Confidentiality Agreement

**THIS** **EMPLOYEE CONFIDENTIALITY AGREEMENT** (“***Agreement***”) is entered into by and between Association Name Here (the “***Employer***”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “***Employee***”) (the Employer and the Employee are collectively referred to herein as the “***Parties***”) as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “***Effective Date***”).

**WHEREAS,** Employer is a non-profit trade organizations of independent businesses active in the building industry in list of covered counties; and

**WHEREAS,** Employee’s execution of this Agreement is a condition of any employment or further employment with the Employer and disclosure of any of the Employer’s Confidential Information to Employee; and

**WHEREAS,** Employee acknowledges that any employment with the Employer is on an at-will basis for an unspecified duration and may be terminated at any time by the Employer or Employee with or without cause or any or reason, with or without notice, and that any representation to the contrary is unauthorized and invalid unless in writing and signed by an officer of the Employer.

**NOW, THEREFORE**, in consideration of the Employee’s employment by the Employer, which the Employee acknowledges to be good and valuable consideration for Employee’s obligations hereunder, the Employer and the Employee hereby agree as follows:

1. **Recitals.** The recitals set forth above are fully incorporated into the terms of this Agreement.
2. **Consideration.** Employee understands and acknowledges that: (a) Employee is employed at-will with the Employer in a position that will allow Employee access to and/or possession of certain Confidential Information, as defined herein; (b) the Employer will not employ Employee or allow Employee access to Confidential Information without the assurance of reasonable protection against any use or disclosure of said information in a manner inconsistent with the Employer’s best interests; and (c) as a condition of at-will employment with the Employer, the receipt and sufficiency as consideration which Employee hereby acknowledges, Employee agrees to the terms and conditions set forth in this Agreement.
3. **Confidentiality.**
   1. Access To Confidential Information. The Employee understands and acknowledges that during the course of employment by the Employer, Employee will have access to and learn about confidential, secret, and proprietary documents, materials, data and other information, in tangible and intangible form, of and relating to the Employer and its businesses and existing and prospective customers, suppliers, investors and other associated third parties (“***Confidential Information***”). The Employee further understands and acknowledges that this Confidential Information and the Employer’s ability to reserve it for the exclusive knowledge and use of the Employer is of great competitive importance and commercial value to the Employer, and that improper use or disclosure of the Confidential Information by the Employee will cause irreparable harm to the Employer, for which remedies at law will not be adequate.
   2. Confidential Information Defined.
      1. For purposes of this Agreement, Confidential Information includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic, or any other form or medium, relating directly or indirectly to: business processes, plans, documents, operations, services, agreements, contracts, terms of agreements, transactions, potential transactions, negotiations, pending negotiations, know-how, trade secrets, work-in-process, records, systems, material, sources of material, supplier information, vendor information, financial information, results, accounting information, accounting records, legal information, pricing information, credit information, payroll information, staffing information, personnel information, employee lists, supplier lists, vendor lists, developments, reports, internal controls, revenue, costs, formulae, notes, communications, designs, models, ideas, customer information, customer lists, client information, client lists of the Employer, or of any other person or entity that has entrusted information to the Employer in confidence.
      2. The Employee understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.
      3. The Employee understands and agrees that Confidential Information developed by the Employee in the course of their employment by the Employer shall be subject to the terms and conditions of this Agreement as if the Employer furnished the same Confidential Information to the Employee in the first instance. Confidential Information shall not include information that is generally available to and known by the public, provided that such disclosure to the public is through no direct or indirect fault of the Employee or person(s) acting on the Employee’s behalf.
4. **Disclosure and Use Restrictions.**
   1. Employee agrees and covenants:
      1. to treat all Confidential Information as strictly confidential;
      2. not to directly or indirectly disclose, publish, communicate, or make available Confidential Information, or allow it to be disclosed, published, communicated, or made available, in whole or part, to any entity or person whatsoever (including other employees of the Employer) not having a need to know and authority to know and to use the Confidential Information in connection with the business of the Employer and, in any event, not to anyone outside of the direct employ of the Employer except as required in the performance of any of the Employee’s authorized employment duties to the Employer or with the prior consent of an authorized officer acting on behalf of the Employer in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent);
