

REGISTRATION, CONFIDENTIALITY & WAIVER
January 2019

PROPERTY: Waikoloa Highlands Lot #17
South Kohala District, Island of Hawai'i
Tax Map Key Nos.: (3) 6-8-2-17

SELLER: **Waikoloa Highlands Inc.** ("Seller")

Joel K. LaPinta, CCIM R® (JKL) is acting as the advisor with respect to the marketing and solicitation of offers in connection with the lease or lease or sale of the above identified property (the "**Property**"). JKL and Seller have available to review certain information concerning the Property and the potential purchase of the Property which includes, without limitation, certain materials and plans pertaining to the Property (collectively, the "**Informational Materials**"). The undersigned potential purchaser and its broker, if any (collectively, "**Potential Purchaser**"), understands that all information provided by JKL and Seller regarding the lease or sale of the Property, including, but not limited to, (i) any marketing materials (along with any photographs, maps, and artwork contained therein), (ii) all documents, studies, electronic materials and information furnished to Potential Purchaser by JKL, Seller or their respective partners, trustees, executives, employees, agents or representatives (collectively, "**Seller's Representatives**") relating to the Property, whether furnished before, on or after the date of this Agreement and whether furnished orally, in writing or by any other medium, and (iii) all reports, studies and other documents and information prepared by or for Potential Purchaser which contain or reflect any such documents or information furnished by JKL, Seller or Seller's Representatives or any information obtained through review of the Property or the potential purchase of the Property, shall be considered part of the Informational Materials and shall be treated in accordance with the provisions hereof. Informational Materials will not include information or documents that: a) Potential Purchaser can demonstrate were known by Potential Purchaser prior to the disclosure thereof by JKL or Seller, unless made known to Potential Purchaser from a source which was not permitted to disclose such information or documents to Potential Purchaser; b) came into the possession of Potential Purchaser from a third party which is not under any obligation to maintain the confidentiality of such information or documents; c) has become part of the of the public domain through no act or fault of Potential Purchaser in violation hereof; or d) Potential Purchaser can demonstrate were independently developed by or for Potential Purchaser without the use of the Informational Materials.

JKL and Seller will not permit the disclosure of any Informational Materials to a Potential Purchaser unless Potential Purchaser has executed this Agreement. Upon JKL's receipt of this executed Agreement, the Informational Materials will be provided for the Potential Purchaser's consideration in connection with the possible purchase of the Property, subject to the conditions set forth herein.

1. All Informational Materials pertaining to the Property or the potential purchase of the Property, including information conveyed via the spoken word, that are furnished to the Potential Purchaser shall be held in the strictest confidence and shall be used solely for the purpose of Potential Purchaser's consideration of a purchase of the Property and shall not be copied or reproduced except as necessary for the consideration of the purchase of the Property. Upon JKL's request, the Potential Purchaser shall destroy all Informational Materials and copies thereof and provide JKL with written certification of such destruction.
2. The Informational Materials may be disclosed to the Potential Purchaser's partners, employees, legal counsel and lenders ("**Related Parties**") only on a need-to-know basis for the purpose of evaluating the potential purchase of the Property; provided, however, that the Potential Purchaser shall inform such Related Parties of this Agreement and the confidential nature of the Informational Materials and shall be responsible for a breach of this Agreement by any Related Parties.
3. Potential Purchaser shall not: (a) disclose (other than to Related Parties in accordance with paragraph 2 above) the fact that the Informational Materials have been or may be available to Potential Purchaser or the fact that discussions or negotiations are taking place concerning the possible acquisition of the Property or any of the terms thereof, or (b) contact any of the tenants of the Property with respect to the subject matter hereof, in each case without the prior written consent of Seller.
4. In the event that Potential Purchaser is required by subpoena or other judicial or administrative process to disclose the Informational Materials, Potential Purchaser shall (i) provide JKL and Seller with prompt notice thereof, (ii) consult with Seller on the advisability of taking steps to resist or narrow such disclosure, (iii) furnish only that portion of the information which Potential Purchaser is advised by written opinion of legal counsel is legally required, and (iv) reasonably cooperate with Seller in any attempt that Seller may make to obtain an order or other reliable assurance that confidential treatment will be accorded the Informational Materials.
5. The Informational Materials are not intended to be all inclusive or to contain all information that a prospective purchaser may desire. The Potential Purchaser understands and acknowledges that all the Informational Materials have been obtained from third parties and neither the Seller, JKL, Seller's Representatives, nor any of their employees and agents (a) make any representations or warranties as to the accuracy or completeness of the Informational Materials, or (b) have independently verified the information contained in them. Potential Purchaser acknowledges that the Seller, Seller's Representatives and JKL have no responsibility to update the Informational Materials. The Potential Purchaser further acknowledges and agrees that neither the Seller, any of Seller's Representatives, nor JKL has or will have any liability to the Potential Purchaser or any other person resulting from any use of the Informational Materials by the Potential Purchaser or its Related Parties.
6. Potential Purchaser acknowledges it is acting solely on its own behalf with respect to the proposed purchase of the Property, and not as a broker, and in the event the Potential Purchaser is represented by a broker, the broker must register such representation below. JKL shall split with the Potential Purchaser's broker a portion of the lease or sales commission up to an equivalent of two and one half percent (2.5%) of the lease or sales price of the Property upon the Potential Purchaser closing on a purchase of the Property.
7. The Potential Purchaser hereby agrees to indemnify, defend, and hold harmless the Seller, Seller's Representatives and JKL, and their respective affiliates, trustees, shareholders, directors, officers, employees, agents, and successors and assigns against and from any loss, liability, or expense, including attorney's fees, arising out of or related to (i) the use of the Informational Materials by Potential Purchaser or its Related Parties, (ii) any breach of any of the terms of this Agreement by Potential Purchaser or its Related Parties, or (iii) any broker, agent or finder claiming a commission or other fee by or through Potential Purchaser.

