

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this "Agreement"), made and entered into as of \_\_\_\_\_, 2024 (the "Effective Date"), by and between Sand Bar & Grill, LLC, which with its successors and assigns is herein called "Sand Bar", and \_\_\_\_\_, which is herein called "Recipient", is to EVIDENCE THAT:

WHEREAS Sand Bar and Recipient (collectively, the "Parties" and individually, a "Party") have entered into this Agreement because they desire to explore a potential transaction involving the sale and purchase of Sand Bar (the "Transaction") and, in connection therewith, Sand Bar may disclose certain proprietary and confidential business information to Recipient; and

WHEREAS Recipient agrees to accept any proprietary and confidential business information from Sand Bar strictly subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the foregoing statements and the mutual promises made in this Agreement and for other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

### 1. Confidential Information.

"Confidential Information" as used in this Agreement shall mean all such information that is or has been disclosed by Sand Bar: (a) in writing, by email, or other tangible electronic storage medium regardless of whether such information is marked "Confidential" or "Proprietary"; or (b) orally or visually, regardless of whether such information is described as "Confidential" or "Proprietary". Confidential Information also includes, but is not limited to, that the business known as the "Sand Bar" is being offered for sale, confidential business data or proprietary information as defined in this Agreement or by applicable law, whichever is broader, including without limitation all trade secrets, ideas, concepts, development plans, technology, customer lists, sales and marketing plans, employment and employee records, software, technical drawings, models, and other tangible material constituting confidential research and development, business plans or operations, development or collaborative plans, applications for particular technologies, materials and designs constituting trade secret information, and such information need not to be marked "Confidential" or "Proprietary" to be treated as Confidential Information under this Agreement.

### 2. Non-Disclosure Obligations.

2.1 Recipient agrees to use the Confidential Information solely and exclusively for the purpose of evaluating the Transaction.

2.2 Recipient shall treat as strictly confidential all Confidential Information which it receives from Sand Bar, and shall use the same care to prevent the disclosure of such Confidential Information as Recipient uses with respect to its own proprietary and confidential business information (which shall be no less than the care a reasonable person would use under similar circumstances).

2.3 In this regard, Recipient shall not: (a) disclose any Confidential Information it receives, except to those employees, agents, and advisors of Recipient (i) whose duties justify their need to know such Confidential Information and (ii) who have a clear understanding of their obligation to maintain the proprietary, confidential, and/or trade secret status of such Confidential Information and have signed an appropriate non-disclosure agreement to evidence their confidentiality obligation; (b) use any Confidential Information it receives, except for the purpose of discussions between the Parties concerning the Transaction; or (c) use any Confidential Information for Recipient's own purposes without the express written consent of Sand Bar (such consent will be in the form of a subsequent written agreement).

2.4 Recipient shall, immediately upon the request of Sand Bar, return to Sand Bar all Confidential Information that Recipient has received, including all copies thereof made by any party and all employees, agents, and advisors of Recipient, and destroy all materials incorporating or based on such Confidential Information which were prepared by Recipient and all employees, agents, and advisors of Recipient. Recipient shall be liable for any breach of this Agreement, including without limitation, any unauthorized disclosure or use by Recipient of Confidential Information it has received.

3. **Exceptions to Non-Disclosure Obligations.**

The obligations set forth in Section 2 shall not apply to any Confidential Information (a) which Sand Bar expressly agrees in writing is free of any non-disclosure obligations; (b) which, at the time of disclosure to Recipient, was known to Recipient (as evidenced by documentation in Recipient's possession) free of any non-disclosure obligations; (c) which is independently developed by Recipient or which is lawfully received by Recipient, free of any non-disclosure obligations, from a third-party having the right to so furnish such Confidential Information; (d) which is or becomes generally available to the public without any breach of this Agreement or unauthorized disclosure of such Confidential Information by Recipient or by any employee, agent, subcontractor or advisor of Recipient; or (e) which must be disclosed pursuant to applicable Federal, State or local law, regulation, court order or other legal process, provided Recipient has notified Sand Bar prior to such required disclosure and, to the extent reasonably possible, has given Sand Bar an opportunity to contest such required disclosure at Sand Bar's expense.

4. **Term.**

This Agreement shall become effective as of the Effective Date. This Agreement may be terminated by either Party at any time for any reason upon written notice to the other Party. Upon termination of this Agreement, Recipient's non-disclosure obligations set forth herein shall continue for a period of two (2) years after such termination.

5. **General.**

5.1 **No Commitment.** Sand Bar has no obligation to disclose any Confidential Information to Recipient. In addition, neither this Agreement nor the disclosure or receipt of Confidential Information hereunder shall constitute or imply any promise or intention by either Party to enter into any further agreement or business relationship.

5.2 **No License Granted.** All Confidential Information shall remain the property of Sand Bar and nothing contained in this Agreement shall be construed as granting or conferring any rights by license in any Confidential Information.

5.3 **No Representations.** Sand Bar shall not be deemed to make any representation, warranty, assurance, guarantee or inducement with respect to any Confidential Information disclosed hereunder.

5.4 **Enforcement.** Recipient understands and agrees that, in the event of any breach of this Agreement, including, without limitation, the actual or threatened disclosure of Confidential Information without the express prior written consent of Sand Bar, Sand Bar shall suffer an irreparable injury such that monetary damages will be inadequate to compensate Sand Bar for such breach. Accordingly, Recipient agrees that, in the event of any actual or threatened breach of this Agreement, Sand Bar shall be entitled to injunctive relief against Recipient to prevent or restrain any such breach by Recipient, or by any of Recipient's employees, agents, subcontractors, advisors or other persons directly or indirectly acting for, on behalf of or with Recipient.

5.5 Attorney Fees. If Sand Bar should undertake legal action to enforce any of the terms of this Agreement, Sand Bar shall be entitled to reasonable attorney fees and costs of suit incurred in connection therewith, in addition to any other relief awarded by a court of competent jurisdiction.

5.6 Governing Law, Jurisdiction and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio. The Parties (separately and jointly) submit to the personal jurisdiction and venue of the State Courts of Erie County, Ohio for any dispute, controversy or litigation arising hereunder.

5.7 Construction. The headings and captions set forth herein are for convenience only and shall not affect any of the terms hereof.

5.8 Notices. Any notices given hereunder shall be in writing and shall be delivered in person or sent by facsimile, by electronic mail or by certified or registered mail, postage prepaid, return receipt requested, addressed to Sand Bar or Recipient as set forth below in the signature section herein or to such other address as shall be given to the Parties in writing. Notices delivered in person shall be effective upon receipt; notices sent by facsimile or electronic mail shall be effective upon confirmed receipt; and notices sent by certified or registered mail shall be effective three (3) business days after being deposited in the U.S. mail as provided above.

5.9 Waivers. All waivers must be in writing and signed by the waiving Party. The failure of a Party, in any one or more instances, to insist on performance of any of the provisions of this Agreement, or to exercise any right to terminate this Agreement or any other right under this Agreement, shall not be a waiver and shall not prevent such Party from enforcing such provision or any other provision of this Agreement in the future.

5.10 Severability. A determination by a court of competent jurisdiction that any provision of this Agreement or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Agreement, which shall remain in full force and effect.

5.11 Entire Agreement. This Agreement contains the entire understanding between the Parties with respect to Confidential Information provided hereunder. No amendment or modification of this Agreement shall be valid or binding unless made in writing and signed by the Parties or by their respective duly-authorized representatives.

5.12 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all Parties executed the same document. All such counterparts shall constitute one and the same integrated agreement.

**[Signature Page to Follow]**

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the Effective Date.

**Sand Bar & Grill, LLC**

By: \_\_\_\_\_

Gary H. Gilbert, Member

Address: 301 Canterbury Drive  
Huron, OH 44839-1493

-Sand Bar-

By: \_\_\_\_\_  
\_\_\_\_\_

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

-Recipient-