

Contact: Jerry Tsai at 916-801-1893 if you have any questions about this NDA or posting.

Instructions: Complete all the information below before emailing it back to: j.tsai@murphybusiness.com.

Your email subject to Jerry Tsai should read: NDA For Your Massage Spa In Sacramento.

Your Name: _____ Your Phone: _____ Your Email: _____

Print your name: _____ Return to Jerry Tsai: j.tsai@murphybusiness.com

ACKNOWLEDGEMENT OF INTRODUCTION AND CONFIDENTIALITY AGREEMENT

The undersigned, individually and on behalf of any affiliated prospective buyer, acknowledges being introduced to the business identified herein by **Murphy Business and Financial, Broker.** **The undersigned request information on the following business:**

_____ ("Business"). Such information shall be provided to the undersigned for the sole purpose of entering into discussions with Seller of said Business for the possible purchase by the undersigned of all or part of the stock or assets of the Business. As used herein, the term Buyer ("Buyer") applies to the undersigned and any partnership, corporation, individual, or other entity which the undersigned is affiliated. The undersigned agrees as follows:

1. NON-DISCLOSURE OF INFORMATION: The undersigned acknowledges that Seller desires to maintain the confidentiality of the information disclosed. **The undersigned 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 advisors to whom disclosure or access is necessary for Buyer to evaluate the Business, provided that they are not one of Seller's employees, customers, landlords, suppliers, or competitors.** 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. The undersigned 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 Broker's option) 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 communications with Seller or its 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 and known to the public.

3. DISCLAIMER OF BROKER'S LIABILITY AND BUYER'S RESPONSIBILITY: When business brokers take a business to market, they receive information about the business from the Seller, usually including, but not limited to, tax returns, financial statements, equipment lists and facilities leases. Based on information provided by the Seller, brokers often prepare a summary description of the business which may include cash flow projections, 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 decision to purchase 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. Broker urges Buyer to obtain independent legal and tax counsel.

4. NON-CIRCUMVENTION AGREEMENT: The Seller has entered into an agreement providing that Seller shall pay a fee to 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 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 stock or assets 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 listing broker or cooperating broker for such a fee and any other damages including reasonable attorney's fees and cost.

5. FURTHER TERMS: **Neither Buyer nor Buyer's agents will contact Seller's employees, customers, landlords, competitors or suppliers 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 is specifically intended to be a beneficiary 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. Seller may assign this Agreement to any new ownership of the Business. 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 supercedes 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. 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.**

Buyer Signature Date

Company

Street Address

City, State, ZIP

Buyer Name (Please Print) Date

Telephone Fax

Cell Telephone

E-MAIL Address



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California Association of Business Brokers
Professional Service since 1987
Agency Disclosure and Agreement



BUSINESS _____ BROKER _____

Agency and Dual Agency: On the reverse of this form is printed a portion of California Civil Code section 2079.16, which requires disclosure of some concepts and definitions concerning the relationship between a principal and an agent in the sale of certain residential real estate. While the listing and sale of a business is not 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.

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." Although a buyer and seller are sometimes 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. An agent must fully disclose all relevant information known to the agent to the party or parties that the agent represents. An agent, whether acting only for one party, or as a dual agent, must make the same such disclosures to the other party, or to the other party's agent and cannot withhold any material information which such agent may know, or in the exercise of reasonable diligence, should discover.

Price and Valuation: There is an exception to the rule that a dual agent must disclose all information in his or her possession. In representing both seller and buyer, the agent shall not, without the express permission of the respective party, disclose to the other party that the seller will accept a price less than the asking price or that the buyer will pay a price greater than the price offered, even though there otherwise might be a duty to do so. Likewise, a broker acting as a dual agent will not disclose valuations or appraisals prepared by the broker for the seller (but must disclose any comparable sales figures which may have been a major factor in such evaluation), nor the contents of any previous negotiations, contracts or offers between either the buyer or seller and any other parties. This is the only way negotiations can be conducted when the broker represents both the buyer and the seller.

