

The Gap Net Leased Investment
NON-CIRCUMVENT/CONFIDENTIALITY and NON-DISCLOSURE AGREEMENT

Date: _____

This Confidentiality Agreement (“Agreement”) is made between LUM YIP KEE LTD. ,a Hawaii corporation, dba Twin Trees Land Company (“LUM YIP KEE” or “Owner”) and, _____ (“Company” or “Potential Purchaser”), for the purpose of the Potential Purchaser’s evaluation of lease information. In connection with such evaluation, LUM YIP KEE will make a leases and certain information available to Potential Purchaser. Potential Purchaser agrees to treat any such information furnished to it on behalf of Lum Yip Kee and Newmark Cornish & Carey (“Broker”) (the “Evaluation Material”) in accordance with the provisions of this Confidentiality Agreement.

Broker is presenting for sale the Subject Property (“the Gap”) which shall include the property located at 3830 Atherton Road in the city of Rocklin. The property is located in the State of California. Potential Purchaser hereby acknowledges and agrees that certain confidential information that has been or may be disclosed is intended solely for Potential Purchaser’s limited use in considering whether to pursue negotiations to acquire the Gap.

The term “Evaluation Material” does not include any information that (a) at the time of disclosure or thereafter is generally available to and known by the public other than as a result of disclosure by Potential Purchaser or any of Potential Purchaser’s representatives, (b) was available to Potential Purchaser on a non-confidential basis from a source that at the time of disclosure was not prohibited from disclosing such information by a contractual, legal or fiduciary obligation to, (c) was in Potential Purchaser’s possession prior to Potential Purchaser’s receipt from LUM YIP KEE or Broker as shown by written records, without having been obtained through breach of a confidential, legal or fiduciary obligation to Lum Yip Kee, or (d) is independently developed by Potential Purchaser without the use of any confidential information provided by LUM YIP KEE.

Except as expressly set forth herein, Potential Purchaser will not disclose to any person the fact that the Evaluation Material has been made available to Potential Purchaser or any of the terms, conditions or facts with respect thereto.

Potential Purchaser’s rights, powers, privileges, duties and obligations hereunder are not assignable. Potential Purchaser agrees that only Potential Purchaser shall have access to the Evaluation Material, as well as any of Potential Purchaser’s partners, members, officers, employees, brokers, attorneys, bankers and advisors who need to review such information for the purpose set forth in the first sentence of this Agreement (Potential Purchaser “Representatives”) unless Lum Yip Kee gives its prior written consent to a disclosure of the Evaluation Material to another person.

Notwithstanding the foregoing paragraph, if Potential Purchaser or any of Potential Purchaser’s Representatives receive a valid and effective subpoena, order, deposition, interrogatory, request for documents, civil investigative demand or similar process to disclose any of the Evaluation Material, Potential Purchaser shall provide LUM YIP KEE with written notice of such requirement as soon as possible after learning of it, shall furnish only that portion of the Evaluation Material that, in the opinion of Potential Purchaser’s counsel, Potential Purchaser is legally required and only in the manner legally required. In any event, Potential Purchaser agrees to cooperate fully with LUM YIP KEE at LUM YIP KEE’s expense, should it elect to seek an appropriate protective order or other reliable assurance that confidential treatment will be accorded such Evaluation Material. Potential Purchaser shall have no obligation to incur any costs, make application for any delays or stays or take any other measure and shall have the absolute right to comply in a timely manner with any obligation to disclose which it, in good faith, believes to be valid.

Neither the Owner of the Gap nor Broker or any of their respective officers, employees or agents, make any representation or warranty, expressed or implied, as to the accuracy or completeness of this confidential information and no legal liability is assumed or shall be implied with respect thereto. Information provided has been or will be gathered from sources that are deemed reliable; however, neither Owner nor Broker warrants or represents that the information is true or correct. Recipients are advised to verify information independently. Owner and/or Broker reserve(s) the right to change the Gap’s purchase price, or any Property or market information provided, or to withdraw the Gap from the market at any time without notice.

LUM YIP KEE shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any breach of the terms and conditions of this Agreement but in no event shall Potential Purchaser be liable for any money damages or consequential damages. In the event of litigation with respect to this Agreement, the prevailing party may recover, in addition to any other relief it obtains, its court costs and reasonable attorneys’ fees.

This Agreement constitutes the entire agreement between the parties with respect to the lease information. This agreement shall be in force for 2 years from the Effective Date or until a binding **purchase agreement** is executed between the parties, whichever is sooner.

At expiration, if a binding purchase agreement has not been executed or the parties agree that no such agreement shall be executed, Potential Purchaser agrees to destroy the Evaluation Material and the parties shall have no further obligation to each other.

While Owner and/or Broker may discuss the purchase and sale of the Gap with recipients, either Owner or Broker, in our sole and absolute discretion, may terminate sale discussions at any time and for any reason. Recipients acknowledge that neither Owner nor Broker has any obligation to discuss or agree to the sale of the Gap. The acquisition discussions may be lengthy and complex. Notwithstanding that the parties may reach one or more oral understandings or agreements on one or more issues, neither of the parties shall be bound by any oral agreement of any kind, and no rights, claims, obligations or liabilities of any kind, either expressed or implied, shall arise or exist in favor of or be binding upon either Owner or Broker except to the extent expressly set out in a written agreement signed by both Owner and Broker.

This Agreement will further confirm that Potential Purchaser understands that Broker is presenting the information on the above-referenced Gap and that Potential Purchaser agrees not to circumvent Broker and contact the Owner of the Property.

Please execute below and return via email to Ryan Forsyth at ryan.forsyth@cushwake.com or Tom Heacox at theacox@newmarkccarey.com at your earliest convenience.

This Agreement shall be binding on the successors and assigns of the parties.

In witness whereof the parties have executed this Agreement as of the date first above written.

Agreed and accepted, this _____ day of _____, 2016.

PRINCIPAL
Company: _____

Address: _____

By: _____

Name: _____

Its: _____

Phone: _____

Email: _____

CO-BROKER
Company (if applicable): _____

Address: _____

By: _____

Name: _____

Its: _____

Phone: _____

Email: _____