



BUSINESS LISTING AGREEMENT

(C.A.R. Form BLA, Revised 10/01)

(A separate listing agreement is required for any real property to be included in sale.)

1. EXCLUSIVE AUTHORIZATION: Lindy Sun, and /or assignee ("Owner") doing business as: Le Tasty Restaurant a (check one) [X] sole proprietor, [ ] partnership, [ ] corporation, [ ] limited liability company, [ ] other ( [ ] a franchise of ) hereby employs and grants ("Broker") beginning (date) April 1, 2012 and ending at 11:59 P.M. on (date) July 22, 2012 ("Listing Period") the exclusive and irrevocable right to sell the business situated in the City of Oakland, County of Alameda, California, commonly described as: 1437 Franklin Street, Oakland, CA 94612 ("Business").

2. BUSINESS DISCLOSURE STATEMENT:

- A. PURPOSE OF BDS: Owner acknowledges and agrees that the attached Business Disclosure Statement ("BDS") is provided to Broker as: (i) a tool to assist in establishing the listing price; (ii) a disclosure of material facts regarding the operation of the Business; and (iii) a proposal of items included in or excluded from the offering of the Business for sale.
B. RELATION TO PURCHASE AGREEMENT: Owner acknowledges and agrees that: (i) the agreement between Owner and buyer supersedes any intention expressed in the BDS and will ultimately determine which items are either included in or excluded from the sale; and (ii) Broker is not responsible for and does not guarantee that the items included or excluded in the BDS will be in the agreement.
C. OWNER WARRANTY: Owner warrants the accuracy of the information furnished herein, and on the attached BDS, or as modified hereafter with respect to the Business, and Owner agrees to indemnify, defend and hold harmless Broker from all claims, costs, expenses, disputes, litigation, arbitration, judgments and awards arising from any incorrect information supplied by Owner or from any material fact that Owner knows but fails to disclose.
D. AUTHORIZATION: Broker is authorized to provide the BDS to prospective buyers.

3. DOCUMENTATION: Owner shall provide to Broker the following lists of items or documents, or copies thereof, within 10 calendar days of the execution of this agreement. For each item, as applicable, Seller shall include a statement of whether the item is owned or leased and whether Seller has any legal, proprietary interest, or intellectual property rights in, or restrictions on, the item:

- [X] Inventory, including work in progress [X] Signs and advertising materials
[X] Machinery [X] Telephone and fax numbers
[X] Furniture, fixtures, and other equipment [X] Websites, URL addresses and E-mail addresses
[X] Other personal property [X] Vendor lists and catalogs
[ ] Leasehold improvements [X] Goodwill
[ ] Government licenses and permits [ ] Agreements not to compete
[ ] Customer lists [ ] Franchise agreements
[ ] Fictitious business name statement [ ] Distribution rights
[ ] Trade names and trademarks [ ] Employee lists and information
[ ] Logos [ ] Computer and customer software
[ ] Copyrights and patents [ ] Customer deposits
[ ] Schedule of accounts receivable [ ] Leases
[ ] Business appraisal
[ ] Other assets:
[ ] Schedule of accounts payable [ ] Service/maintenance/advertising agreements
[ ] Other liabilities:
[ ] Sales tax returns for the years . . . . . to
[ ] Federal and state income tax returns for the years . . . . . to
[ ] Financial statements for the years . . . . . to
[ ] Employment withholding returns for the years . . . . . to

OWNER REPRESENTS THAT: (i) THE BOOKS AND RECORDS THAT OWNER PROVIDES ARE THOSE MAINTAINED IN THE ORDINARY AND NORMAL COURSE OF BUSINESS; AND (ii) FEDERAL AND STATE TAX RETURNS THAT OWNER PROVIDES ARE COPIES OF THOSE FILED WITH THE APPLICABLE GOVERNMENTAL AGENCY.

The copyright laws of the United States (Title 17 U.S. Code) forbid the unauthorized reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. Copyright © 1993-2006, CALIFORNIA ASSOCIATION OF REALTORS®, INC. ALL RIGHTS RESERVED.

BLA REVISED 10/01 (PAGE 1 OF 5)

Owner's Initials ( ) ( )

Reviewed by Date



Business: Le Tasty Restaurant Date: \_\_\_\_\_

**4. REAL PROPERTY:**

- A. INTENTION TO SELL:**  (If checked) Owner owns the real property on which the Business operates and intends that the sale of the Business is contingent upon Owner's sale of such real property. **A separate real property listing agreement is required.**
- B. RELATION TO PURCHASE AGREEMENT:** Owner acknowledges and agrees that: **(i)** the agreement between Owner and buyer supersedes any intention expressed above in paragraph 4A and will ultimately determine whether any real property is included in the sale or whether the sale of the Business is contingent upon the sale of any real property, and **(ii)** Broker is not responsible for and does not guarantee that any real property will be included in the purchase agreement or that the sale will be contingent upon the sale of any real property.

**5. TERMS OF SALE:**

- A. LIST PRICE:** The list price shall be Seventy-Five Thousand Dollars (\$ 75,000.00 )
- B. ADDITIONAL PURCHASE TERMS:** \_\_\_\_\_

**6. COMPENSATION TO BROKER:**

- A.** Owner agrees to pay to Broker as compensation for services irrespective of agency relationship(s): EITHER  5.000 percent of the list price (or if a contract is entered into, of the contract price) (compensation due Broker shall be calculated on all assets of the Business that are either offered for sale on the BDS or in the contract entered into, whichever is applicable), OR  \$ 5,000.00 , as follows:
- (1)** If Broker, Owner, cooperating broker, or any other person, produces a buyer who offers to acquire the Business on the above price and terms, or on any price and terms acceptable to Owner during the Listing Period, or any extension.
- (2)** If Owner, within **180** (or  \_\_\_\_\_ ) **calendar days** after the end of the Listing Period or any extension, enters into a contract to sell, convey, lease or otherwise transfer the Business to anyone ("Prospective Buyer") or that person's related entity: **(i)** who physically entered and was shown the Business during the Listing Period or any extension by Broker or a cooperating broker; **(ii)** for whom Broker or any cooperating broker submitted to Owner a signed, written offer to acquire, lease, exchange or obtain an option on the Business; or **(iii)** to whom Broker submitted written information regarding the Business at the request of such person. Owner, however, shall have no obligation to Broker under this sub-paragraph 6A(2) unless, not later than **10 calendar days** after the end of the Listing Period or any extension, Broker has given Owner a written notice of the names of such Prospective Buyers. A Prospective Buyer shall not include a person to whom Broker furnished unsolicited information concerning the Business.
- (3)** If, without Broker's prior written consent, the Business is: **(i)** withdrawn from the market; **(ii)** sold, conveyed, exchanged, optioned, or otherwise transferred; or **(iii)** made unmarketable by a voluntary act of Owner during the Listing Period, or any extension.
- B.** If Owner enters into a listing agreement with another broker within the time period set forth in paragraph 6A(2), Owner shall provide to such broker the names of Prospective Buyers, as supplied to Owner by Broker.
- C.** If completion of the transaction is prevented by a party to the transaction other than Owner, then compensation due under paragraph 6A shall be payable only if and when Owner collects damages by suit, arbitration, settlement, or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.
- D.** In addition, Owner agrees to pay Broker: \_\_\_\_\_
- E.** **(1)** Broker is authorized to cooperate and compensate brokers participating through a multiple listing service(s) ("MLS"): **(i)** in any manner, OR **(ii)** (if checked) Broker shall offer MLS brokers: either  5.000 percent of the sales price, or  \$ 5,000.00 .
- (2)** Broker is authorized to cooperate and compensate brokers operating outside the MLS in any manner.
- F.** Owner hereby irrevocably assigns to Broker the above compensation from Owner's funds and proceeds in escrow. Broker may submit this listing agreement to any escrow holder as instructions to compensate Broker pursuant to paragraph 6A, if the terms of compensation are consistent with the business purchase agreement between Owner and the buyer.
- G.** **(1)** Owner represents that Owner has not previously entered into a listing agreement with another broker regarding the Business, except as follows: \_\_\_\_\_
- (2)** Owner warrants that Owner has no obligation to pay compensation to any other broker regarding the Business unless the the Business is transferred to any of the following individuals or entities: \_\_\_\_\_
- (3)** If the Business is transferred to anyone listed above during the time Owner is obligated to compensate another broker: **(i)** Broker is not entitled to compensation under this Agreement; and **(ii)** Broker is not obligated to represent Owner with respect to such transaction.



**7. BUSINESS ESCROW AND APPRAISAL:**

**A.  Business Escrow:** (If checked) Owner agrees to cooperate with and use a business escrow in any resulting sale pursuant to this agreement.

**B.  Appraisal:** (If checked) Owner agrees to hire and pay for a qualified business appraiser to appraise the Business.

**8. MULTIPLE LISTING SERVICE:** Information about this listing  will  will not be provided to the MLS of Broker's selection and all terms of the transaction, including, if applicable, financing, will be provided to the MLS for publication, dissemination and use by persons and entities on terms approved by the MLS. Owner authorizes Broker to comply with all applicable MLS rules.

**9. TITLE: UNLESS OTHERWISE AGREED, OWNER WARRANTS THAT, EXCEPT AS SPECIFIED IN WRITING, OWNER HAS GOOD AND MARKETABLE TITLE TO THE BUSINESS AND PERSONAL PROPERTY THAT ARE OFFERED FOR SALE.**

**10. OWNER REPRESENTATIONS:** Owner represents that unless otherwise specified in writing, Owner is unaware of: **(i)** any Notice of Default recorded against the Business; **(ii)** any delinquent amounts due under any loan secured by, or other obligation affecting, the Business; **(iii)** any bankruptcy, insolvency or similar proceeding affecting the Business; **(iv)** any current, pending or proposed special assessments affecting the Business; or **(v)** any pending or threatened action or adverse condition which does or may affect the Business or Owner's ability to transfer it, including but not limited to, any litigation, arbitration, administrative action, or government investigation. Owner shall promptly notify Broker in writing if Owner becomes aware of any of these items during the term or any extension of the Listing Period.

**11. BROKER'S AND OWNER'S DUTIES:** Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this agreement. Unless Owner gives Broker written instructions to the contrary, Broker is authorized to advertise and market the Business, including the Business name and address, in any method and in any medium, including the internet, selected by Broker, and, to the extent permitted by these media, including MLS, control the dissemination of the information submitted to any medium. Owner agrees to consider offers presented by Broker, and to act in good faith toward accomplishing the transfer of the Business. Owner agrees to immediately refer to Broker any party interested in the Business. All negotiations are to be disclosed to Broker. Owner agrees to provide Broker and transferee(s) all written disclosures, as required by law. Owner further agrees to immediately disclose in writing any condition known to Owner that affects the Business, including, but not limited to, any past or current generation, storage, release, threatened release, disposal, and presence and location of asbestos, PCB transformers, petroleum products, flammable explosives, underground storage tanks and other hazardous, toxic or contaminated substance or condition in, on, or about the Business. Owner shall maintain public liability and property damage insurance on the Business during the Listing Period, or any extension. Owner waives all subrogation rights under any insurance against Broker, cooperating brokers or employees. **Owner further agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments and attorney fees arising from any incorrect information supplied by Owner, or from any material facts that Owner knows but fails to disclose.**

**12. DEPOSIT:** Broker is authorized to accept and hold on Owner's behalf a deposit to be applied toward the sales price.

**13. SIGN:** Owner does (or if checked  does not) authorize Broker to install a FOR SALE/SOLD sign on the Business premises.

**14. INSPECTIONS:** Owner shall make the Business available for all inspections called for in any purchase agreement.

**15. AGENCY RELATIONSHIPS:**

**A. Owner Representation:** Broker shall represent Owner in any resulting transaction, except as specified in paragraph 6G.

**B. Possible Dual Agency With Buyer:** Depending upon the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Owner and buyer, exchange party, or one or more additional parties ("Buyer"). Broker shall, as soon as practicable, disclose to Owner any election to act as a dual agent representing both Owner and Buyer. If a Buyer is procured directly by Broker or an associate licensee in Broker's firm, Owner hereby consents to Broker acting as a dual agent for Owner and such Buyer. In the event of an exchange, Owner hereby consents to Broker collecting compensation from additional parties for services rendered, provided there is disclosure to all parties of such agency and compensation. Owner understands and agrees that: **(i)** Broker, without the prior written consent of Owner, will not disclose to Buyer that Owner is willing to sell the Business at a price less than the listing price; **(ii)** Broker, without the prior written consent of Buyer, will not disclose to Owner that Buyer is willing to pay a price greater than the offered price; and **(iii)** except for (i) and (ii) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Business to both parties.

**C. Other Owners:** Owner understands that Broker may have or obtain listings on other businesses, and that potential buyers may consider, make offers on, or purchase through Broker, a business the same as or similar to Owner's Business. Owner consents to Broker's representation of owners and buyers of other businesses before, during and after the end of this listing agreement.



- 16. **EQUAL OPPORTUNITY:** The Business is offered in compliance with federal, state, and local anti-discrimination laws.
- 17. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Owner and Broker regarding the obligation to pay compensation under this listing agreement, the prevailing Owner or Broker shall be entitled to reasonable attorney fees and costs, except as provided in paragraph 19A.
- 18. **ADDITIONAL TERMS:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**19. DISPUTE RESOLUTION:**

**A. MEDIATION:** Owner and Broker agree to mediate any dispute or claim arising between them out of this listing agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraph 19B(2) below. Paragraph 19B(2) below applies whether or not the arbitration provision is initialed. Mediation fees, if any, shall be divided equally among the parties involved. If for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

**B. ARBITRATION OF DISPUTES:**

(1) Owner and Broker agree that any dispute or claim in law or equity arising between them regarding the obligation to pay compensation under this listing agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraph 19B(2) below. The arbitrator shall be a retired judge or justice, or an attorney with experience in the purchase and sale of businesses, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.

(2) **EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from mediation and arbitration hereunder: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; (iv) any matter which is within the jurisdiction of a probate, small claims, or bankruptcy court; and (v) an action for bodily injury or wrongful death, or for latent or patent defects to which Code of Civil Procedure §337.1 or §337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a violation of the mediation and arbitration provisions.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Owner's Initials \_\_\_\_\_ / \_\_\_\_\_ Broker's Initials \_\_\_\_\_ / \_\_\_\_\_



Business: Le Tasty Restaurant Date: \_\_\_\_\_

**20. ENTIRE CONTRACT:** All prior discussions, negotiations, and agreements between the parties concerning the subject matter of this listing agreement are superseded by this listing agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this listing agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This listing agreement and any supplement, addendum, or modification, including any photocopy or facsimile, may be executed in counterparts. This listing agreement and any addendum or modification shall be binding upon, and inure to the benefit of, the heirs, successors and assignees of the parties.

**Owner warrants that Owner has the authority to execute this listing agreement. If the Business is owned by a corporation, Owner's authority to execute this Agreement is found in the ATTACHED RESOLUTIONS OF ITS BOARD OF DIRECTORS dated \_\_\_\_\_ . By signing below, Owner acknowledges that Owner has read, understands, accepts and has received a copy of this Agreement, including any attached schedule of compensation. If additional signatures are required, use an addendum.**

Owner Lindy Sun Date \_\_\_\_\_  
By \_\_\_\_\_ Title \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone (510) 786-8811 Fax \_\_\_\_\_ E-mail letasty2012@gmail.com

Owner and /or assignee Date \_\_\_\_\_  
By \_\_\_\_\_ Title \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Real Estate Broker (Firm) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_  
By (Agent) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.  
This form is available for use by the entire real estate industry. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

**R** **I** Published and Distributed by:  
**E** **N** REAL ESTATE BUSINESS SERVICES, INC.  
**B** **S** a subsidiary of the California Association of REALTORS®  
**C** 525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





BUSINESS DISCLOSURE STATEMENT

(C.A.R. Form BDS, Revised 10/01)

1. INTENT AND PURPOSE: This Business Disclosure Statement ("BDS") is provided by Lindy Sun, and /or assignee Le Tasty Restaurant ("Owner"), Owner of the business known as Le Tasty Restaurant ("Business"), as (i) a tool to assist in establishing the listing price; (ii) a disclosure of material facts regarding the operation of the Business; and (iii) a proposal of items to be included in or excluded from the offering of the Business for sale. The BDS is for information purposes only and is not part of any agreement. Owner authorizes Broker to provide this BDS to prospective buyers. OWNER DECLARES THAT THE INFORMATION PROVIDED HEREIN IS BASED ON FIGURES SUPPLIED BY OWNER AND THAT OWNER INTENDS THAT BROKERS AND PROSPECTIVE BUYERS RELY ON SUCH INFORMATION. OWNER HAS DOCUMENTATION SUPPORTING SUCH FIGURES AND AGREES TO PROVIDE SUPPORTING DOCUMENTATION UPON REQUEST. BROKER HAS NOT INDEPENDENTLY VERIFIED THE INFORMATION PROVIDED HEREIN.

2. RELATION TO PURCHASE AGREEMENT: Owner acknowledges that: (i) the agreement between Owner and buyer supersedes any intention expressed in the BDS and will ultimately determine which items are either included in or excluded from the agreement; and (ii) Broker is not responsible for and does not guarantee that the items included or excluded in the BDS will be in the agreement.

3. OWNER WARRANTY: Owner warrants the accuracy of the information furnished herein, or as modified hereafter, with respect to the Business. OWNER FURTHER WARRANTS THAT, EXCEPT AS SPECIFIED IN WRITING, OWNER HAS GOOD AND MARKETABLE TITLE TO THE BUSINESS AND PERSONAL PROPERTY THAT ARE OFFERED FOR SALE.

4. ITEMS OFFERED FOR SALE: The following items, as listed on the attached lists, are included in the offer to sell, subject to any lessor rights, and transferability and disclosed restrictions (if checked):

- Inventory, including work in progress
Machinery
Furniture, fixtures, and other equipment
Other personal property
Leasehold improvements
Government licenses and permits
Customer lists
Fictitious business name statements
Trade names and trademarks
Logos
Copyrights and patents
Schedule of accounts receivable
Other assets:
Schedule of accounts payable
Other liabilities:
Signs and advertising materials
Telephone and fax numbers
Websites, URL addresses and E-mail addresses
Vendor lists and catalogs
Goodwill
Agreements not to compete
Franchise agreements
Distribution rights
Employee lists and information
Computer and customer software
Customer deposits
Service, maintenance and advertising agreements

5. ITEMS EXCLUDED FROM OFFER TO SELL: The following items are not included in the offer to sell:

6. APPROXIMATE VALUE OF CURRENT INVENTORY, including work in progress: \$

7. ADDITIONAL AVAILABLE INFORMATION:

- Business appraisal
Lease
Sales tax returns for the years to
Federal and state income tax returns for the years to
Financial statements for the years to
Employment withholding returns for the years to

The copyright laws of the United States (Title 17 U.S. Code) forbid the unauthorized reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. Copyright © 1998-2001, CALIFORNIA ASSOCIATION OF REALTORS®, INC. ALL RIGHTS RESERVED.

REVISION DATE 10/01
BDS-11 (PAGE 1 of 3)

Owner acknowledges receipt of a copy of this page.

