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KR Business Brokers

Washington State's Premier Business Broker

Expertise Integrity Results

DATE:

NAME OF BUSINESS:

CONFIDENTIAL NON-DISCLOSURE AND BROKERAGE AGREEMENT

This Confidential Non-disclosure and Brokerage Agreement (hereinafter referred to as "Agreement") is made effective as of _____, between PBS LLC, dba KR Business Brokers and its agents (hereinafter referred to as "Broker"), whose business location is 2024 Madison St., Everett, WA 98203, and

Name/s):

Phone:

E-mail address:

Address:

[hereinafter referred to as "Receiving Party(s)"]

Principals Only/No Brokers

Receiving Party (RP) understands, acknowledges, and agrees as follows: In this Agreement, the party(s) who represents a particular business for sale, and holds the Confidential Information pertaining to a particular business for sale, will be referred to as “Broker” and the party(s) to whom the Confidential information (AKA, “NDA materials”) will be disclosed will be referred to as the “Receiving Party”, including any and all entities, third party agreements, partnerships, corporations and LLC’s that Receiving Party shall have any interest in now/or in the future.

The Broker is engaged in business and financial intermediary services including selling businesses. The Receiving Party(s) signing this agreement is/are engaged in the process of reviewing business opportunities for potential purchase. The Business Seller [hereinafter referred to as “Seller(s)"] has requested that the Broker protect proprietary, sensitive, and confidential material and related information which may be disclosed between the Broker and the Individuals(s) signing this agreement. Therefore, each party Signature hereto agrees as follows:

1. CONFIDENTIAL INFORMATION. The term “Confidential Information” or “NDA materials” means any information or material which is propriety to the Seller(s), whether owned or developed by the Seller(s), which is not generally known by parties other than the Seller(s), and which the Individual(s) signing this agreement may obtain through any direct or indirect contact with the Broker. *Confidential information includes without limitation: Seller(s) business records or plans, financial statements, customer lists and records, vendor list, supplier list, trade secrets, technical information, products, inventions, product design information, pricing structure, discounts, costs, computer programs and listings, source code and/or object code, copyrights and other intellectual property, tangible and intangible assets, and any other propriety information of any form.*

2. PROTECTION OF CONFIDENTIAL INFORMATION. The Receiving Party understands, acknowledges, and agrees that the Seller(s) Confidential Information which has been assembled developed and/or otherwise obtained by the Seller(s) represents a significant investment of time, effort, and expense. The Confidential Information provided to Receiving Party represents a valuable, special, and unique asset of the Seller(s). Receiving Party understands that Confidential Information provides the Seller(s) with a significant competitive advantage and needs to be protected from unfair and improper disclosure. Receiving Party understands that any Seller and/or its principals or authorized party(s) of the Seller(s) who provide Confidential Information, in trust through the Broker, are third party beneficiaries of this Agreement and are entitled to enforce this Agreement and recover damages for any breach of this Agreement by Receiving Party. In consideration for the disclosure of Confidential Information, Receiving Party agrees to hold in confidence and not to disclose the Confidential Information provided to Receiving Party to any other person or entity under any circumstance, except for representative(s), accountants, attorneys, etc. who are participating in the evaluation of Confidential Information for Receiving Party. It is the express duty of Receiving Party to notify all recipients of the Confidential information of its confidentiality and the necessity to protect the information from being disclosed to any non-authorized party.

In addition, Receiving Party agrees to the following sections “2a”, “b”, “c”, “d”, “e”, “f” and “g”.

a. No Copying/Modifying. Receiving Party will not copy or modify in any way Confidential Information as provided, without prior written consent of the Broker.

b. Application to Employees. Receiving Party shall not disclose Confidential Information to any employee(s) or other associate(s) of the Seller(s), except those employees or associates who are required to have Confidential Information in order to perform their job duties and/or any other function in connection with the Seller(s) business sale purposes as set forth in this Agreement. Each permitted employee and/or associate with whom Confidential Information is disclosed shall sign a Confidentiality and Non-disclosure agreement similar to or the same as this agreement at the request of the Broker.

c. Contact. Receiving Party agrees not to contact the Seller(s), his/her employees or any associate, landlord, lien holder, suppliers, or customers for a period of two (2) years from the date of this agreement except through the Broker. During the stipulated two-year period, all correspondence, inquiries, offers to purchase and/or negotiations relating to the purchase of any business or lease of any premises presented by the Broker to Receiving Party, including Receiving Party representative(s) as stipulated in Section 2 herein or any other entity that Receiving Party represents or is otherwise a part of, will be conducted exclusively through the Broker. The Broker will plan for all meetings between the Seller(s) and the Receiving Party(s). Receiving Party understands and agrees that such face-to-face meetings with the Seller(s) and/or with the party(s) acting on behalf of and so authorized by the Seller(s) are essential and are encouraged in order to obtain additional information concerning a subject business and for the benefit and knowledge of all affected parties as set forth herein.

d. Disclosure of Business Opportunities. Receiving Party hereby receives all NDA materials from Broker for each business listed below with the name and/or file number and/or MLS#, of each business disclosed or presented to the Individual(s) signing this agreement (BUSINESS OPPORTUNITY(S) DISCLOSURE STATEMENT).

The Receiving Party acknowledges and agrees that once Receiving Party receives NDA materials from Broker, Receiving Party agrees to make all offers to purchase the business directly through PBS LLC, dba KR Business Brokers or its agents. In the event Receiving Party desires to utilize another Broker to make the offer to purchase a business listed below and not offer to purchase directly through Broker or its agent(s), Receiving Party agrees that it shall be responsible for and pay any commission due to that Broker.

INITIALS

Broker is a current member of the Commercial Brokers Association (“CBA”) and Northwest Multiple Listing Service (“NWMLS”). **Receiving Party understands and agrees that if NDA materials have been disclosed to Receiving Party, and, Receiving Party within 2 years of such disclosure, purchases, leases or establishes any other business relationship with any business that has been presented to Receiving**

Party by the Broker as disclosed on page 6 of this agreement, regardless of whether or not Receiving Party elects to continue using the services and assistance available through the Broker, Receiving Party agrees that as a result of the NDA materials disclosed to Receiving Party by the Broker and the subsequent purchase, lease or establishment of any other relationship with any business as disclosed on page 6 of this Agreement, Receiving Party will be liable for the commission fees that would have been paid by the Seller(s) to Broker. Receiving Party shall immediately pay that commission to Broker upon demand.

e. *Facsimile Transmission.* In the event Receiving Party requests the Broker to send Confidential information via facsimile transmission regarding certain business opportunities, Receiving Party understands and agrees that such Confidential Information facsimile transmission shall be considered the same as a personally presented.

f. *Basic Information and Representations.* The broker has requested and received information about the presented business(es) directly from the Seller(s) and/or from the party(s) as authorized by the Seller(s). The information provided by the Seller(s) to the Broker has not been verified by the Broker for its accuracy, may not be complete, or may not provide Receiving Party with all of the facts necessary for Receiving Party to accurately evaluate the financial condition of the business. **The Broker will not verify, represent, or guarantee the accuracy or completeness of any information provided by the Seller(s) to Broker.** Receiving Party understands Broker is not an expert in the management or operation of any specific business listed for sale. Receiving Party will rely upon Receiving Party's own final investigation to determine whether Receiving Party ultimately decides to purchase any business offered for sale through Broker and agrees to release and/or hold Broker, its agents/sales staff, and representatives harmless against any cause(s) of action, claims, damages or demands brought against Broker. Receiving Party further releases and/or holds Broker, its agents/sales staff, and representatives harmless against any allegation of inaccuracy or incompleteness of information provided to Receiving Party with respect to any business or real property that Receiving Party may purchase.

g. *Unauthorized Disclosure of Information.* If it appears that the Individual(s) signing this Agreement has disclosed (or otherwise threatened to disclose) Confidential Information which is deemed in violation of this Agreement, the Broker shall be entitled to injunctive relief to restrain the Individual(s) signing this Agreement from disclosing, whether in whole or in part, any Confidential Information as set forth herein. The Broker shall not be prohibited by this provision from pursuing other legal remedies, including the initiation of a claim for any loss or damages.

