

CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT

This Agreement is entered into between MARCUS REALTY, a Hawaii corporation (“**Marcus**”) and _____, a _____ (“**Recipient**”) and its directors, officers, members, shareholders, managers, employees, partners, financing sources, potential partners or financing sources, representatives, advisors, agents, realtors, brokers, successors, assigns, and/or affiliate, parent and/or subsidiary companies, whether currently in existence or formed in the future (collectively, “**Representatives**”), concerning the production and review of various materials and other information which Marcus has assembled concerning a prospective sale of a certain real estate asset in Hawaii (the “**Property**”), by a certain undisclosed seller (“**Seller**”).

WHEREAS, Recipient desires to entertain the potential purchase of the Property and also desires to engage in due diligence regarding the Property, and Marcus has agreed to provide Recipient with certain Confidential Information as further described herein;

NOW, THEREFORE, in consideration of the mutual benefits accruing from the performance of their respective obligations under this Agreement, Marcus and Recipient hereby agree to the following:

1. **Confidentiality.** As a condition to, and in consideration of, Recipient being furnished information about the Property, Recipient agrees to treat any and all information (the “**Confidential Information**”) concerning the Property, Seller, or the potential sale of the Property (whether prepared by Seller, Marcus, their Representatives, or otherwise and regardless of the form of communication) that is furnished to Recipient, its broker, or its Representatives by or on behalf of Marcus in accordance with the provisions of this Agreement and to take or abstain from taking certain other actions as set forth in this Agreement. Once this agreement has been signed by Recipient, as part of the production of the Confidential Information, the identity of the Property will be filled in on the signature page hereof and the basic facts related thereto will be provided to Recipient.

The term “Confidential Information” shall be deemed to include notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by Seller, Marcus or their Representatives which contain, reflect or are based upon, in whole or in part, the Confidential Information. The term “Confidential Information” does not include information which (i) is already in Recipient’s possession, (ii) becomes generally available to the public other than as a result of a disclosure by Recipient or its Representatives or (iii) becomes available to Recipient on a non-confidential basis from a source other than Seller or Marcus, provided that such source is not to Recipient’s knowledge bound by a confidentiality agreement with, or other legal or fiduciary obligation of secrecy to, Seller or Marcus.

Recipient agrees that the Confidential Information will be used solely for the purpose of evaluating a possible transaction between Seller, Marcus and Recipient regarding the Property, and will not be used in any way directly or indirectly that is detrimental to Seller, Marcus or their affiliates, and that such information will be kept confidential by Recipient; provided, however, that any of the Confidential Information may be disclosed to Recipient’s Representatives who need to know such information for the sole purpose of evaluating a possible transaction between Seller and Recipient regarding the Property. Recipient further agrees to inform its Representatives of the confidential nature of the Confidential Information and that Recipient will obtain the agreement of its Representatives to act in accordance with the terms of this Agreement and not to disclose the Confidential Information to any other person. In any event, Recipient agrees to be responsible for any breach of this Agreement by any of its Representatives.

In addition, without the prior written consent of Marcus, Recipient will not, and will direct its Representatives not to, disclose to any other person either the fact that the Confidential Information has been requested by, or disclosed to, Recipient, that investigations, discussions or negotiations are taking

place concerning a possible transaction between Seller, Marcus and Recipient regarding the Property or any of the terms, conditions or other facts with respect to any such transactions, including the status thereof.

2. **No Warranties.** Recipient understands that neither Seller, Marcus nor any of its Representatives have made or make any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. Recipient agrees that neither Seller, Marcus nor any of its Representatives will have any liability to Recipient or any of Recipient's Representatives resulting from the use of the Confidential Information.

