

Non-Disclosure Agreement

This Non-Disclosure Agreement (the “**Agreement**”) is entered into as of the date set forth in the signature block below, between, on the one hand, the disclosing party (“**Receiver**”), Patrick O’Keefe of O’Keefe and Associates Consulting, LLC the court-appointed special receiver of Finlandia University in the Circuit Court of Ingham County, Michigan (Case No. 23-0185-CB) (“**Court**”), on the one hand, and (“**Prospect**”), as defined in the signature block below, on the other hand.

WHEREAS, Receiver is seeking to close a sale (a “**Transaction**”) of selected real property assets (which shall hereinafter be referred to as the “**Property**” or “**Properties**”), and

WHEREAS, Receiver, pursuant to an Order of the Court, has engaged Keen-Summit Capital Partners LLC (“**Keen**”) to market the Property, in whole or in parts, for a Transaction, and

WHEREAS, Receiver, for the sole purpose of consummating a Transaction, wishes to disclose to Prospect certain written and/or oral confidential and proprietary information relating to the Property and to engage in confidential discussions pertaining to the prospective Transaction. For purposes of this Agreement, the term “**Confidential Information**” shall include, without limitation all of the following that is shared by the Receiver or Keen with Prospect:

1. all information, data, reports, analyses, compilations, studies, interpretations, projections, forecasts, records and other materials (whether prepared by the Receiver or Keen or otherwise and in whatever form maintained, whether documentary, computerized or otherwise) related or pertaining to the Property, including but not limited to its financial statements, vendors, H/R information, I/T information, and business processes and procedures,
2. all notes, summaries, or other material derived therefrom, that contain or otherwise reflect information concerning the Property and that are disclosed in the course of Prospect’s evaluation of a possible transaction, and
3. the fact of Prospect’s possible interest in a Transaction, the fact of Prospect’s communications with the Receiver and/or Keen regarding the Property and/or a Transaction, the possibility of Prospect making a Transaction offer, and/or any and all details regarding the terms and conditions of Prospect’s anticipated Transaction offer, if any, and

Whereas, the parties hereto intend for this Agreement to be binding upon their respective affiliates and each of their respective officers, directors, employees, financial partners, lenders, advisors, attorneys, accountants, consultants, agents and representatives (collectively, “**Representatives**”);

NOW WHEREFORE, Receiver agrees to disclose, and Prospect agrees to receive and use, such Confidential Information subject to terms and conditions set forth below:

Confidentiality

1. Prospect agrees:
 - a. not to use any Confidential Information except for in connection with a potential Transaction;
 - b. to keep confidential and not to disclose any Confidential Information to persons or entities other than its Representatives with a need to know the information contained therein; *provided*, that such Representatives shall be bound by obligations of confidentiality materially the same as the confidentiality and non-use terms of this Agreement, have been informed of the confidential nature of the Confidential Information and are directed to abide by and have agreed to the terms of this Agreement;
 - c. to maintain adequate procedures to preserve the confidentiality of the Confidential Information, such procedures to be at least equal to the procedures it would use to protect its own Confidential Information; and

- d. not to disclose: (i) that the Confidential Information has been made available to Prospect; (ii) that Prospect and/or its Representatives have inspected the Property; (iii) that Prospect may be considering a Transaction; (iv) that Prospect and/or its Representatives have had, are having or propose to have any discussions or negotiations with Receiver with respect to the Property; and/or (v) that Prospect and/or its Representatives are bidding for a Transaction (the foregoing being deemed Confidential Information).
2. Confidential Information shall not include any information that:
 - a. is or becomes generally available to the public other than as a result of a disclosure by Prospect or any of its Representatives in violation of this Agreement,
 - b. is already known to Prospect or its Representatives or is already in its or their possession prior to its disclosure to Prospect by the Receiver or its Representatives,
 - c. becomes available to Prospect from a source other than the Receiver or its Representatives, provided that such source is not, to Prospect's knowledge after due inquiry, in breach of an obligation of confidentiality to the Receiver, or
 - d. is independently developed by Prospect or its Representatives without reliance on Confidential Information.
3. Receiver may elect at any time to terminate further access by Prospect to the Confidential Information. Upon written request by Receiver, Prospect agrees to promptly destroy or return to the Receiver, at Prospect's option, all Confidential Information, and to confirm in writing (e-mail being sufficient) that all such material has been either returned or destroyed in compliance with this Agreement. Prospect further acknowledges that no such termination will affect its obligations of Confidentiality hereunder or those of their Representatives, all of which obligations shall continue in effect for the term of this Agreement. Notwithstanding the foregoing, Prospect may retain copies of the Confidential Information and such portion of the Confidential Information that are stored on Prospect's information technology backup and/or disaster recovery systems until the ordinary course deletion thereof. Prospect shall continue to be bound by the terms and conditions of this Agreement while Prospect retains Confidential Information.

