

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between BRAUN CO. ("Braun") and Buyer (the "Disclosee").

WHEREAS, Braun has been retained by Chapter 7 Trustee in the Quertle, Inc. Bankruptcy Case No. 22-11421-MKN, Brian D. Shapiro ("Trustee") in connection with the auction sale of the Property located at certain assets of the Debtor ("Sale Assets"); and

WHEREAS, Braun may provide access to documents, correspondence, third party reports, data, and other information relating to the Sale Assets for review to Disclosee so that Disclosee can participate in an auction sale of the Property; and

WHEREAS, in consideration of Braun's furnishing Disclosee or providing Disclosee with access to information regarding the Sale Assets, Braun desires to make certain agreements regarding such information including any other information Braun or representatives furnish to Disclosee regarding the Sale Assets, together with all copies thereof and notes, analyses, compilations, studies, and other documents, whether prepared by Braun or others, which contain or otherwise reflect such information pertaining to the Property (such information, and such documents, are collectively herein referred to as the "Evaluation Materials").

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Braun and Disclosee hereby agree as follows:

**Section 1. *Term.*** This Agreement shall become effective on the date on which it is executed by Disclosee and shall terminate only upon sale of the Sale Assets by the Trustee. Prior to the sale of the Asset, all obligations set forth herein shall survive the termination of any discussions and/or business relationship between Braun and Disclosee, for a period of three (3) years thereafter or until the sale of the Assets, whichever occurs first. Notwithstanding the foregoing, any claim based on a breach of this Agreement by Disclosee with respect to the Evaluation Materials occurring prior to the Transaction shall survive termination of this Agreement, unless waived by Braun in writing.

**Section 2. *Limited Access; Confidentiality.*** Without the prior written consent of Braun, to be granted or withheld in Braun's sole discretion, Disclosee shall not disseminate or divulge the Evaluation Materials to any person or entity, other than to such persons who have a need for access to the Evaluation Materials for the purpose of assisting and advising Disclosee in the evaluation, negotiation and possible purchase and sale of the Asset to Disclosee ("Transaction"). Disclosee shall ensure that all persons to whom it discloses the Evaluation Materials shall keep the Evaluation Materials confidential and otherwise comply with all the terms of this Agreement. For purposes of this Agreement, the Evaluation Materials will not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by Disclosee; (ii) was already in Disclosee's possession prior to its receipt from Braun; and (iii) becomes available to Disclosee on a non-confidential basis from a third party, other than Braun, who, insofar as is known to Disclosee, is not prohibited from transmitting the information to Disclosee by a contractual, legal or fiduciary obligation to Braun.

**Section 3. *Contacts.*** Without the prior written consent of Braun, which consent may be withheld in Braun's sole discretion, Disclosee shall not, directly or indirectly, contact, or seek or attempt to seek any information from, any person other than Braun, and its agents and representatives, or the Trustee, regarding the Evaluation Materials. Without limiting the generality of the foregoing, Disclosee shall not contact or attempt to contact any owners or tenants of the Asset, or any of their respective officers, directors, employees, agents, representatives or attorneys. Nothing in this Section 3 shall prohibit Disclosee from contracting with third parties to provide (i) title searches, (ii) broker price opinions, (iii) appraisals, and (iv) real estate tax information.

**Section 4. *No Waiver of Privileges.*** By providing Disclosee with access to the Evaluation Materials pursuant to this Agreement, Braun does not intend to and shall not be deemed to have waived its individual attorney-client privilege or work-product doctrine or any other privilege that may be applicable to the Evaluation Materials. If Braun determines that privileged material has been provided to Disclosee, Disclosee agrees to immediately return and/or destroy any and all privileged material provided to Disclosee.

**Section 5. *Other Disclosure.*** To the extent that Disclosee is required to disclose the Evaluation Materials or any portion thereof pursuant to the requirements of any legal proceeding, Disclosee shall notify Braun within three (3) business days of its knowledge of such legally required disclosure so that Braun may seek an appropriate protective order and/or waive Disclosee's compliance with this Agreement. Notice shall be both by telephone and in writing. In the absence of a protective order or waiver, Disclosee may disclose relevant Evaluation Materials if compelled to disclose relevant evaluation materials by a court of law.

**Section 6. *No Ownership Rights.*** Disclosee acknowledges that the Evaluation Materials are the property of Braun or the then-current owner of the Asset or a third party, and that Braun or the then current owner of the Asset or third party has and will retain all ownership rights and title in and to the Evaluation Materials.

**Section 7. *Liability.*** If Braun determines that Disclosee has breached any provision of this Agreement, Braun may, in its sole discretion, exercise any or all legal or equitable rights or remedies to which Braun is entitled on account of Disclosee's breach, including the right to refuse to accept any offer made by or on behalf of Disclosee. Disclosee acknowledges and recognizes that any use, disclosure or appropriation of the Evaluation Materials could cause irreparable harm and injury to Braun and/or the owner of the Asset, and there may be no adequate remedy at law for any breach of Disclosee's obligations hereunder. Therefore, upon any breach or any threat thereof, Braun shall be entitled to appropriate equitable relief in addition to any remedies that Braun may have at law. Disclosee agrees not to contest or otherwise obstruct or hinder the acquisition and enforcement of such equitable relief. Braun shall not be deemed to have waived any of its rights or remedies on account of its failure, delay or forbearance in exercising any such right or remedy. Disclosee will inform Braun immediately of any improper disclosure of any of the Evaluation Materials, and of any breach of any provision of this Agreement, which may come to Disclosee's attention.

