

## NON-DISCLOSURE AND NON-CIRCUMVENT CONTRACT

This Agreement made this \_\_\_\_\_ (*date*) between  
 \_\_\_\_\_ (*Name of Broker*) of \_\_\_\_\_  
 \_\_\_\_\_ (*street*  
*address, city, county, state, zip code*), referred to herein as **Broker** and  
 \_\_\_\_\_ (*Name of Seller*) of \_\_\_\_\_  
 \_\_\_\_\_ (*street*  
*address, city, county, state, zip code*), referred to herein as **Seller**, and  
 \_\_\_\_\_ (*Name of Buyer*) in connection with the **Buyer's** consideration of a  
 possible transaction to acquire (*Description of Property or Properties*)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_, hereinafter referred to as **Property**.

## 1. Genuine Business Interest.

*Buyer* is genuinely interested in pursuing and possibly purchasing a potential business arrangement proposed for discussion with the ***Seller***.

## 2. Use of Information by Recipient.

*Buyer* will use the confidential information solely for purposes of evaluating the business of the *Seller*.

### 3. Confidentiality.

*Buyer* and *Seller* both acknowledge that all information and materials furnished from the *Broker* concerning the above referenced *Property* is confidential and may not be used for any purpose other than evaluation. Access to any information furnished by the *Broker* will be limited to attorneys, accountants, banking representatives, and business advisors directly involved with the *Property* listed above.

Confidentiality. From time to time during the term of this Agreement, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party") information about its business affairs, [products/services], confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information[, whether orally or in written, electronic, or other form or media][, and] [whether or not marked, designated, or otherwise identified as "confidential"] (collectively, "Confidential Information"). Confidential Information shall not include information that, at the time of disclosure [and as established by documentary evidence]: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section [X] by the Receiving Party or any of its Representatives; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the Receiving Party or its Representatives before being disclosed by or on behalf of the Disclosing Party; (iv) was or is independently developed by the Receiving Party without reference to or use, in whole or in part, of any of the Disclosing Party's Confidential Information; or (v) is required to be disclosed under applicable federal, state or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction. The Receiving Party shall: (A) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use the Disclosing Party's Confidential Information, or

permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (C) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Agreement. The Receiving Party shall be responsible for any breach of this Section [X] caused by any of its Representatives. [[On the expiration or termination of the Agreement/At any time during or after the term of this Agreement, at the Disclosing Party's written request], the Receiving Party shall promptly return, and shall require its Representatives to return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information[, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed].] [In addition to all other remedies available at law, the Disclosing Party may seek equitable relief (including injunctive relief) against the Receiving Party and its Representatives to prevent the breach or threatened breach of this Section [X] and to secure its enforcement.]

**4. Nondisclosure.**

*Seller, Buyer and Broker* all agree not to disclose to any other person the fact that any discussion or negotiations are taking place with respect to the *Property* or Business or the actual or potential terms, conditions or facts involved in any such discussions or negotiations.

**5. Discretion.**

*Buyer* agrees not to contact the *Property* or Business owner, employees, suppliers, or customers except through *Broker*. *Buyer* further agrees not to circumvent or interfere with *Broker's* written contract or verbal agreement with *Seller* in any way.

**6. Binding Effect.**

This Agreement shall be governed and construed in accordance with the laws of the State of \_\_\_\_\_ and shall survive the closing of any Agreement between *Buyer* and *Seller* for a period of one year from the date of said closing. The word *Closing* shall include notification of non-interest on the part of *Buyer* as well any successful transaction between *Buyer* and *Seller*.

**7. Cost of Enforcement.**

In the event either party commences a judicial action to enforce the provision of this Agreement, the prevailing party in such action shall be entitled to recover, in addition to such other amounts as may be permitted by law, call costs and expenses incurred by it in the prosecution of defense of such action, including reasonable attorneys' fees.

**8. Warranty.**

*Broker* does not guarantee, warrant, either expressed or implied, any information and/or figures supplied by the *Seller*. *Buyer* should rely on his own verification of this information as a part of his or her own due diligence.

**9. Reproduction Prohibited.**

No copies shall be made or retained of any written information supplied to *Buyer* by *Seller*. At the conclusion of any discussion, negotiation or upon demand by *Seller*, all information including written notes, photographs, or notes taken by *Buyer* shall be returned to *Seller* or *Seller's* Agent. Any information shall not be disclosed to any employee or consultant unless they agree to execute and be bound by this agreement.

**10. Non-circumvention.**

For 24 months after the effective date of this Agreement, the Receiving Party and its officers and directors, separately and individually, will not make any effort to circumvent the terms of this Agreement

in an attempt to gain the benefits or considerations granted to it under the Agreement by taking any actions to indirectly gain the benefits of the Confidential Information, including but limited to contracting directly with any client of the other party which Disclosing Party has identified as having access to the Confidential Information, or (b) hiring or contracting with any present or future employee or independent contractor of Disclosing Party.

**11. Remedies.**

Each Party acknowledges and agrees that money damages would not be a sufficient remedy for any breach or threatened breach of this Agreement by such Party or its Representatives (collectively, the "Breaching Party"). Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the non-breaching Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

**12. No Representations or Warranties.**

Neither the Discloser nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to the Recipient hereunder. Neither the Discloser nor any of its Representatives shall be liable to the Recipient or any of its Representatives relating to or resulting from the Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

**13. Governing Law, Jurisdiction, and Venue.**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of North Carolina. Any legal suit, action, or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of North Carolina in each case located in the city of \_\_\_\_\_ and County of \_\_\_\_\_, and each Party irrevocably submits to the [exclusive] jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or forum non convenienc. Service of process, summons, notice, or other document by mail to such Party's address set out herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

WITNESS our signatures as of the day and date first above stated.

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Signature of Buyer)

\_\_\_\_\_  
(Signature of Broker)

\_\_\_\_\_  
(Signature of Seller)