



TEXAS ASSOCIATION OF BUSINESS BROKERS
STANDARD
BUSINESS LISTING AND SERVICES AGREEMENT

This Business Listing and Services Agreement ("Agreement") is entered into on this date between _____ ("Broker"), and _____ the owner(s) or authorized representative of the owner(s) and/or the legal entity which owns the Business described below ("Seller" whether one, more, authorized representative, or assigns).

Broker is a member of the Texas Association of Business Brokers and subscribes to its code of ethics and professional standards. Broker will use reasonable care in serving as the agent of Seller regarding the Sale of the Business. In addition, Broker is charged with the duties and responsibilities imposed on an agent representing a principal, limited only by the terms and conditions of this Agreement.

THE PARTIES, intending to be legally bound, hereby agree as follows:

1. Grant of Agency. In consideration of the brokerage services and efforts to be provided by Broker, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby grants to Broker the EXCLUSIVE RIGHT TO SELL and authority to act as agent to arrange the "Sale" (as defined below) of the business described as follows (the "Business"):

- a. Name of Business: _____
b. Address: _____ City: _____ County: _____ State: _____ Zip: _____
c. Form of Ownership (Check one): () Sole Proprietorship; () Corporation; () Partnership; () Other (specify) _____
d. Owned by the Following (Name and percent ownership by each owner) _____

2. Assets Included in Sale. All of the assets shown on balance sheet as of _____ and all of the other tangible and intangible assets used in or by the Business including, without limitation, company name, phone numbers, & customer lists except the following excluded assets _____

3. Liabilities to be Assumed. _____

Table with 2 columns: Description and Amount. Rows include Listing Sale Price for Real Property Assets, Listing Sale Price for Business, and Terms (Cash at Closing, Assumption of Existing Indebtedness, Seller Financing, Other). Total Listing Sale Price is also listed.

Listing Sale Price is based upon inventory value, at lower of cost or market, of \$ _____, and the following: _____

Seller hereby expressly agrees that a reduction or increase in asset values (as reflected by Seller's documentation or independent valuation) reflected or referenced in Sections 2, 4 and 5 will result in a dollar for dollar reduction or increase, as the case may be, "Listing Sale Price" and in "Cash at Closing."

7. Term. The primary term of this Agreement shall be for a period of _____ months from date of this Agreement. After the primary term, this Agreement shall continue until terminated upon ten (10) days prior written notice of termination delivered by ONE (1) party to the other via certified mail, return receipt requested.

8. Preparation/Commitment Fee. Upon execution of this Agreement, Seller agrees to pay Broker a nonrefundable preparation/commitment fee in the amount of \$ _____. In the event a Professional Service Fee (defined below) is earned and payable upon the occurrence of any one or more of the events described in Section 12, the preparation/commitment fee shall / shall not (circle one) be applied as a credit to the Professional Service Fee.

9. Professional Service Fee. Upon the occurrence of any one or more of the compensatory events described in Section 12, Seller shall pay Broker a Professional Service Fee, in cash, calculated as follows:

Blank lines for calculation of Professional Service Fee.

10. Services to be Provided by Seller. In further consideration of the brokerage services and efforts to be provided by the Broker, the Seller agrees to provide the following services in a timely and diligent manner, to Broker during the Term of this Agreement:

- a. Use reasonable business efforts to preserve the value of the Business and the Real Property during the Term of this Agreement and take no action that will impair the saleability or marketability of the Business and the Real Property.
b. Cooperate with Broker in showing the Business and the Real Property to Prospective Purchasers during and after business hours.
c. Furnish Broker and any "Prospective Purchaser" pertinent information within Seller's knowledge or subject to Seller's control concerning all aspects of the Business and the Real Property including, without limitation, signing IRS Form 4506, Request for Copies of Tax Returns.

d. Notify Broker within 48 hours of Seller learning of any additional information that may affect the value or saleability of the Business or the Real Property in any way including, without limitation, the products, customer base, services provided, financial condition or modifications to any agreements to which Seller is a party. Seller agrees to notify Broker as to any change in marital status of the principals of Seller.

e. Promptly furnish to Broker income tax returns and financials (balance sheets and income statements), plus any other requested information necessary to help convey the value and nature of the Business and the Real Property to Prospective Purchasers.

