

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:

TOW YARD BREWING, LLC

Debtor.

Case No. 18-260-RLM-11

**MOTION TO SELL PERSONAL PROPERTY AT PUBLIC AUCTION
PURSUANT TO BANKRUPTCY CODE SECTION 363(b) and (f) FREE AND CLEAR OF INTERESTS,
LIENS, CLAIMS AND ENCUMBRANCES AND TO DISTRIBUTE PROCEEDS IN ACCORDANCE WITH
PRIORITY OF LIENS, and TO APPROVE BID PROCEDURES**

Tow Yard Brewing, LLC, Debtor and Debtor in Possession, (“Debtor”), by counsel, pursuant to Sections 105, 363, and 506(c) of Title 11 of the United States Code (the “Bankruptcy Code”), Federal Rules of Bankruptcy Procedure 2002 and 6004, and S.D. Ind. B-6004-1(a), requests an Order authorizing the sale at auction of all of the brewing and restaurant equipment assets owned by the Debtor located at 501 S Madison Ave., Indianapolis, IN 46204, (the “Equipment”), free and clear of any interests, liens, claims and encumbrances with the sale proceeds to be distributed in accordance with priority of liens on the following grounds:

Jurisdiction and Venue

1. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on January 17, 2018, (“Petition Date”). Since the Petition Date, the Debtor has been operating this estate as debtor-in-possession pursuant to Bankruptcy Code Sections 1107 and 1108.

2. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. Sections 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. Section 1408. This matter is core within the meaning of 28 U.S.C. Sections 157(b)(2)(A), (N) and (O).

Background

3. The Debtor owns and operates a brewery and restaurant in downtown Indianapolis. The Debtor filed this case in order to forestall eviction from the premises in which it operates by its landlord. Debtor has determined after substantial negotiations with its landlord that there is no viable way to continue to occupy the premises and otherwise cannot continue to operate without such premises. BMO Harris Bank, (“BMO”), is the secured creditor having a blanket lien behind purchase money financiers on the Equipment to secure a claim of approximately \$240k. As of the Petition Date, there was one purchase

money secured creditor having a claim of approximately \$2,500, meaning almost all of the proceeds from the sale proposed herein will go to satisfy the BMO claim.

4. Debtor does not have the capital to make its operation a profitable enterprise that will generate money for the bankruptcy estate. As a result, Debtor believes that an orderly liquidation of the Equipment will benefit both the Debtor and the bankruptcy estate.

5. The Debtor filed its Application to Employ Auctioneer (“Application”) contemporaneously with the filing of this Motion wherein it requested authority to employ Key Auctioneers, 5520 S Harding St, Indianapolis, IN 46217, (“Key”) to sell the Equipment by open outcry auction to be held on April 9, 2018. The auction will be conducted pursuant to the bid procedures identified herein.

RELIEF REQUESTED

6. By this Motion, the Debtor seeks the entry of an order:

(a) authorizing the Debtor to sell the Equipment at auction, outside the ordinary course of business, pursuant to Bankruptcy Code Section 363(b);

(b) authorizing the Debtor to sell the Equipment free and clear of liens, claims, encumbrances, and interests pursuant to Bankruptcy Code Section 363(f) with liens to attach to the proceeds of sale;

(c) determining that the purchaser is a good faith purchaser pursuant to Bankruptcy Code Section 363(m);

(d) waiving the 14-day waiting period under Bankruptcy Rule 6004(h);

(e) ordering the proceeds of sale to be distributed in accordance with the priority of liens as set forth herein;

(f) approving the bid procedures discussed below, and

(g) granting all other just and proper relief.

7. The Debtor believes that a sale of the Equipment is in the best interests of the Debtor’s estate.

BASIS FOR RELIEF REQUESTED

8. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. Section 363(b)(1). Although the Bankruptcy Code does not articulate the standard for approving a sale of assets (other than requiring notice and a hearing), a debtor’s

sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate a sound business justification for the proposed transaction. See *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986); see also *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Dai-ichi Kangyo Bank, Ltd v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999). Pursuant to Bankruptcy Rule 6004, “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1).

9. The Debtor submits that sound business justification exists to sell the Equipment at this time and in the manner proposed. There is no viable alternative for selling the Equipment, and the Debtor is not able to operate the Equipment at a profit. Permitting the sale of the Equipment to move forward will result in the orderly liquidation of that portion of the Debtor’s estate that is burdensome to the estate.

10. Under Section 363(f) of the Bankruptcy Code, a debtor-in-possession may sell all or any part of its property free and clear of any and all liens, claims or interests in such property if: (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a bona fide dispute; or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. Section 363(f); *Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that § 363(f) of the Bankruptcy Code is written in the disjunctive; therefore, a court may approve a sale “free and clear” provided at least one of the subsections is met).

11. Selling the Equipment free and clear of liens is permissible under Bankruptcy Code Sections 363(f)(2) and (5). BMO consents to this sale provided it receives the proceeds of sale in accordance with its blanket security interest, after payment of Equipment purchase money liens. Accordingly, the Equipment may be sold free and clear of liens, claims, encumbrances, or interests.

12. Section 363(m) of the Bankruptcy Code provides, in pertinent part:

The reversal or modification on appeal of an authorization under subsection (b) . . . of this section of a sale . . . of property does not affect the validity of a sale . . . under such authorization to an entity that purchased . . . such property in good faith, whether or not such entity knew

of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal. 11 U.S.C. § 363(m).

13. Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal. By its terms, section 363(m) of the Bankruptcy Code applies to sales of interests in tangible assets, such as the Equipment.

14. As the proposed public auction represents an arm's-length transaction in which the buyer will act in good faith, without collusion or fraud of any kind, the Debtor requests that the Court make the finding at the hearing on this Motion that the highest bidder shall be deemed a good faith purchaser entitled to the protections of Bankruptcy Code Section 363(m).

15. The Debtor hereby requests that the Court waive the 14-day stay period under Bankruptcy Rules 6004(h). Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Debtor requests that the Sale Order be effective immediately by providing that the 14-day stay under Bankruptcy Rules 6004(h) is waived so that the sale can close promptly.

16. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the fourteen (14) day stay period, Collier on Bankruptcy suggests that the stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." 10 Collier on Bankruptcy 15th Ed. Rev., ¶6064.09 (L. King, 15th rev. ed. 1988). Furthermore, Collier's provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

17. The Debtor is engaged in final negotiations with its landlord for occupancy of the premises in which the Equipment is located and from which it will be sold, but it has at best only a few weeks to conclude the sale effort. Accordingly, time is of the essence.

18. The Equipment will be marketed by Key in order to obtain the best possible price. As Key will be accepting bids from all interested parties, the market will set the price for the Equipment, and the purchaser will not receive a windfall. Furthermore, all known creditors will receive notice of this Motion and

will have the opportunity to solicit buyers and ensure the highest possible bid is received. Therefore, the proposed sale of the Equipment is in the best interest of creditors.

19. In the event that there are not sufficient net proceeds from the sale to pay sale expenses, the Debtor proposes to surcharge each secured creditor a pro rata portion of those expenses based on the value of each item of collateral sold. In any case, Key shall be authorized to deduct its approved expenses and commission from the sale proceeds before distribution is made to secured creditors.

20. Key will be in control of the proceeds of the sale and therefore requires a bond to protect the estate from loss. The Debtor requests that the Court set the amount of the bond based on the most relevant estimation of the risk to the estate in this context.

21. There is no personally identifiable information in or on the sale assets that requires disclosure under local rule B-6004-4 (5).

BID PROCEDURES

22. The Debtor seeks authority to establish bidding procedures proposed herein ("Bid Procedures"), that will allow it to implement the authority granted under this Sale Motion. While these bid procedures contemplate a traditional open outcry auction, the Debtor and its landlord have agreed that the Debtor may continue its going concern business until March 15, 2018, at which time the Debtor has agreed to cease its business operations. Key will continue to market the Equipment as part of a going concern until the open outcry auction date of April 9, 2018. If no such buyer is procured by then, the open outcry auction will proceed as described below.

