

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “**Agreement**”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2021 by and between Hotel **Advisory, LLC**, d/b/a “HVS Brokerage and Advisory,” a Texas limited liability company (“**Broker**”), and \_\_\_\_\_, a \_\_\_\_\_ (the “**Registered Potential Purchaser**”), and, where applicable, \_\_\_\_\_, a \_\_\_\_\_ (the “**Co-Broker**”).

### RECITALS

A. Broker has been retained by the owner (“**Owner**”) of the property known as Courtyard by Marriott and TownePlace Suites by Marriott Galveston Island located at 9540 and 9550 Seawall Boulevard, Galveston, Texas 77554 (the “**Property**”), to market and facilitate the sale of the Property pursuant to that certain Exclusive Listing Agreement dated February 10, 2021 (the “**Listing Agreement**”).

B. Broker understands that the Registered Potential Purchaser desires to explore the possibility of acquiring the Property. To assist the Registered Potential Purchaser in reaching a decision concerning a possible acquisition, Broker has agreed to furnish to the Registered Potential Purchaser certain information that is either non-public, confidential or proprietary in nature (the “**Information**”), including, but not limited to, information of a financial nature, relating to the Property.

C. As a condition to furnishing the Registered Potential Purchaser with the Information, Broker requires the Registered Potential Purchaser to agree to treat the Information as strictly confidential.

D. As used herein, the term “**Information**” shall be deemed to include, without limitation: (a) materials or information provided or made available to Registered Potential Purchaser or its Representatives (as defined herein), whether prior to or following the date hereof; and (b) all trending reports, analyses, compilations, modeling, forecasts, studies or other documents prepared by the Registered Potential Purchaser, its directors, officers, employees, Affiliates, agents, attorneys, accountants, consultants, or financial advisors (collectively, “**Representatives**”) which contain or otherwise reflect such materials of information. As used herein, the term “**Affiliates**” shall mean, individually and collectively, each and all of a party’s respective current and future partners and members and each and all of their respective heirs, successors and assigns together with any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with any of the parties in question, which in the case of a person which is a partnership, shall include each of the constituent partners, whether general or limited partners thereof. The term “**control**,” as used in the immediately preceding sentence, means, with respect to a corporation, the right to the exercise, directly or indirectly, of more than fifty percent (50%) of the voting rights attributable to the shares of such corporation, and with respect to an entity that is not a corporation, the possession, directly or indirectly, or the power to direct or cause the direction of, the management or policies of such entity.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Broker, directly or through its representatives, may furnish, directly or indirectly, the Information in order to enable the Registered Potential Purchaser to evaluate the possible acquisition of the Property. The Registered Potential Purchaser shall accept and hold such Information in strict confidence in accordance with the provisions of this Agreement.

2. The Information will be kept strictly confidential and, without Broker's and Owner's prior written consent, the Registered Potential Purchaser and its Representatives shall not: (a) copy, reproduce, distribute or disclose the Information to any third party other than as contemplated by this Agreement; (b) use the Information for any purpose other than in connection with evaluating the possibility of acquiring the Property; or (c) use the Information in any manner detrimental to the Property, Owner or Broker. The Registered Potential Purchaser also agrees to transmit the Information only to those individuals who are actively and directly participating in the acquisition evaluation of the Property and who have read and agreed in writing to comply with the terms of, this Agreement and who are instructed not to make use of the Information in a manner inconsistent herewith. The Registered Potential Purchaser shall be responsible for any breach of the terms of this Agreement by such parties. All information that may be furnished to the Registered Potential Purchaser shall continue to be the property of Owner and/or Broker.
3. The Registered Potential Purchaser may register the Co-Broker as its agent by having such Co-Broker execute this Confidentiality Agreement simultaneously with the Registered Potential Purchaser. Co-Broker and Registered Potential Purchaser shall enter into a separate written agreement that provides if Owner and the Registered Potential Purchaser consummate a sale of the Property, Co-Broker shall be entitled to a commission paid by Registered Potential Purchaser (the "**Co-Broker Commission**"). In no event shall Co-Broker look to any party other than Registered Potential Purchaser for the payment of the Co-Broker Commission. Both the Registered Potential Purchaser and the Co-Broker hereby agree jointly and severally to indemnify Owner, Member and each of their respective servicers, employees, agents, predecessors, successors, administrators, fiduciaries, insurers, heirs, estates, servants, joint venturers, assigns, designees, subsidiaries, parents, principals, Affiliates, officers, directors, members, shareholders, partners, investors, managers, servicers, trustees, lenders, certificate holders, representatives, bondholders, beneficiaries, attorneys, and legal representatives (individually, a "**Owner Party**" and collectively, "**Owner Parties**") against any compensation, fee, loss, liability or expense, including attorneys' fees, arising from claims by the Co-Broker or any other party the Registered Potential Purchaser or the Co-Broker has had dealings with, excluding Broker, in connection with the proposed transaction. The Co-Broker agrees it will not look to Owner Parties for any compensation in connection with the proposed transaction and the Co-Broker agrees it will not discuss the Property with any other party other than the Registered Potential Purchaser, including without limitation, those set forth in Section 13 hereof, and that neither the Registered Potential Purchaser nor the Co-Broker will distribute the Information or excerpts to any other party.
4. The Information shall not include information which the Registered Potential Purchaser can clearly demonstrate falls within any of the following categories: (a) Information which has come within the public domain through no fault, action or inaction of the Registered Potential Purchaser or its Representatives; (b) Information which was known to the Registered Potential Purchaser on a non-confidential basis prior to its disclosure hereunder; or (c) Information which becomes rightfully available to the Registered Potential Purchaser on a non-confidential basis from any third party, the disclosure of which to the Registered Potential Purchaser does not violate any contractual or legal obligation said third party has with respect to such Information.
5. The Registered Potential Purchaser, when requested by Broker or Owner, shall immediately return or destroy (confirmed in writing) the Information, including all notes, copies, reproductions, summaries, analyses, or extracts thereof, then in the Registered Potential Purchaser's or its Representatives' possession, either furnished by Broker and/or Owner hereunder or prepared by the Registered Potential Purchaser or its Representatives. Such return or destruction shall not abrogate the Registered Potential Purchaser's continuing obligations under this Agreement.

6. The Registered Potential Purchaser will not disclose to any person or entity the fact that discussions, investigations, or negotiations are taking place concerning a possible transaction involving the Property or that the Registered Potential Purchaser has requested the Information. In the event that the Registered Potential Purchaser is requested or required (by interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, the Registered Potential Purchaser shall (a) immediately notify Broker so that Broker and/or Owner may seek a protective order or other appropriate remedy, (b) cooperate with Broker and/or Owner in the challenge of any such request or demand to disclose the Information, and (c) not disclose any Information pursuant to such request or demand until Broker and/or Owner has exhausted any lawful and timely appeal or challenge that Broker and/or Owner elects to file or make. In the event such protection or other remedy is not obtained, the Registered Potential Purchaser shall furnish only that portion of the Information which the Registered Potential Purchaser is advised by written opinion of counsel is legally required and shall exercise best efforts to obtain assurance that confidential treatment will be accorded to such Information. In the event disclosure of the Information is required by Federal and/or state securities laws or regulations, the Registered Potential Purchaser shall provide written notice of its intended disclosure to Broker for Owner's approval, which may not be unreasonably withheld.
7. Except as may otherwise be expressly set forth in a separate definitive agreement(s) between Owner and the Registered Potential Purchaser, Owner, its agents and representatives, including Broker, shall not be deemed to have made any representations or warranties whatsoever, express or implied, as to the accuracy or completeness of the Information and shall not have any liability whatsoever to the Registered Potential Purchaser (or its Representatives) relating to or arising in any manner from the Registered Potential Purchaser's use of, or reliance on, the Information for any reason whatsoever.
8. It is understood that this Agreement does not constitute an agreement to sell the Property, does not evidence any intent, binding or otherwise, to enter into negotiations regarding the sale of the Property, and does not obligate Owner or Broker to enter into any further discussions or agreements.
9. The terms of this Agreement shall inure to the benefit of Broker, Owner and their respective successors and assigns. Without prejudice to the other rights and remedies otherwise available at law or in equity, Owner, its agents and representatives, including Broker, shall be entitled to equitable relief by way of injunction if the Registered Potential Purchaser or any of its Representatives breach or threaten to breach any of the provisions of this Agreement.
10. Without limiting the obligations of the Registered Potential Purchaser or their respective Representatives, the Registered Potential Purchaser agrees to indemnify, defend and hold Owner Parties harmless from and against all claims, losses, liabilities, expenses, and/or damages including attorneys' fees that may result from (a) any breach of this Agreement by the Registered Potential Purchaser or its Representatives, and (b) any claim or claims by any other broker, finder or other party if such claim or claims are based, in whole or in part, on dealings with the Registered Potential Purchaser or its Representatives for commissions, fees and other compensation for the sale or proposed sale of the Property to the Registered Potential Purchaser.
11. It is understood and agreed that no failure or delay by Owner or Broker 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 right, power or privilege hereunder.

