

## CONFIDENTIALITY and NON-CIRCUMVENTION AGREEMENT

A business may be harmed if it becomes known prematurely that it is for sale. So we ask that you, as a prospective buyer and your broker and/or representative, not tell anyone except the professional advisors who may be helping you with your investigation, about the business being for sale. By signing this three page agreement below, you (hereinafter "Buyer") and your broker and/or representative (hereinafter "Buyer's Representative") each agree to keep information delivered to you confidential. You and Buyer's Representative further agree that BBG, Ltd. ("BBG") is responsible for introducing the business to you and Buyer's Representative and you both agree to conduct all inquiries through BBG. Buyer agrees to pay all professionals working on behalf of Buyer.

This Confidentiality and Non-Circumvention Agreement (hereinafter "Agreement") is entered into this \_\_\_\_\_ Day of \_\_\_\_\_ 20\_\_\_\_ between \_\_\_\_\_ as the undersigned Buyer and \_\_\_\_\_ as the undersigned Buyer's Representative and real estate broker BBG.

WHEREAS, BBG is aware of a restaurant business and/or real property for sale and/or for lease (hereinafter "Restaurant(s)");

WHEREAS, Buyer and Buyer's Representative desire to learn from BBG information about the Restaurant including the identity, name and/or location of the Restaurant;

WHEREAS, BBG will identify the Restaurant after this Agreement has been executed by Buyer and Buyer's Representative wherein Buyer and Buyer's Representative agree to all of the terms and conditions of this Confidentiality and Non-Circumvention Agreement;

WHEREAS, Absolute, total and unconditional confidentiality is required of Buyer and Buyer's Representative;

WHEREAS, Buyer and Buyer's Representative must deal solely and exclusively through BBG and through no one else with regard to the Restaurant (including the fee owner of the real property or the tenant of the real property) which is the subject of this Agreement and identified to Buyer and Buyer's Representative by BBG pursuant to the terms and conditions set forth in this Agreement;

Now, THEREFORE, in consideration of BBG agreeing to provide Buyer and Buyer's Representative with information about the opportunity to acquire the Restaurant, Buyer and Buyer's Representative agree as follows:

1. **FOREGOING RECITALS.** The foregoing recitals are hereby incorporated by reference and made a part of the terms of this Agreement.
2. **CONFIDENTIAL INFORMATION.** Buyer and Buyer's Representative agree to treat strictly confidential the location and identity of the Restaurant, the offering information, if any, and any other information, documents, materials or data that BBG and/or owner of the Restaurant ("Owner") furnishes to Buyer and Buyer's Representative whether furnished orally or in writing or gathered by inspection, regardless of whether specifically identified as "confidential" (hereinafter collectively, the "Information"). Neither Buyer nor Buyer's Representative shall disclose to any person either the fact that discussions or negotiations are taking place concerning a possible transaction between the parties, nor shall Buyer or Buyer's Representative disclose to any person the fact that the subject Restaurant may be available for acquisition.
3. **PROCURING CAUSE; NOT CIRCUMVENT BBG.** Buyer and Buyer's Representative acknowledge and agree BBG is the procuring cause for the Restaurant presented to Buyer and Buyer's Representative. Buyer and Buyer's Representative agree to not circumvent BBG in any manner whatsoever.
4. **USE OF INFORMATION.** Buyer and Buyer's Representative agree not to use any of the Information for any purpose other than the exclusive purpose of evaluating the possibility of an acquisition of the Restaurant. Buyer and Buyer's Representative shall (a) not use the Information in any way detrimental to the Restaurant, the Owner, or BBG; (b) keep the Information strictly confidential; and, (c) each shall be responsible for any breach of this Agreement in whole or in part by Buyer any of its representatives.
5. **RETURN OF INFORMATION.** Buyer and Buyer's Representative agree that at any time at the request of the Owner or BBG, Buyer and Buyer's Representative shall promptly return all Information without duplicating or retaining any copy thereof or any notes relating thereto. Buyer and Buyer's Representative shall certify as to the return of all of the Information and related notes.
6. **DISCLOSURE – LEGAL PROCESS.** Buyer and Buyer's Representative agree that in the event Buyer or Buyer's Representative is required or requested by legal process to disclose any of the Information, Buyer or Buyer's Representative shall provide Owner and BBG, with prompt notice of such requirement or request so that the Owner and/or BBG may seek an appropriate protective order or waive compliance with the provisions of this requirement or both.