Owner's Initials ( ) ( )

Reviewed by
Broker or Designee Date



**8. PREMISES INFORMATION:**

**A. EXISTING LEASE:**

- (1) Current monthly base rent \$ 2,800.00 . Average CAM\* or NNN monthly expenses \$ \_\_\_\_\_
- (2) Lease term:  Month-to-month  Fixed term ending on \_\_\_\_\_  Option(s) (explain) \_\_\_\_\_
- (3) Lease deposit amount \$ \_\_\_\_\_
- (4) Lease assumable or assignable  Yes  No
- (5) Rent increases  Yes  No (explain) \_\_\_\_\_
- (6) Percentage rent  Yes  No (explain) \_\_\_\_\_
- (7)  Other lease terms (see attached lease agreement)

**B. FACILITY:**

- (1) Building size (approximate) \_\_\_\_\_ sq.ft. Lot Size (approximate) \_\_\_\_\_ sq. ft.
- (2) Building type:  Freestanding,  Strip center,  In line,  In mall (name) \_\_\_\_\_
- (3)  In major shopping center (name) \_\_\_\_\_ , anchor tenant (name) \_\_\_\_\_
- (4)  Other \_\_\_\_\_
- (5) Square footage of Business location \_\_\_\_\_
- (6) Maximum occupancy (seating) of Business location \_\_\_\_\_
- (7) Parking: Total number of on-site parking spaces \_\_\_\_\_  Number specifically reserved for Business \_\_\_\_\_  
Off-site parking (explain) \_\_\_\_\_
- (8) Additional building information \_\_\_\_\_
- (9) Landlord \_\_\_\_\_ Telephone \_\_\_\_\_

- C.  **REAL PROPERTY:** (If checked) Owner owns the real property on which the Business operates.  
Proposed lease terms (explain, or  see attached) \_\_\_\_\_

**9. FINANCIAL INFORMATION FOR THE MOST RECENT YEAR-TO-DATE AND THE PRECEDING THREE YEARS:**  
or (if checked)  see attached Schedule C:

	YEAR TO DATE	YEAR	YEAR	YEAR
<b>A. Total Sales</b>	\$ _____	\$ _____	\$ _____	\$ _____
<b>B. Cost of Goods Sold</b>	\$ _____	\$ _____	\$ _____	\$ _____
<b>C. Gross Profit</b>	\$ _____	\$ _____	\$ _____	\$ _____
<b>D. Expenses</b>				
Rent	\$ _____	\$ _____	\$ _____	\$ _____
CAM* charges	\$ _____	\$ _____	\$ _____	\$ _____
Utilities	\$ _____	\$ _____	\$ _____	\$ _____
Telephone	\$ _____	\$ _____	\$ _____	\$ _____
Insurance	\$ _____	\$ _____	\$ _____	\$ _____
Repairs	\$ _____	\$ _____	\$ _____	\$ _____
Licenses and Permits	\$ _____	\$ _____	\$ _____	\$ _____
Sales tax	\$ _____	\$ _____	\$ _____	\$ _____
Supplies	\$ _____	\$ _____	\$ _____	\$ _____
Equipment rental	\$ _____	\$ _____	\$ _____	\$ _____
Accounting	\$ _____	\$ _____	\$ _____	\$ _____
Advertising	\$ _____	\$ _____	\$ _____	\$ _____
Payroll	\$ _____	\$ _____	\$ _____	\$ _____
Payroll tax	\$ _____	\$ _____	\$ _____	\$ _____
Workers compensation	\$ _____	\$ _____	\$ _____	\$ _____
Employee benefits	\$ _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____	\$ _____
<b>E. Total Expenses</b>	\$ _____	\$ _____	\$ _____	\$ _____
<b>F. Net Profit</b>	\$ _____	\$ _____	\$ _____	\$ _____

**\*Common Area Maintenance**

The copyright laws of the United States (Title 17 U.S. Code) forbid the unauthorized reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats.  
Copyright © 1998-2001, CALIFORNIA ASSOCIATION OF REALTORS®, INC. ALL RIGHTS RESERVED.

REVISION DATE 10/01  
BDS-11 (PAGE 2 of 3)

Owner acknowledges receipt of a copy of this page.  
Owner's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_  
Broker or Designee \_\_\_\_\_



Business: Le Tasty Restaurant Date: \_\_\_\_\_

**10. BUSINESS INFORMATION:**

- A. **FORM OF OWNERSHIP:**  Sole Proprietor;  Partnership;  Corporation (type:  S  C);  
 Limited Liability Company;  Other \_\_\_\_\_
- B. **SPECIAL LICENSES:** Operation of the Business requires the following licenses or permits:  
 (1)  City license \_\_\_\_\_  
 (2)  State license \_\_\_\_\_  
 (3)  ABC license (type:  41  47  48  Other \_\_\_\_\_ )  
 (4)  Other \_\_\_\_\_

**NOTICE: The transfer of some or all of the licenses required to operate the Business may be subject to regulatory approval. If any licenses are included in the purchase price, their transfer is subject to such approval, if required.**

- C. **FRANCHISE:** The Business  is  is not a franchise. Transfer of the Business must be approved by Franchisor:  Yes  No Franchisor's name: \_\_\_\_\_  
Telephone number \_\_\_\_\_ Transfer fee \$ \_\_\_\_\_

- D. **FURNITURE, FIXTURES, MACHINERY AND EQUIPMENT:**  
 (1) Approximate value of machinery ..... \$ \_\_\_\_\_  
 (2) Approximate value of furniture, fixtures and other equipment ..... \$ \_\_\_\_\_

- E. **OPERATIONS:**  
 (1) Approximate number of employees 3 Full time \_\_\_\_\_ Part time \_\_\_\_\_  
 (2) Number of days open per week 7  
 (3) Closed on \_\_\_\_\_  
 (4) Days and times open \_\_\_\_\_  
 (5) Business established 2008 Present owner since \_\_\_\_\_  
 (6) Reason for sale Uninsufficient support

- (7)  Owner operator (number of hours worked per week 2 ), or  Absentee owner.

11.  **CONSULTATION:** (If checked) Owner will consider providing a consultation period to buyer.

12. **ADDITIONAL PURCHASE TERMS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OWNER REPRESENTS THAT THE BOOKS AND RECORDS PROVIDED BY OWNER ARE THOSE MAINTAINED IN THE ORDINARY AND NORMAL COURSE OF BUSINESS**

Owner warrants that Owner has the authority to execute this Statement.

Owner Lindy Sun Date \_\_\_\_\_  
By \_\_\_\_\_ Title \_\_\_\_\_  
Telephone (510) 786-8811 Fax \_\_\_\_\_ E-mail letasty2012@gmail.com

Owner and /or assignee Date \_\_\_\_\_  
By \_\_\_\_\_ Title \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

**BUYER ACKNOWLEDGEMENT:** Buyer acknowledges receipt of a copy of the BDS for informational purposes only and not as a part of any agreement between Owner and buyer. Buyer further acknowledges that: (i) the agreement between Owner and buyer supersedes any intention expressed in the BDS and will ultimately determine which items are either included in or excluded from the sale; and (ii) Broker is not responsible for and does not guarantee that the items included or excluded in the BDS will be in the agreement.

Buyer \_\_\_\_\_ Date \_\_\_\_\_

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

This form is available for use by the entire real estate industry. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by:  
REAL ESTATE BUSINESS SERVICES, INC.  
a subsidiary of the California Association of REALTORS®  
525 South Virgil Avenue, Los Angeles, California 90020

REVISION DATE 10/01  
BDS-11 (PAGE 3 of 3)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_  
Broker or Designee \_\_\_\_\_







BUSINESS PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(C.A.R. Form BPA, Revised 4/10)

Date \_\_\_\_\_

1. OFFER:

- A. THIS IS AN OFFER FROM ... ("Buyer"),
B. THE BUSINESS TO BE ACQUIRED is known as Le Tasty Restaurant
C. THE PURCHASE PRICE offered is ... (Dollars \$ ...)
D. INVENTORY valued at approximately \$ ...
E. CLOSE OF ESCROW shall occur on ... (date) (or ... Days After Acceptance).

2. AGENCY:

- A. POTENTIALLY COMPETING BUYERS AND SELLERS: Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal.
B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:
Listing Agent ... (Print Firm Name) is the agent of (check one):
Selling Agent ... (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one):

3. PAYMENT OF PURCHASE PRICE: Buyer represents that funds will be good when deposited with Escrow Holder.

- A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ ...
(1) Buyer shall deliver deposit directly to Escrow Holder by personal check, electronic funds transfer, or Other ...
OR (2) (If checked) Buyer has given the deposit by personal check ...
B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ ...
C. LOAN(S)
(1) FIRST LOAN in the amount of \$ ...
(2) SECOND LOAN in the amount of \$ ...
D. LOAN SECURED BY BUSINESS ASSETS IN THE AMOUNT OF \$ ...

Buyer's Initials ( ) ( )

Seller's Initials ( ) ( )

The copyright laws of the United States (Title 17 U.S. Code) forbid the unauthorized reproduction of this form, or any portion thereof, by photocopy machine or any other means including facsimile or computerized formats. Copyright © 1989-2010, CALIFORNIA ASSOCIATION OF REALTORS®, INC. ALL RIGHTS RESERVED.

BPA REVISED 4/10 (PAGE 1 OF 9)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



BUSINESS PURCHASE AGREEMENT (BPA PAGE 1 OF 9)

Property Address: Oakland, CA 94612 Date: \_\_\_\_\_

E. **ADDITIONAL FINANCING TERMS:** ..... \$ \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

F. **BALANCE OF PURCHASE PRICE OR DOWNPAYMENT** in the amount of ..... \$ \_\_\_\_\_  
to be deposited with Escrow Holder within sufficient time to close escrow.