f. Furnish Broker current financial statements each month during the Term of this Agreement.

g. Execute a written "Offer" (hereby defined as a letter of intent, an offer to purchase, or any similar document), within three (3) business days of receipt of such Offer, with a Prospective Purchaser, which document shall contain the essential terms and conditions of the proposed Sale, in the event that a Prospective Purchaser for the Business and the Real Property is found under the Listing Sale Price and terms described above or any other terms acceptable to Seller. In the event an Offer is presented to Seller that is not acceptable to Seller in its original form Seller agrees to respond, within three (3) business days of receipt of such Offer, with a counter Offer, through Broker, in writing.

h. Permit a Prospective Purchaser, following a fully executed Offer, a reasonable inspection period, during normal business hours, to complete due diligence, including but not limited to interviewing key employees to ensure continuity. Seller agrees to conduct Seller's own due diligence with respect to a Prospective Purchaser.

i. Cause to be executed and delivered to a Prospective Purchaser of the Business such documents as shall be necessary to vest in the Prospective Purchaser good, indefeasible and marketable title to the Business and Real Property, if any, all with the customary representations and warranties and indemnifications by Seller as are appropriate for a Sale of that size and type, including environmental representations and warranties. In this regard, Seller shall permit environmental and other inspections to be conducted with respect to the Business and/or Real Property during normal business hours.

j. Notify Broker of any and all "Contact" (defined, without limitation, as any communication or inquiries, whether oral or written, concerning any aspect of the Sale of the Business and/or Real Property) with or to Seller or any agent or employee of Seller by anyone concerning the possible Sale of the Business and/or Real Property within 48 hours of such Contact.

k. Instruct any person or entity who may be handling the closing of the Sale of the Business and/or the Real Property to pay and disburse out of the Sale proceeds directly to Broker, any money due under the terms of this Agreement.

l. Notify Broker of the date, time and location of a closing of a Sale at least FIVE (5) days prior to such closing.

m. Consider Broker a party to any closing and take all reasonable steps necessary to ensure that Broker attends such closing, or is permitted to send a representative to the closing.

n. Provide Broker with the appropriate consent (e.g. corporate resolution, spousal consent, partnership authorization, etc.) necessary to evidence the authority that Seller has to authorize and complete the Sale of the Business and Real Property.

11. Representations and Warranties of Seller. Seller makes the following representations and warranties to Broker:

a. Seller is duly authorized to represent all owners, direct or indirect, of the Business and the Real Property, and that all such owners have agreed to be bound by the terms and conditions of this Agreement and will join in representations and warranties to the purchaser. If Seller is a partnership, corporation or other entity, each person signing on behalf of such entity hereby represents and warrants that each has the authority to enter into this Agreement on behalf of said entity, and that each is personally liable for all provisions of this Agreement.

b. Seller will seek competent counsel (legal, financial, tax, etc.) in any Sale of the Business and the Real Property. Seller understands and agrees that "Broker Group" (herein defined as Broker and its agents, employees, officers, directors, shareholders, co-brokers, independent contractors and affiliates) WILL NOT PROVIDE ANY LEGAL, ACCOUNTING OR TAX ADVICE TO SELLER and will NOT provide any related services to Seller acting as licensed attorneys, accountants or tax advisors. Seller understands that Seller shall be required to fill out and submit to the IRS Form 8594, Asset Acquisition Statement, showing the allocation of purchase price upon closing of the Sale.

c. If the Seller affects the Sale of a "Related Business" (defined as any property and/or business, or similar or related asset, including other businesses or assets at other locations, that is/are owned in whole or in part by the same persons, or their relatives, or legal entities that own the Business) during the Term of this Agreement or within TWO (2) years after the termination of this Agreement and such Sale is made to a Prospective Purchaser, Broker shall be entitled to a Professional Service Fee on, and at the time of, the Sale of the Related Business in accordance with Section 9 hereof.

d. In any Sale hereunder, Broker is expressly authorized to represent and to receive compensation from any and all parties involved in the Sale of the Business and the receipt or accrual of any such compensation to Broker from parties, other than Seller, shall not diminish Seller's obligation under this Agreement, as long as any such arrangement with parties other than Seller is disclosed to Seller by Broker.

e. Broker is authorized, but not obligated, to cooperate with other brokers, and to furnish them and Prospective Purchasers all financial and other information provided by Seller. Broker may advertise and market the Business and the Real Property at Broker's sole discretion.

f. All information previously or hereafter furnished to Broker is complete and accurate in all material respects. Seller understands and acknowledges that all information supplied to Broker, by Seller or Seller's representatives, will be relied on by Broker when promoting the Business and the Real Property to Prospective Purchasers. Seller agrees that Seller's inability to prove such information, including any income and/or expenses added back to Reported Earnings to reflect normalized earnings and proving same to the satisfaction of any Prospective Purchaser of the Business, will constitute a material breach of this Agreement. Seller understands and agrees that Broker will make no independent investigation with respect to any of the information supplied by Seller including computer hardware or software, telephone or other equipment compatibility. All forecast information supplied or approved by Seller or Seller's representatives is accurate to the best of Seller's knowledge and Seller hereby releases, indemnifies and holds harmless Broker Group in the use of any such information.

g. In connection with the Sale of the Business, the Seller, and any family members of Seller who are working in the Business, at the request of a purchaser, (i) shall execute a Covenant Not To Compete agreement agreeing not to reestablish, reopen, or engage, directly or indirectly, in the same or in a similar trade or business within the market area currently served by Seller for a period of FIVE (5) years from date of closing and (ii) shall agree to a consulting or employment arrangement with the purchaser for the purpose of training the purchaser in the detailed operations of the Business and assisting in a smooth and orderly transition of the Business from Seller to the purchaser for a period of THIRTY (30) days. Each of (i) and (ii) above to be included in the Sale Price at no additional cost (except for a price allocation of the agreed upon Sale Price as may be negotiated in good faith between the parties).

h. Seller will not take any action which will materially and/or adversely affect the value or the saleability of the Business or the Real Property, including, without limitation, taking out new, or substantially increasing, loans or lines of credit, modifying any agreements or taking any action or making any statements that might cause any employee(s) to leave the Business prior to or following the Sale, or failing to use reasonable efforts to assure that the Business maintains its recent historical revenues, profits and growth during the Term of this Agreement or failing to use reasonable efforts to assure that all employees and/or subcontractors, customers, suppliers and any other entity or body involved in or with the Business remain with the Business following any Sale subject to the desires of the purchaser.

i. Seller has read and understands this Agreement and Seller further acknowledges and agrees that the Independent Contractor representative of Broker, if any, signing below is not an employee of Broker and has no authority to commit Broker on any matter.

j. Except for Broker, Seller has not employed or agreed to compensate, and shall not employ or agree to compensate, any other broker, dealer, salesman or agent with regard to the subject Sale for or during the Term of this Agreement.

k. When this Agreement is signed by Seller, the obligations in it shall constitute the joint and several, personal and individual, obligations of each Seller signatory hereto. Also by Seller's signature below, Seller certifies that Seller has received a copy of this Agreement.

12. Compensatory Events. The Professional Service Fee described in Section 9 shall be earned and payable to Broker, in cash, at Broker's office in _____ County, Texas upon the occurrence of any of the following events:

a. The Sale of the Business, the Real Property or a Related Business during the Term of this Agreement.

b. The Sale of the Business, the Real Property or a Related Business at any time during the Term or within TWO (2) years after the termination of this Agreement, if such Sale is made to, or through, or with the assistance of any Prospective Purchaser.

c. The procurement of an Offer for the Business or the Real Property on terms and conditions specified in Section 6 or any terms and conditions equivalent to those specified in Section 6, or any terms and conditions acceptable to Seller from a ready, willing and able purchaser and such Offer is procured during the Term of the Agreement.

d. Seller accepts in writing an Offer from a ready, willing and able Prospective Purchaser at any time during the Term or within TWO (2) years after the termination of this Agreement, and Seller then completes the Sale of the Business, or Real Property or fails to complete the Sale of the Business or Real Property through no fault of the Prospective Purchaser.

e. Seller (i) violates any material term(s) of this Agreement, or (ii) breaches any material warranty or representation made herein, or (iii) withdraws the Business or Real Property from the market, or (iv) otherwise terminates this Agreement prior to its expiration date.