Disclosure

4. Prospect shall, in good faith, attempt to prohibit its Representatives from disclosing or using any Confidential Information consistent with the terms and conditions of this Agreement. If Receiver or Prospect discover that Prospect and/or one or more of its Representatives have disclosed or used Confidential Information in contravention of this Agreement, then Prospect hereby covenants to immediately notify Receiver thereof and to assist Receiver in recovering such Confidential Information and in mitigating any damages resulting therefrom and shall indemnify and hold Receiver harmless from any loss or damages suffered by Receiver resulting from any failure of an affiliate or Representative to maintain the confidential nature of the Confidential Information.
5. If requested or required (by law, court order, stock exchange, self-regulatory organization, governmental agency, regulatory body, oral questions, interrogatories, requests for information, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, Prospect agrees, to the extent legally permissible, to provide the Receiver with prompt written notice of such request so as to allow the Receiver to seek an appropriate protective order and/or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder, Prospect or Prospect's Representatives are, in the opinion of Prospect's

or Prospect's Representatives' counsel, as the case may be, required to disclose Confidential Information, Prospect may disclose only that portion of such information as is legally required without liability hereunder; *provided*, that Prospect agrees to exercise Prospect's reasonable efforts to obtain assurance that confidential treatment will be accorded such information. Notwithstanding anything in this Agreement to the contrary, Prospect and its Representatives may disclose Confidential Information without notice, a protective order or other remedy where disclosure is in connection with a routine audit or examination by, or a document request from, a regulatory or self-regulatory authority, bank examiner or auditor that does not reference the Receiver or this Transaction.

Disclaimer

6. Prospect agrees that no contract or agreement providing for any Transaction shall be deemed to exist between Prospect and the Receiver unless and until Prospect and the Receiver execute and deliver a final definitive agreement relating thereto that is approved by the Court (a "**Transaction Agreement**"), and Prospect hereby waives, in advance, any claims (including, without limitation, breach of contract) in connection with any Transaction. Prospect also agrees that neither Prospect nor the Receiver will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement except for the matters specifically agreed to herein. Prospect further understands that the Receiver shall be free to establish and change any process or procedure with respect to a Transaction as the Receiver in its sole discretion shall determine (including, without limitation, negotiating with any other interested party and entering into a Transaction Agreement with any other party without prior notice to Prospect or any other person).
7. Prospect understands and agrees that neither the Receiver, nor Keen, nor any of their respective Representatives (i) have made or make any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information or (ii) shall have any liability whatsoever to Prospect or any of Prospect's Representatives relating to or resulting from the use of the Confidential Information or any errors therein or omissions therefrom.
8. Prospect understands and agrees that neither the Receiver, nor Keen, nor any of their respective Representatives:
 - a. have made or make and expressly disclaim making any written or oral statements, representations, warranties, promises or guarantees, whether express or implied or by operation of law or otherwise, with respect to the Property or with respect to the accuracy, reliability or completeness of the Confidential Information;
 - b. to the fullest extent permitted by law, shall have any liability whatsoever to Prospect or any of Prospect's Representatives on any basis (including, without limitation, in contract, tort, under federal, foreign or state securities laws or otherwise) as a result of, relating or pertaining to, or resulting or arising from Prospect's or Prospect's Representatives reliance on the Confidential Information, or Prospect's or Prospect's Representatives use or non-use of the Confidential Information, for any alleged acts or omissions of Receiver, Keen or any of their respective Representatives, or any errors or omissions in the Confidential Information;
 - c. shall have any liability or responsibility for any decisions made by Prospect or its Representatives in reliance on any Confidential Information;
 - d. will be under any obligation or duty (express or implied) to make available to Prospect or its Representatives any Confidential Information; and

- e. will be under any duty or obligation (express or implied) to update, supplement, revise or correct any Confidential Information disclosed under this Agreement, regardless of the circumstances.
9. The Properties are being sold as-is, where-is, with no representations or warranties of any kind. Prospects are advised to conduct their own due diligence prior to submitting an offer for the Property and to engage the services of legal counsel, accountants, engineers, surveyors, and such other advisors as may be required to understand the Property. The Confidential Information does not purport to be all-inclusive or to contain all of the information that Prospects may desire. Neither the Receiver nor Keen have assumed responsibility for independent verification of any of the Confidential Information and have not, in fact, in any way audited the Confidential Information.

Dispute Resolution

10. It is further understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement and that the Receiver shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and Prospect further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement but shall be in addition to all other remedies available at law or equity to the Receiver.
11. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan without regard to conflict of law principles (that might dictate the application of the laws of another jurisdiction). The parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the Court for any lawsuits, claims or other proceedings arising out of or relating to this Agreement, and hereby further irrevocably and unconditionally waive the right and agree not to plead or claim in any such court that any such lawsuit, claim or other proceeding brought in any such court has been brought in an inconvenient forum. EACH OF THE PARTIES HERETO EXPRESSLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.
12. Attorneys' Fees. If any party to this Agreement brings an action directly or indirectly based upon this Agreement or the matters contemplated hereby against any other party, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to any other appropriate amounts, its reasonable costs and expenses in connection with such proceeding, including, but not limited to, reasonable attorneys' fees and arbitration and/or court costs.
13. The term of this Agreement shall expire one year from the date hereof.