G. **PURCHASE PRICE (TOTAL):** ..... \$ \_\_\_\_\_

**CAUTION:** Obligations secured by mixed collateral (i.e., both personal and real property) are subject to complex rules and court decisions under the California Civil Code, Commercial Code and the Code of Civil Procedure. Buyer and Seller are strongly cautioned to consult legal counsel in connection with the securing and enforcement of any such obligations.

H. **VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Buyer (or Buyer's lender or loan broker pursuant to 3l(1) shall, within 7 (or  \_\_\_\_\_ ) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (If checked,  verification attached.)

I. **LOAN TERMS:**

(1) **LOAN APPLICATIONS:** Within 7 (or  \_\_\_\_\_ ) Days After Acceptance, Buyer shall Deliver to Seller a letter from lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in 3C above. (If checked,  letter attached.)

(2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Obtaining the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. Buyer's contractual obligations to obtain and provide deposit, balance of down payment and closing costs are not contingencies of this Agreement

(3) **LOAN CONTINGENCY REMOVAL:**

(i) Within 17 (or  \_\_\_\_\_ ) Days After Acceptance, Buyer shall, as specified in paragraph 25, in writing remove the loan contingency or cancel this Agreement;

OR (ii) (If checked)  the loan contingency shall remain in effect until the designated loans are funded.

J.  **ALL CASH OFFER** (If checked): Buyer shall, within 7 (or \_\_\_\_\_ ) Days After Acceptance, Deliver to Seller written verification of sufficient funds to close this transaction. (If checked,  verification attached.)

K. **BUYER STATED FINANCING:** Seller has relied on Buyer's representation of the type of financing specified (including but not limited to, as applicable, amount of down payment, contingent or non contingent loan, or all cash). If Buyer seeks alternate financing, (i) Seller has no obligation to cooperate with Buyer's efforts to obtain such financing, and (ii) Buyer shall also pursue the financing method specified in this Agreement. Buyer's failure to secure alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. **ESCROW AND TITLE:**

A. **ESCROW HOLDER:**  Buyer  Seller shall pay escrow fees \_\_\_\_\_  
Escrow Holder shall be \_\_\_\_\_

B. (1) **FORM OF OWNERSHIP:** The Business shall be owned in the form designated in Buyer's escrow instructions. THE MANNER OF TAKING TITLE AND THE FORM OF OWNERSHIP OF THE BUSINESS MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

(2) **TITLE:** Seller shall furnish to Buyer bills of sale and other instruments of transfer or assignment necessary to carry out this Agreement.

5. **CLOSING AND POSSESSION:**

A. Possession shall be delivered to Buyer at 5 PM or  \_\_\_\_\_  AM  PM, on the date of Close Of Escrow;  on \_\_\_\_\_ ; or  no later than \_\_\_\_\_ Days After Close Of Escrow. If Seller also owns the real property upon which the Business operates and transfer of title to the real property and possession of the Business do not occur at the same time, Owner and Buyer are advised to: (i) enter into a written agreement regarding possession; and (ii) consult with their insurance and legal advisors or other appropriate professional(s).

B. At Close Of Escrow, Seller assigns to Buyer any assignable warranty rights for items included in the sale and shall provide any available Copies of such warranties. Brokers cannot and will not determine the assignability of any warranties.

C. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys and/or means to operate all locks, mailboxes, security systems and alarms.

6. **ASSETS TRANSFERRED:** With the exception of cash or cash equivalents on deposit in any financial institution, and assets excluded below, Buyer is purchasing all assets of the Business, including but not limited to: inventory for sale, machinery, furniture, fixtures and other equipment, leasehold improvements, transferable government licenses and permits, customer lists, fictitious business names, trade names and trademarks, logos, copyrights and patents, signs and advertising materials, telephone and fax numbers, web sites, URL names, e-mail addresses, accounts receivable, vendor lists and catalogs, goodwill, agreements not to compete, franchise agreements, distribution rights, employee lists and information, computer and customer software, and customer deposits. All items transferred that are leased are subject to the terms of existing lease(s).

Other \_\_\_\_\_  
Excluded asset \_\_\_\_\_

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



7. **LIABILITIES TRANSFERRED:** Buyer is NOT purchasing any liabilities of the Business, EXCEPT those items checked below:

- A.  Accounts payable, per attached list.
- B.  Service, maintenance and advertising agreements, per attached list.
- C.  Other \_\_\_\_\_

8.  **INVENTORY** (If checked):

- A. Buyer's acceptance of inventory is a contingency of this Agreement. Buyer shall have the right, at Buyer's expense, within the time specified in paragraph 25, to conduct a physical inventory and, in writing, remove the contingency or cancel this Agreement.
- B. Buyer has the right to confirm the inventory within **5 (or  \_\_\_\_\_ ) Days** Prior to Close Of Escrow. The purchase price shall be adjusted to reflect the remaining inventory. The adjustment is to be added to or subtracted from the  cash down payment; or  seller financing.

9. **SELLER DISCLOSURE; BUYER INVESTIGATION:**

**Seller shall, within the time specified in paragraph 25, provide to Buyer, or to Buyer's counsel, accountant or other designated representative, the lists of items or documents, or Copies thereof, for the items checked below. For each item, as applicable, Seller shall include a statement of whether the item is owned or leased and whether Seller has any legal, proprietary interest, or intellectual property rights in, or restrictions on, the item. Buyer, within the time specified in paragraph 25, shall then investigate the items provided to Buyer and take the action specified in paragraph 25.**

- |  |   |
|--|---|
| <input type="checkbox"/> Inventory, including work in progress                             | <input type="checkbox"/> Signs and advertising materials                    |
| <input type="checkbox"/> Machinery   | <input type="checkbox"/> Telephone and fax numbers                          |
| <input type="checkbox"/> Furniture, fixtures and other equipment                           | <input type="checkbox"/> Websites, URL names and e-mail addresses           |
| <input type="checkbox"/> Other personal property   | <input type="checkbox"/> Vendor lists and catalogs                          |
| <input type="checkbox"/> Leasehold improvements  | <input type="checkbox"/> Goodwill   |
| <input type="checkbox"/> Government licenses and permits                                   | <input type="checkbox"/> Agreements not to compete                          |
| <input type="checkbox"/> Customer lists  | <input type="checkbox"/> Franchise agreements                               |
| <input type="checkbox"/> Fictitious business name statements                               | <input type="checkbox"/> Distribution rights                                |
| <input type="checkbox"/> Trade names and trademarks  | <input type="checkbox"/> Employee lists and information                     |
| <input type="checkbox"/> Logo  | <input type="checkbox"/> Computer and customer software                     |
| <input type="checkbox"/> Copyrights and patents  | <input type="checkbox"/> Customer deposits                                  |
| <input type="checkbox"/> Schedule of accounts receivable                                   | <input type="checkbox"/> Lease  |
| <input type="checkbox"/> Business appraisal  |   |
| <input type="checkbox"/> Other assets: _____   |   |
| <input type="checkbox"/> Schedule of accounts payable                                      | <input type="checkbox"/> Service, maintenance and advertising agreements    |
| <input type="checkbox"/> Other liabilities: _____  |   |
| <input type="checkbox"/> Employee estoppel certificates                                    | <input type="checkbox"/> Proposed allocation of purchase price among assets |
| <input type="checkbox"/> Sales tax returns for the years _____ to _____                    |   |
| <input type="checkbox"/> Federal and state income tax returns for the years _____ to _____ |   |
| <input type="checkbox"/> Financial statements for the years _____ to _____                 |   |
| <input type="checkbox"/> Employment withholding returns for the years _____ to _____       |   |

**SELLER REPRESENTS THAT: (i) THE BOOKS AND RECORDS THAT OWNER PROVIDES ARE THOSE MAINTAINED IN THE ORDINARY AND NORMAL COURSE OF BUSINESS; AND (ii) FEDERAL AND STATE TAX RETURNS THAT SELLER PROVIDES ARE COPIES OF THOSE FILED WITH THE APPLICABLE GOVERNMENTAL AGENCIES.**

10. **CONSULTING AND TRAINING:** Seller shall consult with Buyer to show Buyer methods used in operating the Business. Seller shall provide consulting services for a period of \_\_\_\_\_ **Days** After Close Of Escrow at no cost to Buyer, which services shall not exceed a total of \_\_\_\_\_ hours. Seller shall not be responsible for training Buyer in the basics of operating a business of the type being sold pursuant to this Agreement, but only to alert Buyer to the nuances, as determined by Seller, of operating this type of business. **NOTE TO BUYER: IF YOU ARE NOT ALREADY TRAINED IN THIS TYPE OF BUSINESS, YOU ARE STRONGLY ADVISED TO SEEK TRAINING.**

11.  **AGREEMENT NOT TO COMPETE** (If checked): As a material part of the consideration of the sale, Seller agrees not to operate or engage in, directly or indirectly, whether as a principal, agent, manager, employee, owner, member, partner, stockholder, director or officer of a corporation, trustee, consultant, or any other capacity whatsoever, any business the same as, or substantially similar to, or in competition with the Business within a radius of \_\_\_\_\_ miles from the current location of the Business (or  \_\_\_\_\_ ) for a period of \_\_\_\_\_ year(s) from the date of final transfer of the Business, so long as Buyer, or Buyer's successor-in-interest, is operating the Business in said area.

12. **LEASE (Check applicable items):** The sale is contingent upon Buyer obtaining, within **21 (or  \_\_\_\_\_ ) Days** After Acceptance, the assignment, new lease, option to extend, sublease or other lease as indicated below. Buyer shall submit an application for such lease to Seller's landlord or Seller, as applicable, within **15 (or  \_\_\_\_\_ ) Days** After Acceptance.

