

Date: 11/20/2019 - BizBen Posting: #255317 - Winery, Tasting Room - Owner Retiring In Southern California

Contact: Phil Haney at 661-323-2358 if you have any questions about this NDA or posting.

Instructions: Complete all the information below before emailing it back to: kerncounty@sunbeltnetwork.com.

Your email subject to Phil Haney should read: NDA For Your Winery, Tasting Room - Owner Retiring In Southern California.

Your Name: _____ Your Phone: _____ Your Email: _____

John Willingham
C: 661-332-9401
BRE#556588



BUYER’S ACKNOWLEDGEMENT OF INTRODUCTION AND CONFIDENTIALITY AGREEMENT

OFFICE: 661-323-2358 - FAX: (661) 325-5489

The undersigned, individually and on behalf of any affiliated buyer(s), acknowledges being first introduced to the businesses identified by Sunbelt Business Brokers (“Broker”). The undersigned hereby requests information concurrently and from this time forward, on businesses represented by Sunbelt Business Brokers. Such information shall be provided to the undersigned for the sole purpose of entering into discussions with Seller (“Seller”) of said Business for the possible purchase by the undersigned of all of the stock or assets of the Business. As used herein, the term Buyer, (“Buyer”) applies to the undersigned and any partnership, corporation, individual or other entity with which the undersigned is affiliated. The undersigned agrees as follows:

1. NON-DISCLOSURE OF INFORMATION: The undersigned acknowledges that Seller desires to maintain the confidentiality of the information disclosed. The undersigned agrees with Broker not to disclose or permit access to any Confidential Information without prior written consent of Seller, to anyone other than Buyer’s legal counsel, accountants, lenders, or other agents and advisors to whom disclosure or access is necessary for Buyer to evaluate the Business. Disclosure of Confidential Information shall be made to these parties only in connection with the potential acquisition of the Business, and then only if these parties understand and agree to maintain the confidentiality of such Confidential Information. The undersigned shall be responsible for any breach of this Agreement by these parties and neither Buyer nor these parties shall use or permit the use of Confidential Information in any manner, except as may be required for Buyer to evaluate the Business or as may be required by legal process. If the Buyer does not purchase the Business, Buyer, at the close of negotiations, will destroy or return to Broker (at Broker’s option) all information provided to Buyer and will not retain any copy, reproduction or record thereof.

2. DEFINITION OF “CONFIDENTIAL INFORMATION”: The term “ Confidential Information” shall mean all information, including the fact that the Business is for sale, all financial, production, marketing and pricing information, business methods, business manuals, manufacturing procedures, correspondence, processes, data, contracts, customer lists, employee lists and any other information whether written, oral or otherwise made known to Buyer: (a) from any inspection, examination or other review of books, records, assets, liabilities, processes or production methods of Seller; (b) from communication with Seller or its directors, officers, employees, agents, suppliers, customers or representatives; (c) during visits to Seller’s premises, or (d) thorough disclosure or discovery in any other manner. However, Confidential Information does not include any information which is readily available and known to the public.

3. DISCLAIMER OR BROKER’S LIABILITY AND BUYER’S RESPONSIBILITY: When business brokers take a business to market they receive information about the business from the seller, usually including, but not limited to, tax returns, financial statements, equipment lists and facilities leases. Based on information provided by the Seller, brokers often prepare a summary description of the Business which may include a cash flow projection, an adjusted income statement or seller discretionary cash flow statement. Buyer understands that the Broker does not audit or verify any information given to Broker or make any warranty or representation as to its accuracy or completeness, nor in any way guarantee future business performance. Buyer is solely responsible to examine and investigate the business, its agents, liabilities, financial statements, tax returns and any other facts which might influence Buyer’s decision to purchase or the price the Buyer is willing to pay. Any decision by Buyer to purchase shall be based solely on Buyer’s own investigation and that of Buyer’s legal, tax and other advisor. **Broker urges Buyer to obtain independent legal and tax counsel.**

4. NON-CIRCUMVENTION AGREEMENT: The seller has entered into an agreement providing that Seller shall pay a fee to listing broker if during the term of that agreement or up to twenty-four months thereafter, the Business is transferred to a buyer introduced by listing broker or a cooperating broker. Buyer shall conduct all inquiries into and discussions about the Business solely through broker and shall not directly contact the Seller or the Seller’s representatives. Should any circumvention or contact be made with the sources revealed by Sunbelt Business Brokers, or should this contract or circumvention result in a sale, merger, lease or exchange of the business, premises or property in question, the undersigned agree(s) to pay to Sunbelt Business Brokers as liquidated damages an amount equal to the actual commission due to Sunbelt Business Brokers or any cooperating broker, or (10%) of the gross sales price, whichever is more.

5. FURTHER TERMS: Neither Buyer, nor Buyer’s agent, will contact Seller’s employees, customers, landlords or suppliers without Seller’s consent. For three years, Buyer shall not directly or indirectly solicit for employment any employees of Seller. Broker may act as dual agent representing both Buyer and Seller. Seller is specifically intended to be a beneficiary of the duties and obligations of this Agreement and may prosecute any action at law or in equity necessary to enforce its terms and conditions as though a party hereto. Seller may assign this Agreement to any new ownership or Business. This Agreement can only be modified in writing, signed by both Broker and Buyer. Waiver of any breach of this agreement shall not be a waiver of any subsequent breach. This Agreement supersedes all prior understandings or agreements between the parties with respect to its subject matter. This Agreement shall be construed under and governed by the laws of the State of California. If Buyer is a corporation, partnership or other such entity, the undersigned executes this Agreement on behalf of Buyer and warrants that he/she is duly authorized to do so. **Buyer acknowledges receipt of a fully completed copy of this Agreement.**

IN WITNESS THEREOF, the parties have executed this Agreement on the _____ day of _____, in the year _____.

SUNBELT BUSINESS BROKERS

Agent:

John Willingham

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1400 Easton Drive, Suite 135, Bakersfield CA 93309 Office 661-323-2358 Ext. 214 Fax 325-5489

Please complete and fax back to John Willingham at (661) 325-5489

DISCLOSURE REGARDING THE NATURE OF BUSINESS OPPORTUNITY PURCHASES

BUSINESS OPPORTUNITY INVESTMENTS, LIKE ANY OTHER INVESTMENT, CARRY WITH THEM A CERTAIN AMOUNT OF RISK. SOME OF THE FACTORS THAT CAN AFFECT THE PERFORMANCE OF A BUSINESS OPPORTUNITY ARE:

(1) GOVERNMENTAL RULES AND REGULATIONS

The Government can change the tax laws, and often do, to manipulate the economy so that certain sectors will benefit. As an example, if the Government allows more tax benefits to Real Estate than in the past, individuals in higher income tax brackets will come into the market. This will stimulate the Real Estate Business and cause prices to go up; however, as investors pull their dollars out of other investments, such as the Stock Market, those sectors will be adversely affected. This is exactly what happened in 1986 when the Federal Government passed a tax act that adversely affected Real Estate and/or other Business Opportunities, causing individuals to dump their Real Estate holdings and go into other investments. Real Estate went down, Stocks went up.

Local and State authorities may pass laws that affect Real Estate and/or Business Opportunities, causing property taxes to go up and since the passage of Proposition 13, these entities have found loopholes through Special Assessment Districts that have increased property taxes up to pre-Proposition 13 levels and more. This affects the cash flow and the ability of individuals to qualify for loans and decreases the demand, causing the price to go down. Other things that could, and do, affect values and cash flows in Real Estate and/or Business Opportunities are up and down zoning, growth and no-growth policies, good or poor management at all levels of Government, minimum wage laws and the list could go on.

(2) COMPETITION

As a market in certain areas heat up, builders and investors and others come into the marketplace and this can cause problems, like overbuilding creating high vacancy factors. Competition can affect individual parcels or entire areas. New, innovative, effective and profitable businesses will be copied of time. The rule of economics is "excessive profits breeds ruinous competition."

(3) FINANCING

Tight credit policies keep investors out of the market and lessen the demand and the result is lower prices and less transaction volume. A basic rule of economics is, in order for demand to be effective, it must be coupled with purchasing power. As of the date of this writing we are still in, what is now become known as the Great Recession, and business loans are difficult to obtain. The Small Business Administration (SBA) has tightened up their policies for guaranteeing a portion of SBA loans made by Banks resulting in very tight credit policies.

(4) MANAGEMENT

The performance of any investment or business opportunity will be affected by the management decisions of the new owners. The two most common reasons for business failure are poor management and lack of capital resources.

(5) OTHER FACTORS

We are now operating in a Global Economy and are affected by changes in other nations and there are many other factors that could affect a Real Estate Investment or Business Opportunities, though it would be too large a task to try to define them all here

TO OPERATING DATA, CASH FLOW PROJECTIONS AND OTHER INFORMATION WE FEEL WILL BE HELPFUL IN MAKING AN INVESTMENT DECISION. THESE PROJECTIONS WILL BE BASED ON OUR EXPERIENCE AND UNDERSTANDING OF THE VARIOUS FACTORS AFFECTING AN INDIVIDUAL BUSINESS INVESTMENT. WE WILL MAKE EVERY EFFORT TO MAKE REALISTIC PROJECTIONS. SUNBELT BUSINESS BROKERS, IT'S AGENTS AND MYSELF, JOHN W. WILLINGHAM, CCIM, CBB, CBI, CRS, GRI, CAN MAKE NO GUARENTEE AS TO THE PERFORMANCE OF ANY PARTICULAR INVESTMENT. THERE ARE TOO MANY FACTORS THAT COME INTO PLAY FOR ANY PROJECTION TO BE FLAWLESS, AS IS EVIDENCED FROM THE INFORMATION WRITTEN HEREIN, ABOVE.

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I/We have read, and have had explained to us, and understand, this disclosure. I/We agree that any projections given to me/us by Sunbelt Business Brokers, it's Agents, or by John W. Willingham, are understood to be projections only and are not guarantees as to any investment's or business opportunity's performance. Furthermore, Sunbelt Business Brokers, has obtained information from the owner, one of the owner's employees, or the owner's accountant or authorized third parties. This information has not been verified by Sunbelt Business Brokers for completeness or accuracy. The buyers should conduct their own independent investigation and rely on those results.

Client Signature

Date

Print Name

Client Signature

Date

Print Name