3. RETURN OF CONFIDENTIAL INFORMATION. Upon written request of the Broker, Receiving Party shall within five (5) days, return to the Broker all written materials containing Confidential Information on any specific Broker presented business(es). By signing this Agreement, Receiving Party shall also deliver to the Broker written statement(s) signed by Receiving Party certifying that all previously supplied documents and other Broker presented business materials have been returned within the five (5) day period of Receiving Party receipt of the written Broker request.

4. RELATIONSHIP OF THE PARTIES. The Broker and its agents/sales staff and other representatives are agents for the Seller(s). In the event the Broker becomes an agent for the Seller(s) through its membership with CBA/NWMLS, the Broker will then act as a "Co-Broker" through the CBA/NWMLS and the Seller(s) of the business or property will be bound under the contract with any CBA/NWMLS member thereby providing for a fee to be paid to the Broker by the Seller(s) upon the sale, trade, lease or exchange of the Seller(s) business or property. The Receiving Party(s) signing this Agreement understand that the Broker, through its agents/sales staff and other representatives, will assist Receiving Party in locating a business. However, it is agreed that such assistance, incidental advice and/or statements made in connection with the Broker assistance process will not, legally or otherwise, convert the Broker nor its agents/sales staff and/or other representatives into acting as Receiving Party's agent **unless the Broker has attached a separate retainer agreement to this agreement which states that Broker will act as Receiving Party's agent: in which case the Individual(s) signing said retainer agreement will become fully responsible for the Brokers fee due under the Seller's separate listing agreement or under the retainer agreement that is attached to and incorporated herein, with fees/commissions due Broker at escrow closing of the Seller(s) business to Receiving Party(s) or at the time of Seller(s) business sale, trade, lease, business management agreement or option to purchase, or any other exchange of the Seller(s) business or property occurs to Receiving Party(s).** *The Individual(s) signing this Agreement acknowledge that I/We have been provided with a pamphlet on the "Real Estate Brokerage in Washington" as required under Washington State RCW 18.86.120. I/We agree to be added to KR Business Brokers email list and understand we can unsubscribe at any time.*

5. GENERAL PROVISIONS. This Agreement sets forth the entire understanding between all parties' signature hereto regarding confidentiality and broker arrangements. Any amendment(s) to this Agreement must be set forth in writing and signed by all parties whose signatures appear on this Agreement. This Agreement shall be construed under the laws of the State of Washington. This Agreement shall not be assignable by any party, and no party may delegate its duties under this Agreement without the prior written consent of the other party(s) signature hereto. The confidentiality provisions of this Agreement together with any separate Business Opportunity(s) Disclosure Statement which is attached and made part of this Agreement, shall remain in full force and effect on and after the effective date of this Agreement and/or the effective date of any other separate Business Opportunity Disclosure Agreement for the term as stipulated herein.

6. STOCK OPTIONS. Receiving Party acknowledges that the Broker is not a licensed securities Broker or dealer by any state or federal agency but in the event that Receiving Party purchases shares of stock from the Seller(s) rather than purchase the Seller(s) business assets, then the Broker shall be entitled to a Finders Fee in an amount equal to the Commission per the listing agreement with Seller or as otherwise due under the Brokers Agreement with the Seller(s).

