

Date: 6/20/2019 - BizBen Posting: #236803 - Yoga Studio - Well Established In Sacramento County

Contact: Darrin Davenport at 866-802-0508 if you have any questions about this NDA or posting.

Instructions: Complete all the information below before emailing it back to: olivia@darrindavenport.com.

Your email subject to Darrin Davenport should read: NDA For Your Yoga Studio - Well Established In Sacramento County.

Your Name: \_\_\_\_\_ Your Phone: \_\_\_\_\_ Your Email: \_\_\_\_\_

## **BUYER'S ACKNOWLEDGEMENT OF INTRODUCTION AND CONFIDENTIALITY AGREEMENT**

The undersigned Buyer, individually and on behalf of any affiliated prospective buyer, acknowledges being first introduced to Business inquired about ("Business") by Broker or its agent Common Ground Business Brokers BRE 1224602 and requests Confidential information about the Business. Such Confidential Information shall be provided to Buyer for the sole purpose of evaluating the possible purchase by Buyer of all or part of the Business. As used in this agreement ("Agreement"), the term Buyer ("Buyer") applies to the undersigned and any partnership, corporation, individual or other entity with which the undersigned is affiliated. Buyer agrees as follows:

- 1. NON-DISCLOSURE OF INFORMATION:** Buyer acknowledges that the owner of the Business ("Seller") desires to maintain the confidentiality of the information disclosed. Buyer agrees not to disclose or permit access to any Confidential Information, without the prior written consent of Seller, to anyone other than Buyer's legal counsel, accountants, lenders or other agents or advisors to whom disclosure or access is necessary for Buyer to evaluate the Business. Disclosure of Confidential Information shall be made to these parties only in connection with the potential acquisition of the Business, and then only if these parties understand and agree to maintain the confidentiality of such Confidential Information. Buyer shall be responsible for any breach of this Agreement by these parties, and neither Buyer nor these parties shall use or permit the use of Confidential Information in any manner whatsoever, except as may be required for Buyer to evaluate the Business or as may be required by legal process. If the Buyer does not purchase the Business, Buyer, at the close of negotiations, will destroy or return to Broker (at Seller's direction) all information provided to Buyer and will not retain any copy, reproduction or record thereof.
- 2. DEFINITION OF "CONFIDENTIAL INFORMATION":** The term "Confidential Information" shall mean all information including the fact that the Business is for sale, all financial, production, marketing and pricing information, business methods, business manuals, manufacturing procedures, correspondence, processes, data, contracts, customer lists, employee lists and any other information whether written, oral, or otherwise made known to Buyer: (a) from any inspection, examination or other review of the books, records, assets, liabilities, processes or production methods of Seller; (b) from communication with Seller or Seller's broker, directors, officers, employees, agents, suppliers, customers or representatives; (c) during visits to Seller's premises; or (d) through disclosure or discovery in any other manner. However, Confidential Information does not include any information which is readily available to the public.
- 3. BUYER'S RESPONSIBILITY AND DISCLAIMER OF BROKER'S LIABILITY:** The Brokers have received information about the Business from the Seller which may include, but is not limited to, tax returns, financial statements, equipment lists and facility leases. Based on information provided by sellers, brokers often prepare a summary description of the business which may include a cash

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flow projection, an adjusted income statement or a seller discretionary cash flow statement. Buyer understands that the Broker does not audit or verify any information given to Broker or make any warranty or representation as to its accuracy or completeness, nor in any way guarantee future business performance. Buyer is solely responsible to examine and investigate the Business, its assets, liabilities, financial statements, tax returns and any other facts which might influence Buyer's purchase decision or the price Buyer is willing to pay. Any decision by Buyer to purchase the Business shall be based solely on Buyer's own investigation and that of Buyer's legal, tax and other advisors and not that of Broker.

- 4. NON-CIRCUMVENTION AGREEMENT:** The seller has entered into an agreement providing that Seller shall pay a fee to the listing broker if, during the term of that agreement or up to twenty-four months thereafter, the Business is transferred to a buyer introduced by the listing broker or a cooperating broker. Buyer shall conduct all inquiries into and discussions about the Business solely through Broker and shall not directly contact the Seller or the Seller's representatives. Should Buyer purchase all or part of the Business, acquire any interest in, or become affiliated in any capacity with the Business without Broker's participation, or in any way interfere with Brokers' right to a fee, Buyer shall be liable to the listing broker and the cooperating broker for such fee and any other damages including reasonable attorney's fees and costs.
  
