, trademark or other proprietary right of any kind with respect to the Confidential Information (other than Evaluation Material), other than to review and evaluate and/or use such Confidential Information in connection with the Permitted Purpose.
3. Receiving Party agrees that:

Confidentiality Agreement Form – U.S. Private Bank

- (a) Receiving Party shall take reasonable care and precautions to keep the Confidential Information confidential and shall not disclose Confidential Information except to the extent permitted or contemplated by this Agreement.
 - (b) Receiving Party shall use the Confidential Information only in connection with the Permitted Purpose or for internal audit, compliance and risk management purposes. Receiving Party may disclose Confidential Information to those of its Representatives who have a need to know such Confidential Information to carry out the Permitted Purpose (including the consideration thereof), provided that Receiving Party shall inform such Representatives of the confidential nature of the Confidential Information and shall direct them to comply with the provisions set forth herein. Receiving Party shall be responsible for any breach by its Representatives of any provision of this Agreement that by its terms applies to its Representatives. In no event will Receiving Party be liable for any consequential, special or punitive damages.
4. Confidential Information shall not include, and Receiving Party and its Representatives shall have no obligation of confidentiality or nonuse under this Agreement with respect to, any information:
- (a) which is or becomes generally available to the public, other than through a breach of this Agreement by Receiving Party or its Representatives;
 - (b) which is independently developed by Receiving Party or its Representatives without the use of the Confidential Information;
 - (c) which was in Receiving Party's or its Representatives' possession prior to its disclosure hereunder; or
 - (d) which comes into Receiving Party's or its Representatives' possession from a third party who is not known to Receiving Party or its Representatives to be bound by a confidentiality agreement with Disclosing Party.
5. Any Confidential Information may be disclosed by Receiving Party or its Representatives
- (i) as required by law or regulation or requested by any governmental or regulatory body or authority or self-regulatory organization, (ii) pursuant to proper legal process or in defense or prosecution of any claim, action or proceeding, or (iii) as consented to by Disclosing Party in writing. In the event that Receiving Party or any of its Representatives are required by law or regulation or proper legal process to disclose any Confidential Information, Receiving Party shall, to the extent practicable and permitted by law, regulation and the terms of the applicable request, provide Disclosing Party with prompt notice of any such requirement so that Disclosing Party may seek an appropriate protective order or waive compliance by Receiving Party with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, Receiving Party or its Representatives is nonetheless legally required to disclose such Confidential Information, Receiving Party or its Representatives may disclose such information without liability hereunder, provided, however, that Receiving Party or its Representatives shall disclose only that portion of the Confidential Information which it is required to disclose. Notwithstanding anything to the contrary in the foregoing, Receiving Party or its Representatives may disclose, without notice of any kind, any of the Confidential

Confidentiality Agreement Form – U.S. Private Bank

Information to any governmental agency, regulatory authority or self-regulatory organization having regulatory or supervisory jurisdiction or examination or audit authority over Receiving Party or its Representatives.

6. Upon Disclosing Party's written request at any time when the Permitted Purpose either has not been entered into or has terminated, Receiving Party shall promptly return to Disclosing Party or destroy any Confidential Information (other than Evaluation Material) then in Receiving Party's possession. Receiving Party may, at its option, destroy or retain Evaluation Material subject to the terms of this Agreement. Notwithstanding the foregoing, Receiving Party may retain Confidential Information in written or electronic form to the extent that retention is required by law or regulation and/or its bona fide document retention policies. For the avoidance of doubt, any Confidential Information that is kept by Receiving Party after the expiration of this Agreement shall be kept confidential as mandated by its internal policies and procedures or law or regulation.
7. Receiving Party acknowledges that the Confidential Information disclosed pursuant to this Agreement is of a special and unique character and that money damages may not be a sufficient remedy for any breach of this Agreement by Receiving Party or its Representatives. Accordingly, in addition to all other available remedies, Disclosing Party shall be entitled to seek injunctive relief, specific performance and other equitable relief to enforce the obligations hereunder.
8. It is understood and agreed that no failure or delay by any Party in exercising any right, power or privilege accorded such Party hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.
9. The Parties agree that this Agreement and/or the Disclosing Party's providing Receiving Party with any confidential information shall not in any way imply any commitment on either the Disclosing Party's or Receiving Party's part to enter into any transaction with the other. Such a commitment, if any, will occur only when a formal written agreement between the Parties has been duly executed. Accordingly, neither Receiving Party nor the Disclosing Party shall have any liability to the other in the event a formal agreement between the Parties is not entered into related to the potential transaction, other than with respect to the agreements set forth in this Agreement.
10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without reference to such state's choice of law principles to the contrary) and federal laws applicable to a national bank. The Parties irrevocably consent to the exclusive jurisdiction and venue in any court of competent jurisdiction in New York and in the United States District Court for the Southern District of New York and to service of process under the statutes of the State of New York. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING, WHETHER AT LAW OR EQUITY, BROUGHT BY ANY PARTY TO THIS AGREEMENT ARISING OUT OF OR RELATING TO THIS AGREEMENT.
11. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter hereof and cancels and supersedes any prior discussions, understandings and agreements between the Parties with respect to such subject matter.

Confidentiality Agreement Form – U.S. Private Bank

This Agreement shall not be amended or modified except by a written instrument duly authorized and executed by both Parties. Neither this Agreement nor any rights or obligations under this Agreement may be assigned by the Parties without the prior written consent of the other Party.

12. If any term or provision of this Agreement is declared invalid or unenforceable in whole or in part by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall remain unimpaired and in full force and effect.
13. This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed an original and all of which shall together constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by electronic mail or facsimile transmission shall constitute effective execution and delivery of this Agreement.
14. This Agreement shall terminate upon the earlier of (i) the execution by Receiving Party and Disclosing Party of definitive documentation for the proposed transaction containing superseding confidentiality obligations and (ii) the third anniversary of the date hereof.

[Signature page follows]

Confidentiality Agreement Form – U.S. Private Bank

If the foregoing accurately reflects your understanding of our agreement concerning the subject matter hereof, please sign and return a copy of this letter.

Very truly yours,

J.P. Morgan Private Bank

By: JPMorgan Chase Bank, N.A.

By: _____

Name:

Title:

Accepted and agreed as of
the date first written above:

By: _____
Name: