



Non-Disclosure Agreement

This agreement is entered into between Key Auctions, LLC dba Key Auctioneers, (hereinafter referred to as "Agent") and _____ (hereinafter referred to as "Prospect") regarding certain sensitive and non-public information as it pertains to the listing and sale of the business, including but not limited to; business name, logos, trademarks, proprietary financial data, images, invoices, etc. (the "Proprietary Information") related to the sale of an undisclosed Indianapolis, Indiana craft brewery and restaurant being offered for sale by Agent. Prospect desires to receive the Proprietary Information for use in evaluating the purchase of the subject business. In consideration of the disclosure of the Proprietary Information and of the other covenants contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Proprietary Information.** The term "Proprietary Information" as used herein shall be defined, by way of example but not by way of limitation, all materials, financial detail, marketing plans, research data, documents, personal and business identities, transaction information, know-how, uses, (whether or not able to be patented and whether or not marked as confidential), relating generally or specifically to the transactions contemplated, the resources or services of each Party which may have or will be disclosed by Agent in written form, or orally or disclosed by samples which embody or display such information obtained by the Prospect through observation.

As a condition to being furnished such information, Prospect agrees to treat any Proprietary Information concerning the transaction and the respective business which is furnished to or on behalf of a Prospect, whether furnished before or after the date of this Agreement in accordance with the provisions of this Agreement. The term "Proprietary Information" does not include information:

- 1.1. Which was or becomes generally available to a Prospect on a non-confidential basis from a source other than the Agent, provided that such source is not bound by a confidentiality agreement with the Agent; or
- 1.2. Which was known or within the Prospect's possession prior to it being furnished to the Prospect by or on behalf of the Agent, provided that the source of such information was not bound by a confidentiality agreement with the Agent in respect thereof; or
- 1.3. Which is or becomes public knowledge through no wrongful act of the Prospect; or
- 1.4. Which is approved for disclosure to any third party by prior written authorization of the Agent.

The Prospect shall have the burden of proving by clear and convincing evidence the applicability of any of the foregoing exceptions.

2. **Non-Disclosure/Non-Use.** Prospect agrees it will not disclose or furnish the Proprietary Information to any person or entity. Prospect agrees the Proprietary Information shall be used only for the purpose of evaluating the purchase of the property.
3. **Indemnity.** Prospect agrees it shall indemnify Agent for any damages related to any unauthorized disclosure of the Proprietary Information by Prospect or its agents.
4. **Return or Destruction of Proprietary Information.** If Prospect is not the successful purchaser of the property, Prospect shall promptly return to Agent or destroy any Proprietary Information in its possession.
5. **No Rights.** Nothing in this Agreement or any disclosure of Proprietary Information by Agent hereunder, shall be deemed, either expressly or implied, to convey any right, title, license, or interest of any kind to the Prospect receiving Proprietary Information.
6. **No Further Obligations.** The furnishing of Proprietary Information by Agent or the entering into the discussions referenced above shall not obligate either Party to enter into any further agreement or negotiation with the other Party or to refrain from entering into an agreement or negotiation with any other party, unless specifically agreed by separate agreement.
7. **No Representations or Warranties.** Except as expressly set forth in a definitive agreement between the Parties, Agent has not made any representation or warranty as to the accuracy or completeness of any Proprietary Information furnished. Prospect agrees that the Agent shall have no liability to the respective Party or its representatives resulting from the use of the Proprietary Information.
8. **General Terms.** It is further understood and agreed that:
 - 8.1. This Agreement may be amended only in writing;
 - 8.2. This Agreement shall not be assigned by Prospect;

- 8.3. This Agreement shall be effective as of the date of execution as shown below and shall cover any Proprietary Information disclosed by Agent to the Prospect before or after the execution of this Agreement;
- 8.4. No failure or delay by Agent in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege by a Agent;
- 8.5. Money damages would not alone be a sufficient remedy for any breach of this Agreement by a Prospect; that any Agent shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and that Prospect shall waive any requirement for the securing or posting of any bond in connection with such remedy.

Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement, but shall be in addition to all other remedies available at law or in equity to a Agent.
- 8.6. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral, written and other agreements between the Parties with respect to said subject matter;
- 8.7. The agreement to maintain the confidentiality of the Proprietary Information and the business sources shall survive any termination of the evaluation by Prospect for a period of five (5) years subsequent to the disclosure of Proprietary Information by Agent;
- 8.8. All activities relating to the review and evaluation of Proprietary Information shall be conducted and undertaken at the sole cost and expense of Prospect, unless otherwise agreed;
- 8.9. This Agreement may be executed in counterpart by the Parties and shall be deemed to be valid and legally binding as regarding same;
- 8.10. This Agreement shall benefit and shall be binding on each Party executing same and its respective successors, permitted assigns and personal representatives; and
- 8.11. This Agreement shall be governed by and construed in accordance with the internal laws of the state of Indiana, without giving effect to the principles of conflict of laws thereof.

By executing this Agreement in the place provided below, each Party agrees to the foregoing and agrees that it will constitute the agreement of the Parties with respect to the subject matter hereof.

AGREED AND ACCEPTED:

**Key Auctions, LLC. dba
Key Auctioneers**

By: _____

Printed: Seth Seaton, President

Dated: _____

AGREED AND ACCEPTED:

Prospect: _____

By: _____

Printed: _____

Dated: _____

Email Address: _____

Phone: _____