Brokerage Commissions / Prospect is a Principal

[If you are a broker, check this box delete paragraphs 14 – 20]

14. Prospect warrants and represents that it is a principal acting on its own behalf, and is not a broker, finder or agent acting on another's behalf.
15. Prospect acknowledges that it will not look to the Receiver and/or Keen and their respective Representatives for the payment of any fee or commission.
16. Prospect hereby agrees to indemnify, defend and hold Receiver and Keen and their respective Representatives harmless from and against any and all claims, damages, losses and liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of any claim or claims by any broker, finder or similar agent for commissions, fees or other compensation who allege that

they have dealt with the Receiver and/or Keen in connection with the Property as an agent of Prospect, *except as set forth below*.

17. Prospect understands that the Receiver and Keen and their respective Representatives have not agreed to pay any brokerage commissions, finder's fee or other compensation in connection with Prospect's possible Transaction, *except as follow*: If Prospect is working with a broker or finder other than Keen, Prospect hereby discloses the identity of such broker or finder ("**Buyer's Broker**"), as follows:

- a. Company name: _____
- b. Address: _____
- c. Address: _____
- d. Contact Person: _____
- e. Work phone number: _____
- f. Cell phone number: _____
- g. Email address: _____

18. **Receiver agrees, with the consent of Keen, to pay Buyer's Broker a three percent (3%) commission if and only if Prospect (as identified herein) actually closes on the purchase of a Property as part of the auction sale process being managed by Keen.**

19. **In no instance shall Keen have any responsibility to compensate Buyer's Broker out of Keen's compensation.**

Brokerage Commissions / Prospect is a Broker, Finder or Agent Acting on Another's Behalf

[If you a buyer, check this box delete paragraphs 20- 21]

20. Prospect represents that it is a broker, finder or agent acting on another's behalf ("**Buyer's Broker**").

21. Prospect understands that the Receiver and Keen and their respective Representatives have not agreed to pay any brokerage commissions, finder's fee or other compensation in connection with Prospect's possible Transaction, *except as set forth below*. Prospect hereby agrees to indemnify, defend and hold Receiver and Keen and their respective Representatives harmless from and against any and all claims, damages, losses and liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of any claim or claims by any broker, finder or similar agent for commissions, fees or other compensation who allege that they have dealt with the Receiver and/or Keen in connection with the Property, *except as follows*:

- a. **Receiver agrees, with the consent of Keen, to pay Buyer's Broker a three percent (3%) commission if and only if:**
 - i. **a Property buyer actually closes on the purchase of a Property as part of the auction sale process being managed by Keen, and**
 - ii. **at the time that such Property buyer executed its own Non-Disclosure Agreement, such Property Buyer identified Buyer's Broker, in writing, on such Property buyer's Non-Disclosure Agreement.**

- b. In no instance shall Keen have any responsibility to compensate Buyer's Broker out of Keen's compensation.**

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WHEREFORE, the Prospect has caused this Agreement to be executed by its duly authorized representatives as of _____, ___, 2023.

<p>PROSPECT: _____ _____</p>	<p>RECEIVER: PATRICK O’KEEFE OF O’KEEFE AND ASSOCIATES CONSULTING, LLC, THE COURT-APPOINTED RECEIVER OF FINLANDIA UNIVERSITY IN THE CIRCUIT COURT OF INGHAM COUNTY, MICHIGAN (CASE NO. 23-0185-CB)</p>
<p>By: _____</p>	<p>By: _____</p>
<p>Name: _____ Title: _____ Address: _____ City/St/Zip: _____ Work Phone: _____ Cell Phone: _____ Email: _____</p>	<p>Patrick O’Keefe Solely in his capacity as receiver 2 Lone Pine Bloomfield Hills, MI 48304 Phone: (248) 593-4810 Email: pokeefe@okeeffellc.com</p>
<p><i>With a copy to:</i></p>	<p><i>With copies to:</i></p>
<p>Name: _____ Title: _____ Address: _____ City/St/Zip: _____ Work Phone: _____ Cell Phone: _____ Email: _____</p>	<p>Wolfson Bolton Kochis PLLC 3150 Livernois, Suite 275 Troy, Michigan 48083 ATTN: Anthony J. Kochis, Esq. Phone: (248) 247-7105 Email: akochis@wolfsonbolton.com -- and -- Keen-Summit Capital Partners LLC 3 Columbus Circle, 15th Floor New York, NY 10019 ATTN: Harold Bordwin Telephone: (914) 980-8555 Email: hbordwin@Keen-Summit.com -- and -- Keen-Summit Capital Partners LLC 1 Huntington Quadrangle, Suite 2C04 Melville, NY 11747 ATTN: Matthew Bordwin Telephone: (646) 381-9202 Email: mbordwin@keen-summit.com</p>