- A.  An assignment of Seller's existing lease.
- B.  A new lease with Seller's landlord, on terms acceptable to Buyer, to become effective concurrently with the Close Of Escrow.
- C.  An option to extend Seller's present lease for an additional \_\_\_\_\_ year(s), on terms acceptable to Buyer and Seller's landlord.
- D.  A sublease with Seller, on terms acceptable to Buyer, to become effective concurrently with the Close Of Escrow.

**Buyer and Seller are advised that such sublease may require notice to or approval of Seller's landlord.**

E.  OTHER: \_\_\_\_\_

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



1437 Franklin Street

Property Address: Oakland, CA 94612

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

13.  **PURCHASE OF REAL PROPERTY** (If checked): The sale is contingent upon Buyer's ability to purchase, concurrently with the Close Of Escrow, the real property in which the Business operates. **A separate Real Property Purchase Agreement is required (C.A.R. Form CPA).**

14. **LICENSES:**

**A. LIQUOR:** If transfer of a liquor license is included in this sale, Seller shall comply with the Alcoholic Beverage Control Act concerning such transfer. Escrow shall not close, and no funds shall be transferred to Seller, until Escrow Holder is advised by the State of California Department of Alcoholic Beverage Control that the license transfer has been approved. The costs of such transfer shall be paid \_\_\_\_\_.

**B. OTHER** (If checked): This sale is contingent upon Buyer's obtaining, prior to the Close Of Escrow, the license(s) indicated below. Buyer shall apply for such license(s) within **15** (or  \_\_\_\_\_) **Days** After Acceptance:

- 1.  City license: \_\_\_\_\_
- 2.  State license: \_\_\_\_\_
- 3.  Other: \_\_\_\_\_

15. **FRANCHISE:** If the Business is a franchise, in addition to being subject to Buyer's acceptance of the terms of franchise as provided in paragraph 9, the sale is also contingent upon Franchisor's acceptance of Buyer.

16. **SALES AND USE TAX:** Buyer shall pay any sales or use tax payable as a result of the sale under any Law and shall furnish Seller with Resale Certificates for any items bought for resale.

17. **PRORATIONS:** Personal property taxes, business taxes, rents, interest, insurance acceptable to Buyer, and prepaid deposits shall be prorated as of Close Of Escrow (or  \_\_\_\_\_).

18. **TAX CLEARANCES:** Seller shall deliver to Escrow Holder proof that city (if applicable), state and federal income tax withholdings are current. Amounts withheld but not yet payable will be transferred in escrow or credited to Buyer. Seller shall also deliver to Escrow Holder any clearance documents available from the State Board of Equalization or Employment Development Department regarding S.D.I. unemployment insurance and FICA withholdings. No funds shall be released from escrow before such delivery.

19. **NOTICES OF VIOLATIONS:** Seller represents that, to the best of Seller's knowledge, no notices of violations of federal, state or local statute(s), law(s) or regulation(s) exist, or are filed or issued, that affect the operation of the Business, including any such notices regarding the real property in which the Business is situated ("Notices"), EXCEPT: \_\_\_\_\_

\_\_\_\_\_ . If prior to Close Of Escrow, Seller receives or becomes aware of any Notices filed against or affecting the Business, Seller shall immediately notify Buyer.

20. **BULK TRANSFER:** Seller shall comply with the Bulk Sales provision of Division 6 of the Uniform Commercial Code, Bulk Transfer Section, as the law applies within the Seller's state.

21. **LIENS; ENCUMBRANCES; RESTRICTIONS:** Seller warrants that, to the best of Seller's knowledge, there are no undisclosed liens, encumbrances or restrictions upon the Business.

22. **OPERATION OF BUSINESS DURING ESCROW:** During the escrow period, Seller shall: (i) operate the Business diligently and in substantially the same manner as prior to this offer; (ii) maintain the goodwill of the Business; (iii) keep all equipment and personal property in normal working order; and \_\_\_\_\_

23. **SELLER REPRESENTATIONS:** Seller's representations and warranties set forth herein, or in any written statements delivered to Buyer, shall be true and correct at Close Of Escrow, and shall survive the transfer of ownership of the Business.

24. **OTHER TERMS AND CONDITIONS,** including attached supplements:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

25. **TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

**A. SELLER HAS:** 7 (or  \_\_\_\_\_) **Days** After Acceptance to Deliver to Buyer all reports, disclosures and information for which Seller is responsible under paragraph 9. Buyer may give Seller a Notice to Seller to Perform (C.A.R. Form NSP) if Seller has not Delivered the items within the time specified.

**B. BUYER SHALL,** within the times set forth below, take the specified action and, in writing, either remove the applicable contingency or cancel this Agreement:

(1) **BUYER HAS:** 17 (or  \_\_\_\_\_) **Days** After Acceptance to complete all buyer investigations, unless otherwise agreed in 25B(2); approve all disclosures, reports, and review of reports and other applicable information, for which Buyer is responsible or which Buyer receives from Seller; and approve all other matters affecting the Business.

(2)  (If checked) **BUYER HAS:** 30 (or  \_\_\_\_\_) **Days** After Acceptance to complete geologic, soil and environmental inspections.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Copyright © 1989-2010, CALIFORNIA ASSOCIATION OF REALTORS®, INC.

BPA REVISED 4/10 (PAGE 4 OF 9)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



(3) Within the time specified in 25B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller either (i) a removal of the applicable contingency (C.A.R. Form CR), or (ii) a cancellation (C.A.R. Form CC) of this Agreement based upon a contingency or Seller's failure to Deliver the specified items. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in 25A, then Buyer has 5 (or  \_\_\_\_\_) Days After Delivery of any such items, or the time specified in 25B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

(4) Continuation of Contingency: Even after the end of the time specified in 25B(1) and before Seller cancels this Agreement, if at all, pursuant to 25C, Buyer retains the right to either (i) in writing remove remaining contingencies, or (ii) cancel this Agreement based upon a remaining contingency or Seller's failure to Deliver the specified items. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to 25C(1).

C. SELLER RIGHT TO CANCEL:

(1) Seller right to Cancel; Buyer Contingencies: If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP) may cancel this Agreement. In such event, Seller shall authorize return of Buyer's deposit.

(2) Seller right to Cancel; Buyer Contract Obligations: Seller, after first Delivering to Buyer a NBP may cancel this Agreement for any of the following reasons: (i) if Buyer fails to deposit funds as required by 3A or 3B; (ii) if the funds deposited pursuant to 3A or 3B are not good when deposited; (iii) if Buyer fails to Deliver a letter as required by 3I; (iv) if Buyer fails to Deliver verification as required by 3H or 3J; or (v) if Seller reasonably disapproves of the verification provided by 3H or 3J. In such event, Seller shall authorize return of Buyer's deposit.

(3) Notice To Buyer To Perform: The NBP shall: (i) be in writing; (ii) be signed by Seller; and (iii) give Buyer at least 2 (or  \_\_\_\_\_) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for Buyer to remove a contingency or cancel this Agreement or meet an obligation specified in 25C(2).

D. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in a separate written agreement between Buyer and Seller, Buyer shall with regard to that contingency or cancellation right conclusively be deemed to have: (i) completed all buyer investigations and review of reports and other applicable information and disclosures; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for repairs or corrections or for inability to obtain financing.

E. CLOSE OF ESCROW: Before Seller or Buyer may cancel this Agreement for failure of the other party to close escrow pursuant to this Agreement, Seller or Buyer must first give the other a demand to close escrow (C.A.R. Form DCE).

F. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, Buyer and Seller agree to Sign mutual instructions to cancel the sale and escrow and release deposits, less fees and costs, to the party entitled to the funds. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Release of funds will require mutual Signed release instructions from Buyer and Seller, judicial decision or arbitration award.

26. ENVIRONMENTAL HAZARD CONSULTATION: Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Business; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Business.

27. AMERICANS WITH DISABILITIES ACT: The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. Residential properties are not typically covered by the ADA, but may be governed by its provisions if used for certain purposes. The ADA can require, among other things, that buildings be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Business is not in compliance. A real estate broker does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact an attorney, contractor, architect, engineer or other qualified professional of Buyer or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.

28. SELECTION OF SERVICE PROVIDERS: Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

29. MULTIPLE LISTING SERVICE ("MLS"): Brokers are authorized to report to the MLS or property data system ("PDS") a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS or PDS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS or PDS.

30. EQUAL OPPORTUNITY: The Business is sold in compliance with federal, state, and local anti-discrimination Laws.

31. ATTORNEY FEES: In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 42A.

32. ASSIGNMENT: Buyer shall not assign all or any part of Buyer's interests in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld, unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement.

33. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.

34. COPIES: Seller and Buyer each represent that Copies of all reports, documents, certificates, approvals, and other documents that are furnished to the other are true, correct and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.

35. RISK OF LOSS: Any risk of loss to the Business shall be borne by Seller until ownership has been transferred to Buyer.

36. DAMAGE OR DESTRUCTION: If the Business or real property in which the Business is situated is destroyed or materially damaged prior to Close Of Escrow, then, on demand of Buyer, any deposit made by Buyer shall be returned to Buyer and this Agreement shall terminate.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )



37. **INDEMNIFICATION:** Unless otherwise expressly provided herein, upon completion of sale, Seller agrees to indemnify, defend and hold Buyer harmless from all liability resulting from loss, damage or injury to persons or property in any manner arising out of or incident to the operation of the Business prior to transfer to Buyer. Buyer agrees to indemnify, defend and hold Seller harmless from all liability resulting from loss, damage or injury to persons or property in any manner arising out of or incident to the operation of the Business after transfer to Buyer.

38. **DEFINITIONS:** As used in this Agreement:

A. **"Acceptance"** means the time the offer or final counter offer is accepted in writing by a party and is delivered to and personally received by the other party or that party's authorized agent in accordance with the terms of this offer or a final counter offer.