23. The Debtor proposes to serve notice of the Bid Procedures, the Sale Motion, and the hearing on the Sale Motion on all requisite parties in interest and, subject to the Court granting this motion ("Bid Procedures Motion"), will serve the Bid Procedures on all such parties and on all parties or entities that the Debtor identifies as possibly having an interest in submitting a bid to acquire the Equipment. The Bid Procedures are set forth below:

- A. Conduct of Auction; Sale of Property; Open Outcry Auction.** The Equipment shall be sold at public open outcry auction, free and clear of liens and encumbrances pursuant to Bankruptcy Code Section 363(f), on April 9, 2018. Bidders may also bid online at www.keyauctioneers.com or through the Key Auctioneers mobile app, available for both iOS and Android mobile operating system. The property shall be sold on an "as is where is" basis with no representations or warranties of any kind other than a warranty of title. Payment must be received in full on the day of the auction. Acceptable payment methods will be cash, credit card (MVD & AMEX), check with an accompanying Bank Letter of Guarantee of Funds, ACH or wire transfer. We will charge the purchasers on-site a 15%

Buyer's Premium and online purchasers an 18% Buyer's Premium. Purchasers will be required to remove their purchases during Key's open removal times or by appointment. Purchasers must have their purchases removed on or before April 14, 2018, otherwise their purchases shall be considered abandoned. For additional information, contact Key Auctioneers at (317)353-1100 or info@keyauctioneers.com

B. Credit Bidding. The Debtor, BMO Harris Bank and Key agree that secured creditors having an Allowed Secured Claim entitled to priority over other secured creditors shall be allowed to credit bid their claim. By separate motion the Debtor has filed his Motion for Bar Date seeking to establish a deadline for creditors to obtain an Allowed Secured Claim for purposes of credit bidding in the sale.

C. Bidding Procedure. All bidders must pre-register with the auctioneer in order to bid. The successful high bidder will be required to pay the bid amount at the close of bidding.

24. Bankruptcy Rules 2002 and 6004 govern the scope of the notice to be provided when a debtor opts to sell property of the estate under Section 363 of the Bankruptcy Code. With respect to the procedures to be adopted in conducting Section 363 sale, however, Bankruptcy Rule 6004 provides only that such sale may be by private sale or public auction.

25. Neither the Bankruptcy Code nor the Bankruptcy Rules contain specific provisions with respect to the procedures to be employed by a debtor in conducting a public or private sale. Generally, to obtain approval of a proposed sale, the debtor must demonstrate that the proffered purchase price is the highest and best offer. *In re Integrated Resources, Inc.*, 135 B.R. 746, 750 (Bankr. S.D.N.Y. 1992).

26. Courts have long recognized the need for competitive bidding at hearings on private sales; "[c]ompetitive bidding yields higher offers and thus benefits the estate. Therefore, the objective is 'to maximize bidding, not restrict it.'" *In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988). The Court has broad discretion with regard to ordering bidding procedures on a sale of estate property. *In re Big Rivers Elec. Corp.*, 213 B.R. 962 (Bankr. W.D. Ky. 1997). In this case, Key intends to aggressively market the auction in an effort to obtain the best and highest possible price. The Debtor, therefore, submits that the Bid Procedures are reasonable, are designed to maximize the value of the Equipment, and should be approved.

27. The Court should not "cherry-pick" among contractual provisions, objecting to select individual portions, if the agreement as a whole is supported by the business judgment of the parties. *Cf. In re Ames Dep't Stores, Inc., Eastern Retailers Service Corp., et. al.*, 115 B.R. 34, 37-38 (Bankr. S.D.N.Y. 1990). As a result, the Bid Procedures should be approved in their entirety.

NOTICE

28. Notice of this Motion was given to: (a) the United States Trustee for this district; (b) all parties asserting a security interest in the Equipment; (c) all scheduled creditors of the Debtor; and (d) all parties registered to receive notices in this case via the Court's ECF system. The Debtor submits that such notice is appropriate and sufficient.

WHEREFORE, the Debtor respectfully requests that this Court enter an order approving the sale contemplated hereby and granting all other just and proper relief.

Dated: March 2, 2018,

/s/ KC Cohen

KC Cohen

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was filed using the Court's ECF system and parties will be served via such system. In addition a copy of the forgoing was emailed to the following on the date it was filed:

kc@esoft-legal.com;

scannon@scdevcon.com;

ronald.moore@usdoj.gov;

mike@einterzlaw.com;

ktharp@rbelaw.com;

lucy.dollens@quarles.com;

paul.sanders@quarles.com;

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ustpregion10.in.ecf@usdoj.gov;

/s/ KC Cohen

KC Cohen



Auction Engagement Agreement

This Auction Engagement Agreement ("Agreement") is entered into this _____ day of February, 2018 by and between Key Auctions LLC, an Indiana limited liability company, d/b/a Key Auctioneers, whose principal place of business is 5520 South Harding Street, Indianapolis, Indiana 46217 (the "Auction Company") and Tow Yard Brewing, LLC, whose principal place of business is 501 South Madison Avenue, Indianapolis, Indiana 46225 (the "Seller").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the Seller and Auction Company both acknowledge, Seller and Auction Company agree as follows:

1. **Engagement of Auction Company; Acceptance of Engagement.** Seller hereby grants to Auction Company the exclusive right to sell at auction or otherwise the goods generally described as: DME brewing system, boiler, 100 kegs, commercial kitchen equipment, dining room seating package, bar coolers, forklift, glassware, flatware, dishware, décor, TV's, etc. (an itemized description of which shall be set forth on a schedule of property to be sold, which schedule shall be prepared by Auction Company in due course) (the "Goods") for a period of sixty (60) days commencing on the date of this Agreement, at which point this Agreement will terminate unless the parties extend the Agreement in writing. The Seller hereby engages Auction Company as the agent of the Seller for purposes related to the sale of the Goods.
2. **Conduct of Auction; Sale Date; Absolute Auction.** The Goods shall be sold at public auction or otherwise, approximately twenty-one (21) days from receipt of fully executed Agreement and continue thereafter on a schedule to be determined by the Auction Company. The auction is to be held at the premises located at 501 South Madison Avenue, Indianapolis, Indiana 46225 (the "Sale Premises"). Seller agrees to provide the Sale Premises and all necessities related to the use of the Sale Premises, such as power, lights, water, heat, ordinary conveniences, and reasonable access to Auction Company cost-free for such period as is necessary to prepare, conduct, and complete the auction.
3. **Compensation; Buyer's Premium; Means of Payment; Escrow; Collection of Sales Taxes.**
 - a. The Seller shall pay the Auction Company a commission of ten percent (10%) of the proceeds of the sale as compensation for services to be rendered herein (the "Commission"). Auction Company shall separately charge and retain a fifteen percent (15%) buyer's premium on the gross sales prior to and at auction or bulk sale (the "Buyer's Premium"). Auction Company is authorized to charge and retain an additional three percent (3%) buyer's premium on all gross sales conducted via internet bidding if internet bidding is offered by Auction Company.
 - b. Seller agrees to pay the Auction Company two thousand five hundred dollars (\$2,500) to prepare, market, conduct, and finalize the auction.
 - c. Auction Company agrees to provide all labor to organize and set up the auction, and to conduct preview, sale day and removal functions.
 - d. Seller agrees to reimburse the Auction Company for all credit card processing fees and, if reasonable and necessary, dumpster fees and trash removal costs incurred by the Auction Company.
 - e. At the completion of the auction, the Auction Company shall furnish to the Seller a final statement and a complete list of all Goods sold, together with the sale prices obtained for each item or lot.
 - f. Within twenty-one (21) business days after completion of the auction, Auction Company shall remit to Seller, **or secured creditor if applicable**, the proceeds of the auction less all amounts due the Auction Company pursuant to this Agreement, including the Commission, Buyer's Premium, and other contractual expenses.
 - g. Any money required to be held in escrow shall be held in Auction Company's escrow account.
 - h. If applicable to the auction, the Auction Company agrees to collect and remit sales tax as maybe required under state law.

