

Buyer Confidentiality and Non-Disclosure Agreement (100)

Buyer(s): _____ **Source:** _____ **DATE:** _____

Agent(s): _____ **Agent Cell:** _____ **Agent Email:** _____

Agreement/Listing #	Business Description/Name

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1. Consideration: In consideration of the mutual promises herein contained and First Choice Business Brokers representation of the undersigned Buyer (whether one or more), and/or for FCBB supplying to the Buyer certain confidential business information regarding the named business(es), the receipt of which is hereby acknowledged, the undersigned Buyer hereby acknowledges, understands, and agrees to the terms of this Agreement. Buyer acknowledges that FCBB has agreements with its Sellers that require that FCBB obtain a Buyer Confidentiality and Non-Disclosure Agreement ("Agreement"), prior to disclosing the name, location and other sensitive or confidential information related to the Seller's Business, property sale or lease.

2. Authorization: Upon Buyer's execution of this Agreement, FCBB is hereby authorized to insert the Business Name(s) under "Business Description/Name" next to the corresponding Agreement/Listing number(s). Buyer authorizes FCBB to add additional Businesses after this Agreement is signed if the Buyer receives information on additional businesses not listed above. Buyer agrees that additional businesses added will be subject to and made part of this Agreement.

3. Buyer Funds and Affiliations: Buyer currently has approximately \$_____ available for use as a cash down payment or payment in full for a purchase transaction. Buyer understands that Buyer may be required to provide Proof of Funds to FCBB prior to the arranging of a meeting with the Seller of a Business.

Buyer warrants that Buyer currently has sufficient funds available for use as a cash down payment or qualifies for financing or payment in full for a purchase transaction.

Buyer plans to use a redirected 401k or IRA Funds to complete a purchase? ☐ YES ☐ NO

Buyer warrants that Buyer (check one): ☐ DOES NOT HAVE ☐ DOES HAVE an affiliation with any federal, state or local government agency.

If affiliated with any such agencies, which agency and position held? _____

4. Buyer's Warranties and Acknowledgement: Buyer(s) agree and will **NOT** (a) contact the Seller(s) without the prior consent of FCBB; (b) contact Seller's employees, customers, neighboring businesses, suppliers, landlord, representatives or competitors without the prior, specific consent of both Seller and FCBB; (c) linger, or otherwise observe the Business, without Seller's consent; (d) **approach, make an offer or negotiate or attempt to deal** with Seller either directly or indirectly at any time without FCBB or without prior written permission of FCBB; (e) disclose any information received, including Business name(s) and that said Business(es) may be involved in a contemplated Transaction; (f) use any proprietary information received to compete with any subject Business within a Seller's existing market area; (g) directly or indirectly solicit for employment any employees of the Seller; (h) use information for personal or commercial benefit or for the benefit of any other person or entity for a period of 36 months from the date of this Agreement or from the receipt of information (whichever is later). Buyer acknowledges that Seller's desire to maintain the confidentiality of any information disclosed, and agrees that all information Buyer receives related to a Business is to be treated as proprietary, confidential and/or privileged information. Buyer agrees to hold all such information in strict confidence; to treat information as trade secrets; and not to divulge any information in any manner to any party except as permitted herein. Buyer acknowledges that the purpose of this Agreement is to protect the Seller and their Business by keeping any knowledge of a Transaction from reaching any employee, competitor, customer or supplier. Buyer agrees that any violation of the provisions of this Agreement could result in damages to the Seller's Business and/or the Seller's relationship with FCBB. Buyer warrants that he/she has the authority to execute this Agreement. If Buyer is a corporation, partnership, or other such entity, the undersigned executes this Agreement on behalf of Buyer and warrants that he/she is duly authorized to do so. If Seller financing or assumption of Seller's debt is included in a transaction, Buyer agrees to provide current financial statements, personal history and business history upon request, and authorizes Seller(s) and/or Seller's landlord to obtain, through standard reporting agencies, Buyer's financial and credit information following acceptance of an offer to purchase. Any competitive, subversive or misuse of information provided may result in legal liability to the undersigned and/or their related parties, successors, assigns and representatives. Buyer understands that liability may incur from any use of the information provided for any purpose other than as described by this agreement.

5. Information and Purpose: The Buyer certifies that he/she is a bona fide prospective Buyer(s) and/or a Buyer's agent and also certifies that his/her interest in the businesses and/or properties disclosed is for the sole purpose of a possible purchase, lease, option, merger or management arrangement or Transaction of the businesses and/or properties (collectively herein the "Business"). Buyer agrees not to disclose nor permit access to any Confidential Information to anyone who has not signed this Agreement other than Buyer's legal counsel, accountants, lenders, or advisors to whom disclosure or access is necessary for Buyer to evaluate the Transaction. Disclosure of Seller's Confidential Information shall be made to these parties only in connection with the potential Transaction, and then only if these parties have agreed to maintain the confidentiality of such Confidential Information. Buyer accepts full responsibility for assuring full compliance with all provisions of this Agreement by any third party to whom Buyer discloses information. Neither the Buyer nor any third party shall use or permit the use of Confidential Information in any manner whatsoever, except as may be required for Buyer to evaluate the Transaction or as may be required by legal process. If Buyer decides not to pursue a Transaction involving a disclosed Business, then Buyer will

Buyer's Initials () ()

promptly notify FCBB. In this event, or at the written request of the Seller or FCBB, Buyer will return to FCBB within five (5) business days all information and materials provided to Buyer and any analyses prepared by Buyer and/or any third-party Buyer engaged to analyze the Transaction without retaining any copy, reproduction, summary, analysis, extract or record thereof.

6. Disclaimer of Information: FCBB has received information from the Seller that includes Seller's Confidential Information. Based upon the information provided by the Seller and other sources, FCBB may prepare a summary description of the business which may include cash flow projections, an adjusted income statement or other Seller's income statements. Buyer agrees that FCBB makes no warranty, expressed or implied, as to the accuracy or completeness of any information Buyer receives or fails to receive and acknowledges that FCBB has not and will not audit, perform any investigation or verify any information or make any warranty or representation, nor in any way does FCBB guarantee future business performance. Buyer agrees to be solely responsible to examine and perform an independent investigation of the Business, its assets (including the leasehold improvements and equipment), liabilities, financial statements, tax returns, Seller's representations and any other facts which might influence Buyer's purchase decision or the price Buyer is willing to pay and will not rely upon any statements or opinions of any kind of the Listing Broker, the Selling Broker, their respective agents, employees or representatives in connection with the purchase and sale of the Business. Buyer will rely solely on Buyer's own investigation and the advice of their legal, tax, and other advisors and not of FCBB to assist Buyer prior to signing this agreement and during negotiations and due diligence. If the income and profits quoted (either written or verbally), by the Seller do not agree with those actual records (including Federal Tax returns) and the Buyer continues and completes the transaction, it is agreed that the Buyer has investigated the Business to his/her own satisfaction without ANY reliance upon FCBB. Buyer hereby releases Listing Broker and Selling Broker, their respective agents and representatives, from any and all claims arising from or relating to the accuracy or completeness of the Information. Buyer is aware and agrees that FCBB is not an equipment appraiser nor an inspector of the premises and/or the leasehold improvements.

7. Purchase of the Stock of the Corporation: Buyer agrees and has been made aware that FCBB has offered the listed businesses for sale as an Asset Purchase and that the Agreement with the Seller was executed for the sole purpose of selling the business as an Asset Purchase. Buyer is informed that neither FCBB nor its agents possess the required licenses to advertise, sell, procure investors or transfer the shares of the Sellers' corporation. Buyer agrees that in the event that an agreement is reached with the Seller for the purchase/sale of the Business (whether verbal or written), whereby the Business is to be sold or transferred to the Buyer as a "Stock Purchase Sale or Transfer," rather than as an Asset Purchase Sale, then the following will apply: Buyer and Seller will retain their own legal counsel to complete the Stock Purchase Agreement with no involvement by FCBB and FCBB will have no interest or concern with the Stock Purchase transaction. Upon such an agreement between the Buyer and the Seller, then the guidelines of the Agreement between FCBB and the Seller will be in effect.

8. Procuring Cause: Buyer hereby acknowledges that FCBB has contractual agreements with the Seller by which FCBB is Seller's authorized agent in a potential Transaction. If the undersigned individually, and on behalf of any affiliated prospective Buyer, requests from FCBB Confidential Information about certain Businesses, then Buyer acknowledges that FCBB is: (a) the first to provide information about potential Transactions related to these Businesses; (b) the sole procuring cause should Buyer execute any Transaction pursuant to this Agreement; and (c) is entitled to their commission for any possible Transaction. Buyer agrees that the divulging of Confidential Information to another Broker or agent does not constitute a cooperating broker agreement and/or require splitting of fees between Brokers. Buyer further agrees to be responsible for any fees owed to any other Broker or agent with whom Buyer has signed a Buyers Brokerage Agreement. If the Buyer is a Licensee, this will be disclosed in writing at the time of the signing of this Agreement to FCBB. However, such disclosure will not entitle the Buyer/Licensee to any portion of the commission due FCBB. Buyer authorizes FCBB to act on Buyer's behalf to negotiate a new lease or Real Estate Purchase from the owner of the property where the business(es) is located, and collect any fees if paid for such service.

9. Circumvention, Interference & FCBB's Fees: Buyer acknowledges that the Seller has entered into a Listing or Commission Agreement whereby the Seller has agreed to pay a fee to FCBB that if, during the term of that agreement and up to thirty six (36) months after the expiration of the Agreement, a Transaction is completed involving any Buyer introduced by FCBB or any potential Buyer contacting the Seller directly during the Agreement to Sell Period then the agreed-upon fee is owed to FCBB. Buyer agrees to be bound by this Buyer Confidentiality Agreement for a period of thirty-six (36) months from the date that this Agreement is executed or from the receipt of information (whichever is later), and is notified that FCBB will be entitled to receive the fee from whichever of the parties it has a written and signed commission agreement with, regardless of the listing status of the Business. Should the Buyer participate in a Transaction, lease the business, lease the premises housing the Business, purchase the property and/or equipment buy, trade, lease, loan money to or exchange, purchase a business owned by the Seller, regardless of whether or not the business was listed with FCBB acquire any interest in, or become affiliated in any capacity with the Business without FCBB'S participation, or in any way interfere with FCBB'S right to its fee, within thirty six (36) months from the date of this agreement then the Buyer shall be liable to FCBB for such fee and any other damages including reasonable attorney's fees and costs. If the Buyer conspires, circumvents or attempts to circumvent FCBB, conceals, attempts to or completes a transaction with a Seller whereby the fee owed to FCBB and the cooperating Brokers fees have not been paid due to the Buyer's interference or circumvention and FCBB is unable to collect the fee from the Seller (which is equal to the amount agreed to in writing by Seller and FCBB in the Agreement to Sell not to exceed 12½% of the Asking Price), then the Buyer will be liable for FCBB'S fee PLUS a penalty of twenty five percent (25%) of the original Seller's agreed upon fee OR \$15,000.00, whichever is greater. If the Buyer in good faith completes a transaction with the Seller and the Seller refuses to pay the Fee owed to FCBB through no fault of the Buyer, then the Buyer shall have no liability for the Fee owed to FCBB.

10. Legality of Agreement and Jurisdiction: This Agreement and Addenda: (a) are legally binding; (b) constitute the entire agreement and understanding of the parties and supersede all prior agreements and understandings between them regarding its subject matter; (c) are binding upon Buyer's heirs, successors, assignees, executors and administrators; and (d) can only be modified in writing, signed by both FCBB and Buyer. Any litigation or dispute arising from performance of this Agreement shall be construed, governed and under the jurisdiction of the Court of the County in the State where the FCBB office is located. If, for any reason, any portion of this Agreement is deemed invalid, it shall be deemed severed from the Agreement and the rest shall be enforceable. Waiver of any breach of this Agreement shall not be a waiver of any subsequent breach. If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be excessively broad as to time, duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it so as to be enforceable to the fullest extent permitted under the applicable law. There are no expressed or implied warranties, promises, representations or covenants relating to this Transaction except as expressly set forth or incorporated herein. This Agreement and its representations, warranties and promises shall survive the Closing of any Transaction described to Buyer.

11. Litigation and Damages: Failure of the undersigned or persons they may disclose Seller's information to, to adhere to this agreement may subject them to legal action. Buyer will be liable for all damages to Seller and/or FCBB caused by Buyer's divulging of Confidential Information and/or disturbing the Seller's business operation including, but not limited to, the loss of fees by FCBB and any liability FCBB may have to Seller as a result thereof. Seller and Seller's successors are specifically intended to be beneficiaries of the duties and obligations of this Agreement and may prosecute any action at law or in equity necessary to enforce its terms and conditions as though a party hereto. Notwithstanding anything herein to the contrary, in the event that Buyer violates any of the provisions set forth in this Agreement, Buyer acknowledges that Seller and FCBB will suffer immediate and irreparable harm which cannot be accurately calculated in monetary damages. Buyer agrees that, in addition to any other remedy, the Seller and FCBB shall be entitled to immediate injunctive relief, either by temporary or permanent injunction, from a court of competent jurisdiction to prevent or halt such a breach. Buyer shall reimburse the Seller and FCBB for any attorneys' fees or costs incurred in obtaining any such injunctive relief. In the event of enforcement and/or litigation involving this Agreement and/or the Confidential Information, the undersigned and/or the principals that they represent agree that FCBB shall be awarded all reasonable attorney's fees

and court costs in addition to any commission awards or other damages FCBB receives. Further, Buyer will hold harmless and indemnify FCBB from any and all claims, allegations, causes of actions, lawsuits, costs, losses or expenses, including without limitation, all expenses of investigation and defense of any claim or action, including all attorneys' fees and costs, arising out of any claim made or action instituted by any person or entity arising out of this Agreement or Seller's Confidential Information. All parties specifically waive their rights to a trial by jury in regards any claim related to or arising from this Agreement. Should the Buyer file any legal or equitable action or proceeding against FCBB, its owners or agents, it will be a material breach of this Agreement. Buyer expressly agrees that FCBB's adjudged liability, as well as the liability of any of its owners, individual agents, members, independent contractors, and/or employees shall be limited to a maximum amount of 50% of Commissions actually received by FCBB.