13. Sale Defined. The term "Sale" is defined as any (or any option for) transfer, conveyance, merger, consolidation, exchange, creation of partnership or a business relationship of any kind, indenture or disposition of the Business or a Related Business, including, without limitation, the sale, merger, consolidation or other corporate transaction involving the Business, the Real Property, or a Related Business or a significant part of their respective assets, the consignment, franchise, assignment, lease or hypothecation of any of the above, its capital stock, assets, or any portion thereof, (other than in the ordinary course of business), or entering into any agreement to compensate in any way and for any reason (including, without limitation, employing), a Prospective Purchaser, or the principal of a Prospective Purchaser, introduced to Seller by Broker, or the employment (including, without limitation, hiring or entering into any agreement for compensation) of Seller, or a principal of Seller, by, or through, a Prospective Purchaser, or any loans or guarantees to the benefit of Seller or the Business.

14. Sale Price Defined. The term "Sale Price" shall mean any and all amounts of money or other consideration paid or conveyed to Seller, or for Seller's benefit, directly or indirectly, or paid or conveyed by a purchaser in connection with the Sale of the assets or the capital stock of the Business, the Real Property, or a Related Business plus all liabilities and/or other obligations retained by the Business, or assumed by a purchaser (For example, if all or part of the capital stock of the Business is sold for \$100,000 and the Business retains \$200,000 of liabilities and/or other obligations and/or agreements, the Professional Service Fee will be due on a Sale Price of \$300,000). Sale Price shall include, without limitation, the value of all cash, accounts receivable, stock, bonds, indentures, debentures, promissory notes, letters or lines of credit, loans, guarantees, interest, negotiable instruments, real or personal property, payments under employment and consulting agreements, non-competition agreements, partnership agreements, rental agreements, lease agreements (including real property lease agreements), options, payments pursuant to option agreements, capital investments, the assumption, assignment or discharge of liabilities, the value of all Assets Included in Sale in Section 2 that are part of the "original" Listing Sale Price as of the date this Agreement is executed, which are retained by, or used by, the Seller during or following the Term of this Agreement for any purpose, or any combination of the above, or any other consideration or things of value including, without limitation, the fair value of any consideration exchanged in any Sale, merger, consolidation or other transaction. In addition, Sale Price shall specifically include any and all payments made or to be made by a purchaser that are contingent upon future events, such as, without limitation, license, franchise, or royalty agreements, payments based on future sales or profits and all other items of a contingent nature. Any portion of Sale Price that is dependent upon contingent payments shall be negotiated in good faith by the parties hereto, shall be based on reasonable expectations of payments to the benefit of the Seller or the Business and shall be designated in a dollar amount and deemed added as part of the Sale Price.

15. Indemnification and Hold Harmless. Seller releases, indemnifies and holds harmless Broker Group against any and all losses, claims, damages, expenses or liabilities whatsoever, joint or several, which may arise out of or in connection with the performance of this Agreement, breach of a representation or warranty contained herein, or the performance of Broker Group in connection with this Agreement which release, indemnity and hold harmless shall cover, without limitation, matters caused by or arising out of the negligence of Broker Group. This release, indemnification and hold harmless agreement of Seller shall not apply to any intentionally wrongful or grossly negligent acts of Broker Group. The indemnity shall be cumulative and in addition to any other liability that may be imposed upon Seller.

16. Escrow Agent. Broker is hereby given the exclusive right to appoint an escrow agent for all transactions relating to the Sale of the Business. Broker is authorized to accept earnest money deposits and deposit them with the escrow agent of Broker's choice. If any earnest money funds are forfeited by Prospective Purchaser, Broker will retain or be paid all such sums, up to the amount of the total Professional Service Fee which would have been due Broker had the Sale been consummated, as an additional fee for services performed by Broker. The escrow agent handling the closing of the Sale of the Business is entitled to rely on written instructions and directions of Broker for the payment of all money due hereunder as long as the person or entity handling the closing is given a copy of this Agreement.

