

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (the “Agreement”), is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between MICHAEL S. POLSKY, Esq., Wis. Stats. Chapter 128 Receiver of Monarch, LLC (“Seller”) and \_\_\_\_\_ (the “Interested Party”).

### RECITALS

A. Seller is the court-appointed Receiver of Monarch, LLC pursuant to Chapter 128 of the Wisconsin Statutes in an action pending in the Circuit Court for Milwaukee County, Wisconsin, Case No. 19-CV-7686.

B. The parties hereto desire to explore and discuss a possible sale of assets by Seller to the Interested Party (the “Transaction”).

C. In connection with the Transaction, the Interested Party will be given access to Confidential Information (as defined below) relating to the businesses and affairs of Monarch, LLC.

D. The parties hereto wish to set forth their understanding with respect to the provision, retention and return of such Confidential Information during and after the discussions relating to the Transaction.

### AGREEMENTS

In consideration of the recitals and the mutual covenants and obligations set forth below, the sufficiency of which is acknowledged, the parties agree as follows:

1. Confidential Information. Except as set forth below, “Confidential Information” shall mean and include any financial, operational, technical or other information relating to the businesses and affairs of Monarch, LLC, which information is provided to the Interested Party in connection with the proposed discussions regarding the Transaction, whether such information is provided in written, oral, graphic, pictorial or recorded form or stored on computer discs, hard drives, magnetic tape or digital or any other electronic medium. It is understood that the term “Confidential Information” does not mean and include information which:

1.1 Is or subsequently becomes publicly available other than due to Interested Party’s breach of this Agreement and the Interested Party can prove this by manifest and clear evidence; or,

1.2 Prior to disclosure hereunder is within the possession of the Interested Party and the Interested Party can prove this by manifest and clear evidence.

2. Ownership. The Interested Party acknowledges and agrees that all of the Confidential Information of Monarch, LLC is the exclusive proprietary property of Seller, is being disclosed solely for the purpose of enabling the parties to conduct the discussions relating to the

Transaction and is to be used by the Interested Party only in such limited manner as is permitted by the provisions of this Agreement. The Interested Party will not, without the prior written consent of Seller, make copies of or reproduce in whole or in part any Confidential Information.

3. Nondisclosure of Confidential Information. The Confidential Information shall (a) be kept confidential by the Interested Party and not disclosed to any other individual, entity or party (except as provided in this section 3) and (b) not be used by the Interested Party for any commercial or competitive purpose whatsoever and may only be used in connection with the discussions relating to the Transaction. Notwithstanding the foregoing, the Interested Party may disclose any Confidential Information to the extent and only to the extent required under order of a court of competent jurisdiction or a valid administrative or congressional subpoena; provided, however, that upon issuance of any such order or subpoena, the Interested Party shall promptly notify Seller and shall provide Seller with an opportunity (if then available) to contest the propriety of such order or subpoena (or to arrange for appropriate safeguards against any further disclosure by the court or administrative or congressional body seeking to compel disclosure of such Confidential Information). The Interested Party may also disclose the Confidential Information only to those individuals (collectively, "Representatives") which have a need to know the Confidential Information for the purpose of evaluating the Transaction.

The Interested Party will (i) inform each of its Representatives receiving Confidential Information of the confidential nature of the Confidential Information and of the existence and the terms of this Agreement, (ii) direct its Representatives to treat the Confidential Information confidentially and not to use it other than in connection with an evaluation of the Transaction, and (iii) be responsible for any improper use of the Confidential Information by any Representative (including, without limitation, those Representatives who, subsequent to the first date of disclosure of Confidential Information hereunder, become its former Representatives). Without the prior written consent of Seller, neither the Interested Party nor any of its Representatives (including the officers and directors of the Interested Party) shall disclose to any individual, entity, or other party that the Confidential Information has been made available to it. EXCEPT AS SPECIFIED ABOVE, THE INTERESTED PARTY SHALL NOT DISCLOSE THE CONFIDENTIAL INFORMATION TO ANY INDIVIDUAL, ENTITY, OR OTHER PARTY.