3. **Return and/or Destruction of Confidential Information.** If Recipient decides that Recipient does not wish to proceed with a transaction regarding the Property, Recipient will promptly inform Marcus of its decision. In that case, or at such time as Recipient is requested to do so by Marcus, Recipient shall promptly redeliver to Marcus all written Confidential Information in its possession or in the possession of any of its Representatives (except as set forth in the next sentence) and neither Recipient nor any of its Representatives shall retain any copies, extracts or other reproductions in whole or in part of such written material. All Confidential Information consisting of analyses, compilations, e-mails, computer files, studies, notes and other documents or writings prepared by Recipient or its Representatives based upon, in whole or in part, the information in the Confidential Information shall be destroyed, and such destruction shall, upon Marcus' written request, be certified in writing to Marcus by an authorized officer supervising such destruction. Notwithstanding the return or destruction of the Confidential Information, Recipient will continue to be bound by its obligations of confidentiality and other obligations hereunder.

4. **Non-Circumvention.** If Recipient decides not to and/or cannot proceed with the purchase of the Property for any reason, Recipient agrees not to proceed with a purchase of the Property (or any portion thereof) at any time without paying to Marcus the liquidated damage amount set forth in Section 7. Without limiting the generality of the foregoing, Recipient agrees that, for a period of one (1) year following the date of this agreement, it will not enter into any discussion, communication, agreement, arrangement or understanding (whether written or oral) with any person or entity, including Seller, that might lead to an agreement, arrangement or understanding, regarding a possible transaction involving the Property (it being understood that Recipient shall not be permitted to act as joint or co-bidder, broker, or purchaser on the Property with any other person without Marcus' prior written consent).

5. **Not an Agreement to Sell or Purchase.** Recipient agrees that unless and until a separate binding agreement regarding acquisition of the Property is entered into between Seller and Recipient, neither Marcus nor Recipient will be under any legal obligation of any kind whatsoever with respect to proceeding to sell or acquire the Property other than the matters specifically agreed to in this Agreement.

6. **No Waiver.** It is understood and agreed that no failure or delay by Marcus in exercising any right, power or privilege 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. The provisions of this agreement may not be waived or amended except by the written agreement of Marcus.

7. **Default; Liquidated Damages.** Recipient hereby acknowledges and agrees, that in the event of a breach by Broker of any of its obligations or agreements hereunder, ("**Recipient Default**"), Marcus will suffer damages in an amount which will, due to the confidential nature of the transaction contemplated herein, be impractical or extremely difficult to ascertain. In addition, Recipient wishes to have a limitation placed upon the liability of Recipient in the event of a Recipient Default. After due negotiation, Marcus and Recipient agree that upon the occurrence of a Recipient Default and provided further that: (a) the Recipient Default results in the sale of the Property; and (b) Marcus is not a party to the sale of the Property; then, Marcus shall be entitled to receive, as liquidated damages from the Recipient, an

amount equal to 2.5% of the sales price of the Property. Such sum represents a reasonable estimate of the damages Marcus will sustain in the event of a Recipient Default that results in the sale of the Property.

8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii.

9. **Jurisdiction.** Marcus and Recipient hereby consent to the personal and subject matter jurisdiction of the courts of the State of Hawaii and affirmatively waive any objection thereto.

10. **Counterparts.** This Agreement may be executed in counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument and may be assembled as one document with duplicate unexecuted pages discarded. Signatures transmitted by electronic facsimile devices shall be deemed to be original signatures for all purposes and may be relied upon by the other party as being fully binding.

Please initial the applicable box below:

- Recipient is a licensed realtor representing _____ as a potential purchaser.
(insert client's name)
- Recipient is a potential purchaser and represented by the following licensed realtor:
Name: _____ Brokerage Company: _____
- Recipient is a potential purchaser and is *not* represented by a licensed realtor.

Unless a specific agency relationship is identified above at the time of Recipient's execution hereof: (1) neither Seller nor Marcus shall be obligated to compensate any alleged brokerage representative of Recipient making claims to commissions; and (2) Recipient shall indemnify, defend and hold Seller and Marcus harmless from any brokerage commission claims from alleged brokerage representatives of Recipient related to Recipient's acquisition of the Property. No commission will be due unless the sale is closed.

In WITNESS whereof, the parties hereto have executed this document as of the date written below.

MARCUS REALTY

By _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

"Property"

WAIMANALO TOWN CENTER