

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this "**Agreement**") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2019 between \_\_\_\_\_, a \_\_\_\_\_ (the "**Reviewer**"), with an address at \_\_\_\_\_, and **Institutional Property Advisors on behalf of Meridian Pacific**, (the "**Company**").

### RECITALS:

The Company has agreed to permit the Reviewer to review certain proprietary information pertaining to Puna Kai Shopping Center, 15-2714 Pahoia Village Rd, Pahoia, HI (the "**Asset**") for the sole purpose of allowing the Reviewer to determine whether the Reviewer wishes to make an offer to purchase the Asset or a direct or indirect interest therein (the "**Transaction**"). The Reviewer agrees that the information may be used for no other purpose.

In connection therewith, the Company has agreed to permit the Reviewer to review and inspect certain non-public documents, files and other information relating to the Asset and/or the Transaction, which information (the "**Evaluation Material**") may include economic, commercial, marketing and financial information that is confidential and/or proprietary in nature. Therefore, the Company has required the Reviewer to execute and deliver this Agreement as a condition to any right to review and inspect the information. Evaluation Material includes all information regarding the Asset and/or the Transaction disclosed by or on behalf of the Company to the Reviewer and any analyses, compilations and studies of such disclosed information prepared by or on behalf of the Reviewer that contain or otherwise reflect such disclosed information, other than information that (i) at the time of disclosure or thereafter is available to the public other than as a result of a breach of this Agreement; (ii) is already in the Reviewer's possession or becomes available to the Reviewer on a non-confidential basis from a source other than the Company, provided that such source is not known by the Reviewer to be bound by an obligation of confidentiality to the Company; or (iii) has been independently developed by the Reviewer without violation of this Agreement.

In consideration of being granted the opportunity to review and inspect the Evaluation Material, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### AGREEMENTS:

**Section 1. Purpose.** The Reviewer agrees that its review and inspection of the Evaluation Material shall be solely to conduct due diligence in connection with the Transaction for itself and not as an agent, representative or broker of any undisclosed party.

#### **Section 2. Non-Disclosure and Use of Evaluation Material.**

(a) The Reviewer agrees that, except as set forth below, all Evaluation Material shall be used by the Reviewer solely for the purpose stated above. The Reviewer further agrees not to disclose any of the Evaluation Material, to any third party other than its Representatives (as defined below), without the prior written consent of the Company.

(b) Any of the Evaluation Material that is required to be disclosed by law or by regulatory or judicial process may be disclosed without the Reviewer being in breach of its obligations under this

Agreement. The Reviewer will provide the Company written notice at the address provided herein (to the extent not prohibited by law) so as to enable the Company, at its sole expense to take action to seek a protective order or other appropriate remedy to ensure confidential treatment of the Evaluation Material. The Reviewer agrees to furnish only that portion of the Evaluation Material as is legally required and agrees to cooperate with the Company on a reasonable basis in the Company's efforts to obtain a protective order.

(c) Notwithstanding the foregoing, the Reviewer may disclose the Evaluation Material to its directors, officers, employees, agents, contractors, attorneys, lenders and affiliates (collectively, "**Representatives**") who need to know such information for purposes of evaluating the potential Transaction, it being agreed that the Reviewer shall make each such Representative aware of the confidential nature of the Evaluation Material and shall require each such Representative to treat such Evaluation Material confidentially in accordance with this Agreement.

**Section 3. Review of Evaluation Material.** The Evaluation Material will be made available for review by the Reviewer and its Representatives at a location and time and in a manner determined by the Company.

**Section 4. Return or Destruction of Evaluation Material.** Upon the termination of this Agreement, the Reviewer agrees to promptly destroy all Evaluation Material previously delivered to the Reviewer or provided by the Reviewer to any Representative. Notwithstanding the foregoing, the Reviewer may retain one copy of the Evaluation Material if required by law and will continue to treat the Evaluation Material in accordance with the terms of this Agreement. All of the Reviewer's obligations hereunder and all of the Company's rights and remedies hereunder with respect to any retained Evaluation Material shall survive termination of this Agreement.

