



CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement (this "**Agreement**"), is made, entered into and effective as of _____, 20____ (the "**Effective Date**"), by and among _____, an (individual/corporation) referred to herein as ("**Buyer**") and **SAM'S HOLDINGS, LLC**, a North Carolina limited liability company (on behalf of itself and all of its affiliates and subsidiaries, collectively referred to herein as "**Sam's**") having its principal address at 7935 Council Place, Suite 200, Matthews, North Carolina 28105.

RECITALS

The parties are currently discussing the possibility of a negotiated and mutually agreeable business relationship and/or transaction between them (the "**Transaction**"), and in connection with such potential Transaction, the parties wish to exchange information that they consider to be confidential for the purposes of facilitating their discussions and evaluation regarding the Transaction, and they wish to provide for the confidentiality of such information.

Neither party would disclose such confidential information without the assurances of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Definition of Confidential Information.

(a) For purposes of this Agreement, "**Confidential Information**" means any data, knowledge or information that is proprietary and is disclosed by one party ("**Disclosing Party**") to the other party ("**Receiving Party**") and not generally known to the public, whether in tangible or intangible form, in whatever medium provided, whether unmodified or modified by Receiving Party or its Representatives (as defined herein), whenever (including prior to the Effective Date, if and as applicable) and however disclosed, including, but not limited to: (i) any marketing analyses or strategies, plans, investors, lenders, financial information, or projections, operations, sales estimates and data, business plans, project lists and performance results relating to the past, present or future business activities of such party, its affiliates, subsidiaries and affiliated companies; (ii) plans for products or services, and customer, client or supplier lists; (iii) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; (iv) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; (v) any other information that should reasonably be recognized as confidential information of Disclosing Party because of their expertise in the areas of commercial real estate; and (vi) any information generated by

Receiving Party or by its Representatives that contains, reflects, or is derived from any of the foregoing. Confidential Information need not be novel, unique, patentable, or copyrightable, or otherwise constitute a trade secret, nor shall it need to be marked or otherwise declared confidential, in order to be designated or otherwise deemed Confidential Information. Receiving Party acknowledges that the Confidential Information is proprietary to Disclosing Party, has been developed and obtained through great efforts by Disclosing Party and that Disclosing Party regards all of its Confidential Information as trade secrets. Moreover, the parties acknowledge and agree that Confidential Information shall also include all discussions between the parties and their respective representatives, including the Representatives (defined below), and the fact of the parties having discussions concerning the potential Transaction.

(b) Notwithstanding anything in the foregoing to the contrary, Confidential Information shall not include information which: a) was lawfully possessed, as evidenced by Receiving Party's records, by Receiving Party prior to receiving the Confidential Information from Disclosing Party; (b) becomes rightfully known by Receiving Party from a third-party source not under an obligation to Disclosing Party to maintain confidentiality; (c) is generally known by the public through no fault of or failure to act by Receiving Party inconsistent with its obligations under this Agreement; (d) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation, although the requirements of Section 4 below shall apply prior to any disclosure being made; and (e) is or has been independently developed by employees, consultants or agents of Receiving Party without violation of the terms of this Agreement, as evidenced by Receiving Party's records, and without reference or access to any Confidential Information.

2. Disclosure of Confidential Information.

From time to time, Disclosing Party may disclose Confidential Information to Receiving Party. Receiving Party shall: (a) limit disclosure of any Confidential Information to its directors, officers, employees, agents, advisors or representatives (collectively "**Representatives**") who have a need to know such Confidential Information in connection with the potential Transaction to which this Agreement relates, and only for such purpose; (b) advise its Representatives of the proprietary nature of the Confidential Information and of the obligations set forth in this Agreement, require such Representatives to be bound by written confidentiality restrictions no less stringent than those contained herein, and assume full liability for acts or omissions by its Representatives that are inconsistent with Receiving Party's obligations under this Agreement; (c) keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties (except as otherwise provided for and required herein).

3. Use of Confidential Information.

Receiving Party agrees to, and shall, use the Confidential Information solely in connection with its assessment concerning the potential Transaction, and not for any purpose other than as authorized by this Agreement, without the prior written consent of an authorized representative of Disclosing Party. No license or any other right, whether expressed or implied, in the

Confidential Information is granted to Receiving Party hereunder. Disclosing Party shall retain sole and exclusive ownership of, and title to, the Confidential Information. All use of Confidential Information by Receiving Party shall be for the benefit of Disclosing Party and any modifications and improvements thereof by Receiving Party shall be the sole and exclusive property of Disclosing Party.

4. Compelled Disclosure of Confidential Information.

Notwithstanding anything in the foregoing to the contrary, if Receiving Party or its Representatives are requested or required (by any governmental, judicial, or administrative order, subpoena, oral questions, interrogatories, other discovery request, civil investigative demand, or similar legal process, including stock exchange or other regulatory request or similar method) to disclose any of Disclosing Party's Confidential Information or make any other disclosure prohibited herein, Receiving Party agrees to provide Disclosing Party with prompt written notice of each such request, to the extent practicable, so that Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided that Receiving Party shall limit its disclosure to that portion of the requested Confidential Information that, in the written opinion of its legal counsel, it is required to disclose. Receiving Party agrees that it shall not oppose, and shall cooperate with efforts by, to the extent practicable, Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if Disclosing Party is unable to obtain or does not seek a protective order and Receiving Party is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability under this Agreement.

5. Term.

This Agreement shall remain in effect for a period of two (2) years, commencing on the Effective Date, unless earlier terminated by either party, in such party's sole discretion, upon written notice to the other party; in such event, termination shall be effective immediately upon delivery of such notice to such receiving party. Notwithstanding the foregoing, Receiving Party's duty to hold in confidence Confidential Information that was disclosed during the term of this Agreement (and such Confidential Information disclosed prior to the Effective Date as contemplated above) shall survive the termination of this Agreement, regardless of the reason, and shall remain in effect and shall continue: (i) indefinitely (i.e., such obligation shall not cease), including following the termination of this Agreement, concerning all Confidential Information that constitute "trade secrets" under North Carolina General Statutes Sections 66-152(3) and 132-1.2; and (ii) for ten (10) years following the termination of this Agreement, concerning all Confidential Information that does not constitute "trade secrets" under North Carolina General Statutes Sections 66-152(3) and 132-1.2.

6. Remedies.

The parties acknowledge and agree that Confidential Information to be disclosed hereunder is of a unique and valuable character to Disclosing Party, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information and cause

immediate and irreparable harm to Disclosing Party; additionally, the damages to Disclosing Party that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, both parties hereby acknowledge and agree, in the case of breach of this Agreement, that Disclosing Party shall be entitled to equitable relief, including injunctive relief, without the necessity of a bond, to prevent the dissemination of any Confidential Information, and/or specific performance concerning the return and/or destruction of the Confidential Information to the extent required under this Agreement. Such injunctive relief and specific performance shall be in addition to any other remedies available hereunder, or at law or in equity; each such remedy to be cumulative with, and not exclusive of, all other such remedies.

7. Return of Confidential Information.

Receiving Party shall immediately return and redeliver to Disclosing Party all tangible material embodying any Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving therefrom, and all other documents or materials (“**Notes**”) (and all copies of any of the foregoing, including “copies” that have been converted to computerized media in the form of image, data, word processing, or other types of files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of discussion concerning the potential transaction; (ii) the termination of this Agreement; or (iii) at such time as Disclosing Party may so request; provided, however, that Receiving Party may retain such of its documents as is necessary to enable it to comply with its reasonable document retention policies as evidenced to Disclosing Party, provided, further, however, to the extent that Receiving Party retains any Confidential Information based on the foregoing, such Confidential Information shall be held by Receiving Party’s outside counsel, as confirmed and certified to, in writing, by Receiving Party to Disclosing Party. Alternatively, Receiving Party, with the written consent of Disclosing Party, shall destroy immediately any of the foregoing embodying Confidential Information (and the reasonably non-recoverable data erasure of computerized data) and, upon request, Receiving Party shall certify in writing to Disclosing Party such destruction by an authorized officer of Receiving Party supervising the destruction).

8. Notice of Breach.

Receiving Party shall notify Disclosing Party immediately upon discovery of, or suspicion of, (1) any unauthorized use or disclosure of Confidential Information by Receiving Party or its Representatives; or (2) any actions by Receiving Party or its Representatives inconsistent with their respective obligations under this Agreement, Receiving Party shall cooperate with any and all efforts of Disclosing Party to help Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

9. No Binding Agreement for Transaction.

The parties acknowledge and agree that neither party will be under any legal obligation of any kind whatsoever with respect to effectuating, or otherwise concerning, the potential Transaction

by virtue of this Agreement, except for the matters specifically agreed to herein. The parties further acknowledge and agree that each reserves the right, in such party's sole and absolute discretion, to reject any and all proposals and to terminate discussions and negotiations with respect to the potential Transaction at any time. This Agreement does not create a joint venture or partnership between the parties. If a Transaction goes forward, the non-disclosure provisions of any applicable transaction documents entered into between the parties (or their respective affiliates) concerning the Transaction shall supersede this Agreement; in the event that such provisions contained herein are not provided for in such transaction documents, this Agreement shall control.

10. Warranty.

NO REPRESENTATIONS OR WARRANTIES ARE MADE BY DISCLOSING PARTY OR ITS REPRESENTATIVES UNDER THIS AGREEMENT WHATSOEVER, EXPRESS OR IMPLIED. The parties acknowledge and agree that no representation or warranty as to the accuracy or completeness of the Confidential Information is being made by Disclosing Party. Disclosing Party shall have no liability to Receiving Party or its Representatives concerning any use of the Confidential Information. Any such representation or warranty of Disclosing Party shall be limited to as set forth by the parties if, subsequently, they negotiate and enter into a mutually agreeable definitive agreement concerning the Transaction, although there is no obligation for the parties to do so hereunder.

