



## CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement ("Agreement") is made and entered into as of \_\_\_\_\_, \_\_\_, 20\_\_\_ (the "Effective Date"), by and among \_\_\_\_\_ ("Company") and \_\_\_\_\_ ("Prospective Purchaser").

### RECITALS

Prospective Purchaser has requested information from Sunbelt Business Brokers about one of its clients, the Company, in connection with Prospective Purchaser's consideration of the possibility of a transaction with and/or involving Company (the "Possible Transaction").

In connection with the Possible Transaction, Sunbelt Business Brokers and/or Company has disclosed or will disclose certain confidential and proprietary business information (the "Information") to Prospective Purchaser that Company desires to protect from further disclosure to unauthorized persons or entities and from use for unauthorized purposes.

Now, therefore, be it resolved, that in consideration of the foregoing and for other consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Except as hereinafter provided, the Information (as such term is defined below) (a) will be kept confidential by Prospective Purchaser and Prospective Purchaser's Representatives (as such term is defined below) and (b) shall not, except as hereinafter provided, without the prior written consent of the Company, be disclosed by Prospective Purchaser or Prospective Purchaser's Representatives, in whole or in part. However, Prospective Purchaser may disclose any such Information to Prospective Purchaser's Representatives who need to know such Information for the sole purpose of evaluating the Possible Transaction and who, **prior to transmittal, shall be advised by Prospective Purchaser of this Agreement and directed for the benefit of the Company to keep the Information confidential to the same extent as though they were parties to this Agreement. Prospective Purchaser agrees to be responsible for any breach of this Agreement by any Representative of Prospective Purchaser. In the event the employment or engagement of any Representative of Prospective Purchaser is terminated (for any reason), Prospective Purchaser agrees to use all commercially reasonable efforts to recover any Information from the Representative's custody or control.**

2. For the purposes of this Agreement, the term "Information" means all confidential information about the Company, whether oral, written, or otherwise, which Sunbelt or the Company, or any of Sunbelt or the Company's respective shareholders, general partners, members, directors, officers, employees, counsel, agents or representatives provide to Prospective Purchaser in connection with the Possible Transaction, whether provided before, on or after the date of this Agreement. By way of example, and without limiting the scope of what constitutes "Information" pursuant to this Agreement, Information shall or may include, without limitation, all information relating to Company's business and operations, whether or not written, that is not generally known or available to the public, including but not limited to, information concerning the business, operations, financial and legal condition of Company and/or its business; any trade secret, information, process, technique, algorithm, computer programs, designs, drawing, formulae, test data; business development and marketing plans and concepts, records and files; financial data and budgetary information, income or sales data or projections; customer lists, information regarding customers, pricing information, usage or traffic data, facilities, suppliers, information regarding suppliers, plans, or market analysis, including the fact that the Company and Prospective Purchaser are engaged in discussions concerning the Possible Transaction. Notwithstanding the foregoing, "Information" does not include:

(a) information that is now, or hereafter becomes, through no act or failure to act on the part of Prospective Purchaser or Prospective Purchaser's Representatives, generally known or available to the public;

(b) information that is received by Prospective Purchaser in good faith from an independent source that has no duty of nondisclosure with respect to such information (or, if such source does have a duty of nondisclosure, such party was unaware of or had no reasonable basis for knowing of such duty); or

(c) information that the Prospective Purchaser can document is already known to the Prospective Purchaser and not otherwise required to be kept confidential, or that is independently developed by the Prospective Purchaser without reference to the Information.

3. **Protection of Confidential Information.** Except as otherwise specifically provided in this Agreement or agreed to by the parties in writing, or as otherwise required by law, Prospective Purchaser (a) shall hold in confidence and shall not disclose to any third party any Information, and shall take reasonable security precautions, at least as great as the precautions it takes to protect its

own trade secrets, with respect to such Information, (b) shall not use the Information for any purpose other than evaluating the Possible Transaction, and (c) shall disclose the Information only to those officers, directors, employees, consultants and advisors (each is a "Representative") that need to know the information in connection with discussions regarding the Possible Transaction. As set forth previously, Prospective Purchaser shall ensure that Prospective Purchaser's Representatives having access to the Information comply with the terms of this Agreement to the same extent as the Prospective Purchaser. Prospective Purchaser agrees to be responsible for any breach of this Agreement by any Representative of Prospective Purchaser. In the event the employment or engagement of a Representative of Prospective Purchaser is terminated, Prospective Purchaser agrees to use its commercially reasonable efforts to recover any Information from the Representative's custody or control.

