



Culleton Lawyers

Suite 19, 2 Memorial Drive, Shellharbour City Centre NSW 2529

PO Box 268, Shellharbour City Centre NSW 2529

Phone: 02 4297 6565

Email: cameronm@culletonlawyers.com.au

BACKGROUND

- A. The Seller is the owner and operator of the business trading as Ziggy's Pizza from 1/11 Blackwood Street, Gerringong NSW 2534 (**Business**).
- B. The Potential Buyer has expressed an interest in purchasing the Business from the Seller.
- C. The Seller may disclose certain Confidential Information to the Potential Buyer as part of discussions relating to the Preliminary Investigations in accordance with the terms of this agreement.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 Definitions

Commencement Date means the date on which the Potential Buyer first received or was granted access to Confidential Information.

Confidential Information means all information, irrespective of its form, provided, or made available, by the Seller or its employees, agents, officers or advisers to the Potential Buyer, including:

- (a) trade secrets, including ideas and concepts not reduced to material form;
- (b) technical information and technical drawings;

- (c) information about the Seller and the Business;
- (d) product and market information;
- (e) any information marked “confidential” or which the Seller informs the Potential Buyer is confidential or a trade secret; and
- (f) any information disclosed or provided in connection with the Preliminary Investigations,

but excluding:

- (a) information available to the public (other than through disclosure by the Potential Buyer or by a person to whom the Potential Buyer disclosed the Confidential Information); and
- (b) information which the Potential Buyer can prove it lawfully possessed before obtaining it in connection with this agreement.

Preliminary Investigations means the evaluation by the Potential Buyer for the purpose of deciding whether to enter into an agreement to purchase the Business from the Seller. It includes the negotiations between the parties in relation to the proposed transaction, and anything done in connection with the proposed transaction.

1.2 Interpretations

In this agreement unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a clause or schedule is to a clause or schedule of this agreement;

- (f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (g) where an expression is defined anywhere in this agreement it has the same meaning throughout.

1.3 Headings

In this agreement, headings are for convenience of reference only and do not affect interpretation.

2 Consideration

In consideration for receiving the Confidential Information, the Potential Buyer agrees to be bound by the terms of this agreement.

3 Term

The obligations under this agreement commence at the Commencement Date and continue until the Confidential Information is no longer of a confidential nature, as determined by the Seller.

4 Value and Seller

The Potential Buyer acknowledges that the Confidential Information has a significant commercial value and is the property of the Seller.

5 Obligations in relation to confidentiality

5.1 General obligation

The Potential Buyer must take all steps necessary to safeguard the confidentiality of the Confidential Information.

5.2 Maintaining confidentiality

The Potential Buyer must:

- (a) maintain the confidentiality and security of the Confidential Information; and
- (b) keep all Confidential Information in a secure manner.

5.3 Obligations in relation to Confidential Information

- (a) The Potential Buyer may use Confidential Information only:
 - (i) for the Preliminary Investigations; and

- (ii) to the extent and for a purpose to which the Seller has consented in writing prior to such use.
- (b) The Potential Buyer must not profit from any use of the Confidential Information except in relation to the Preliminary Investigations.
- (c) The Potential Buyer may make any copies of the Confidential Information that are strictly necessary for the Preliminary Investigations but only if:
 - (i) the Seller has consented in writing to the making of these copies; and
 - (ii) the copies are noted as being confidential to the Seller.

5.4 Disclosure of Confidential Information

- (a) The Potential Buyer may disclose Confidential Information only:
 - (i) to a person if:
 - (A) the Potential Buyer has informed that person in writing of the confidential nature of the Confidential Information;
 - (B) that person has undertaken in writing to the Seller to keep the Confidential Information secret and confidential, on terms at least as onerous as this agreement; and
 - (C) it is necessary for the Potential Buyer to disclose the Confidential Information for the Preliminary Investigations;
 - (ii) to the extent, and for a purpose to which the Seller has consented in writing prior to such disclosure; or
 - (iii) to the extent required by law.
- (b) If the Potential Buyer is required to disclose any Confidential Information, then to the extent practicable it must, at its cost:
 - (i) provide the Seller with written notification of the requirement to disclose the Confidential Information;
 - (ii) allow the Seller to resist the disclosure of the Confidential Information and provide all assistance to the Seller in doing so; and
 - (iii) only disclose the minimal amount of Confidential Information required to comply with its obligations under law.

5.5 Return of Confidential Information

On demand from the Seller, the Potential Buyer must immediately:

- (a) at the Potential Buyer's cost, deliver to the Seller all Confidential Information, including any copies of the Confidential Information, which is in the Potential Buyer's possession or control;
- (b) delete all the Confidential Information held electronically in any medium which is in the Potential Buyer's possession or control; and
- (c) destroy all documents (including analyses, compilations, reports and memoranda) which were prepared by or for the Potential Buyer and which were based wholly or partly on the Confidential Information, and delete all documents held electronically in any medium in the Potential Buyer's possession or control.

5.6 Unauthorised use of Confidential Information

- (a) The Potential Buyer must immediately report to the Seller any known or suspected unauthorised use, disclosure, copy or printing of the Confidential Information.
- (b) The Potential Buyer must at its cost:
 - (i) use best efforts to obtain the return or organise the destruction or deletion of any unauthorised copy or print-out of the Confidential Information; and
 - (ii) provide the Seller with all assistance required by the Seller to prevent any further disclosure of the Confidential Information.

6 Breach of confidentiality

6.1 Indemnity by recipient

The Potential Buyer agrees to indemnify the Seller against all claims and all losses, costs, liability and expenses incurred by the Seller for:

- (a) any breach of this agreement by the Potential Buyer; and
- (b) any act or omission by a person to whom the Potential Buyer disclosed the Confidential Information, which, if done or omitted by the Potential Buyer, would be a breach of this agreement by the Potential Buyer.

6.2 Injunctive relief

If the Potential Buyer breaches this agreement, the Seller is entitled to injunctive relief in addition to any other remedies available at law or in equity.

7 No warranties by Seller

7.1 Representations

The Potential Buyer acknowledges that the Seller does not make any representation as to the accuracy, currency or completeness of the Confidential Information and it warrants to the Potential Buyer that that it will not rely on the Confidential Information for any purpose.

7.2 Independent Enquiries

The Potential Buyer will make its own independent enquiries and will seek professional advice in relation to the Preliminary Investigations prior to entering into any binding legal arrangements to give effect to the transactions contemplated by the Preliminary Investigations.

8 General provisions

8.1 Survivorship of obligations

This agreement survives the completion of the Preliminary Investigations and the termination, rescission or completion of any agreement in relation to the Preliminary Investigations, except as otherwise provided by such an agreement.

8.2 Assignment

The Potential Buyer must not assign all or any of its rights or obligations under this agreement without the prior written consent of the Seller. The Seller may assign any of its rights or obligations under this agreement without the consent of the Potential Buyer.

8.3 Applicable law

This agreement is governed by the law of New South Wales and the parties submit to the jurisdiction of the courts of New South Wales.

8.4 Severability

If any provision of this agreement is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, it is to be severed so that the validity and enforceability of the remaining provisions are not affected.