



CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this “Agreement”) is entered into effective as of _____ (the “Effective Date”), by and between **Hotel Advisory, LLC**, a Texas limited liability company, d/b/a “HVS Brokerage and Advisory” (“Discloser”), and _____, a _____ (“Recipient”). Recipient and Discloser are referred to herein individually as a “Party” and collectively as the “Parties”.

RECITALS

A. Discloser may provide Recipient with certain Materials (as defined below) in connection with Recipient’s evaluation of one or more potential real estate transactions (the “Limited Purpose”).

B. The Parties acknowledge and agree that the Materials (including, without limitation, the identities of any Protected Party (as defined below) provided by Discloser to Recipient, whether before or after the execution of this Agreement, are highly confidential and Recipient agrees not to divulge the contents of the Materials or any other information relating to Discloser or any Protected Party, except in strict accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

1.1 As used herein, “Affiliate” means, in relation to a person, any person that (i) directly or indirectly controls it, (ii) directly or indirectly is controlled by it or (iii) is under its direct or indirect common control. For purposes of this definition, the term “control” means the power to direct or cause the direction of management and policies, through the ownership of voting rights, by contract or otherwise, and shall in any event include the ownership or power to vote fifty percent (50%) or more of the outstanding equity or voting interests of such other person or entity.

1.2 As used herein, “Discloser” means Discloser and any and all of Discloser’s Affiliates, parent, associated or allied companies, firms, partnerships and/or organizations, predecessors, successors, assigns, and any related entities (including, without limitation, any entities affiliated with, related to, or sponsored by Discloser) and the directors, officers, shareholders, owners, partners, managers, members, agents, employees, attorneys and representatives thereof disclosing the Materials.

1.3 As used herein, “Materials” means any information received by Recipient from Discloser, together with all derivatives thereof, including, without limitation: (i) information relating to potential real estate transactions identified by Discloser; (ii) the identity of any counterparty to a potential real estate transaction and each such counterparty’s employees, shareholders, directors, partners, managers, members or officers (collectively, the “Protected Parties”) or any information concerning the transactions or Property of any Protected Parties; (iii) any financial, operating or other information belonging to Discloser or any Protected Party or relating to any such transactions or Property; (iv) all written, graphic and other material (in any medium whether in writing, on magnetic tape or in electronic or other form) relating to the foregoing; and (vi) all correspondence, memoranda, files, manuals, books, operating records

and contractor and vendor records relating to or containing any of the foregoing (in any medium whether in writing, on magnetic tape or in electronic or other form). The term Materials shall not include information that was or becomes generally available to the public other than as a result of disclosure by Recipient to the public or any third party in violation of this Agreement or a similar confidentiality agreement.

1.4 As used herein, “Property” means the land, improvements and personal property, free and clear of all liens, commonly known as the Fairfield Inn & Suites by Marriott Santa Rosa Sebastopol located at 1101 Gravenstein Highway South, Sebastopol, CA 95472.

2. Confidentiality and Restrictions on Use.

2.1 Recipient agrees that all Materials will be deemed confidential and used solely for the Limited Purpose. Recipient and its Affiliates, partners, representatives, agents, employees, officers, directors, managers, members, legal and financial advisors and/or any and all persons directly or indirectly acting for or with Recipient (collectively, the “Representatives”) shall not at any time, directly or indirectly, publish, make known or in any manner disclose any Materials to any individual or entity for any other purpose, except with the express prior written consent of Discloser. Further, prior to disclosing any Materials to its Representatives, Recipient shall inform them of the confidential nature of the Materials and of the terms of this Agreement and require them to abide by all the terms included herein. Recipient shall promptly notify Discloser of any unauthorized release, disclosure or use of the Materials.