12. This Agreement shall be governed by and construed in accordance with the laws of the United States and to the extent such laws would apply the laws of a particular state, the laws of the state in which the Property is located shall apply without regard to the results of the application of any conflicts of law analysis of such state. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under all applicable laws. However, if any provision of this Agreement shall be held to be prohibited by or invalid under any applicable law, such provision shall be effective only to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Agreement. If either party institutes any litigation or other proceeding against the other with respect to this Agreement, such litigation or proceeding shall be instituted in either the Federal or State court located in the City, County and State of New York and the parties hereby waive all objections to personal jurisdiction, venue and all rights to seek to transfer the action due to improper or inconvenient forum.
13. All requests for Information or questions with regard to the Information or the Property shall be directed solely to Broker and shall not be made to any of Owner Parties, nor shall Broker, any Registered Potential Purchaser or any other third party, or any employee, agent, representative or other party related to any of the foregoing, contact or attempt to contact (a) anyone located at the Property, including any tenant, property manager or other employee or (b) the former owner of the property or any of its employees, agents, predecessors, insurers, principals, Affiliates, officers, directors, owners, members, shareholders, partners, investors, managers, representatives, attorneys, legal representatives, and related parties or entities, past or present, unless express authority to do so has been given by Owner.
14. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

**[SIGNATURE PAGES FOLLOW]**

EXECUTED TO BE EFFECTIVE as of the date and year set forth above.

**REGISTERED POTENTIAL PURCHASER**

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

**BROKER**

**HOTEL ADVISORY, LLC**, d/b/a “HVS  
Brokerage and Advisory,” a Texas limited  
liability company



Signature: \_\_\_\_\_

Printed Name: Eric Guerrero

Title: Managing Director

**CO-BROKER**

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_



# Information About Brokerage Services

Texas law requires all real estate license holders to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.

11-2-2015



## TYPES OF REAL ESTATE LICENSE HOLDERS:

- **A BROKER** is responsible for all brokerage activities, including acts performed by sales agents sponsored by the broker.
- **A SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

## A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

## A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:

**AS AGENT FOR OWNER (SELLER/LANDLORD):** The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

**AS AGENT FOR BUYER/TENANT:** The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

**AS AGENT FOR BOTH - INTERMEDIARY:** To act as an intermediary between the parties the broker must first obtain the written agreement of *each party* to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with, provide opinions and advice to, and carry out the instructions of each party to the transaction.
- Must not, unless specifically authorized in writing to do so by the party, disclose:
  - that the owner will accept a price less than the written asking price;
  - that the buyer/tenant will pay a price greater than the price submitted in a written offer; and
  - any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

**AS SUBAGENT:** A license holder acts as a subagent when aiding a buyer in a transaction without an agreement to represent the buyer. A subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first.

## TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARLY ESTABLISH:

- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

**LICENSE HOLDER CONTACT INFORMATION:** This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

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Licensed Broker /Broker Firm Name or Primary Assumed Business Name	License No.	Email	Phone
Eric Guerrero	593163	eguerro@hvs.com	+1 (713) 955-0012
Designated Broker of Firm	License No.	Email	Phone
Licensed Supervisor of Sales Agent/ Associate	License No.	Email	Phone
James Rebullida	698337	jrebullida@hvs.com	+1 (713) 955-5580
Sales Agent/Associate's Name	License No.	Email	Phone

Buyer/Tenant/Seller/Landlord Initials

Date