4. Care and Return of Confidential Information. The Interested Party shall take all appropriate precautions against unauthorized disclosure of the Confidential Information by any Representative, employee, agent or other party and to safeguard the confidential and proprietary nature of the Confidential Information. Upon the request of Seller, the Interested Party shall return to Seller, or in the case of Confidential Information stored in electronic, magnetic or digital media, at the election of Seller, erase or render unreadable, all materials furnished (including, without limitation, any working papers containing any Confidential Information or extracts therefrom) which contain Confidential Information of Seller, and shall not retain any copies thereof. If so requested by Seller, the Interested Party shall deliver a certificate of an appropriate executive officer certifying that all such Confidential Information within the Interested Party's possession or control or the possession or control of the Interested Party's Representatives has been returned or erased, as appropriate, and that no such Confidential Information has been retained.

5. No Licenses. Neither the execution of this Agreement nor the furnishing of any Confidential Information pursuant to this Agreement shall be construed as granting the Interested

Party or its Representatives, either expressly or by implication, any license or right to use any Confidential Information for its own benefit or the benefit of any other person, firm or entity, and each party hereto expressly agrees not to so use any such information.

6. Nondisclosure of the Transaction. Neither party hereto shall publicly announce or otherwise disclose without the prior written consent of the other, that discussions relating to the Transaction are taking place except for such disclosure as the party seeking to make disclosure has been advised by its legal counsel in writing is required by law, in which case the party seeking to make disclosure shall provide the other party with as much prior notice of such announcement or disclosure as is reasonably possible under the circumstances (and attempt in good faith to obtain such other party's concurrence with the manner and extent of such disclosure).

7. No Liability. Neither party hereto shall be under any obligation of any kind with respect to the Transaction, except for the matters specifically agreed to herein, unless and until a definitive agreement regarding the Transaction has been executed and delivered by each of the parties hereto and the sale has been approved by the Court.

8. Employees. The Interested Party acknowledges and agrees that the employees of Seller are highly valued. Further, the Interested Party acknowledges that in obtaining information from Seller and evaluating the Transaction, it may learn information about employees of Seller. Therefore, if the parties determine not to consummate the Transaction, the Interested Party agrees that for a period of one year from the date hereof, it shall not recruit, hire or otherwise induce any employee of Seller to terminate their employment. Notwithstanding the foregoing, if an employee of Seller seeks employment with the Interested Party without a breach of this provision, the Interested Party shall contact Seller immediately and shall disclose the fact that the Interested Party has been approached by the employee concerning employment with the Interested Party. The Interested Party shall not hire such employee unless it first receives permission in writing from Seller to hire such employee.

9. Mutual Representations. Each party hereto represents and warrants to the other as follows:

9.1 This Agreement has been duly authorized by all requisite corporate action and such party has the corporate power and authority to execute and deliver, and to perform its obligations under this Agreement.

9.2 This Agreement constitutes a valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally.

10. Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

11. Remedies. Each party hereby acknowledges that Seller would be irreparably harmed by a breach hereof by the Interested Party or its Representatives and it may be difficult to estimate damages resulting from such a breach and, consequently, Seller shall be entitled to injunctive or such other equitable relief as may be appropriate to prevent a breach or threatened or

continuing breach of this Agreement, and to secure the enforcement of this Agreement, without foregoing any legal relief to which Seller may otherwise be entitled to recover. The Interested Party agrees to indemnify and hold Seller harmless from and against any and all loss, damage, cost, or expense (including reasonable attorneys' fees) resulting from or arising out of any breach of this Agreement by the Interested Party or its Representatives.

12. Entire Agreement. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof, superseding all previous oral or written communications, representations, understandings, arrangements or agreements and shall not be amended or modified except in a writing signed by the parties hereto.

13. Headings, etc. The section headings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

15. Survival. All representations and warranties made herein shall survive the execution and delivery of this Agreement.

16. Electronic or Facsimile Signatures. Electronic or facsimile copies of either of the parties' signatures shall be deemed effective execution of this Agreement by such party.

\_\_\_\_\_  
Michael S. Polsky, Esq.  
Wis. Stats. Chapter 128 Receiver of  
Monarch, LLC

INTERESTED PARTY:

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_