4. **Judicial Proceedings.** In the event Prospective Purchaser is required by law, regulation or a valid and effective subpoena or order issued by a court of competent jurisdiction or by a governmental body, to disclose any of the Information disclosed by Company, Prospective Purchaser will promptly notify the Company in writing of the existence, terms and circumstances surrounding such required disclosure so that the Company may seek a protective order or other appropriate remedy from the proper authority. Prospective Purchaser agrees to cooperate with the Company in seeking such order or other remedy. Prospective Purchaser further agrees that if it is required to disclose Information of the Company, it will furnish only that portion of the Information that is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded such Information, such as disclosure "in camera" or subject to a protective order.

5. **Term.** This term of this Agreement shall commence on the Effective Date and shall continue in effect until (i) any party terminates this Agreement by written notice to each other party hereto, or (ii) the parties' discussions regarding the Possible Transaction terminate. **Prospective Purchaser's obligations under this Agreement with respect to Information it receives prior to the effective date of termination shall survive after termination of this Agreement.**

6. **Return or Destruction.** Prospective Purchaser will promptly return to the Company or, if so directed by the Company in writing, destroy all tangible items containing or consisting of the Company's Information and all copies thereof upon the earlier of (i) the Company's written request or (ii) termination of this Agreement pursuant to Section 5. Prospective Purchaser shall ensure the destruction of all electronic or other similar copies, and certify such destruction by a duly authorized officer, upon request of the Company. In addition, Prospective Purchaser shall ensure the destruction of all notes, analyses and other information prepared or extracted by Prospective Purchaser and its Representatives from the Information of the Company, and shall certify such destruction by a duly authorized officer upon the request of the Company.

7. **No Further Rights.** Nothing in this Agreement shall be construed as conferring upon Prospective Purchaser any rights in the Information, or any right to receive additional Information. The parties expressly agree that the provision of Information hereunder and any discussions held in connection with the Possible Transaction shall not obligate either party hereto to (i) continue discussions with the other party, (ii) take or forego any action with respect to the Possible Transaction, (iii) enter into any arrangement with respect to the Possible Transaction, (iv) forego discussions with any third party regarding any arrangement similar to the Possible Transaction, or (v) forego entering into any such arrangement with a third party.

The parties hereto agree that no contract or agreement providing for the Possible Transaction with the Company shall be deemed to exist between Prospective Purchaser and the Company unless and until a definitive written agreement with respect to the Possible Transaction (a "Transaction Agreement") has been executed and delivered. For the purposes of this Paragraph, the term "Transaction Agreement" **DOES NOT INCLUDE AN EXECUTED LETTER OF INTENT** or any other preliminary written (or oral) agreement, nor does it include any written or verbal acceptance of any offer or bid on the part of Prospective Purchaser.

Prospective Purchaser recognizes and agrees that nothing contained in this Agreement will be construed as granting any rights to the Prospective Purchaser, by license or otherwise, to any of the Information disclosed by the Company, except as specified in this Agreement. Nothing in this Agreement shall be deemed to grant to Prospective Purchaser a license under the Company's copyrights, patents, trade secrets, trademarks or other intellectual property rights.

Prospective Purchaser understands and acknowledges that while Sunbelt Business Brokers and the Company have endeavored to provide to you Information they believe will be relevant to you for the purpose of investigating or evaluating the Possible Transaction, neither Sunbelt Business Brokers nor Company makes any representation or warranty, express or implied, as to the accuracy or completeness of Information disclosed hereunder. Sunbelt Business Brokers and Company shall have no liability or responsibility for errors or omissions in, or any decisions made by Prospective Purchaser in reliance on, any Information disclosed under this Agreement.

8. Prospective Purchaser understands and agrees that any offer to purchase or request for information concerning the Company shall be made directly through Sunbelt Business Brokers only and not directly with the Company. Prospective Purchaser agrees not to contact the Company or its shareholders, members, officers, directors, employees, agents and representatives in any way except through Sunbelt Business Brokers.

9. Prospective Purchaser agrees that it and its Representatives will (a) direct all inquiries and any requests for information concerning the Company to Sunbelt Business Brokers, and (b) will not discuss the Possible Transaction or related matters with any management or employees of the Company, without the prior written consent of the Company.

10. **Non-Solicitation of employees.** Prospective Purchaser agrees that during the term of this Agreement and for a period of two (2) years after its expiration or termination for any reason whatsoever, Prospective Purchaser, and all entities and persons that have a direct or indirect financial interest in the Prospective Purchaser, agree not to solicit, approach, nor to accept the application for employment, consulting or similar arrangement, of any employee or consultant currently employed by the Company, or of any employee or consultant that shall hereafter be employed by the Company on the date this Agreement is terminated.

