

## **CONFIDENTIALITY AGREEMENT**

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, the parties whose names and signatures appear below entered into this Confidentiality Agreement (hereinafter "Agreement"). The parties did so prior to entering into negotiations regarding the potential purchase and sale of a valuable business interest. In order to evaluate the propriety of the proposed purchase and sale, one or more of the parties may reveal information to the other that would otherwise be confidential or sensitive. The parties have entered into this Agreement for the purpose of fully exploring whether to enter into a separate transaction for the purchase and sale of the foregoing business interest, while still preserving the confidences that would be compromised if the transaction does not materialize. Based on the foregoing, the parties hereby agree to the following terms and conditions:

1. In consideration of confidential information disclosed by the other, both parties agree to maintain the confidentiality of all such information revealed by the other party.
2. For purposes of this Agreement, "confidential information" shall mean any information relating to the business interest being explored exchanged by or between the parties to this Agreement beginning on the date of this Agreement and ending on the earlier of: (A) one party notifying the other in writing that the party no longer interested in purchasing or selling the business interest being explored; or (B) the closing of the purchase and sale of the business interest being explored.

Any information exchanged between the parties to this Agreement during the foregoing period of time shall be presumed to be "confidential information" unless either of the foregoing shall be true: (A) the parties to this Agreement agree in writing that specifically identified information listed in the parties' writing shall not be confidential; or (B) one party accused of revealing confidential information to a person not a party to this Agreement, in response to the other party's attempt to enforce the terms of this Agreement in Court, shall establish by clear and convincing evidence that the information disclosed by the revealing party, would have become widely known or publicly available despite the revealing party's failure to protect the information's confidentiality. If the revealing party fails to prove the foregoing by clear and convincing evidence, the party seeking to enforce this Agreement shall be entitled to recover all damages called for in this Agreement.

3. For purposes of this Agreement, "maintain the confidentiality of all such information" shall mean that any confidential information, as defined herein, shall not be provided to any person or entity other than the parties to this Agreement, their attorneys, and professional advisors providing counsel to the

parties regarding the proposed transaction (hereinafter collectively “permitted persons”). Further, the party providing confidential information to permitted persons agrees that if such permitted persons fail to maintain the confidentiality of the information, the party who provided confidential information to permitted persons shall be liable for the permitted persons’ disclosure. “Maintain the confidentiality of all such information” shall also mean that, in the event no separate agreement is reached to consummate the purchase and sale of the business interest to which the confidential information relates, all confidential information, including any copies thereof in any form, and any notes, summary or other document or file maintained in any form, is to be returned to the party disclosing the confidential information within five (5) business days of either party’s notice to the other that the party is withdrawing from negotiations for the purchase and sale of the business interest.

4. Both parties agree that their confidential information is sensitive and that the revelation of such information beyond the limits imposed by this Agreement would be harmful to their respective interests. Both parties further agree that the precise measure of such harm is potentially difficult and may not be amenable to simple calculation. Therefore, to the extent that either party breaches this Agreement, the parties agree that damages due the aggrieved party shall be: (1) the greater of \$25,000.00 or the actual damages established by evidence of the same; (2) all costs incurred in collecting such damages, including filing fees, deposition costs, copying costs, expert witness fees, subpoena fees, and any other costs incurred for the purpose of collecting damages from the breaching party; and (3) reasonable attorney fees incurred in collecting such damages.

5. Regardless of whether the purchase and sale of the business interest is accomplished, the obligations imposed on the parties as a result of this Agreement shall remain binding upon the parties until the earlier of: (1) five (5) years from the date of this Agreement; or (2) a written Agreement signed by both parties terminating the obligations imposed by this Agreement.

All of which is agreed and executed as of the date set forth above.

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature