

**CONFIDENTIALITY AGREEMENT**

(Please type or print legibly)

Potential Purchaser: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

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Foster Kern LLC, a Hawaii limited liability company (“FOSTER-KERN”) is the present owner of certain parcels of real property in the State of Hawaii more particularly described on Exhibit A attached hereto and made a part hereof (individually and collectively the “Property”); and has retained Joel K. LaPinta (LaPinta), a real estate broker licensed by the State of Hawaii, to market and sell the Property. Potential Purchaser has expressed an interest in reviewing one or more of the parcels included within the Property for the purpose of considering whether to make an offer to purchase one or more of the parcels included within the Property from FOSTER-KERN. In this regard, Potential Purchaser has requested that Foster-Kern furnish to Potential Purchaser certain information and materials concerning the Property, which includes, without limitation, various papers, documents, operating statements (if any), schedules of tenant leases, engineering reports and studies, and other materials and information, whether written, oral or contained in electronic or computer format (collectively, the “Evaluation Material”) relating to the each parcel comprising the Property. FOSTER-KERN is prepared to furnish the Evaluation Material to Potential Purchaser in connection with Potential Purchaser’s review of one or more of the parcels comprising the Property only on the express and continuing condition that Potential Purchaser agrees to keep and treat the Evaluation Material as strictly confidential as hereinafter provided.

Therefore in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and as a prerequisite to FOSTER-KERN furnishing the Evaluation Material, Potential Purchaser does hereby covenant and agree with and for the benefit of FOSTER-KERN and its shareholders, partners, members, directors, officers, employees, agents, attorneys, contractors, representatives, including but not limited to LaPinta, successors and assigns), as follows:

1. Confidentiality of Evaluation Material. Potential Purchaser shall keep all Evaluation Material (other than information which is a matter of public knowledge or which legal counsel for Potential Purchaser advises that Potential Purchaser is legally obligated to disclose)

provided by FOSTER-KERN strictly confidential, including the substance, terms, conditions and the fact of any discussions between Potential Purchaser and FOSTER-KERN concerning a potential purchase of one or more of the parcels comprising the Property.

2. Potential Purchaser Parties. Potential Purchaser shall not use the Evaluation Material for any purpose other than its review, analysis and consideration of a potential purchase of the Property from Seller. Notwithstanding the foregoing, if Potential Purchaser closes its purchase of the Property from Seller, Potential Purchaser's use of the Evaluation Materials with respect to the Property shall not be limited by this Agreement from and after the date of such purchase. Potential Purchaser shall limit access to the Evaluation Material only to its partners, directors, officers, employees, agents, attorneys, consultants, lenders and investors (collectively referred to, with Potential Purchaser, as "Potential Purchaser Parties") who require knowledge of the Evaluation Material for the purpose of assisting Potential Purchaser in the evaluation and consideration of a potential offer to purchase of the Property from Seller. Potential Purchaser shall advise all other Potential Purchaser Parties in writing of the existence of this Agreement and the confidentiality of the Confidential Information, and shall require them to maintain the confidentiality of the Evaluation Material in accordance with the terms of this Agreement.

3. Disclosure. Potential Purchaser shall not copy, electronically scan otherwise load into a database, duplicate, publish or disclose to any person, firm, corporation, company, association, partnership, trust or other entity ("Person"), other than Potential Purchaser Parties, in any manner or form whatsoever, without the prior written consent in each instance of FOSTER-KERN, any Evaluation Material for any reason or purpose whatsoever, except and then only to the extent Potential Purchaser becomes legally compelled to do so by deposition, interrogatory, subpoena, civil investigative demand or similar legal process. Potential Purchaser shall provide FOSTER-KERN with prompt written notice (unless such notice is prohibited by law) prior to the date of such compelled disclosure, in which case, FOSTER-KERN may seek a protective order or other appropriate remedy to prevent such disclosure. In the event such protective order or other remedy is not sought or not obtained, Potential Purchaser shall disclose only that portion of the Evaluation Material which, upon the advice of its counsel, is legally required. Potential Purchaser may make notes regarding Evaluation Material, which notes shall be deemed confidential Evaluation Material under the terms of this Agreement. If Potential Purchaser does not purchase the Property, then upon the request of FOSTER-KERN, Potential Purchaser shall promptly return all Evaluation Material, other than its notes, whether furnished before or after the date of this Agreement, to FOSTER-KERN without retaining any copy thereof. All notes, studies, reports, analysis or documents prepared by Prospective Purchaser or any Potential Purchaser Parties relating to the Property or the Evaluation Material shall be destroyed and Potential Purchaser shall provide FOSTER-KERN with written confirmation of such destruction. Notwithstanding the return or destruction of the Evaluation Material, Potential Purchaser and any Potential Purchaser Parties will continue to be bound by the confidentiality and other obligations under this Agreement.

