All Offices Independently Owned And Operated

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Non-Disclosure and Confidentiality Agreement (“Agreement”) is entered into between CBI Business Advisors, Inc. dba Confidential Business Intermediaries/CBI Team (herein known “Intermediary”), Seller (as identified below) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Buyer”).

**WHEREAS,** Intermediary has an agreement with Seller which requires it to obtain a signed copy of this Agreement and prior written approval before it may disclose the name and location of Seller’s business being confidentially marketed for sale;

**WHEREAS**, the term “information” is defined as the fact that the Seller’s business is for sale, and anything else disclosed to Buyer by Intermediary and/or Seller;

**WHEREAS**, information Buyer discloses to Intermediary and/or Seller will be kept confidential, unless and until such time as the parties close on the purchase of Seller’s business, assets or otherwise;

**WHEREAS**, information Seller discloses to Intermediary and/or Buyer will be kept confidential, unless and until such time as the parties close on the purchase of Seller’s business, assets or otherwise.

**THEREFORE**, in consideration for the disclosure of information regarding Seller’s business, Intermediary, Seller and Buyer understand and agree as follows:

1. Information provided to Buyer regarding Seller’s business is sensitive and confidential and its disclosure to others would be damaging to Seller;
2. Buyer shall not disclose any information regarding Seller’s business to any other person or entity that has not also signed this Agreement;
3. All information provided to Buyer shall be returned to Intermediary without retaining copies, summaries, analyses or extracts thereof;
4. Buyer shall not contact the Seller, Seller’s employees, suppliers, or customers except through Intermediary;
5. Buyer shall not use the confidential information it receives to establish a competitive advantage over the Seller’s business;
6. All information is provided directly to Buyer by the Seller and is not verified in any way by Intermediary;
7. Intermediary is relying on Seller for the accuracy and completeness of all information, has no knowledge of the accuracy of said information and makes no warranty, express or implied, as to such information;
8. Prior to finalizing an agreement to purchase a business, it is Buyer’s exclusive responsibility to make an independent verification of all information regarding Seller’s business;
9. Buyer agrees that Intermediary is not responsible for the accuracy of any information it receives and Buyer agrees to indemnify and hold Intermediary harmless from any claims or damages resulting from the use of any information;
10. Intermediary does not give tax, accounting, or legal advice;
11. Buyer grants Seller and Intermediary the right to obtain, through standard reporting agencies, financial and credit reports concerning Buyer or its principals, and Buyer shall execute any documents necessary to obtain said reports;
12. Any credit report regarding Buyer will be held in confidence by Seller and Intermediary and will only be used for the purpose of Seller or third-party lending institutions extending credit to Buyer;
13. In the event that Buyer is making an earnest money deposit and cannot consummate a purchase through no fault of its own, the earnest money deposit will be refunded, minus any amount expended by the parties for any costs, to include but not limited to appraisals, credit reports, lien searches, etc;
14. All correspondence, inquiries, offers to purchase, and negotiations relating to the purchase or lease of Seller’s business will be conducted exclusively through Intermediary;
15. It is acknowledged that breach of this Agreement by Buyer will cause Seller substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof – therefore, in lieu of actual damages for such disclosure by Buyer, the parties agree that liquidated damages may be assessed and recovered by the Seller as against Buyer in the amount of ten percent (10%) of the listing price or $20,000.00, whichever is greater – such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Buyer shall pay them to Seller without limiting Intermediary or Seller’s right to terminate this Agreement for default as provided elsewhere herein.
16. All other claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application or enforcement of this Agreement, including but not limited to breach thereof, shall be referred to a mediator certified by the Arkansas Judiciary and mediation shall be conducted in the State of Arkansas before, and as a condition precedent to the initiation of any administrative or judicial action or proceeding.