B. **"C.A.R. Form"** means the specific form referenced or another comparable form agreed to by the parties.

C. **"Close Of Escrow"** means the date the grant deed, or other evidence of transfer of title, is recorded.

D. **"Copy"** means copy by any means including photocopy, NCR, facsimile and electronic.

E. **"Days"** means calendar days. However, after Acceptance, the last **Day** for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.

F. **"Days After"** means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.

G. **"Days Prior"** means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.

H. **"Deliver", "Delivered" or "Delivery",** regardless of the method used (i.e., messenger, mail, email, fax, other), means and shall be effective upon (i) personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in paragraph D of the section titled Real Estate Brokers on page 9;

OR (ii) if checked,  per the attached addendum (C.A.R. Form RDN).

I. **"Electronic Copy" or "Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other party.

J. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.

K. **"Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.

L. **"Signed"** means either a handwritten or electronic signature on an original document, Copy or any counterpart.

39. **BROKERAGE:**

A. **BROKER COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.

B. **SCOPE OF BROKER DUTY:** Buyer and Seller acknowledge and agree that: (i) Brokers do not decide what price Buyer should pay or Seller should accept; (ii) Brokers do not guarantee the performance or repairs of others who have provided services or products to Buyer or Seller; and (iii) they will seek legal, tax, insurance, title and other assistance from appropriate professionals.

C. **BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Business, including, but not limited to, inquiries, introductions, consultations, and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representation in this paragraph.

40. **JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**

A. **The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder,** which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: 1, 3, 4, 8B,13, 14A, 17, 18, 20, 24, 25F, 38, 39A, 40, 44, 47, and paragraph D of the section titled Real Estate Brokers on page 9. If a Copy of the separate compensation agreement(s) provided for in paragraph 39A, or paragraph D of the section titled Real Estate Brokers on page 9 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out of Buyer's or Seller's funds, or both, as applicable, the respective Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not specifically referenced in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provisions upon Escrow Holder's request. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow.

B. A Copy of this Agreement shall be delivered to Escrow Holder within **3** business days after Acceptance (or  \_\_\_\_\_). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement.

C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 39A and paragraph D of the section titled Real Estate Brokers on page 9. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 39A, respectively, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement. Escrow Holder shall immediately

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )



Property Address: 1437 Franklin Street  
Oakland, CA 94612

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

notify Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if either Buyer or Seller instruct Escrow Holder to cancel escrow.

D. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 2 business days after mutual execution of the amendment.

41. **LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement.**

Buyer's Initials \_\_\_\_\_ / \_\_\_\_\_ Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

42. **DISPUTE RESOLUTION:**

A. **MEDIATION:** Buyer and Seller agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. **Buyer and Seller also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker.** Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. **Exclusions from this mediation agreement are specified in paragraph 42C.**

B. **ARBITRATION OF DISPUTES:**

Buyer and Seller agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. Buyer and Seller also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 42C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials \_\_\_\_\_ / \_\_\_\_\_ Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

C. **ADDITIONAL MEDIATION AND ARBITRATION TERMS:**

(1) **EXCLUSIONS:** The following matters shall be excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction or other provisional remedies, shall not constitute a waiver or violation of the mediation and arbitration provisions.

(2) **BROKERS:** Brokers shall not be obligated or compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.

43. **TERMS AND CONDITIONS OF OFFER:**

This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all parties initial such paragraph(s), a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Copyright © 1989-2010, CALIFORNIA ASSOCIATION OF REALTORS®, INC.

BPA REVISED 4/10 (PAGE 7 OF 9)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



1437 Franklin Street

Property Address: Oakland, CA 94612 Date: \_\_\_\_\_

**44. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**

**45. AUTHORITY:** Any person(s) signing this Agreement represent(s) that such person(s) has full power and authority to bind that person's principal, and that the designated Buyer and Seller have full authority to enter into and perform this Agreement. Entering into this Agreement and the completion of the obligations pursuant to this Agreement, do not violate any Articles of Incorporation, Articles of Organization, Bylaws, Operating Agreement, Partnership Agreement or other document governing the activity of either Buyer or Seller.

**46. EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit shall be returned, unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by \_\_\_\_\_, who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer, (**OR**, if checked  by  AM  PM) on \_\_\_\_\_ (date). Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the above confirmation of agency relationships.

Buyer \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Name Printed \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Name Printed \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Notice Address, If Different \_\_\_\_\_

Additional Signature Addendum attached (C.A.R. Form ASA).

**47. ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of this Business, or has the authority to execute this Agreement. Seller accepts the above offer, agrees to sell the Business on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Broker to deliver a Signed Copy to Buyer.

(If checked) **SUBJECT TO THE ATTACHED COUNTER OFFER (C.A.R. Form CO) DATED** \_\_\_\_\_ .

Seller Lindy Sun \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Name Printed \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone (510) 786-8811 Fax \_\_\_\_\_ E-mail letasty2012@gmail.com

Seller and /or assignee \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Name Printed \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Notice Address, If Different \_\_\_\_\_

Additional Signature Addendum attached (C.A.R. Form ASA).

( \_\_\_\_\_ / \_\_\_\_\_ ) **Confirmation of Acceptance:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on \_\_\_\_\_ (date) at \_\_\_\_\_  AM  PM. **A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.**

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Copyright © 1989-2010, CALIFORNIA ASSOCIATION OF REALTORS®, INC.

**BPA REVISED 4/10 (PAGE 8 OF 9)**

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





Property Address: 1437 Franklin Street  
Oakland, CA 94612 Date: \_\_\_\_\_

**REAL ESTATE BROKERS:**  
**A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.**  
**B. Agency relationships are confirmed as stated in paragraph 2 above.**  
**C.** If specified in paragraph 3A(2), Agent who submitted offer for Buyer acknowledges receipt of deposit.  
**D. COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (**Selling Firm**) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow: **(i)** the amount specified in the MLS or PDS, provided Cooperating Broker is a Participant of the MLS or PDS in which the Business is offered for sale or a reciprocal MLS or PDS; or **(ii)**  (if checked) the amount specified in a separate written agreement (C.A.R. Form CBC) between Listing Broker and Cooperating Broker. Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) \_\_\_\_\_  
By \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Real Estate Broker (Listing Firm) \_\_\_\_\_  
By \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

**ESCROW HOLDER ACKNOWLEDGMENT:**  
Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked,  a deposit in the amount of \$ \_\_\_\_\_), counter offer numbered \_\_\_\_\_,  Seller's Statement of Information and  Other \_\_\_\_\_, and agrees to act as Escrow Holder subject to paragraph 24 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions if any.  
Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is \_\_\_\_\_.  
Escrow Holder \_\_\_\_\_ Escrow # \_\_\_\_\_  
By \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_  
Phone/Fax/E-mail \_\_\_\_\_  
Escrow Holder is licensed by the California Department of  Corporations,  Insurance,  Real Estate. License # \_\_\_\_\_

**PRESENTATION OF OFFER:** ( \_\_\_\_\_ ) Listing Broker presented this offer to Seller on \_\_\_\_\_ (date).  
Broker or Designee Initials

**REJECTION OF OFFER:** ( \_\_\_\_\_ ) ( \_\_\_\_\_ ) No counter offer is being made. This offer was rejected by Seller on \_\_\_\_\_ (date).  
Seller's Initials

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.  
This form is available for use by the entire real estate industry. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

**R** **I**  
**E** **N**  
**S** **C**  
Published and Distributed by:  
REAL ESTATE BUSINESS SERVICES, INC.  
a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®  
525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





**COMMERCIAL CONFIDENTIALITY AND NON-DISCLOSURE  
AGREEMENT  
(C.A.R. Form CML-CNDA, 04/09)**

This Commercial CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Confidentiality Agreement") is given in connection with or in contemplation of that certain:  Commercial Property Purchase Agreement,  Business Purchase Agreement,  Residential Income Property Purchase Agreement,  Other \_\_\_\_\_ dated \_\_\_\_\_ ("Agreement"), in which

\_\_\_\_\_ is referred to as ("Buyer") and Lindy Sun, and /or assignee is referred to as ("Seller") regarding:

(Check All that Apply):

that certain real property owned by Seller and to be sold to Buyer, commonly known as \_\_\_\_\_, the ("Property").

AND/OR

a business owned by Seller and to be sold to Buyer, described as 1437 Franklin Street, Oakland, CA 94612, the ("Business").

AND/OR

that certain real property, together with any improvements located thereon, leased by Seller, and to be assigned to Buyer, pursuant to that certain lease dated, \_\_\_\_\_, ("Lease") by and between Seller, as Tenant, and \_\_\_\_\_, as Landlord ("Leased Property"). For purposes of this Confidentiality Agreement, the Leased Property shall be included within the definition of Property.

The implementation of the applicable Agreement as it relates to the Property or the Business, as the case may be, shall be referred to as the ("Transaction").

**1. DELIVERY OF CONFIDENTIAL INFORMATION:**

**A.**  Seller, OR  Buyer is the Delivering Party or, if checked  : Both Seller and Buyer shall each be delivering Information to the other party. Consequently, each of Seller and Buyer shall be a Delivering Party and a Receiving Party as to that Information delivered or received by Seller or Buyer, as the case may be. This Confidentiality Agreement shall be mutual in the effect of the respective rights and obligations of the Delivering Party and the Receiving Party, as such rights and obligations specifically relate to the Seller and the Buyer in its role as a Delivering Party or a Receiving Party, as the case may be.