17. Grant of Security Interest. Seller hereby grants Broker a security interest in all of the assets used in or by the Business, wherever located, including, without limitation, Business name, furniture, fixtures, equipment, inventory, accounts receivable and all additions and

accessions thereto and the proceeds of the foregoing, to secure the payment of all money due under the terms of this Agreement. THE PARTIES AGREE THAT A PHOTOGRAPHIC, OR OTHER, REPRODUCTION OF THIS AGREEMENT IS SUFFICIENT AS A UCC-1 FINANCING STATEMENT, as the term is used in Article 9 of the Uniform Commercial Code. Further, the Real Property is subject to a lien under Chapter 62 of the Texas Property Code. If Seller receives any proceeds from a Sale hereunder, Seller agrees that Broker's Professional Service Fee is included in the Sale proceeds, and agrees to hold them as fiduciary and trustee for Broker.

18. Certain Non-liability and Releases. In no event shall Broker be required to participate in any evaluation of the Business and/or Real Property, including, without limitation, any accounting, inventory, appraisal, audit, verification, stock value or other evaluation either for Seller or for a Prospective Purchaser, and Seller expressly releases and discharges Broker from any responsibility or liability in connection with any evaluation. Seller expressly releases and discharges Broker from (i) any responsibility or liability for setting the Listing Sale Price and terms of the Business and/or Real Property Sale, and if the Sale Price turns out to be lower than the Listing Sale Price, from (ii) any responsibility or liability with regard to any price or terms the Seller may ultimately accept. Seller expressly releases and discharges Broker from any responsibility or liability in connection with any action or lack of action of a Prospective Purchaser of the Business and for all due diligence investigations regarding the honesty, integrity, creditworthiness, managerial abilities or other capabilities of a Prospective Purchaser.

19. Performance/Choice of Law/Venue/Interest. The performance of this Agreement shall be in _____ County, Texas (the "Subject County") and shall be governed by the laws of the State of Texas, without regard to choice of law or conflicts of law principles. Any claims, actions, or controversy regarding this Agreement, the transaction subject of this Agreement or any act, omission, occurrence, event or circumstance relating to or resulting from this Agreement, shall be resolved in the Subject County. The parties agree to forbear from bringing action in any state or county other than the Subject County. Seller agrees that all moneys due Broker, including but not limited to any Professional Service Fee, legal fees and all expenses of collection, that are not paid when due or incurred will bear interest at the maximum rate permitted by law from the date due until paid.

20. Binding Nature/Assigns. The parties agree that this Agreement shall be binding upon Seller, the Seller's heirs, executors, successors, administrators, representatives or assigns and all individual signatories hereto. This Agreement is non-binding upon Broker until countersigned as being accepted by an officer of Broker at Broker's office in the Subject County. Neither Broker nor Seller may transfer or assign their duties and obligations hereunder, except as provided herein.

21. Savings Clause/Waiver. If any term, provision or condition of this Agreement shall be held to be invalid, void or unenforceable, the remainder of the provisions hereof, shall remain in full force and effect and this Agreement shall be construed as if such invalid, void or unenforceable provision had not been contained herein. If any term, provision or condition of this Agreement is waived, the waiver must be in writing, signed by the party to be charged, but one such instance of waiver shall be limited to the facts specific to that waiver and does not constitute waiver of any other term or condition.

22. No Guarantee/Reasonable Efforts. Seller acknowledges that Broker has not guaranteed the Sale of the Business and that the Business may not sell at the Listing Sale Price or at any price. Broker will use reasonable efforts to represent Seller as its exclusive agent with the Exclusive Right To Sell the Business until this Agreement terminates.

23. Entire Agreement/Attorney's Fees. This Agreement sets forth the ENTIRE AGREEMENT and understanding between the parties, superseding all prior written and verbal agreements, and cannot be modified, amended, supplemented or rescinded except in writing signed by Seller and an officer of Broker. If either party to this agreement employs legal counsel to enforce or to defend any provision or any part of this Agreement, reasonable legal fees and expenses may be awarded as the trier(s) of fact shall decide.

24. Headings. Section/paragraph headings are for administrative convenience, and shall not be construed in interpreting the Agreement.

25. Facsimile/Scans. The parties hereby agree that a facsimile or scanned signed copy of this Agreement will be deemed an original for all purposes, and each party hereby waives the necessity of providing the original copy of this Agreement to bind the other.

