

Marcus & Millichap

Real Estate Investment Services

STNL PROSPECTIVE PURCHASER CONFIDENTIALITY AGREEMENT

PLEASE FORWARD COMPLETED DOCUMENT TO:

ISSENBERGBRITTI@MARCUSMILlichap.COM

This Single Tenant Net Lease Prospective Purchaser Confidentiality Agreement (“Agreement”) is made as of this (“Effective Date”), by and between Marcus & Millichap Real Estate Investment Services, Inc. (“Marcus & Millichap”), a California corporation, and (“Potential Purchaser”).

RECITALS

A. Potential Purchaser is interested in acquiring an interest in a single tenant net leased (STNL) property, or a number of such properties, as follows: **Topgolf – Pharr, Texas** (“Proposed Transaction” or “Proposed Transactions”) and desires that Marcus & Millichap specifically identify such Proposed Transactions that Potential Purchaser may be interested in acquiring (“Prospective Acquisition Targets”).

B. Marcus & Millichap is willing to identify Prospective Acquisition Targets for Potential Purchaser’s consideration under the terms and conditions set forth in this Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Marcus & Millichap and Potential Purchaser agree as follows:

1. Term. This Agreement shall commence on the Effective Date and shall terminate as to each Proposed Transaction only upon the closing of a sale of such Proposed Transaction between a seller and Potential Purchaser. This Agreement shall remain in full force and effect as to any and all Proposed Transactions identified by Marcus & Millichap, but for which a sale has not closed.

2. Definition of “Confidential Information.” “Confidential Information” means any and all information, in any form or medium, whether written or oral, concerning or relating to a Proposed Transaction including, without limitation, information relating to the location, ownership, income, expenses, listing price, tenants, loans, financing, mortgages, surveys, reports, inspections, analyses, abstracts, compilations, forecasts, market studies, drawings, designs, diagrams, specifications, and plans.

3. Confidentiality. Potential Purchaser agrees that any and all Confidential Information received by it shall be kept strictly confidential, whether furnished before or after the date hereof, whether furnished orally, electronically or in written or hard copy form, whether or not marked “Confidential” and regardless of the manner in which it is furnished, and shall not be disclosed to any person without Marcus & Millichap’s

and/or the seller's prior written consent, which consent may be granted or withheld in Marcus & Millichap's or seller's sole and absolute discretion. Potential Purchaser will take all reasonable measures to protect the secrecy, confidentiality and integrity of the Confidential Information, and to avoid unauthorized disclosure and use of Confidential Information.

4. Limited Access. Potential Purchaser shall limit access to Confidential Information to its Representatives on a need-to-know basis for the sole purpose of assisting and advising Potential Purchaser in the evaluation, negotiation and implementation of the Proposed Transaction, and then only if such persons also agree to comply with the terms of this Agreement.

5. No Obligation to Proceed. Potential Purchaser acknowledges and agrees that (a) any seller has the right, at its sole and absolute discretion, to reject any or all expressions of interest or offers regarding a Proposed Transaction and may terminate discussions at any time with or without notice, and (b) no contract or agreement providing for a Proposed Transaction shall be deemed to exist unless and until Potential Purchaser and the seller enter into a definitive written agreement relating to a Proposed Transaction, which has been fully executed, delivered, and approved by the seller.

6. **DISCLAIMERS. POTENTIAL PURCHASER ACKNOWLEDGES AND AGREES THAT:** (A) MARCUS & MILLICHAP, ITS REPRESENTATIVES AND SALESPERSONS HAVE MADE NO REPRESENTATIONS REGARDING THE ACCURACY OR COMPLETENESS OF CONFIDENTIAL INFORMATION, THE DOCUMENTS DELIVERED OR TO BE DELIVERED IN CONNECTION WITH THE PROPOSED TRANSACTIONS, OR ANY DUE DILIGENCE OR OTHER INFORMATION PROVIDED BY MARCUS & MILLICHAP, SELLER OR ANY OTHER PARTY; (B) WHILE A TENANT'S PAST PERFORMANCE IS AN IMPORTANT CONSIDERATION, IT IS NOT A GUARANTEE OF FUTURE SUCCESS; (C) THE LEASE RATE FOR SOME PROPERTIES, INCLUDING NEWLY-CONSTRUCTED FACILITIES OR NEWLY-ACQUIRED LOCATIONS, MAY BE SET BASED ON A TENANT'S PROJECTED SALES WITH LITTLE OR NO RECORD OF ACTUAL PERFORMANCE, OR COMPARABLE RENTS FOR THE AREA; (D) RETURNS ARE NOT GUARANTEED, AND THE TENANT AND ANY GUARANTORS MAY FAIL TO PAY THE LEASE RENT OR PROPERTY TAXES, OR MAY FAIL TO COMPLY WITH OTHER MATERIAL TERMS OF THE LEASE; (E) CASH FLOW MAY BE INTERRUPTED IN PART OR IN WHOLE DUE TO MARKET, ECONOMIC, ENVIRONMENTAL OR OTHER CONDITIONS.