**B.** Delivering Party has furnished, is furnishing, or will be furnishing, either directly or indirectly through a representative, to the other party ("Receiving Party") or to the Receiving Party's representatives, including without limitation, any agents, brokers, professional advisors, consultants, affiliates, officers, directors, partners, shareholders, accountants, legal counsel and employees (collectively, "Representatives") of the Receiving Party, certain information, in whatever form or by whatever mode or medium whatsoever, about the Delivering Party, the Delivering Party's Property or the Delivering Party's Business, which, at the time of such delivery, was, is or will be identified as confidential information because it is either nonpublic, confidential or proprietary in nature. Such information provided, whether provided in documentary, oral, visual, electronic, tangible or any other form, including without limitation, in the form of designs, sketches, drawings, photographs, videotapes, specifications, blueprints, plans, studies, findings, computer printouts, computer disks, documents, memoranda, reports, notebooks, manuals, notes, contracts, correspondence, files, lists and other records, and the like, and all photocopies or other reproductions, together with any analysis, compilations, forecasts, studies, reports or other documents or information prepared, developed or concluded by the Receiving Party or its Representatives, which contains, is derived from, or otherwise reflects such information about the Property or the Business, as the case may be ("Work Product"), is hereinafter collectively referred to as the ("Information"). Non-tangible information will be Information only to the extent that it is first disclosed in non-tangible form and is orally identified at the time of disclosure as confidential information and is summarized in tangible form conspicuously marked as "confidential information" and delivered to Receiving Party in such tangible form within thirty (30) days of the original disclosure. The parties acknowledge that the unauthorized disclosure to or use by any person or organization of the existence and content of the Information by Receiving Party would be detrimental and damaging to the Delivering Party. Accordingly, the parties wish to ensure that the Information provided by the Delivering Party will only be disclosed or used in strict accordance with the provisions of this Confidentiality Agreement.

**2. DISCLOSURES INCLUDED AND NOT INCLUDED IN INFORMATION:**

**A. INCLUDED:** Any Information disclosed, provided or delivered by Delivering Party to Receiving Party or its Representatives relating to the Transaction prior to the date of this Confidentiality Agreement shall also be subject to and governed by the terms of this Confidentiality Agreement to the same extent as any Information disclosed, provided or delivered after execution of this Confidentiality Agreement.

The copyright laws of the United States (Title 17 U.S. Code) forbid the unauthorized reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. Copyright © 2009, CALIFORNIA ASSOCIATION OF REALTORS®, INC. ALL RIGHTS RESERVED.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )  
Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



**B. NOT INCLUDED:** The term "Information" shall not include any Information which:

- (1) The Receiving Party can show, by suitable written documentation, was already in its possession prior to receipt of such Information by Delivering Party;
- (2) The Receiving Party can show is or becomes public information or is otherwise generally available to the public, other than as a result of a disclosure by the Receiving Party or its Representatives;
- (3) The Receiving Party can show becomes or became available to the Receiving Party on a non-confidential basis from a source lawfully in possession of such Information (other than the Delivering Party or a Representative of the Delivery Party) which is not, to the knowledge of the Receiving Party, in breach of any agreement or prohibited from disclosing such Information to Receiving Party by a legal, contractual or fiduciary obligation to the Delivering Party; OR
- (4) Receiving party can show was independently developed by the Receiving Party entirely without reference to or under any further investigation of the Information.

**3. NO OBLIGATION TO EFFECT POTENTIAL TRANSACTION:** Except for the provisions of this Confidentiality Agreement, which shall be binding upon full and due execution hereof, neither party shall be committed in any way with respect to the Property or the Business, unless and until a Transaction is entered into, and nothing provided herein shall be construed to imply or require that any agreements with respect to such a Transaction be executed.

**4. OBLIGATIONS REGARDING THE INFORMATION:** In consideration of being furnished with the Information, the Receiving Party expressly agrees that:

**A. NO REPRESENTATION OR WARRANTIES:** The Receiving Party agrees that it will use its own independent judgment in assessing the Information, and understands and acknowledges that the Delivering Party is not making any representations or warranties, of any kind whatsoever, express or implied, oral or written, as to the truth, accuracy or completeness of the Information, all such representations and warranties being hereby expressly disclaimed. The Receiving Party agrees that the Delivering Party and its Representatives, shall have no liability to the Receiving Party or to any other entity resulting from the use of, or reliance upon, the Information by any person or entity.

**B. MAINTAINING CONFIDENTIALITY:** The Information shall be kept confidential in perpetuity, and in strict accordance with the provisions of this Confidentiality Agreement. The Receiving Party shall take all reasonable precautions to prevent the disclosure of the Information to any third party, without the prior written consent of the Delivering Party. The Receiving Party and its Representatives, shall not, without the prior written consent of the Delivering Party, (except as such disclosure is required by law, regulation, government regulatory authority, court order or other legal process, and then only strictly pursuant to the terms of this Confidentiality Agreement), disclose the Information in any manner whatsoever, in whole or in part. The Receiving Party and its Representatives, shall not use the Information, or otherwise appropriate the Information for its own benefit, either directly or indirectly, for any purpose other than the consideration, contemplation and evaluation of the Transaction. The Receiving Party agrees to reveal the Information only to those Representatives who need to know the Information for the purpose of the consideration, contemplation and evaluation of the Transaction and who are informed by the Receiving Party of the confidential nature of the Information. The Receiving Party shall be responsible for any breach of this Confidentiality Agreement by its Representatives.

**C. WRITTEN RECORDS:** The Receiving Party shall keep a record of the written Information furnished to the Receiving Party and of the location of all such Information, including all photocopies or other reproductions, a copy of which record shall be made available to the Delivering Party upon written request.

**D. RETURN OF INFORMATION:** All copies of the Information, in documentary or other tangible form, shall be returned to the Delivering Party immediately upon the earlier to occur of: (i) the abandonment of the Transaction; or (ii) the written request of the Delivering Party; provided, however, that the Receiving Party may retain the Receiving Party's Work Product, and any Information which it is required to retain pursuant to law, regulation, government regulatory authority, court order or legal process, as determined by the reasonably supported written opinion of its legal counsel, an original of which legal opinion shall be delivered to the Delivering Party ("Retained Information"). The Retained Information shall be held by the Receiving Party, and kept confidential in strict accordance with the terms of this Confidentiality Agreement, or shall be destroyed, unless the Receiving Party is prohibited from destroying it. Any such destruction shall be confirmed in writing to the Delivering Party upon the Delivering Party's request. Any and all oral Information shall continue to be held in strict accordance with this Confidentiality Agreement.

**E. COMPELLED DISCLOSURE:** In the event that the Receiving Party or anyone to whom the Receiving Party transmits the Information pursuant to this Confidentiality Agreement, becomes legally compelled to disclose any of the Information, the Receiving Party shall provide the Delivering Party with prompt Notice so that the Delivering Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Confidentiality Agreement. In the event that such protective order or other remedy is not sought, or if sought, is not obtained, or that the Delivering Party waives in writing compliance with the provisions of this Confidentiality Agreement, the Receiving Party shall furnish only that portion of the Information which the Receiving Party is compelled to disclose or else stand potentially liable for contempt or suffer any other censure or penalty, as determined by the reasonably supported written legal opinion of its legal counsel, an original of which legal opinion shall be delivered to the Delivering Party, and the Receiving Party shall exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded the Information required to be disclosed.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )  
Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



**F. PROHIBITED CONTACTS:** Absent the Delivering Party's prior written consent, unless and until the Transaction is consummated, if ever, neither the Receiving Party nor its Representatives shall make (other than to its Representatives on a need to know basis, and except as may be required under Paragraph 4E): (i) any statement, or any public announcement, or any release to trade publications or to the press; (ii) any statement to any competitor, customer, supplier or any other third party; (iii) contact with or otherwise engage in any discussions or other contacts or communications with any person or entity, including without limitation any state or federal governmental entity or agency; which statements, contacts or communications are about the Transaction or Delivering Party or its Property or Business, or are intended to or likely would result in a person who or entity which has had contractual or business relations with the Delivering Party ceasing or refusing to do any further business with the Delivering Party ("Prohibited Contacts"). Notwithstanding the foregoing, the prohibited Contacts shall not include discussions or other contacts or communications, which do not directly or indirectly reveal the Information and are not directly or indirectly based upon the Information.

**5. INDEMNIFICATION:**

**A. CLAIMS:** Each of the Seller and the Buyer ("Indemnifying Party") shall indemnify, defend, with counsel reasonably satisfactory to the other party, and hold the other party free, clear and harmless from and against any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, obligations, controversies, debts, fees, penalties, costs, expenses, damages, losses, taxes, fines, injuries, judgments, orders and liabilities, (including, without limitation, damage to property and injuries to or death of any person, reasonable attorneys' fees and expenses, consultants' fees and expenses, expert witness fees and expenses and court fees and costs), of whatsoever character, whether known or unknown, suspected or unsuspected (collectively, "Claims") arising out of or related to the failure by the Indemnifying Party or its Representatives to strictly and fully comply with the provisions of this Confidentiality Agreement.

**B. INDEMNIFIED PARTIES:** The following parties shall be referred to herein, collectively, as the ("Indemnified Parties") and, each individually, as an ("Indemnified Party"): (a) where the Indemnifying Party is the Seller, then the Buyer and the Buyer's Representatives; and (b) where the Indemnifying Party is the Buyer, then the Seller and the Seller's Representatives.

**C. PROCEDURE GOVERNING CLAIMS:** The following obligations are imposed upon each Indemnified Party:

(1) **NOTICE OF CLAIM:** Give prompt, Notice to the Indemnifying Party of any Claim, suit or proceeding for Claims of which an Indemnified Party becomes aware, provided that such Indemnified Party's failure to give prompt Notice shall not relieve the Indemnifying Party from its obligations hereunder; and

(2) **SETTLEMENTS OF CLAIMS:** Refrain from entering into any settlements without the Indemnifying Party's prior written consent, which consent shall not be unreasonably withheld or delayed.