11. **Remedies.** Prospective Purchaser acknowledges and agrees that any disclosure or use of Information not authorized under this Agreement, or any breach of Section 10, will constitute a material breach of this Agreement and result in irreparable harm to the Company, for which monetary damages would be an inadequate remedy. In addition to the rights and remedies otherwise available at law, the Company will be entitled to equitable relief, including injunction without the necessity of Company's posting a bond, in the event of any breach or threatened breach of this Agreement, and to recover all of its costs and its reasonable attorney fees incurred in obtaining injunctive relief and/or subsequent monetary damages. Prospective Purchaser agrees to be responsible for any breach of this Agreement by any Representative, including the payment of court costs and legal fees.

12. **Law.**

12.1 **Governing Law and Fees.** This Agreement shall be subject to and construed in accordance with and under the laws of the State of Tennessee, and in any litigation hereunder, both parties agree to the exclusive venue and jurisdiction in the state or federal courts of the county in Tennessee in which the Company resides or has its principal place of business. In the event of any litigation hereunder, the substantially prevailing party shall be entitled to recover costs and reasonable attorney's fees.

12.2 **Severability/enforceability.** In the event any court of competent jurisdiction holds that a particular provision or requirement of this Agreement is in violation of any applicable law, such provision or requirement shall be enforced only to the extent it is not in violation of such law or is not otherwise unenforceable, and all other provisions and requirements of this Agreement shall remain in full force and effect.

If any Court of competent jurisdiction finds that any provision of this Agreement is not reasonable or enforceable as to scope or duration, the parties agree to remain bound by the Agreement to the maximum extent of scope or duration found to be reasonable and/or enforceable by any such Court of competent jurisdiction.

12.3 **Notices.** Any notice, demand or other document required or permitted to be delivered hereunder shall be in writing and shall be (i) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, (ii) delivered in person, by reputable delivery service, or (iii) transmitted by facsimile with hard copy and confirmation of facsimile transmission sent via mail, and shall be addressed to the recipient party at the address indicated on the signature page of this Agreement, or at such other address as such party shall indicate in a notice to the other parties sent in accordance with this Section 12.3.

Each notice, demand or other document that is delivered in the manner described above shall be deemed to be sufficiently delivered, given, served, sent or received for all purposes at such time as it is delivered to the addressee (with the return receipt, delivery receipt, affidavit of messenger or, with respect to a facsimile transmission, the answerback being conclusive, but not exclusive, evidence of such delivery), or at such time as delivery is refused upon presentation.

12.4 **Entire Agreement.** This Agreement contains the entire understanding between the parties hereto relating in any manner to its subject matter, and any representation, warranty, covenant, understanding or agreement not contained or incorporated in it by reference shall be of no force or effect. This Agreement supersedes all prior proposals, discussions, writings, and agreements between any of the parties to this Agreement relating the subject matter hereof.

12.5 **Modifications and Waiver.** No modification or waiver of this Agreement, or any part of it, shall be valid unless in writing, signed by the party sought to be charged therewith; and no waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any subsequent breach or condition, whether of like or different nature. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

12.6 **Binding Agreement and Assignment.** This Agreement and all the provisions hereof will be binding upon and inure to the benefit of the parties hereto and their permitted assigns. Neither this Agreement nor any other rights, interests, or obligations hereunder may be assigned by any party hereto without the written consent of all other parties hereto, with the exception that this Agreement may be assigned by Company to any ultimate purchaser of Company, or all or a majority of its stock, assets or its business.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf as of the Effective Date.

**PROSPECTIVE PURCHASER:**

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_  
(if individual)

Signature: \_\_\_\_\_

Print Name of Company: \_\_\_\_\_ Date: \_\_\_\_\_  
(if company or corporation)

By: \_\_\_\_\_  
(name of authorized representative)

Its: \_\_\_\_\_  
(title of authorized representative)

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

BROKER: \_\_\_\_\_



**CONFIDENTIAL FINANCIAL SUMMARY STATEMENT**

Print Name: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Assets**

Cash on Hand and in Banks	\$
U.S. Government Securities	\$
Account, Loans and Notes Receivable	\$
Cash surrender Value of Life Insurance	\$
Value of Businesses owned	\$
Other Stocks and Bonds	\$
Real Estate	\$
Automobile - Number ( )	\$
Household Furnishings and Personal Effects	\$
Other Assets (Itemize)	\$
	\$
	\$

**Total Assets** \$

**Liabilities and Net Worth**

Notes Payable	\$
Liens on Real Estate	\$
Other Liabilities (Itemize)	\$
	\$
	\$

**Total Liabilities** \$

**Net Worth** \$

**Source of Income**

Salary	\$
Dividends and Interest	\$
Bonus and Commissions	\$
Real Estate Income	\$
Other Income	\$

**Total Income** \$

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The undersigned certifies that this information was provided by him/her and is true and correct

Signature: \_\_\_\_\_ Date: \_\_\_\_\_