7. **POTENTIAL PURCHASER'S OBLIGATION.** POTENTIAL PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT: (A) HIS/HER ADVISORS WILL CONDUCT A CAREFUL, INDEPENDENT INVESTIGATION OF ANY PROPOSED TRANSACTIONS SUBMITTED BY MARCUS & MILLICHAP; AND (B) REGARDLESS OF TENANT HISTORY AND LEASE GUARANTEES, POTENTIAL PURCHASER IS RESPONSIBLE FOR CONDUCTING HIS/HER OWN INVESTIGATION OF ALL MATTERS AFFECTING THE INTRINSIC VALUE OF THE PROPERTY AND THE VALUE OF ANY LONG-TERM LEASE, INCLUDING THE LIKELIHOOD OF LOCATING A REPLACEMENT TENANT IF THE CURRENT TENANT SHOULD DEFAULT OR ABANDON THE PROPERTY, AND THE LEASE TERMS THAT MIGHT BE NEGOTIATED WITH A POTENTIAL REPLACEMENT TENANT.

8. Dispute Resolution. This Agreement shall be interpreted, construed and governed by and in accordance with the laws of the State of [INSERT STATE WHERE OFFICE IS LOCATED]. Any controversy or claim arising out of or relating to this Agreement or any Proposed Transaction purchased by Potential Purchaser shall be settled by final binding arbitration administered by the American Arbitration Association (AAA) under its Commercial Arbitration Rules before a single arbitrator sitting in [INSERT CITY WHERE OFFICE IS LOCATED] and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The AAA's administrative fees and charges shall be paid equally by the parties as they become due, provided that the arbitrator shall award the prevailing Party its costs and expenses as provided

in this Agreement. Notwithstanding the applicability of any other law to this Agreement, the Federal Arbitration Act, 9 U.S.C. § 1 et seq., shall apply to the construction and interpretation of this arbitration clause. This Paragraph 7 “Dispute Resolution” agreement between Marcus & Millichap and Potential Purchaser shall survive the termination of the Agreement.

9. Successors And Assigns. This Agreement shall be binding on and shall inure to the benefit of the Parties hereto and their successors and assigns.

10. Costs And Attorneys’ Fees. In any litigation, arbitration or other legal proceeding which may arise between any of the Parties, the prevailing party shall be entitled to recover its costs and expenses including, without limitation, reasonable attorneys’ fees, in addition to any other relief to which such Party may be entitled.

11. Entire Agreement; Modifications. This Agreement constitutes the full and complete understanding between the Parties and supersedes all prior agreements, arrangements, and understandings, whether oral or written, between the Parties relating to the subject matter hereof.

12. Amendments. This Agreement may not be altered, amended or modified in any way except by written instrument executed by each of the Parties.

13. Counterparts. This Agreement may be executed in two or more counterparts, the originals (or electronic or facsimile transmissions of such originals) of which, taken together, shall constitute one instrument.

14. Waiver. No waiver of any provision of this Agreement by any Party shall (i) be effective unless in writing signed by the Party against which it is asserted, or (ii) constitute a waiver of any other provision.

15. Construction. This Agreement shall be deemed to have been jointly drafted and shall construed without regard to any presumption or other rule of law requiring construction against the Party who caused it to be drafted.

16. Authority. The persons signing this Agreement represents that they are fully authorized to enter into this Agreement and to legally bind the Parties hereto.

17. Headings. The Headings in this Agreement are for reference only and shall be disregarded in construing the Agreement’s meaning and intent.

IN WITNESS WHEREOF, the Parties have executed this Agreement and caused their names to be signed hereto by their duly authorized representatives as of the Effective Date.

POTENTIAL PURCHASER

By: _____

Title: _____