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7. **BBG DISCLAIMER.** Buyer and Buyer's Representative understand and agree that the BBG expressly disclaims and shall not have any liability for representations or warranties, express or implied, as to the accuracy or completeness of information contained in the Information.
8. **NO OBLIGATION TO BUYER OR BUYER'S REPRESENTATIVE.** Buyer and Buyer's Representative agree that the Owner and/or BBG expressly reserve the right, in their/its sole discretion, to reject any and all expressions of interest or offers and/or terminate discussions with any person at any time with or without notice. The Owner and/or BBG shall have no legal commitment or obligation to any person reviewing the Information or making an offer to acquire the Restaurant unless and until a written purchase and sale agreement or any other legally sufficient agreement has been executed and all obligations thereunder satisfied or waived.
9. **ALL COMMUNICATIONS THROUGH BBG.** Buyer and Buyer's Representative agree that all communications, regardless of the nature of the communication, related to Restaurant transactions introduced to Buyer and Buyer's Representative by BBG, shall be solely and exclusively through BBG including negotiating a new premises lease, if applicable. Buyer and Buyer's Representative will not directly or indirectly seek to contact or actually contact the real property owner or master lessor or anyone affiliated with real property owner or master lessor related to Restaurant transactions introduced to Buyer and/or Buyer's Representative by BBG. Buyer and Buyer's Representative are not allowed to approach the real property owner or master lessor or existing Lessee/Tenant or enter into any discussions with them whatsoever. Any attempt by Buyer and/or Buyer's Representative to contact real property owner or master lessor or existing Lessee/Tenant or any contact, direct or indirect, between Buyer and/or Buyer's Representative and real property owner or master lessor or existing Lessee/Tenant is a violation of this Agreement and strictly prohibited.
10. **TERM.** This Agreement shall be effective for a period of sixty (60) months from the date of execution of this Agreement. The obligation to maintain confidentiality shall continue for the term of this Agreement.
11. **JURISDICTION; CALIFORNIA LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflicts of laws principles. Venue and jurisdiction for any legal action concerning this Agreement shall be in the County of Marin, California. This Agreement represents the entire understanding among the Buyer and Buyer's Representative and BBG with respect to the subject matter hereof and shall only be amended by a written agreement duly executed by all parties hereto. This Agreement may not be orally modified or amended.
12. **DRAFTER OF THIS AGREEMENT.** Buyer and Buyer's Representative agree all Parties to this Agreement have had the opportunity to consult and obtain advice of legal counsel in the negotiation and preparation of this Agreement. Accordingly, this Agreement has been drafted on the basis of the Parties' mutual contributions of language and the Agreement is not to be construed against any Party as being the drafter of this Agreement.
13. **PROVISIONS HELD INVALID OR ILLEGAL.** Should any provisions of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but instead, the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.
14. **LEGAL FEES AND COSTS.** In the event legal action, litigation or arbitration concerning the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and all other costs and expenses associated with the proceeding, including without limitation, expert witness fees, reasonable attorneys' fees and other costs and expenses associated with the collection or enforcement of any judgment.
15. **BINDING AGREEMENT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Upon execution of this Agreement by Buyer and Buyer's Representative, and from time to time, BBG will identify to Buyer and/or Buyer's Representative Restaurants subject to the terms and conditions of this Agreement. By their signatures below, the undersigned Buyer and Buyer's Representative, on behalf of Buyer and Buyer's Representative, and on behalf of himself/herself personally, acknowledges receipt of this Agreement and agree to be personally bound by all the foregoing provisions. By their signature below each represents he/she is legally authorized to sign on behalf of the entity which the undersigned signatory represents. Facsimile signatures on this Agreement shall be deemed to be original signatures for all purposes.

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# CONFIDENTIALITY and NON-CIRCUMVENTION AGREEMENT

**BUYER:** \_\_\_\_\_  
[Print Restaurant(s) Now Owned by Buyer]

\_\_\_\_\_  
[Print Name and Title of Buyer]

\_\_\_\_\_  
[Email Address] [Cell Phone]

\_\_\_\_\_  
[Address] [City] [State] [Zip Code]

**BY:** \_\_\_\_\_  
[Authorized Signature of Buyer] [Date]

**BUYER'S REPRESENTATIVE:** \_\_\_\_\_  
[Name and Title of Buyer's Representative]

\_\_\_\_\_  
[Email Address] [Cell Phone]

\_\_\_\_\_  
[Address] [City] [State] [Zip Code]

**BY:** \_\_\_\_\_  
[Buyer's Representative Signature] [Date]

Acknowledgement:

BBG, Ltd.

**BY:** \_\_\_\_\_  
Bruce M. Breitman, President [Date]

## INSTRUCTIONS FOR VIEWING THE RESTAURANT INITIALLY

1. Drive by the restaurant.
2. If you have an interest in seeing the inside of the restaurant please enter the restaurant as a customer only.
3. Only visit the restaurant during the meal period when it is busy so you don't stand out.
4. Do not engage any employee in conversation other than normal conversation as a customer.
5. If you're not going to eat a meal in the restaurant walk discreetly to the restroom and go inside the restroom. Then exit the restroom and leave the restaurant without having any conversation with any employee.
6. If you have further interest in the business and want to receive additional information and want us to set up a tour of the back of the house of the restaurant with the owner please call us at 415-435-4506.

**IT IS EXTREMELY IMPORTANT THAT YOU FOLLOW THE INSTRUCTIONS INDICATED ABOVE REGARDING CONFIDENTIALITY. IF YOU BREACH THE ABOVE POLICY YOU COULD BE LIABLE FOR LEGAL DAMAGES INCLUDING MONETARY DAMAGES.**