7. LITIGATION. In the event of a breach of this agreement, suit may be instituted in Snohomish County superior court in order to adjudicate the claim. The expenses of the legal proceedings conducted hereunder shall be borne by the non-prevailing party who shall in addition pay the prevailing party's reasonable attorney fees and costs.

8. FINANCIAL STATEMENT. Receiving Party agrees that if Receiving Party should enter into an agreement to purchase a business that broker offers for sale or lease any real property, Receiving Party agrees to provide a current financial statement, a personal and business history concerning Receiving Party, or the companies Receiving Party represents. Receiving Party understand that this information will be held confidential by the owner and Broker and that it will only be used for the purpose of allowing the owner and/or landlord review.

BY AFFIXING MY/OUR SIGNATURE(S) BELOW, I/WE ACKNOWLEDGE THAT I/WE HAVE RECEIVED **A COPY OF THE "REAL ESTATE BROKERAGE IN WASHINGTON PAMPHLET"**, READ THIS AGREEMENT AND FULLY UNDERSTAND AND AGREE TO THE CONDITIONS AS SET FORTH HEREIN.

Buyer is encouraged to visit the business as a customer. PLEASE BE DISCREET WHILE YOU ARE AT THE BUSINESS and do not speak to the owners, staff or customers about the sale. If you would like to schedule an appointment for a full tour or have questions about the business, please contact the broker who provided you with the NDA.

Reviewed and Accepted By: By: INDIVIDUAL(S) ["Receiving Party or Individual(s)]

_____ **Signature Date**

Name (Print)

By: BROKER/AGENT for PBS LLC. *dba KR Business Brokers:*

Randi Edwards CBB, CBIS

Co-Founder and President

Certified Business Broker

Certified Business Investment Specialist

BUSINESS OPPORTUNITY(S) DISCLOSURE STATEMENT

List of Businesses Presented By Broker

- 1.
- 2.
- 3.
- 4.
- 5.



To provide real estate brokerage services in Washington, a broker must be licensed under chapter 18.85 RCW and licensed with a real estate firm, which also must be licensed. Each real estate firm has a designated broker who is responsible for supervising the brokers licensed with the firm. Some firms may have branch offices that are supervised by a branch manager and some firms may delegate certain supervisory duties to one or more managing brokers. The Washington State Department of Licensing is responsible for enforcing all laws and rules relating to the conduct of real estate firms and brokers.

Agency Relationship

In an agency relationship, a broker is referred to as an "agent" and the seller/landlord and buyer/tenant is referred to as the "principal." For simplicity, in this pamphlet, seller includes landlord, and buyer includes tenant.

For Sellers



A real estate firm and broker must enter into a written services agreement with a seller to establish an agency relationship. The firm will then appoint one or more brokers to be agents of the seller. The firm's designated broker and any managing broker responsible for the supervision of those brokers are also agents of the seller.

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For Buyers

A real estate firm and broker(s) who perform real estate brokerage services for a buyer establish an agency relationship by performing those services. The firm's designated broker and any managing broker responsible for the supervision of that broker are also agents of the buyer. A written services agreement between the buyer and the firm must be entered into before, or as soon as reasonably practical after, a broker begins rendering real estate brokerage services to the buyer.

For both Buyer and Seller - as a Limited Dual Agent

A limited dual agent provides limited representation to both the buyer and the seller in a transaction. Limited dual agency requires the consent of each principal in a written services agreement and may occur in two situations: (1) When the buyer and the seller are represented by the same broker, in which case the broker's designated broker and any managing broker responsible for the supervision of that broker are also limited dual agents; and (2) when the buyer and the seller are

represented by different brokers in the same firm, in which case each broker solely represents the principal the broker was appointed to represent, but the broker's designated broker and any managing broker responsible for the supervision of those brokers are limited dual agents.

Duration of Agency Relationship

Once established, an agency relationship continues until the earliest of the following:

(1) Completion of performance by the broker; (2) Expiration of the term agreed upon by the parties; (3) Termination of the relationship by mutual agreement of the parties; or (4) Termination of the relationship by notice from either party to the other. However, such a termination does not affect the contractual rights of either party.