- 8. Potential Purchaser acknowledges that the Property has been offered for lease or sale subject to withdrawal from the market, change in offering price, prior lease or sale or rejection of any offer because of the terms thereof, lack of satisfactory credit references of any prospective purchaser, or for any other reason whatsoever, without notice. Without limiting the generality of the foregoing, Potential Purchaser acknowledges and agrees that (i) Seller is free to conduct the process leading up to a possible purchase of the Property as Seller, in its sole discretion, determines appropriate (including, without limitation, negotiating with any number of prospective purchasers and entering into a preliminary or definitive agreement with any of them without prior notice to Potential Purchaser or any other person), (ii) Seller reserves the right, in its sole discretion, to change at any time the procedures relating to its consideration of the potential purchase of the Property without prior notice to Potential Purchaser or any other person, to reject any and all proposals made by Potential Purchaser and to terminate discussions and negotiations with Potential Purchaser at any time and for any reason, and (iii) unless and until a written definitive agreement concerning the purchase of the Property has been executed, neither Seller nor any of Seller's Representatives will be under any legal obligation of any kind whatsoever with respect to any potential purchase of the Property, whether by virtue of this Agreement, or any other written or oral expression relating to any potential purchase or otherwise.
- 9. Potential Purchaser agrees that, if Seller or JKL brings an action to enforce the provisions of this Agreement, the damages would be inadequate and difficult to measure and, therefore, the Seller shall be entitled to injunctive and other equitable relief in addition to any other relief available at law or in equity.
- 10. No personal liability or obligation under this instrument shall be imposed or assessed against Seller's Representatives in their individual capacities.
- 11. In any action to enforce the terms of this Agreement the non-prevailing party shall be responsible for the payment of the prevailing party's reasonable attorneys' fees and expenses included in any such action. Upon execution, this Agreement will become a binding agreement and will be a contract construed and enforced in accordance with Hawaii law without regard to conflict of law principles and shall constitute the entire agreement between the parties with respect to the subject matter hereof. Any amendment or modification of this Agreement must be in writing and signed by all of the parties hereto, and any waiver of any provision of this Agreement must be by written instrument signed by the party charged with the alleged waiver. This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.
- 12. It is specifically acknowledged and agreed that each of Seller and Seller's Representatives shall be intended third-party beneficiaries of this Agreement, which Agreement shall inure to the benefit of Seller, Seller's Representatives, and their respective successors, successors in trust, and assigns. Without limiting the generality of the foregoing, and notwithstanding that Seller is not a signatory to this Agreement, (i) Seller shall have the right to enforce this Agreement and (ii) this Agreement may not be amended or modified without the prior written consent of Seller.

If you are in Agreement with the foregoing, please return one original signed copy of this Agreement to JKL (Attention: Joel K. LaPinta, 40 Kamehameha Avenue, Hilo, HI. 96720; Phone (808) 961-0161; email to lapinta@lapinta.com). Facsimile/electronic reproductions of the signatures affixed to this Agreement shall constitute original signatures and shall signify agreement to the terms hereof and acceptance of this Agreement. 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 instrument.

POTENTIAL LEASEE OR PURCHASER:

Accepted and Agreed to this _____ day of _____, 2019

Company _____

By: _____

Print Name: _____

Title: _____

Address: _____

Phone: _____ Email: _____

BROKER REPRESENTING POTENTIAL LEASEE OR PURCHASER:

Accepted and Agreed to this _____ day of _____, 2019

Company _____

License No. & State: _____

By: _____

Print Name: _____

Title: _____

Address: _____

Phone: _____ Email: _____

SELLER'S BROKER:

Accepted and Agreed to this _____ day of _____, 2019

Company Joel K. LaPinta

License No. & State: RB-14261 Hawaii

By: _____

Print Name: Joel K. LaPinta

Title: Principal Broker

Address: 40 Kamehameha Avenue, Hilo, HI 96720

Phone: 808.961.0161, Cell. 808.987.3544 Email: LaPinta@LaPinta.com