Agreed and accepted on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Intermediary: Seller: Buyer:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_<<Electronic Signature>>\_

Signature Signature Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name Printed Name Printed Name

# BUYER:

Name of Entity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ EIN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address City St Zip Code

Phone Work Mobile Fax

Email Will anyone else be actively involved in the acquisition?

Monetary expectations from the Business $ Geographic area (s) you are interested in:

Would you expect to devote full time to the business?

# SELLER:

Name of Entity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ EIN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address City St Zip Code

BUYER DISCLOSURE ACKNOWLEDGEMENT

Initial acknowledgement of prospective buyer(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(herein referred to as “Buyer(s)”);

(print name)

**Agency Disclosure**

The buyer(s) acknowledges that CBI Business Advisors, Inc., an Arkansas corporation (herein referred to as “Intermediary”) is acting as agent of the seller and all fees due Intermediary are, will be, the responsibility of the seller. Seller’s agent is an agent who acts under a listing agreement with the seller and acts as the agent to the seller only. A seller’s agent has affirmative obligations to the seller including the fiduciary duties of loyalty, obedience, disclosure, confidentiality, reasonable care, and diligence and accounting in dealing with the seller. In addition, a seller’s agent has affirmative obligations to the Buyer(s) and Seller of honest dealing and disclosure.

Initial: \_\_\_\_\_\_\_\_\_\_\_\_\_

**Counsel Disclosure**

Buyer(s) are advised to seek counsel from an attorney, Certified Public Accountant and any other parties necessary to make an informed decision regarding the purchase of any business opportunity bought or sold through Intermediary.

Initial: \_\_\_\_\_\_\_\_\_\_\_\_\_

**Information Disclosure**

Buyer(s) acknowledges that all information and material on each business opportunity provided by Intermediary has been provided by the seller of the business. The seller believes the information to be true and accurate; however, accuracy is not guaranteed and all information should not be considered complete. While statements may be presented concerning a matter of opinion, whether or not so identified, these are only statements of opinion. Intermediary makes no representation or warranties, expressed or implied, regarding the information provided to Buyer.

Initial: \_\_\_\_\_\_\_\_\_\_\_\_\_

**Risk Disclosure**

Business opportunities by their very nature carry risk. Some of these risks include obsolescence or reduced demand for service or product, regulatory laws, ineffective management, changes in the local or national economic condition, and many others. Due to the risks inherent in business opportunities, buyer(s) could incur a loss, including, but not limited to, their entire investment. Buyer(s) acknowledge that they understand these risks and that Intermediary cannot and does not in any way warrant or guarantee the future vitality or prospects of any business.

Initial: \_\_\_\_\_\_\_\_\_\_\_\_\_

**Indemnification and Hold Harmless Disclosure**

Buyer(s) and Seller each acknowledge that neither Intermediary, nor any of Intermediary's agents, employees, officers, directors, shareholders, co-brokers, independent contractors and affiliates have made any representations or warranties regarding any fact regarding the business/stock being sold, any legal issues, aspect or ramification connected with the proposed purchase/sale, or any representation or warranty to either Buyer(s) or Seller concerning the financial condition, or any matter relating to either party. Intermediary has made no independent investigation or verification of any representation, warranty, document, or piece of information presented by either party. Each party has either done its own, independent investigation with respect to such items or was advised by Intermediary to do so.

Intermediary is hereby released, indemnified and held harmless by Seller(s) and/or Buyer(s) from and against any and all claims and damages of each kind attributable to the performance or non-performance of Seller and/or Buyer under any agreement connected with the sale/purchase of the business/stock described above. Intermediary shall not be liable or responsible for, and are hereby indemnified and held harmless by Seller and/or Buyer(s) from and against any and all claims and damages of any kind relating to the above-referenced sale/purchase.

By signing below the prospective Buyer(s) acknowledge that they have read and understood the five disclosures (Agency, Information, Counsel and Risk, Indemnification and Hold Harmless Disclosure) stated above.

Prospective Buyer(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(signatures)

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_