**Section 5. Reliance on Third Party Engineering and Environmental Reports and Other Evaluation Material.**

(a) The Reviewer acknowledges and agrees that the Company makes no warranties or representations, whether express or implied, in fact or in law, with respect to the content, accuracy or completeness of financial statements, documents pertaining to the real property and improvements on the Asset and any of the Evaluation Material, unless expressly set forth in a separate, written purchase and sale agreement executed between the Company and the Reviewer in connection with the Transaction (herein called a "**Purchase and Sale Agreement**"). Unless otherwise expressly provided in a Purchase and Sale Agreement, all Evaluation Material, including, without limitation, the engineering and environmental reports of third party engineering and environmental firms, has been prepared for use solely and exclusively by the Company or the Company's predecessors in interest. Such reports and other Evaluation Material are provided for informational purposes only, and the Reviewer hereby agrees that such reports and other Evaluation Material shall not be relied upon as indicators of the value of the Asset. The Company has not directed the manner or method any such firm or other person utilized in performing its work or producing its report or other Evaluation Material, and the Reviewer shall make its own independent determination as to the adequacy or correctness thereof or the assumptions used and conclusions reached therein. The Reviewer specifically acknowledges that the engineering and environmental consultant industries may not be regulated and that neither the scope of any such work nor any such report may satisfy various governmental requirements or identify all possible engineering or environmental issues or concerns. The Reviewer also acknowledges that conditions at any particular portion of the Asset and the surrounding area may have changed since such reports were performed.

(b) The Reviewer shall not have the right to rely upon, and hereby expressly agrees not to rely upon, the conclusions or other data set forth in any reports or any other Evaluation Material and shall have no recourse against the Company or its affiliates, shareholders, partners, members, officers, directors, trustees, employees, agents, advisors, counsel or other representatives, including without limitation, the preparers of such reports or other Evaluation Material, in the event of any errors therein or omissions therefrom or for any other reason, unless otherwise agreed to by the parties hereto in a Purchase and Sale Agreement. The Company shall not (i) have any obligation or responsibility whatsoever, or (ii) make any representation or warranty or assume any duty or obligation, for the adequacy, completeness, accuracy, form or content of the scope of any work or any such report or other Evaluation Material, the existence or non-existence of any facts related thereto, the performance or quality of any work performed or the absence of defects therefrom, or the financial condition or professional qualifications of or the reporting thereof by any such firm or other person. Only those representations and warranties that may be made by the Company in a Purchase and Sale Agreement shall have any legal effect. The Company's acceptance, review or use of any such report or other Evaluation Material shall not constitute (i) an approval of any such report or other Evaluation Material, (ii) a waiver of any of its rights under any agreements it has relating to environmental matters, or (iii) a release of any person of its obligations under any agreements it has relating to environmental matters.

(c) The Reviewer's decision to purchase or not to purchase the Asset is and will be based on the Reviewer's independent evaluation of the Asset. The Reviewer is experienced in evaluating, owning and holding commercial real estate in the nature of the Asset. The Reviewer is familiar with the risks associated with commercial real estate sale transactions.

(d) The Company agrees not to claim any conflict of interest solely by reason of any such engineering or environmental firms whose work is part of the Evaluation Material, discussing its report with the Reviewer or the Reviewer utilizing any such firm in its investigation of the Asset, provided that the Reviewer shall be solely responsible for any associated costs and expenses. If the Reviewer utilizes any such firm, the Reviewer acknowledges and agrees that it has selected such firm on the basis of independent information and has not relied upon or received any recommendation from the Company and that such firm and the Reviewer shall be responsible for determining the appropriate level or inquiry and scope of services to be provided to the Reviewer, and such firm shall conduct such services independently of the services conducted for the Company. Although such firm may utilize records it utilized on behalf of the Company, the Reviewer and such firm shall be solely responsible for determining the need to update or further research such records, without reliance on the Company. Upon written request of the Company, the Reviewer shall cause such firm to provide the Company with a copy of any engineering or environmental report regarding such services it performs for the Reviewer at the same time it is provided to the Reviewer; provided, however, the Company agrees that any such engineering or environmental report shall not be distributed to any third party by the Company during the period that the Reviewer is evaluating the Evaluation Material.

**Section 6. Property Inspection.** The Reviewer agrees that without written consent from the Company, the Reviewer will not seek to gain access to any non-public areas of the Asset, or to any books and records of the Asset other than those made available by the Company. The Reviewer agrees not to communicate with any tenant, property manager, engineer or other person having rights and/or responsibilities with respect to the Asset or any of the Evaluation Material without the prior written consent of the Company.

**Section 7. Termination.** Notwithstanding anything to the contrary set forth herein, this Agreement shall remain in full force and effect until the earlier of (a) twenty-four (24) months from the date hereof, or (b) the sale, if any, of the Asset to a party other than the Reviewer.

**Section 8. Remedies.** In the event the Reviewer or any of its Representatives fails in any respect to comply with its obligations under this Agreement, the Reviewer shall be liable to the Company for such breach, and the Company shall be entitled to exercise any right, power or remedy available to the Company at law or in equity for such breach. Such remedies may include, without limitation, the right to sue for specific performance, injunctive or other equitable relief and/or damages. No forbearance, failure or delay in exercising any such right, power or remedy shall operate as a waiver thereof.

**Section 9. Applicable Law.** This Agreement is governed by and will be construed in accordance with the laws of the State of California giving effect to its conflict of laws principles.

**Section 10. Notices.** All notices and other communications required or permitted under this Agreement ("**Notices**") must be in writing and must be sent by i) personal delivery, (ii) certified mail, return receipt requested, (iii) for next day delivery by nationally recognized overnight delivery service that provides evidence of the date of delivery with all charges prepaid, or (iv) electronic mail, in any case with all charges prepaid, addressed to the appropriate party at its address indicated above. The Reviewer or the Company each may change from time to time the address to which Notices must be sent, by Notice given in accordance with this Section. All Notices given in accordance with this Section will be deemed to have been received three (3) Business Days after having been deposited in any mail depository regularly maintained by the United States Postal Service, if sent by certified mail, on the date delivered if by personal delivery or electronic mail or one (1) Business Day after having been deposited with a nationally recognized overnight delivery service, if sent by overnight delivery, or on the date delivery is refused, as indicated on the return receipt or the delivery records of the delivery service, as applicable. Notices given by counsel to a party in accordance with the above shall be deemed given by such party. The term "**Business Day**" as used herein means any day other than a Saturday or a Sunday or a legal holiday in the State of California or the State or Commonwealth where the Asset is located.

**Section 11. Unenforceable Provisions.** If any provision of this Agreement is found to be illegal or unenforceable or would operate to invalidate this Agreement, then the provision will be deemed to be expunged, and this Agreement will be construed as though the provision was not contained herein and the remainder of this Agreement will remain in full force and effect.

**Section 12. Entire Agreement.** Any agreements between the parties relating to the matters described herein are contained in this Agreement, which contains the complete and exclusive statement of the agreements between the Company and the Reviewer, except as the Company and the Reviewer may later agree in writing to amend this Agreement.

**Section 13. No Oral Amendment.** This Agreement may not be amended, waived or terminated orally or by any act or omission made individually by the Company or the Reviewer but may be amended, waived or terminated only by a written document signed by the party against whom enforcement of the amendment, waiver or termination is sought.

**Section 14. No Discussion.** The Reviewer shall not discuss bid pricing for the Asset with any party, other than its Representatives, or reveal to any party, other than its Representatives, the amount of the Reviewer's bid for the Asset.

**Section 15. Recitals.** The recitals set forth above are hereby incorporated in this Agreement.

**Section 16. E-mail or PDF Signatures.** To facilitate execution of this Agreement, the Reviewer may provide its signature by electronic mail (e-mail), or portable document format (PDF) of the signature page to the Company, which shall be effective as an original signature page for all purposes. Delivery of the execution original to the Agreement or any e-mail signature or PDF thereof may be given on behalf of the Reviewer by the attorney of the Reviewer.

IN WITNESS WHEREOF, a duly authorized representative of the Reviewer has executed this Agreement as of the date set forth above.

**REVIEWER:**

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

**Please fully complete the information above and email the executed Confidentiality Agreement to the attention of Patrick Toomey at [ptoomey@ipausa.com](mailto:ptoomey@ipausa.com), or complete the electronic fields provide.**