Written Services Agreement

A written services agreement between the firm and principal must contain the following: (1) The term (duration) of the agreement; (2) Name of the broker(s) appointed to act as an agent for the principal; (3) Whether the agency relationship is exclusive (which does not allow the principal to enter into an agency relationship with another firm during the term) or nonexclusive (which allows the principal to enter into an agency relationship with multiple firms at the same time); (4) Whether the principal consents to limited dual agency; (5) The terms of compensation;

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(6) In an agreement with a buyer, whether the broker agrees to show a property when there is no agreement or offer by any party or firm to pay compensation to the broker's firm; and (7) Any other agreements between the parties.

A Broker's Duties to All Parties

A broker owes the following duties to all parties in a transaction: (1) To exercise reasonable skill and care; (2) To deal honestly and in good faith; (3) To timely present all written offers, written notices, and other written communications to and from either party; (4) To disclose all existing material facts known by the broker and not apparent or readily ascertainable to a party. A material fact includes information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a transaction, or operates to materially impair or defeat the purpose of the transaction. However, a broker does not have any duty to investigate matters that the broker has not agreed to investigate; (5) To account in a timely manner for all money and property received from or on behalf of either party; (6) To provide this pamphlet to all parties to whom the broker renders real estate brokerage services and to any unrepresented party; (7) To disclose in writing who the broker represents; and (8) To disclose in writing any terms of compensation offered by a party or a real estate firm to a real estate firm representing another party.

A Broker's Duties to the Buyer or Seller

A broker owes the following duties to their principal (either the buyer or seller): (1) To be loyal to their principal by taking no action that is adverse or detrimental to their principal's interest in a transaction; (2) To timely disclose to their principal any conflicts of interest; (3) To advise their principal to seek expert advice on matters relating to the transaction that are beyond the broker's expertise; (4) To not disclose any confidential information from or about their principal; and (5) To make a good faith and continuous effort to find a property for the buyer or to find a buyer for the seller's property, until the principal has entered a contract for the purchase or sale of property or as agreed otherwise in writing.

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Limited Dual Agent Duties

A limited dual agent may not advocate terms favorable to one principal to the detriment of the other principal. A broker, acting as a limited dual agent, owes the following duties to both the buyer and seller: (1) To take no action that is adverse or detrimental to either principal's interest in a transaction; (2) To timely disclose to both principals any conflicts of interest; (3) To advise both principals to seek expert advice on matters relating to the transaction that are beyond the limited dual agent's expertise; (4) To not disclose any confidential information from or about either principal; and (5) To make a good faith and continuous effort to find a property for the buyer and to find a buyer for the seller's property, until the principals have entered a contract for the purchase or sale of property or as agreed otherwise in writing.

Compensation

In any real estate transaction, a firm's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between firms. To receive compensation from any party, a firm must have a written services agreement with the party the firm represents (or provide a "Compensation Disclosure" to the buyer in a transaction for commercial real estate). A services agreement must contain the following regarding compensation: (1) The amount the principal agrees to compensate the firm for broker's services as an agent or limited dual agent; (2) The principal's consent, if any, and any terms of such consent, to compensation sharing between firms and parties; and (3) The principal's consent, if any, and any terms of such consent, to compensation of the firm by more than one party.

Short Sales

A "short sale" is a transaction where the seller's proceeds from the sale are insufficient to cover seller's obligations at closing (e.g., the seller's outstanding mortgage is greater than the sale price). If a sale is a short sale, the seller's real estate firm must disclose to the seller that the decision by any beneficiary or mortgagee, to release its interest in the property for less than the amount the seller owes to allow the sale to proceed, does not automatically relieve the seller of the obligation to pay any debt or costs remaining at closing, including real estate firms' compensation.