



HAWAII LIFE
REAL ESTATE BROKERS

Non-Disclosure Agreement (NDA) and Confidentiality Agreement

THIS AGREEMENT dated _____, 20____, by and between Hawaii Life Real Estate Brokers, a Hawaii Corporation ("Hawaii Life") and _____ ("Recipient").

A. WHEREAS, Hawaii Life and Recipient, for their mutual benefit and pursuant to a working relationship which has been or may be established, anticipate that Recipient will likely receive, become exposed to or otherwise become aware of information which is confidential and proprietary to Hawaii Life; and

B. WHEREAS, Hawaii Life and Recipient have agreed upon, and wish to memorialize their agreement concerning the ownership, confidentiality and non-disclosure of such information. This confidentiality agreement shall apply to any discussions regarding the possibility of a business relationship between the parties and to any business relationship ultimately entered into by the parties.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual agreements, promises and covenants contained herein, Hawaii Life and Recipient hereby agree as follows:

1. **Definitions.** As used herein, the following words, terms and phrases shall have the meanings set forth below:

(a) **"Proprietary Information"** shall mean and include any and all information of the following type: Any and all information relating to marketing, finance, forecasts, invention, research, design or development of information system and any supportive or incidental subsystems, including but not limited to client information, documents, components, parts, information, drawings, data, sketches, plans, programs, specifications, techniques, processes, software, inventions and other materials, both written and oral, of a secret, confidential or proprietary nature, and any and all subject matter claimed in or disclosed by any patent application prepared or filed by or on behalf of Hawaii Life, in any jurisdiction, and any amendments or supplements thereto.

Any Information which is marked or otherwise identified as "Proprietary Information" at the time of Disclosure shall be deemed to be Proprietary Information for the purposes of this Agreement; provided, however, that the failure of Hawaii Life to mark any Information as "Proprietary Information" or at the time of Disclosure shall create no presumption that such Information is not "Proprietary Information".

"Proprietary Information" may also include "Trade Secrets" which is identified as Proprietary Information that is commercially valuable and secret in that it is not generally known in the industry in the areas in which it is utilized.

(b) **"Information"** shall mean and include any data or information Disclosed (as hereinafter defined) in the form of (i) any written information, reports, documents, books, notebooks, memoranda, charts or graphs; (ii) computer tapes, disks, CDROM, files, E-Mail or other mechanical or electronic media; (iii) oral statements, representations or presentations; (iv) audio, visual or audio-visual materials or presentations, including audiotapes, videocassettes, laser discs or CD's; and (v) any other documentary, written, magnetic or other permanent or semi-permanent form.

(c) **"Disclose"** or **"Disclosure"** shall mean and include any delivery, transmittal, presentation or representation of information, by any Person to any other Person.

(d) **"Person"** shall mean and include any individual or natural person, corporation, trust, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, or other entity.

2. (a) For a period of sixty (60) months from the date hereof, Recipient shall hold in trust and confidence, and not disclose to others or use for Recipient's own benefit or for the benefit of another, any Proprietary Information which is disclosed to Recipient by Hawaii Life at any time between the date hereof and twelve (12) months

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thereafter. Recipient shall disclose Proprietary Information received under this Agreement to person within its organization only if such persons (i) have a need to know and (ii) are bound in writing to protect the confidentiality of such Proprietary Information. This paragraph 2 shall survive and continue after any expiration or termination of this Agreement and shall bind Recipient, its employees, agents, representatives, successors, heirs and assigns.

(b) Notwithstanding the foregoing, with respect to Proprietary Information identified by Hawaii Life as Trade Secrets, the term of confidentiality shall be perpetual.

3. The undertakings and obligations of Recipient under this Agreement shall not apply to any Proprietary Information which: (a) is described in an issued patent anywhere in the world, is disclosed in a printed publication available to the public, or is otherwise in the public domain through no action or fault of Recipient; (b) is generally disclosed to third parties by Hawaii Life without restriction on such third parties, or is approved for release by written authorization of Hawaii Life; or (c) is shown to Hawaii Life by Recipient, within ten (10) days from disclosure, by underlying documentation to have been known by Recipient before receipt from Hawaii Life and/or to have been developed by Recipient completely independent of any disclosure by Hawaii Life.

4. Title to all property received by Recipient from Hawaii Life, including all Proprietary Information, shall remain at all times the sole property of Hawaii Life, and this Agreement shall not be construed to grant to Recipient any patents, licenses or similar rights to such property and Proprietary Information disclosed to Recipient hereunder.

5. Recipient shall, upon request of Hawaii Life, return to Hawaii Life all documents, drawings and other tangible materials, including all Proprietary Information and all manifestation thereof, delivered to Recipient, and all copies and reproductions thereof.

6. The parties further agree to the following terms and conditions:

a. Any breach by Recipient of any of Recipient's obligations under this Agreement will result in irreparable injury to Hawaii Life for which damages and other legal remedies will be inadequate. In seeking enforcement of any of these obligations, Hawaii Life will be entitled (in addition to other remedies) to preliminary and permanent injunctive and other equitable relief to prevent, discontinue and/or restrain the breach of this Agreement.

b. If any provision of this Agreement is invalid or unenforceable, then such provision shall be construed and limited to the extent necessary, or severed if necessary, in order to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall not be affected thereby.

c. In any dispute over whether information or matter is Proprietary Information hereunder, it shall be the burden of Recipient to show both that such contested information or matter is not Proprietary Information within the meaning of this Agreement, and that it does not constitute a trade secret under the Uniform Trade Secrets Act or successor or similar law in effect in the State of Hawaii.

d. No delay or omission by either party in exercising any rights under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by either party on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

e. This Agreement shall be binding upon and will inure to the benefit of the parties hereto and their respective successors and assigns.

f. This Agreement is governed by and will be construed in accordance with the laws of the State of Hawaii, and the courts of Hawaii shall be the exclusive forum.

g. This Agreement is in addition to any prior written agreement between Hawaii Life and Recipient relating to the subject matter of this agreement; in the event of any disparity or conflict between the provision of such agreements, the provision which is more protective of Proprietary Information shall control. This Agreement may not be modified, in whole or in part, except by an agreement in writing signed by Hawaii Life and Recipient.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Hawaii Life Real Estate Brokers

By: _____

Signature

Printed Name

Title

RECIPIENT

By: _____

Signature

Printed Name

Title