2.2 If Recipient or any of its Representatives is requested or required to disclose any Materials in connection with any legal, judicial, regulatory or administrative proceeding or investigation (including in connection with any pre-trial discovery), Recipient shall notify Discloser promptly of the existence, terms and circumstances surrounding such a request or requirement so that Discloser or the applicable Protected Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If Discloser or the applicable Protected Party elects to seek a protective order or otherwise challenge the disclosure request, Recipient agrees to cooperate at no cost to Recipient (and to cause each of its Representatives to cooperate at no cost to such Representatives) to the extent legally permissible regarding the timing and content of such disclosure. If Recipient or any of its Representatives is nonetheless compelled or required by governmental authority, agency or regulation to disclose any such Materials, Recipient may disclose such Materials to the extent and as compelled or required without liability hereunder so long as (i) Recipient provides Discloser with written notice of the Materials or matter to be disclosed as far in advance of its disclosure if and as is practicable, and (ii) Recipient uses its reasonable efforts to obtain (and to cause its Representatives to use reasonable efforts obtain) assurances that confidential treatment will be accorded to such Materials.

2.3 Recipient shall use the Materials only for the Limited Purpose. At no time shall Recipient use the Materials for any other purpose, for the benefit of itself or any third party, or in any manner adverse to, or to the detriment of, Discloser or any Protected Party, including, without limitation, using the Materials in a manner (i) that would be in direct or indirect competition with the business activities of Discloser or any Protected Party, or (ii) that would be adverse to the business relationships of Discloser or any Protected Party with clients, customers, investors or other third parties (including, without limitation, using the Materials in a manner that results in any of such clients, customers, investors or other third parties terminating, reducing or failing to renew or expand their business relationships with Discloser or any Protected Party).

3. No Representations. The disclosures or delivery of Materials to Recipient will not be deemed to constitute any express or implied representation or warranty by Discloser. Discloser makes no representations or warranty to Recipient or any of its Representatives as to the accuracy or completeness of the Materials. Discloser shall not have any liability to Recipient or any of its Representatives as a result of review of or reliance upon the Materials by Recipient or any of its Representatives or any errors therein or omissions therefrom. Neither the Materials nor the act of disclosure thereof by Discloser shall constitute a grant of any license under any trademark, patent or copyright.

4. Return of Materials. Within five (5) days after delivery of a written request from Discloser, Recipient shall (and shall cause its Representatives to) deliver to Discloser (or certify in writing to Discloser the destruction of) all Materials in the possession or control of Recipient or its Representatives and any copies thereof which have been made. Notwithstanding the return or destruction of the Materials, Recipient shall continue to be bound by its obligations of confidentiality hereunder.

5. No Adequate Remedy at Law. Recipient agrees that the conditions in this Agreement and any information disclosed in the Materials are of a special, unique, and extraordinary character, that Discloser and the applicable Protected Party would be irreparably harmed by any disclosure of such information in violation of this Agreement. Accordingly, Discloser and Recipient agree that, in addition to all other remedies provided at law or in equity, Discloser and the applicable Protected Party shall be entitled to seek and obtain temporary, preliminary and permanent injunctive relief in a court of law to prevent and restrain any breach or contemplated or threatened breach of and to specifically enforce the provisions of this Agreement, and neither Discloser nor any Protected Party will be obligated to post bond or other security in seeking such relief or to prove irreparable harm. The existence of any claim, demand, action, set-off, counterclaim, or cause of action by Recipient against Discloser or any other person shall not constitute a defense to the enforcement by Discloser of this Agreement. Such remedies shall be in addition to and not in limitation of any injunctive relief or other rights or remedies to which Discloser is or may be entitled at law or in equity or under this Agreement.

6. Non-Circumvent. Recipient shall not, directly, indirectly or through a third party, use the Materials in any manner that circumvents the relationship between Discloser and any client of Discloser, including, without limitation, using the Materials to pursue a transaction related to the Property without recognizing Discloser's listing rights with respect to the Property.