26. Arbitration. The parties agree that any controversy or claim arising out of or relating to this Agreement, or breach thereof, including any matters involving Broker Group, shall be settled by binding arbitration via the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator's sole authority shall be to interpret and/or apply the provisions of this Agreement; and the arbitrator shall have no authority to change or modify any provision of this Agreement. Expenses of arbitration shall be borne by the parties in such proportion as the arbitrator shall decide. Any provisional remedy, including injunctive relief, shall be available notwithstanding the provisions relating to arbitration. The arbitrator shall enter a default judgment against (i) any party who fails to participate in the arbitration proceedings, or (ii) any party who fails to pay any administrative or arbitration expense after having been given seven (7) days' notice and opportunity to cure such default.

27. Attachments. The following documents are part of this Agreement: **Exhibit "A": Owners Discretionary Earnings Analysis If Real Estate is included:** (Legal description attached as Schedule "1"); _____

28. Other Conditions: _____

DATED this _____ day of _____, _____.

INDEPENDENT CONTRACTOR:
OR AGENT OF BROKER

SELLER:

BY: _____
Seller(s), as selling entity representative Title: _____

By: _____
Seller(s), Individually

BROKER:

By: _____
Broker's Officer Acceptance
(not valid until Broker's Officer signs)

Address – Residence	City	State	Zip
Phone(s) Business	FAX	Cell	Residence
Federal Tax I.D.#	SSN	Driver's License # and State	



Business Name: _____

EXHIBIT "A"
Owners Discretionary Earnings Analysis
for the Period:

GROSS INCOME		\$ _____ Less
Cost of Goods Sold	\$ _____	
GROSS PROFIT		\$ _____
Less Expenses*	\$ _____ *	
PRE-TAX PROFIT		\$ _____

OWNERS' BENEFITS, DISCRETIONARY EXPENSES AND NON-CASH ITEMS:

Amortization	\$ _____
Depreciation	\$ _____
Interest Expense	\$ _____
Owner's Salary	\$ _____
Payroll Taxes on Owner	\$ _____
Personal Insurance	\$ _____
Contributions	\$ _____
Owner's Vehicle(s)	\$ _____
Dues and Subscriptions	\$ _____
Business Meals	\$ _____
Entertainment	\$ _____
Travel	\$ _____
Personal Expenses	\$ _____
Non-Working Payroll	\$ _____
Merchandise for Personal Use	\$ _____
Legal & Accounting	\$ _____
Penalties	\$ _____
Bank Charges	\$ _____
One Time Major Expense	\$ _____
Loss on Sale of Assets	\$ _____
_____	\$ _____
_____	\$ _____

Note: Broker Group has made no investigation or verification of the information contained herein.

All expenses included (added back) must be included in the Expenses* named above.

Total Add-Backs to Earnings		\$ _____
Less Deductions from Cash Flow:		
Unpaid Employee	\$ _____	
Interest Income	\$ _____	
Gain on Sale of Assets	\$ _____	
_____	\$ _____	
_____	\$ _____	
Total Deductions from Earnings		(\$ _____)

Total Discretionary Earnings to Owner \$ _____

NOTE: If "Total Discretionary Earnings" is for a period of less than 12 months, the estimated "ANNUALIZED" Owner's Discretionary Earnings is projected at . . . \$ _____

Owner's Representation & Warranty

I hereby warrant that this information is true and accurate and complete in all material respects. I understand and agree that this information may be used in promoting the sale or preparing an evaluation of the Business and that Broker Group will not audit or verify the information furnished. I therefore agree to release, indemnify and hold harmless Broker Group, its employees, representatives, officers and directors against any and all losses, claims, damages, expenses or liabilities whatsoever, joint or several, which may arise out of or in connection with any misrepresentations, or errors, or omissions made by myself, my representatives or Broker Group by reason of any inaccuracy of the information contained herein. Further, the indemnity shall be cumulative and shall be in addition to any other liability which may be imposed upon Owner. Inability of the Owner to prove the results of this document will constitute a material breach of the Business Listing and Services Agreement with Broker.

 Owner's Printed Name

 Signature (Individually and Corporate)

 Date