4. Sale Process.

(A) Potential Purchaser acknowledges that Seller intends to enter into agreements similar to this one with other prospective purchasers of one or more of the parcels comprising the Property. This Agreement, and such similar agreements, is the beginning of a process in which FOSTER-KERN intends to invite and/or solicit offers to purchase the Property, which offers are intended by FOSTER-KERN. FOSTER-KERN has not offered to sell the

Property or any parcel thereof, to Potential Purchaser and is not obliged to accept any purchase offer by Potential Purchaser or any other person for the Property or any parcel thereof.

(B) Potential Purchaser agrees that unless and until a definitive purchase agreement regarding the sale and purchase of the Property or any parcel thereof between FOSTER-KERN and Potential Purchaser has been executed and delivered by the parties thereto, neither FOSTER-KERN or Potential Purchaser will be under any legal obligation of any kind whatsoever with respect to a transaction except, in the case of this Agreement, for the matters specifically agreed to herein. For the purposes of this Agreement, the term "definitive purchase agreement" shall not include (unless and to the extent so contemplated by a subsequent written agreement) an executed document titled "Offer Term Sheet", "Letter of Intent", or any other written agreement which, by its terms, is merely preliminary to a complete and detailed agreement, nor does it include any oral acceptance by or on behalf of FOSTER-KERN of any offer or bid on by or on behalf of Potential Purchaser.

5. Indemnity. Potential Purchaser shall defend, protect, indemnify and hold FOSTER-KERN harmless from and against any and all claims, actions, suits, liabilities, losses, damages, costs and expenses, including, without limitation attorneys' fees and expenses, court costs and out of pocket expenses, which are incurred by FOSTER-KERN in connection with any breach by Potential Purchaser of any of its agreements or obligations under this agreement.

6. Equitable Remedies. Potential Purchaser agrees that the Evaluation Material constitutes a valuable property interest of FOSTER-KERN and the unauthorized disclosure or improper use of any of the Evaluation Material by Potential Purchaser or any Potential Purchaser Parties will cause irreparable damage and harm to FOSTER-KERN. Accordingly, in the event of a breach of this Agreement by Potential Purchase or any Potential Purchaser Parties, FOSTER-KERN shall be entitled to, and Potential Purchaser hereby consents to the entry of, an injunction restraining such breach. Such remedy shall not be deemed to be the exclusive remedy for any breach of this Agreement, but shall be in addition to any and all other remedies available at law or in equity to FOSTER-KERN.

7. Brokerage. Foster-Kern has hired Joel K. LaPinta, CCIM, on an exclusive-right-to-sell basis, to market and sell the Property. The exclusive-right-to-sell listing contract between Foster-Kern and LaPinta provides for LaPinta, in his sole discretion, to share a portion of the commission with a properly licensed real estate broker identified by the procedure described below (hereinafter referred to as the "cooperating broker") by a buyer of the Property. Therefore, LaPinta has established the following conditions for sharing of the commission with the cooperating broker:

- 1) the cooperating broker must be clearly identified below by the prospective buyer as representing them at the time this Confidentiality Agreement is signed;
- 2) if a properly licensed broker is not listed below at the time this agreement is signed, then neither FOSTER-KERN nor LaPinta shall be obligated to compensate any broker alleged to represent the Prospective Buyer making a claim at a subsequent date to the signing this agreement and Prospective Buyer shall indemnify, defend and hold FOSTER-KERN and LaPinta harmless from any brokerage commission claims;
- 3) the maximum commission to be received by a cooperating broker shall be 2.5% of the purchase price but under no circumstance shall it be greater than half that received by LaPinta;
- 4) the cooperating broker shall not be a subagent of LaPinta and shall be an agent for the buyer;

- 5) if the cooperating broker is a principal or has ownership interest in the entity purchasing the Property, then no commission shall be paid to the cooperating broker and neither FOSTER-KERN nor LaPinta shall be obligated to compensating the cooperating broker, even if the broker had been identified below; and
- 6) no commission shall be paid or owed unless the sale is closed and proceeds from the sale paid to FOSTER-KERN and commission paid to LaPinta.

Cooperating Broker:            Company: \_\_\_\_\_  
    Agent: \_\_\_\_\_  
    License No.: \_\_\_\_\_  
    Address: \_\_\_\_\_  
    City: \_\_\_\_\_  
    State, Zip: \_\_\_\_\_  
    Telephone: \_\_\_\_\_  
    e-mail: \_\_\_\_\_

(OR)

There shall be no cooperating brokers. \_\_\_\_\_ (Initial & Date)

8. Disclaimer by FOSTER-KERN. Although FOSTER-KERN has endeavored to include in the Evaluation Material information known to FOSTER-KERN which FOSTER-KERN reasonably believes to be relevant for the purpose of Potential Purchaser's investigation of the Property, Potential Purchaser understands and acknowledges that FOSTER-KERN is not making any representation or warranty as to the accuracy or completeness of the Evaluation Material. FOSTER-KERN expressly disclaims any and all liability for representations or warranties, express or implied, contained in the Evaluation Material or omissions from the Evaluation Material, or in any other written, oral or other communications transmitted or made available to Potential Purchaser, excepting only those particular representations and warranties which may be made in a definitive purchase agreement executed and delivered by FOSTER-KERN and Potential Purchaser and subject to such limitations and restrictions as may be specified therein. Potential Purchaser agrees that FOSTER-KERN shall not have any liability to Potential Purchaser or any Potential Purchaser Parties resulting from the use of the Evaluation Material by Potential Purchaser or them. Potential Purchaser hereby represents, warrants and covenants to FOSTER-KERN that Potential Purchaser shall rely solely upon its own investigation of the Property, including, without limitation, its physical, environmental or economic condition, operations, dimensions, descriptions, soil condition, suitability, compliance or lack of compliance with any state, federal, county, or local law, ordinance, order, permit or regulation or any other attribute or matter relating thereto. Any information provided to Prospective Purchaser by FOSTER-KERN or by any surveyors, architects, engineers, escrow agents, title companies, governmental authorities or any other person or entity retained or contacted by FOSTER-KERN with respect to the Property which is relied upon by Potential Purchaser shall not create or give rise to any liability of or against FOSTER-KERN except as expressly agreed in a definitive purchase agreement executed and delivered by FOSTER-KERN and Potential Purchaser and subject to such limitations and restrictions as may be specified therein.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii.

10. No Waiver. No failure or delay by FOSTER-KERN in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof or the exercise of any right, power or privilege under this Agreement.

11. Miscellaneous. This Agreement is an entire agreement and supersedes all prior or contemporaneous negotiations, understandings and agreements, written or oral, between Potential Purchaser and FOSTER-KERN with respect to the subject matter hereof. Nothing shall serve to amend or modify any provision hereof in any respect whatsoever unless reduced to writing and signed by FOSTER-KERN and Potential Purchaser.

In witness whereof, Potential Purchaser has executed this Agreement, effective as of \_\_\_\_\_, 2006.

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit A**

**TMK:**

(3) 1-

**Address:**

**Location:**