
CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this "**Agreement**") is made as of the ____ day of _____, 2021, by _____ ("**Recipient**"), whose principal place of business and post office address is at _____, in favor of Arena Investors LP, whose principal place of business and post office address is at 405 Lexington Avenue 59th Floor New York, NY 10174 the owner of the Asset (defined below) ("**Owner**"), with respect to the fee simple interest in the property commonly known as Coconut Beach Resort, containing approximately 20.97 acres of land, located at Aleka Loop, in the City of Waipouli, County of Kauai, State of Hawaii, TMK Numbers (4) 4-3-2:15, 16, & 20 and all improvements thereon ("**Asset**").

1. Background.

Owner and/or Owner's broker, Colliers International ("**Colliers**") may be providing and/or making available to Recipient information and/or documents relating to the Asset. The information may be presented to Recipient in various forms including, but not limited to, photocopies of documents, digital information on CD-ROM, digital information sent via electronic mail, and/or digital information accessible via the Internet (collectively "**Information**").

2. Confidentiality.

Recipient, including, but not limited to its directors, officers, employees, managers, members and/or shareholders, agrees that it will keep all Information, including any information derived from the Information, regardless of whether the Information is marked or specifically identified as "confidential" or "proprietary", confidential, except as to Recipient's professional consultants (disclosed to Owner in advance) who will be evaluating the feasibility of Recipient acquiring the Asset. Recipient further agrees, prior to disclosing the Information to any consultants, that it will inform such consultant that they are required to observe and maintain the confidentiality of the Information and the provisions of this Agreement.

3. Limitation on Use of Information.

All Information furnished to Recipient by Owner will be used solely by Recipient for the purpose of evaluating the feasibility of purchasing the Asset and Recipient agrees not to use the Information, including any information derived from the Information, for any other purpose.

4. Limitation on Disclosure of Information.

Recipient will not disclose to anyone, with exception to its disclosed consultants, the existence of or any other aspect of the Information or any information derived from the Information.

5. Prohibition Against Copying and Return of Materials.

No copies of the Information shall be made or disclosed to anyone whatsoever without the prior written consent of Owner. Upon the completion of the above-described evaluation, or upon request by Owner, Recipient shall return to Owner all Information in the form that was provided to Recipient and any and all duplications thereof.

6. Damages.

Recipient acknowledges and agrees that Owner has a substantial, material and proprietary interest in the Information and that if the Information or any other information protected under this Agreement is disclosed by Recipient in any respect whatsoever without Owner's prior written consent, Owner may suffer immediate and irreparable harm and may be substantially and materially damaged.

7. Remedies.

In the event Recipient breaches any of the conditions set forth in this Agreement, Owner shall have the right to exercise all of its rights and remedies at law and equity, including, without limiting the generality of the

foregoing, the right to obtain injunctive relief. The non-prevailing party shall pay all costs and expenses, including, without limitation, reasonable attorneys' fees incurred by the prevailing party in enforcing any of the covenants or conditions contained in this Agreement.

8. **Agency.**

Owner is represented by Colliers, a licensed real estate broker in the State of Hawaii. The brokerage agreement between Owner and Colliers provides for half of one percent (0.5%) commission to any properly licensed U.S. brokers up to \$18,000,000 or one percent (1%) of the purchase price if over \$18,000,000. If a properly licensed real estate broker represents Recipient, Recipient must provide the information below simultaneously with the execution of this Agreement. If Recipient's broker is not listed below at the time of Recipient's execution hereof, neither Owner nor Colliers shall be obligated to compensate any alleged brokerage representative of Recipient making claims to commissions at a subsequent date and Recipient shall indemnify, defend and hold Owner and Colliers harmless from any brokerage commission claims. If a properly licensed real estate agent represents itself as Recipient or if a real estate agent is a principal or owner of Recipient, neither Owner nor Colliers shall be obligated to compensate Recipient. No commission will be accrued or paid unless the sale is closed and proceeds distributed to Owner.

| | | |
|---|--|-------|
| Recipient's Broker: | Company: | _____ |
| | Agent: | _____ |
| (if not represented please write "NONE") | License No.: | _____ |
| | Address: | _____ |
| | City: | _____ |
| | State & Zip: | _____ |
| | Telephone: () Fax: () | _____ |
| | Email: | _____ |

9. **No Waiver.**

No waiver by Owner of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

10. **No Oral Modifications.**

This Agreement may not be altered, amended, changed, waived, terminated or modified in any respect or particular unless the same shall be in writing and consented to by Owner and Recipient.

11. **Successors and Assigns.**

This Agreement shall inure to the benefit of Owner and to its successors and assigns and be binding upon Recipient and its legal representatives, successors and assigns.

12. **No Third Party Beneficiaries.**

This Agreement is not intended to confer any benefits upon any persons, firms, corporations or other entities except Owner and Recipient and their respective directors, officers, employees, managers, members and/or shareholders.

13. **Choice of Law.**

This Agreement shall be construed, governed and enforced in accordance with the laws of the State of Hawaii without giving effect to principles of conflict of laws.

14. **No Other Agreement.**

Recipient acknowledges that this Agreement is solely for the purpose of establishing the confidentiality of the Information and does not grant Recipient any exclusive or other rights in connection with the purchase of Owner's Asset.

15. Termination.

This agreement shall terminate upon the date which is one (1) year from the date hereof.

IN WITNESS WHEREOF, Recipient has executed this Agreement as of the day and year first hereinabove set forth.

“Recipient”

Signature

Date

Print Name

Title

Company/Organization

E-Mail

Address

City/State/Zip

Telephone

Facsimile

Company/Organization Website

Please return signed Confidentiality Agreement (preferably via email in PDF format) to:

COLLIERS INTERNATIONAL

Attn: Mark D. Bratton* (R) CCIM
Direct: 808-523-9708
Fax: 808-521-0977
Email: mark.bratton@colliers.com

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Honolulu, HI 96813

* Bratton Realty Advisers, Ltd., exclusively contracted to Colliers International