11. Non-solicitation; Other Actions.

From the Effective Date to the earlier of: (1) the date of execution of a definitive agreement in respect of the Transaction, if applicable; and (2) the second (2nd) anniversary of this Agreement, each party covenants not to and shall not, directly or indirectly, alone, jointly or in concert with any other person, entity, partnership, association or otherwise, without the express prior written consent of the other party, in the sole discretion of such party, use the Confidential Information, or take any action based upon the Confidential Information, to:

- (i) interfere in any way with any contractual or other business of the other party;
- (ii) solicit for hire or employ, directly or indirectly, any officer, director or employee of Disclosing Party or its affiliates, who is or was an officer, director or employee of the disclosing party during the term of this Agreement; or
- (iii) in any capacity, either separately or jointly or in association with others, directly or indirectly, solicit or contact in connection with, or in furtherance of, such party's business or interests, or in competition with the other party, any of the other party's vendors (collectively, the "**Restricted Parties**" and each a "**Restricted Party**"). Additionally, during such time, such party shall not at any time contact, or permit any of its employees, officers, or other agents or Representatives, to contact, directly or indirectly, without the prior written consent of the other party, which consent may be withheld by the other party, in its sole and absolute discretion, any of the Restricted Parties, including any employee, officer or other agent of any Restricted Party or any affiliate of same. This subsection specifically excludes and shall not apply to those

certain vendors that Buyer has engaged, employed or contracted with previously in contemplation or furtherance of separate business relationships or transactions, which may continue to be solicited or contacted in the normal course of business.

The covenants set forth above in this Section 11 shall survive the termination of this Agreement, regardless of the reason for such termination, for the applicable period of time contemplated above in this Section 11.

12. Authorization.

Each party represents that it has the right to enter into this Agreement without any breach of any obligation to others. The parties further acknowledge and agree that the evaluation of Confidential Information of Disclosing Party shall be at the sole risk of Receiving Party.

13. Miscellaneous.

(a) This Agreement represents the final and complete agreement between the parties regarding the subject matter hereof; and supersedes all previous and contemporaneous communications, representations, understandings and agreements, whether oral or written, between them with respect to the Confidential Information, disclosed or obtained after the execution of this Agreement.

(b) No change, modification, extension, termination or waiver of any provision of this Agreement shall be valid unless made in writing and signed by a duly authorized representative of the party to be bound thereby.

(c) If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable; if it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance.

(d) In the event of litigation or other enforcement actions concerning this Agreement, including, without limitation, if Disclosing Party brings an action to enforce the terms of this Agreement, including concerning the protection of any Confidential Information, including, without limitation, injunctive relief or specific performance, and/or concerning damages associated with any breach of this Agreement or concerning any other matter, the prevailing party in such action (whether Receiving Party or Disclosing Party or any successor-in-interest), in addition to all remedies available at law or in equity, shall be entitled to costs and expenses associated therewith, including, without limitation, reasonable attorneys' fees. The parties acknowledge and agree that all liabilities concerning all relief, including, without limitation, concerning damages and costs and expenses arising from this Agreement, shall be joint and several by and among the entities and affiliates constituting, collectively, the Buyer, if against a Buyer, and shall be joint and several by and among the entities and affiliates constituting, collectively, the "Seller", if against Seller.

(e) The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of North Carolina, without giving effect to any conflicts of law provisions. The Federal and state courts located in North Carolina shall have sole and exclusive jurisdiction over any disputes arising under, or in any way connected with or related to, the terms of this Agreement, and Receiving Party: (i) consents to personal jurisdiction therein; and (ii) waives the right to raise *forum non conveniens* or any similar objection.

(f) Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier for overnight or next business day delivery, electronic mail (marked as “Important” in the subject line), or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party first indicated above (or such other addressee as may be furnished by a party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery, or electronic mail on the date of such delivery, (b) in the case of delivery by a nationally recognized overnight carrier, on the next business day, and (c) in the case of mailing, on the third business day following such mailing.

(g) This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors and permitted assigns and designees.

(h) This Agreement may be signed in counterparts, and electronic signatures (including pdfs) shall be deemed original signatures for all purposes.

[Separate Signature Page Follows]

**SEPARATE SIGNATURE PAGE TO
CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT**

In Witness Whereof, the parties have executed this Agreement by their respective officers thereunto duly authorized as of the Effective Date.

Buyer:

Name of corporation: _____

By: _____ (SEAL) Date: __/__/__

Name: _____

Title: _____

Address: _____

City/State/Zip: _____

Phone: _____ Cell: _____

Email: _____

Seller:

Sam's Holdings, LLC

7935 Council Place

Matthews, NC 28105

By: _____ Date: __/__/__

Paul K Joseph, Real Estate Director