4. **Conduct of Sale; No Reserve or Guaranteed Prices; Agency and Bill of Sales.** All aspects of the auction including; preparation, advertising, determination of lots, and conduct of the sale, including all terms of sale, determination of bidders' qualification, and completion of all matters relating to the auction, shall be solely within the discretion and control of the Auction Company. Auction Company shall have the right to take all appropriate actions, in its discretion, to prepare the Goods for auction, including moving and combining or dividing lots. Auction Company agrees to use its best efforts to obtain the highest available price for the Goods at the auction. Seller acknowledges, however, that the final sale of any Goods shall not be subject to a minimum or reserve price and that Auction Company makes no representations or guarantees concerning the price for which any Goods may sell. The Seller hereby engages Auction Company as the agent of the Seller for purposes related to the subject auction. The Auction Company shall have authority to execute bills of sale to purchasers at the auction, and to receive, demand, and collect auction proceeds. Auction Company is not responsible to collect any funds for any bids rescinded by a bidder. If any bid is rescinded by a bidder, Auction Company will, at its discretion, make every reasonable effort to re-sell the item.
5. **Title to Goods; No Prior Transfer of Goods.** Seller warrants that Seller has full authority to sell all Goods identified herein or hereafter and on any attached schedules. Seller will make all necessary documents of title available upon execution of this Agreement. Seller warrants that its title to the Goods is free and clear of liens, with only those exceptions, as Seller shall disclose in writing to Auction Company. The Seller agrees not to sell, remove from the auction, or in any manner dispose of any of the Goods prior to the auction. If any Goods are disposed of outside the terms of this Agreement without the prior written consent of the Auction Company, Seller agrees to pay the Auction Company a penalty in an amount equal to the Buyer's Premium and the Commission the Auction Company would have earned had said Goods been sold at auction for the same price, plus an additional five percent (5%) of the final selling price of said Goods.
6. **Risk of Loss.** Title to the Goods remains with Seller until such time as the Goods are delivered to buyer. Title to Goods shipped will pass directly from Seller to buyer. Seller assumes all risk of loss to Goods until delivery to the buyer. Title and risk of loss will not transfer to Auction Company at any time. Auction Company will not be held responsible for fire, theft, vandalism, or other losses. Seller shall, at Seller's sole expense, keep the Goods insured until delivery to Buyer and, at Auction Company's request, shall provide Auction Company with proof of insurance sufficient in coverage to cover all such losses.
7. **Hazardous Materials.** Auction Company shall not be responsible for any liability, including costs, expenses, fines, and clean-up obligations, which may arise from the failure of any of the Goods to comply with any federal, state, or local law, statute, or regulatory agency regulation or requirement including specifically requirements relating to environmental pollutants. Seller shall indemnify Auction Company from any and all risks and liability therefor, including all direct and indirect costs for the clean-up and removal of such Goods and any other costs that may be incurred due to the existence of environmental pollutants either on or in the Goods or Sale Premises.
8. **Obligations of Auction Company.** Auction Company agrees to advertise the Goods, place signs, show the Goods, conduct the auction, and assist in the completion of sale documents and in closing on the Goods. Auction Company agrees to use its best efforts to obtain the highest available price at the auction. Seller acknowledges, however, that Auction Company makes no representations or guarantees regarding the bid amounts offered at auction. Auction Company is not responsible for the failure to collect any amounts due from the buyers.
9. **Seller's Breach.** If the Seller fails to comply with the terms and conditions of this Agreement or fails to carry out any provision of this Agreement to be performed, the Seller shall pay to Auction Company (a) all of the Auction Company's expenses incurred through and including the date the Seller's breach became known to Auction Company, plus (b) an amount equal to the Commission and Buyer's Premium the Auction Company would have earned, but for the Seller's breach of this

Agreement, had all Goods been sold at auction, based on the appraised fair market value of the Goods.