      3. not to access or use any Confidential Information, and not to copy any documents, records, files, media, or other resources containing any Confidential Information, or remove any such documents, records, files, media, or other resources from the premises or control of the Employer, except as required in the performance of any of the Employee’s authorized employment duties to the Employer or with the prior consent of an authorized officer acting on behalf of the Employer in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent). The Employee understands and acknowledges that the Employee’s obligations under this Agreement regarding any particular Confidential Information begin immediately and shall continue during and after the Employee’s employment by the Employer until the Confidential Information has become public knowledge other than as a result of the Employee’s breach of this Agreement or a breach by those acting in concert with the Employee or on the Employee’s behalf.
   2. Permitted disclosures.
      1. Nothing in this Agreement shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. The Employee shall promptly provide written notice of any such order to an authorized officer of the Employer. Nothing in this Agreement prohibits or restricts the Employee (or Employee’s attorney) from initiating communications directly with, responding to an inquiry from, or providing testimony before any self-regulatory organization, or any federal or state regulatory authority regarding this Agreement or its underlying facts or circumstances.
      2. Nothing in this Agreement prohibits or restricts the Employee (or Employee’s attorney) from initiating communications directly with, responding to an inquiry from, or providing testimony before any self-regulatory organization, or any federal or state regulatory authority.
      3. Nothing in this Agreement in any way prohibits or is intended to restrict or impede the Employee from discussing the terms and conditions of their employment with coworkers or union representatives/exercising protected rights under Section 7 of the National Labor Relations Act/exercising protected rights to the extent that such rights cannot be waived by agreement, or otherwise disclosing information as permitted by law.
   3. Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016. Pursuant to Section 7 of the Defend Trade Secrets Act of 2016, Employee is advised that an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of confidential information that is: (A) made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In the event any Confidential Information is required to be disclosed by law or order of any government authority having jurisdiction over Employee (including as necessary for a party to assert a claim in a court of competent jurisdiction), before any such disclosure Employee promises to provide written notice to the Employer reasonably sufficient to allow the Employer the opportunity to apply for a protective order or other restriction regarding such disclosure. In the event any Confidential Information is disclosed in such circumstances, such Confidential Information shall continue to constitute Confidential Information in all other circumstances pursuant to this Agreement.
5. **Duration of Confidentiality Obligations.** The Employee understands and acknowledges that their obligations under this Agreement with regard to any particular Confidential Information shall commence immediately upon the Employee first having access to such Confidential Information (whether before or after employment with the Employer begins) and shall continue during and after employment by the Employer until such time as such Confidential Information has become public knowledge other than as a result of the Employee’s breach of this Agreement or breach by those acting in concert with the Employee or on the Employee’s behalf and shall not continue longer than two (2) years following the termination of the Employee’s employment with Employer.
6. **Returning Employer Property.** Upon demand by the Employer, Employee will immediately deliver to the Employer, and will not keep in Employee’s possession, recreate or deliver to anyone else, any and all Employer property, including, but not limited to, Confidential Information, as well as all devices and equipment belonging to the Employer (including computers, handheld electronic devices, telephone equipment, and other electronic devices), Employer credit cards, records, data, notes, notebooks, reports, files, proposals, lists, correspondence, specifications, drawings blueprints, sketches, materials, photographs, charts, all documents and property, and reproductions of any of the aforementioned items that were developed by Employee pursuant to Employee’s employment relationship with the Employer, obtained by Employee, or otherwise belonging to the Employer, its successors or assigns.
7. **Notification.** Employee hereby authorizes the Employer to disclose this Agreement and its terms to any third party.
8. **Representations.** Employee agrees to execute any proper oath or verify any proper document required to carry out the terms of this Agreement. Employee represents that Employee’s performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary information acquired by Employee in confidence or in trust prior to this Agreement. Employee hereby represents and warrants that Employee has not entered into, and Employee will not enter into, any oral or written agreement in conflict herewith. Employee acknowledges and agrees to each of the following items: (a) Employee is executing this Agreement voluntarily and without any duress or undue influence by the Employer or anyone else; (b) Employee has carefully read this Agreement, Employee has asked any questions needed for Employee to understand the terms, consequences and binding effect of this Agreement and fully understands them, including that Employee is waiving Employee’s right to a jury trial by signing below; and (c) Employee sought the advice of an attorney of Employee’s choice if Employee wanted to before signing this Agreement.