- 5. FURTHER TERMS:** Neither Buyer nor Buyer's agents will contact Seller's employees, customers, landlords, or suppliers, nor linger, or otherwise observe the Business, without Seller's consent. For three years, Buyer shall not directly or indirectly solicit for employment any employees of Seller. Broker may act as a dual agent representing both Buyer and Seller. Seller and Seller's successors are specifically intended to be beneficiaries of the duties and obligations of this Agreement and may prosecute any action at law or in equity necessary to enforce its terms and conditions as though a party hereto. This Agreement can only be modified in writing, signed by both Broker and Buyer. Waiver of any breach of this Agreement shall not be a waiver of any subsequent breach. This Agreement supersedes all prior understandings or agreements between the parties with respect to its subject matter. This Agreement shall be construed under and governed by the laws of the State of California. The venue for any action instituted to enforce any terms of the Agreement shall be in the county in which the office of the listing broker is located. This Agreement may be signed in counterparts and faxed and electronic signatures may be considered as originals. If Buyer is a corporation, partnership or other such entity, the undersigned executes this Agreement on behalf of Buyer and warrants that he/she is duly authorized to do so. Buyer acknowledges receipt of a fully completed copy of this Agreement.

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## AGENCY DISCLOSURE

Under California law, a broker can be the agent of a seller or buyer, or both the seller and buyer. Below is a portion of California Civil Code section 2079.16, which explains concepts and definitions concerning the relationship between a transaction requiring the use of the form prescribed by that Code section, the information provided is completely applicable to the business sale context as well, and you are requested to read it carefully and acknowledge that you have been advised of its contents.

Excerpt from CALIFORNIA CIVIL CODE § 2079.16

SELLER'S AGENT: A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT: A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

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AGENT REPRESENTING BOTH SELLER AND BUYER: A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

**How Dual Agency Arises:** When a broker lists a business for sale, the broker becomes an “agent” representing the seller. The same broker also often works with prospective buyers, and by the nature of that relationship, becomes a buyer’s agent as well: this is called “dual agency”. Conversely, a buyer’s agent could introduce his or her client to a seller and become a dual agent in that transaction. When a buyer and seller are represented by different agents of the same brokerage firm, this is also a dual agency because the broker who employs each of the agents is really the agent for both parties.

**Full Disclosure:** Under California law, the buyer and the seller of a business are each required to fully and fairly disclose to the other, any and all information which is known to that party, or reasonably should be known, and which may or will be material to the other party’s decision to enter into the transaction. Whether acting as an agent for only one party, or as a dual agent, an agent must make the same such disclosures to the other party’s agent, and cannot withhold material information which such agent may know, or in the exercise of reasonable diligence, should discover. However, a broker acting as a dual agent will not disclose written valuations or appraisals prepared for the seller (but upon request will disclose any comparable sales figures), nor the contents of any previous negotiations, contracts or offers between either the buyer or seller and any other parties.

**Compensation:** The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and a seller or buyer.

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THE CALIFORNIA ASSOCIATION OF BUSINESS BROKERS MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM. A BROKER IS NOT LICENSED, QUALIFIED OR ENTITLED TO PROVIDE LEGAL, ACCOUNTING OR TAX ADVICE. SELLER AND BUYER MUST RELY UPON THEIR OWN KNOWLEDGE AND EXPERIENCE IN THESE MATTERS, AND EACH IS ADVISED TO CONSULT WITH INDEPENDENT ATTORNEYS, ACCOUNTANTS, AND OTHER COMPETENT PROFESSIONALS IN ENTERING INTO AND COMPLETING THE TRANSACTION.

I have carefully read and understand the matters discussed above, I agree with the above conditions, and I have had the opportunity to ask questions and/or to seek the advice of legal counsel prior to signing below.

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## CONFIDENTIAL BUYER PROFILE

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

Spouse/Partner: \_\_\_\_\_

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

Home Phone: \_\_\_\_\_

Office: \_\_\_\_\_

Cell: \_\_\_\_\_

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

Preferred Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Current Occupation: \_\_\_\_\_

How did you hear about us? \_\_\_\_\_

Previous business and work experience: (List below)

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Educational background:

B.A./B.S.      Masters      Doctorate      Prof. License(s)      Other

Special skills, interests, hobbies: \_\_\_\_\_

Motivation for buying a business: \_\_\_\_\_

Types of business preferred:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

Types of business in which you are *not* interested:

\_\_\_\_\_

Who will assist you in operating the business? \_\_\_\_\_

Location preferences: \_\_\_\_\_

Who besides you will make the decision to purchase? \_\_\_\_\_

How do you plan to finance this purchase? \_\_\_\_\_

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How much money have you allocated to invest in a business? \_\_\_\_\_

In what form are your funds? (Explain below) Savings, CDs, Stocks, Equity, Loan, Other

\_\_\_\_\_

How long have you been actively looking for a business? 0-3 mo 3-6 mo 6 mo – 1 yr 1 yr+

\_\_\_\_\_

Ever made an offer on a business? \_\_\_\_\_

Are you in the position to make an offer now? \_\_\_\_\_

Ever worked with a business broker? \_\_\_\_\_

When do you want to be in business? \_\_\_\_\_

Remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



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## **AUTHORIZATION TO VERIFY INFORMATION**

I AUTHORIZE the broker and the sellers of any business on which I make an offer, to verify any of the above information and to obtain a credit report once an offer has been accepted.

\_\_\_\_\_  
Buyer's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Broker's Agent

\_\_\_\_\_  
Date