**D. COUNSEL:** Each Indemnified Party shall have the right to be represented by additional advisory counsel of its own selection; provided, however, that such representation is at each Indemnified Party's own expense. If any Claim arises as to which the indemnity provided for in Paragraph 5 applies, and the Indemnifying Party fails to assume, within thirty (30) days after being notified in writing of the Claim, the defense of the Indemnified Party, the Indemnified Party may contest and settle the Claim, at the Indemnifying Party's expense, using counsel selected by such Indemnified Party; provided, however, if the Indemnifying Party fails to provide a defense within thirty (30) days after such written Notice, but subsequently takes diligent steps to provide such a defense, then the Indemnified Party agrees to permit the Indemnifying Party to assume the defense, so long as the assumption does not prejudice the Indemnified Party's position in the proceeding and, concurrently with such assumption, the Indemnifying Party shall reimburse each and every Indemnified Party for all reasonable costs and expenses theretofore incurred by them in connection with such proceeding.

**E. NON-PAYMENT:** Any amount to which an Indemnified Party is entitled hereunder which is not paid by the Indemnifying Party within ten (10) days after written demand from the Indemnified Party (the "Default Date"), shall bear interest at ten percent (10%) per annum, or such lesser amount as shall be required by law, for each day from the Default Date until payment in full thereof (after, as well as before, judgment).

**F. THIRD PARTY BENEFICIARIES:** Those parties comprising the Indemnified Parties who are not signatories to this Confidentiality Agreement shall be deemed third party beneficiaries hereof, but their signatures or consent shall not be required for any modification of this Confidentiality Agreement.

**6. MISCELLANEOUS:**

**A. ABSENCE OF LICENSE:** The provisions of this Confidentiality Agreement shall not be deemed by implication or otherwise to grant or convey to Receiving Party or its Representatives, any license or similar ownership right, title or interest in and to any Information.

**B. NOTICES:** Any notice or communication required or permitted by this Confidentiality Agreement ("Notice") shall be deemed sufficiently given if it is given in writing addressed as provided in the Notice information on the signature pages, and shall be effective upon the earlier of when it is actually received by the party to whom it is directed, or when the period set forth below expires (whether or not it is actually received):

(1) If delivered personally, when it is delivered;

(2) If transmitted by facsimile transmission ("Fax"), then, provided the party immediately sends a confirmation copy by first class mail, upon: (i) transmission to the party's Fax number set forth below, with the party's name and address set forth below clearly shown on the page first transmitted, and (ii) receipt by the transmitting party of written confirmation of successful transmission, which confirmation may be produced by the transmitting party's equipment; or

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



(3) If deposited with the U.S. Mail, post prepaid, as registered or certified mail and addressed to the party to receive it as set forth below, seven (7) days after such deposit;

(4) If sent by recognized delivery service (e.g., Federal Express) addressed to the party at the address set forth below, upon delivery or refusal of delivery, as evidenced by such delivery service's records. Each party may change its Notice information, by giving Notice of the change to the other parties as provided for herein, and the new Notice information shall become effective as provided above.

**C. CUMULATIVE REMEDIES:** The rights and remedies of the parties as provided in this Confidentiality Agreement shall be cumulative and not alternative and are in no way intended to limit or waive, but are in addition to, any other rights or remedies available under applicable law or otherwise.

**D. INJUNCTIVE RELIEF:** The parties acknowledge that if a party should default in any of its obligations under this Confidentiality Agreement, it would be impracticable to measure the resulting damages to the aggrieved party and it may not be possible to adequately compensate the aggrieved party for the resulting injury by means or monetary damages. Accordingly, without prejudice to the right to seek and recover monetary damages, the aggrieved party shall be entitled to seek and obtain specific performance of this Confidentiality Agreement or other injunctive relief, and the parties each waive any defense that a remedy only in damages would be adequate and any requirement for the aggrieved party to post any bond or other security in order to obtain such relief.

**E. WAIVER:** Any party may in writing waive any provision of this Confidentiality Agreement to the extent such provision is for the benefit of the waiving party. No waiver by any party of a breach of any provision of this Confidentiality Agreement shall be construed as a waiver of any subsequent or different breach, and no forbearance by a party to seek a remedy for noncompliance or breach by another party shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.

**F. COUNTERPARTS:** This Confidentiality Agreement may be executed in one or more separate counterparts, each of which shall be deemed an original instrument, but all of which, taken together shall constitute one and the same entire agreement.

**G. APPLICABLE LAW:** The Confidentiality Agreement shall be construed in accordance with the laws of the State of California.

**H. ENFORCEABILITY:** It is the intention of the parties that the provisions of this Confidentiality Agreement shall be enforced to the maximum extent possible. Accordingly, if any of the provisions of this Confidentiality Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such provisions shall be reformed by the court and enforced to the maximum extent possible. The invalidity or unenforceability of any particular provision of this Confidentiality Agreement shall not affect the validity or enforceability of any other provisions of this Confidentiality Agreement.

**I. ATTORNEYS' FEES:** In the event that any party hereto brings a judicial action or proceeding for a declaration of the rights of the parties under this Confidentiality Agreement, for injunctive relief, for an alleged breach or default, or for any other action related to the prosecution or defense of any claim, dispute or controversy between the parties arising out of this Confidentiality Agreement or the transactions contemplated hereby, whether or not suit is filed or prosecuted to final judgment, the prevailing party shall be entitled to reasonable attorneys' fees and costs, in addition to any other court costs incurred and any other damages or relief awarded.

**J. AMENDMENTS:** No amendment, change or modification of this Confidentiality Agreement shall be valid, unless it is in writing, is signed by all of the parties hereto, and expressly states that an amendment, change or modification of this Confidentiality Agreement is being made.

**K. ASSIGNMENT:** This Confidentiality Agreement is not assignable, except with the prior consent of the Delivering Party(ies).

**L. CONSENTS AND APPROVALS:** Unless expressly provided otherwise, wherever in this Confidentiality Agreement the consent or approval of a party is required, such consent or approval must be in writing, and it may be given or withheld in the sole and absolute discretion of such party.

**M. SUCCESSORS AND ASSIGNS:** Subject to the limitation set forth in Paragraph 6K above, this Confidentiality Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**7. ENVIRONMENTAL DOCUMENTATION AND ISSUES:**

UNLESS THE BOX BELOW IS CHECKED AND THE ENVIRONMENTAL ISSUES ADDENDUM (C.A.R. FORM EIA) IS ATTACHED HERETO, this Confidentiality Agreement does not address any environmental reports, documentation or information, nor does it confer any right in the Receiving Party to cause to be done any environmental assessments, testing or investigations of any kind or character regarding the Property or the Business, nor does it confer any right in the Receiving Party to access the Property or any Leased Property upon which the Business is conducted, for the purpose of collecting any environmental information or conducting any environmental investigations.

AN ENVIRONMENTAL ISSUES ADDENDUM (C.A.R. Form EIA) IS ATTACHED TO AND MADE PART OF THIS CONFIDENTIALITY AGREEMENT.

**8. ENTIRE AGREEMENT:**

This Confidentiality Agreement, together with the Environmental Issues Addendum, if attached, is intended to be the entire and complete understanding and agreement of the parties with respect to the subject matter of this Confidentiality Agreement, and any and all other prior agreements, understandings, discussions, negotiations or representations and warranties between the parties hereto, whether oral or written, expressed or implied, are hereby terminated, superseded and cancelled in their entirety, and are of no further force or effect.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )  
Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



**THIS CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT HAS SIGNIFICANT LEGAL CONSEQUENCES. BROKERS ARE NOT ATTORNEYS AND DO NOT PROVIDE LEGAL ADVICE. PRIOR TO SIGNING BELOW, EACH PARTY SHOULD SEEK THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE CONSEQUENCES OF THIS CONFIDENTIALITY AGREEMENT.**

**EACH PARTY ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF LEGAL COUNSEL PRIOR TO EXECUTION OF THIS CONFIDENTIALITY AGREEMENT AND HAS EITHER DONE SO OR HAS DECIDED NOT TO DO SO.**

**THIS CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT is executed as of \_\_\_\_\_ .**

SELLER:

If Seller is an individual:

Seller: \_\_\_\_\_

Seller: \_\_\_\_\_

OR,  If Seller is an entity:

\_\_\_\_\_ (Name of Entity)

a \_\_\_\_\_ (Type of Entity)

By: \_\_\_\_\_ (Signature)

Name: \_\_\_\_\_ (Name)

Its: \_\_\_\_\_ (Title)

By: \_\_\_\_\_ (Signature)

Name: \_\_\_\_\_ (Name)

Its: \_\_\_\_\_ (Title)

Notice Information for Seller:

Address:

\_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

BUYER:

If Buyer is an individual:

Buyer: \_\_\_\_\_

Buyer: \_\_\_\_\_

OR,  If Buyer is an entity:

\_\_\_\_\_ (Name of Entity)

a \_\_\_\_\_ (Type of Entity)

By: \_\_\_\_\_ (Signature)

Name: \_\_\_\_\_ (Name)

Its: \_\_\_\_\_ (Title)

By: \_\_\_\_\_ (Signature)

Name: \_\_\_\_\_ (Name)

Its: \_\_\_\_\_ (Title)



Notice Information for Buyer:

Address:

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

LISTING AGENT:

Listing Agent: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_ DRE License Number: \_\_\_\_\_

Notice Information for Listing Agent:

Address:

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

SELLING AGENT:

Selling Agent: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_ DRE License Number: \_\_\_\_\_

Notice Information for Selling Agent:

Address:

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

This form is available for use by the entire real estate industry. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.



Published and Distributed by:  
REAL ESTATE BUSINESS SERVICES, INC.  
a subsidiary of the California Association of REALTORS®  
525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