**Section 8. *Indemnification.*** Disclosee shall indemnify Braun, its employees, representatives, principals, agents and contractors ("Indemnified Parties") and hold such Indemnified Parties harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorneys' fees) asserted against or incurred by Braun or the Indemnified Parties as a result of any violation of, or failure to comply with, the provisions of this Agreement by Disclosee or any person to whom Disclosee has disclosed the Evaluation Materials or any portion thereof.

**Section 9. *Release of Braun.*** Disclosee acknowledges and understands that some or all of the Evaluation Materials may have been prepared by parties other than Braun, that Braun has not independently verified the Evaluation Materials, and that neither Braun, its employees, representatives, principals, agents or contractors nor any other entity which provides or makes available Evaluation Materials to Disclosee at the direction of Braun, makes any representation or warranty whatsoever, express or implied, with respect to the content, completeness or accuracy of the Evaluation Materials. Disclosee hereby releases Braun and its employees, representatives, agents and contractors, including the preparers of any of the Evaluation Materials, from all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorneys' fees) asserted against or incurred by Disclosee by reason of Disclosee's reliance on or knowledge of the Evaluation Materials or for any other reason. Disclosee acknowledges and waives the benefits of California Civil Code Section 1542 (and all similar ordinances and statutory, regulatory, or judicially created laws or rules of any other jurisdiction), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Braun and Disclosee agree that this waiver and release is an essential and material term of this Agreement. This section shall survive termination of this Agreement.

**Section 10. *Return of Tangible Materials.*** Immediately upon (a) the decision of Disclosee not to

engage in the Transaction, (b) a request by Braun at any time, which will be effective upon receipt or three (3) days after mailing, first-class, postage prepaid, to Disclosee's address herein, or (c) termination of this Agreement, Disclosee shall turn over to Braun all Evaluation Materials that were provided in a tangible format, including but not limited to documents or media. Disclosee acknowledges and agrees that Disclosee shall not retain any copies of the Evaluation Materials in a tangible format without the prior written consent of Braun, which consent may be withheld in Braun's sole and absolute discretion.

**Section 11. Governing Law.** This Agreement shall be construed, and the rights and obligations hereunder determined, in accordance with the laws of the State of California. Disclosee hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the United States Bankruptcy Court for the District of Nevada, in connection with suits or proceedings arising out of or relating to this Agreement, and Disclosee agrees not to commence any action, suit or proceeding relating thereto except in such courts. Disclosee agrees that any service of any process, summons, notice or document by U.S. Postal Service registered mail to Disclosee's address set forth below shall be effective service of process for any action, suit or proceeding brought against Disclosee in any such court. Disclosee hereby irrevocably and unconditionally waives any objection to the venue of any action, suit or proceeding arising out of this Agreement in the courts of the State of California, County of Los Angeles, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim that any action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

**Section 12. Employee/Broker/Third Party Acknowledgement.** Before any Evaluation Materials or other information is disclosed to an employee of Disclosee, a non-affiliated potential buyer or any other third party (collectively referred to as "Recipient"), the intended Recipient shall be first presented with a copy of this Agreement, and after reading it and agreeing to be bound by its terms, sign the form attached as Exhibit "A" which is an "Acknowledgment of Confidentiality and Non-Disclosure Agreement" ("Acknowledgement"). Disclosee shall advise every Recipient given access to Evaluation Materials or information contained therein that such material or information is being disclosed pursuant and subject to the terms of this Agreement and may not be used or disclosed except as permitted herein, and that failure to abide by the terms hereof may be punished as a breach of contract. Acknowledgements signed by the Recipient shall be provided to counsel for Braun within two (2) days of execution. Evaluation Materials shall not be disclosed to any person or in any manner not specified in this Agreement.

**Section 13. Miscellaneous.** THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. This Agreement may not be modified orally but only by a written agreement executed by Disclosee and Braun, and so designated as an amendment or modification of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, heirs, executors, administrators and personal representatives. The representative(s) signing this Agreement on behalf of Disclosee represents that he or she is fully authorized to enter into this Agreement and to legally bind Disclosee.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed by their duly authorized representatives as of the day and year first above written.

**BRAUN Co.**

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

Address for Notice:

**“DISCLOSEE”**

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

Address for Notice:

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

EXHIBIT "A" TO CONFIDENTIALITY AGREEMENT

Acknowledgment of Confidentiality and Non-disclosure Agreement

I hereby acknowledge that I have read the Confidentiality Agreement and I agree to be bound by its terms.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Person to be Bound

\_\_\_\_\_  
Printed Name of Person to be Bound

\_\_\_\_\_  
Address and Phone Number