10. **Seller's Indemnification of Auction Company.** Seller agrees to completely indemnify and hold harmless Auction Company from any loss, casualty, or liability, including all attorneys' fees, costs, expenses, settlements, and judgments, incurred by or threatened against Auction Company by any third party, including governmental parties, from any claim, whether or not suit is actually filed, on any grounds, including, without limitation
- a. Any injury (including financial loss or damage) occurring on or to the Sale Premises;
 - b. Claims asserting defects in Seller's title, or in Seller's right to consign for auction any of the Goods;
 - c. Injury (including environmental injury or damage) resulting from any of the Goods; or
 - d. Claims caused by any breach of this Agreement by Seller.

Seller authorizes Auction Company to withhold auction proceeds in an amount and for such duration as is reasonably necessary to assure Auction Company of indemnification hereunder; however, Seller's obligation to reimburse hereunder shall not be limited to the amount of such proceeds withheld, if any.

11. **Waiver of Subrogation.** Seller and Auction Company hereby waive all rights of recovery against the other and against the officers, employees, agents and representatives of the other, on account of injury, or loss by or damage to the waiving party of its property or the property of others under its control, to the extent that such injury, loss or damage is insured against under any insurance policy which either may have in force at the time of the injury, loss or damage.

12. **Auction Company Reimbursements and Lien.** If not pre-paid by Seller upon execution of this Agreement, Seller agrees that all expenses incurred by Auction Company as defined in this Agreement for which Auction Company is designated to be reimbursed, shall be first paid from the sales proceeds realized from the Auction before the payment and satisfaction of any encumbrances on the Goods. For the purposes of this Agreement, Seller agrees that these fees and expenses are deemed to be a share of the money received by the Seller and the Auction Company shall have an equitable lien on such funds and an equitable lien upon the Goods until the fees and expenses associated with this Agreement are paid. In the event that any action is filed in relation to this Agreement, a Lis Pendens Notice may be filed and the unsuccessful party in the action shall pay to the successful party, a reasonable sum for the successful party's attorney fees.

13. **Miscellaneous Provisions and Representations.**

- a. Auction Company and its personal assistants, contractors, inspectors, and appraisers, cooperating brokers, buyer's agent and others reasonably necessary to market the Goods shall have the right to enter the Sale Premises as required, including to take videos, photos and electronic images of the Goods.
- b. Auction Company shall have the right to install or affix signs and/or banners on the Sale Premises advertising the Goods for sale or auction.
- c. Auction Company shall have the right to accept and execute absentee bids during the auction knowing that this will create a dual agency position for the Auction Company.
- d. Auction Company shall have the right, upon Seller approval, to consign such additional assets to the auction that in the judgment of the Auction Company will enhance attendance or sales at the auction.
- e. Auction Company and employees of Auction Company shall have the right to bid on the Goods for their own personal account.
- f. Seller will provide Auction Company with key(s) necessary to access the Sale Premises. Seller authorizes Auction Company to have duplicate keys made and use a coded lock box on the Sale Premises.

- 14. **Entire Agreement and Integration.** There are no representations, agreements, or conditions relating to the subject matter hereof other than as expressly set forth in this Agreement, which contains the entire agreement between the parties. Seller acknowledges that no oral representations or warranties have been made by Auction Company or by any of Auction Company's agents or employees. No amendment or modification of the terms hereof shall be effective except in writing, and signed by both Auction Company and Seller. It is mutually agreed that this Agreement shall be binding and obligatory upon the undersigned, their separate heirs, administrators, executors, assigns and successors in interest of the undersigned.

- 15. **Jurisdiction and Venue; Choice of Law; Escrow.** In an action concerning any aspect of this Agreement, Seller agrees to submit irrevocably, at Auction Company's election, to the jurisdiction and venue of the Marion County Superior or Indiana Circuit Courts, and agrees to waive any right of removal or to the jurisdiction and venue of the United States District Court for the Southern District of Indiana. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, notwithstanding its conflict of laws and provisions.

SELLER: Tow Yard Brewing, LLC

AUCTION
COMPANY: Key Auctions, LLC

BY: _____

BY: _____
Seth Seaton, President

SELLER Fed ID Number: _____
(Social Security if Individual)