9. **Non-Disparagement.** The Employee agrees and covenants that not to, at any time make, publish, or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the Employer, Employer’s services, or Employer’s employees or make any maliciously false statements about the Employer’s employees and officers.
10. **Acknowledgment.** Employee acknowledges and agrees that: (a) in the course of employment with the Employer, Employee will have unique access to Confidential Information, Restricted Services, and Trade Secrets, as defined herein, and that such access could not be fully and collectively obtained by Employee except through employment with the Employer (b) the Employer would not enter into this Agreement but for each of the separate agreements and covenants contained in this Agreement; (c) each of the agreements and covenants contained in this Agreement are essential to protect the Employer and its goodwill and are necessary to enable the Employer to maintain a stable customer and vendor base in order to remain in business; (d) it would disrupt, damage, impair and interfere with the Employer if Employee were to engage in such activities that would contravene any one of the separate covenants contained in this Agreement; (e) each of the separate provisions of this Agreement are reasonable and necessary to prevent the improper use or disclosure of Confidential Information and to convey to the Employer the goodwill of its business; and (f) Employee’s covenants in this Agreement are independent covenants and the existence of any claim by the Employer against Employee under this Agreement or otherwise will not excuse Employee’s breach of any other covenant herein. **Nothing in this Agreement shall be construed to in any way terminate, supersede, undermine, or otherwise modify the at-will status of the employment relationship between the Employer and the Employee, pursuant to which either the Employer or the Employee may terminate the employment relationship at any time, with or without cause, with or without notice.**
11. **Remedies.** The Employee acknowledges that the Employer’s Confidential Information and the Employer’s ability to reserve it for the exclusive knowledge and use of the Employer is of great competitive importance and commercial value to the Employer, and that improper use or disclosure of the Confidential Information by the Employee will cause irreparable harm to the Employer, for which remedies at law will not be adequate. In the event of a breach or threatened breach by the Employee of any of the provisions of this Agreement, the Employee hereby consents and agrees that the Employer shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction, or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that monetary damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief.
12. **Attorneys’ Fees.** If the Company commences any litigation to enforce any term or condition of this Agreement or seeks any other legal or equitable relief with regard to any breach, or threatened breach, by Employee of the terms or conditions of this Agreement, and substantially recovers any of such relief requested, Employee understands and agrees that Employee will be required to pay to the Company, all attorneys’ fees, costs and other expenses incurred by Company in obtaining that relief, even if other relief requested by the Company is denied.
13. **Successors and Assigns.**
    1. Assignment by the Employer. The Employer may assign this Agreement to any subsidiary or corporate affiliate, or to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Employer. This Agreement shall inure to the benefit of the Employer and permitted successors and assigns.
    2. No Assignment by the Employee. The Employee may not assign this Agreement or any part hereof. Any purported assignment by the Employee shall be null and void from the initial date of purported assignment.
14. **Governing Law; Jurisdiction and Venue.** This Agreement, for all purposes, shall be construed in accordance with the laws of Wisconsin without regard to conflicts-of-law principles. Any action or proceeding by either Party to enforce this Agreement shall be brought only in any state or federal court located in the state of Wisconsin, county of Dane. The Parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.
15. **Entire Agreement.** Unless specifically provided herein, this Agreement contains all the understandings and representations between the Employee and the Employer pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
16. **Modification and Waiver.** No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Employee and by a duly authorized officer of the Employer (other than the Employee). No waiver by either of the Parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the Parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
17. **Severability.** Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the Parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement.
18. **Headings.** Headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the heading of any section or paragraph.
19. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart’s signature page of this Agreement by facsimile, email in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document has the same effect as delivery of an executed original of this Agreement.

[signature page follows]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date above.

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| **EMPLOYEE** | **NAME OF HOME BUILDERS ASSOCIATION** |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: [NAME OF AUTHORIZED OFFICER]  Title: [TITLE OF AUTHORIZED OFFICER]  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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