12. Definitions: As used within this agreement, the following terms are further defined as follows: "Buyer" applies to the undersigned (singular and plural), representative, family members, associates, agents, partnership, corporation, individual, or any other entity with which the undersigned is affiliated or represents. "Seller": The owner(s) of the businesses or property covered or listed in this Agreement. "Confidential Information" shall mean all information including, but not limited to, that the Business is for sale; all financial, production, sales, marketing and pricing information; methods; manuals; manufacturing procedures; correspondence; processes; data; reports; records; memoranda; contracts; employee, customer or vendor lists; tax documents; intellectual property and any other information whether written, oral, electronic or otherwise made known to Buyer: (a) from any inspection, examination, or other review of the books, records, assets, liabilities, processes, or production methods of Seller; (b) from communication with Seller or Seller's broker, directors, officers, employees, agents, suppliers, customers or representatives; (c) during visits to Seller's premises; or (d) through disclosure or discovery in any other manner. "Confidential Information" also includes the name, address, and type of business, all trade secrets, and all information that has been provided. "Confidential Information" does not include any information which is readily available and known to the public. "Transaction" is defined as, but not limited to, a change of any interest or management of or in the Business involving the Buyer and the Seller, the purchase, lease, option, merger, loan of funds, partnership, trade, exchange, management arrangement, acquisition of, any interest in or affiliation in any capacity between Buyer and Seller or Seller's Business. "FCBB" shall include FCBB's Agents, officers and representatives.

13. Disputes: Buyer(s), FCBB and the co-operating Broker agree to mediate or submit to binding arbitration all disputes or claims arising amongst or between them regarding this Agreement or any resulting transaction prior to resorting to court action.

14. Misc: Buyer and FCBB agree that this Agreement may be signed in counterparts and that faxed or electronic signatures may be considered as originals for all purposes. Each party waives the necessity of providing the original copy of this Agreement to bind the other. If the purchase is consummated through a third party (escrow company or transfer agent), the escrow account shall be opened with the Buyer's Earnest Money Deposit within ONE (1) business day of acceptance of the offer unless otherwise directed by the parties. To complete the purchase, Buyer agrees to pay one half of all Transactional Fees Escrow Fees, FCBB's Storage Fees (approximately \$400.00), Lease Assignment Fee or any Transfer Fees relating to the sale and transfer of the assets of the business or lease. In the event of cancellation of the Transaction, Buyer agrees that the Escrow Company or Transfer Agent may deduct, for work performed, the investigative fees from the earnest money deposit. The escrow/closing entity company shall search for liens, lawsuits and tax indebtedness owing by the Seller. Buyer may independently select any providers of their own choosing. If FCBB refers the Buyer to persons, vendors, experts, tax professionals, lenders, legal professionals, service or product providers (Providers), FCBB does not guarantee the performance and/or quality of performance of any such Providers. Buyer acknowledges that Providers may or may not compensate FCBB for the referral. Buyer agrees to allow FCBB to advertise and announce that FCBB facilitated the sale of the Business. In the event of any disagreement or dispute regarding this Agreement or any transaction, FCBB and Buyer agree not to post directly or indirectly, any negative or disparaging comments on any social media and/or websites. Such postings will be considered a breach of this Agreement. Buyer understands that FCBB representing Buyer may also represent other potential Buyers, who may ultimately acquire the Business.

15. Franchisee: Buyer understands and irrevocably agrees that First Choice Business Brokers is an independently owned and operated Franchise and that the Franchisor (First Choice Business Brokers Inc.) is NOT involved in this Transaction or any Agreements.

I/we hereby state that I/we have read, agreed to and understood the terms of this Buyer Confidentiality and Non-Disclosure Agreement. Buyer further agrees that the terms of this Agreement cannot be superseded, revoked or modified without the express written approval of FCBB.

Buyer's Signature: _____ Date _____ Buyer's Signature: _____ Date _____
Buyer's Printed Name: _____ Buyer's Printed Name: _____
Buyer's Title: _____ Buyer's Title: _____
Physical Home Address: (No P.O.Boxes): _____
Cell: _____ Office: _____ Home: _____
Fax: _____ Email: _____
Licensee/Agent Name: _____ Licensee/Agent Signature: _____ Date _____

Please Make Sure to COMPLETE ALL FIELDS. Please sign above and initial where indicated on the bottom of each page.
Return all pages as soon as possible to First Choice Business Brokers in person, via Electronic Signature, U.S. mail, or facsimile.
Modified or Incomplete Forms will not be accepted. Thank You for Your Interest.