7. Miscellaneous.

7.1 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and sent by certified mail, return receipt requested, or by messenger, with acknowledgement of receipt returned to sender, or by Federal Express or another reputable courier by next business day delivery. All notices shall be addressed as follows:

To Discloser:
Hotel Advisory, LLC (d/b/a "HVS Brokerage and Advisory")
808 Travis Street
Suite 1635
Houston, TX 77002
Attention: Eric Guerrero

To Recipient:

Attention:

7.2 Construction. The captions and headings used in this Agreement are for convenience only and are not to be considered in the construction or interpretation of this Agreement. This Agreement shall not be construed more strictly against either Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties.

7.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective Affiliates, all personnel thereof and the Parties' respective successors or assigns

of the Parties; provided, however, Recipient may not assign this Agreement or any right under this Agreement or delegate any duty under this Agreement without the prior written consent of Discloser (which may be given or withheld in Discloser's sole discretion).

7.4 Governing Law. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State in which the Property are located. All disputes which arise in connection with, or are related to this Agreement or any claimed breach hereof, shall be resolved, if not sooner settled, by litigation only in Harris County, Texas. The Parties agree to submit to jurisdiction and to accept service of process for courts in that locality.

7.5 Attorneys' Fees. If any proceeding, action or arbitration is instituted with respect to this Agreement or the transactions contemplated hereby, the prevailing Party shall recover its costs and reasonable attorney's fees from the non-prevailing Party.

7.6 Jury Trial Waiver. To the extent permitted by applicable law, each Party unconditionally waives its rights to a jury trial of any claim or cause of action based upon or arising out of this Agreement and the relationship that is being established between the parties pursuant hereto. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court. This waiver is irrevocable, meaning that it may not be modified either orally or in writing. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

7.7 No Waiver. No provision of this Agreement shall be deemed to have been waived, except if such waiver is contained in a written instrument executed by the Party against whom such waiver is to be enforced. No waiver by a Party of any term or condition of this Agreement shall constitute a waiver by such Party of any prior, concurrent or subsequent breach or default of the same or any other term or condition of this Agreement.

7.8 Severability. In the event that any part of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be reformed, and enforced to the maximum extent permitted by law. If such provision cannot be reformed, it shall be severed from this Agreement and the remaining portions of the Agreement shall be valid and enforceable.

7.9 Counterparts/Electronic Signatures. This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement. The Parties agree that signatures transmitted electronically via .pdf attachment shall be binding as if they were original signatures.

7.10 Survival. Notwithstanding the return or destruction of the Materials, Recipient and its Representatives will continue to be bound by all of their obligations under this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date

DISCLOSER:

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

Name: Eric Guerrero
Title: Senior Managing Director, Partner

RECIPIENT:

Name:
Title



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/21)

(If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(j), (k), and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salespersons and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE SECOND PAGE.**

Buyer Seller Landlord Tenant _____ Date _____

Buyer Seller Landlord Tenant _____ Date _____

Agent _____ DRE Lic. # _____

Real Estate Broker (Firm)

By _____ DRE Lic. # _____ Date _____

(Salesperson or Broker-Associate, if any)

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

Keller Williams Benchmark Properties, 39465 Paseo Padre Pkwy, Suite 1500 Fremont CA 94538
Scott Maksel

Phone: 5109996809 Fax: _____
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwoll.com

2610 35th Ave

CIVIL CODE SECTIONS 2079.13 – 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16. Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

CONFIRMATION: (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

Seller's Brokerage Firm _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____

Is the broker of (check one): the seller; or both the buyer and seller. (dual agent)

Seller's Agent _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____

Is (check one): the Seller's Agent. (salesperson or broker associate) both the Buyer's and Seller's Agent. (dual agent)

Buyer's Brokerage Firm _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____

Is the broker of (check one): the buyer; or both the buyer and seller. (dual agent)

Buyer's Agent _____ DO NOT COMPLETE. SAMPLE ONLY _____ License Number _____

Is (check one): the Buyer's Agent. (salesperson or broker associate) both the Buyer's and Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. (b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. (c) "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. (d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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