Acknowledgment of Disclosure and Agreement to Dual Agency: Each party by signing below, acknowledges and agrees that:

- 1. The party has carefully read and fully understands the matters discussed above, as well as the language of the statute quoted on the reverse of this form, and has had the opportunity to ask questions and/or to seek the advice of legal counsel prior to signing below.
2. The seller consents and agrees that the Broker representing said party may, in his discretion, act as an agent for any buyer or prospective buyer as well as for the Seller, as explained above and on the reverse hereof, and agrees to the conditions stated above.
3. The Buyer consents and agrees that the Broker representing the Seller will continue to do so even though said Broker will also represent the Buyer as a dual agent, understands all of the information stated above and on the reverse hereof and consents to such dual agency.

THIS FORM MAY BE SIGNED IN COUNTERPARTS. NOT ALL SIGNATURES ARE REQUIRED TO APPEAR ON THE SAME COPY. FACSIMILE SIGNATURES ARE ACCEPTABLE AND BINDING.

SELLER(S):

BUYER(S):

Signature _____ Date _____ Signature _____ Date _____
Name (print) _____ Name (print) _____
Signature _____ Date _____ Signature _____ Date _____
Name (print) _____ Name (print) _____
Agent for Seller _____ Date _____ Agent for Buyer _____ Date _____

Date: 6/19/2019 - BizBen Posting: #249958 - Massage Spa In Sacramento

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Excerpt from CALIFORNIA CIVIL CODE § 2079.16

SELLER'S AGENT: When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

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.

BUYER'S AGENT: 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.

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 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.

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 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 advice about real estate. If legal or tax advise is desired, consult a competent professional.

Business Name _____ initials initials initials initials

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BUYER PROFILE FOR: _____ Email: _____
Please Print Name

Home Address: _____ City: _____ State: _____ Zip: _____

Home Phone: _____ Work Phone: _____

Fax: _____ Cell Phone: _____

How did you hear about us? _____ If Internet, which website? _____

We provide each seller the following confidential facts about you prior to releasing any information about their business.

BACKGROUND INFORMATION:

Are you currently employed? _____ If so, in what industry and what position _____

Please give a brief description of your responsibilities: (Plan to prepare and submit a formal Resume for consideration.)

Please list the industries in which you've worked and the positions you've held:

Does your spouse work? _____ Full time? _____ Industry and position? _____

Do you own or have you ever owned your own business? _____ If Yes, what type _____

Education: High School College / Degree _____ Post-College / Degree _____

Other Special Education or Training _____

Why are you looking for a business opportunity? _____

What is your timeframe to purchase? Immediate No hurry How long have you been looking? _____

Would you work in the business Full-time Part-Time

Place a check mark beside each business category that interests you:

- Manufacturing
- Distribution
- Computer/Hi Technology/Sciences etc.
- Absentee Ownership
- Turnaround Situations
- New or Existing Successful Franchises
- Any Business which receives cash payments
- Any Business that can be relocated
- Retail
- Services: postal, copy centers, tax prep
- Restaurant /Fast Food
- Gas Stations/Mini Marts/Car Washes
- Dry Cleaning
- Home Based Business

List 3 things that are important to you about any business you might consider buying:

1. _____
2. _____
3. _____

Geographic Location Desire: _____

How far from your home are you willing to drive one way to the business you will buy? _____

If you reside outside California and have inquired about a California based business, what are your relocation plans and timeframe? _____

Additional information that you think may help us locate a desirable business opportunity for you:

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FINANCIAL INFORMATION FOR: Please print name: _____

(Please attach prepared financial statement, if available)

What is your current annual income? \$ _____

What are your income expectations the first year of owning your own business? \$ _____

Have you ever filed bankruptcy? _____ Had a foreclosure? _____ Had a judgment filed against you? _____

Is there any reason you might be declined a loan for a business acquisition? _____

Will anyone advise you in the review of business records and the decision to purchase any business? _____

What is the down payment amount and the source of funds that you **are prepared to substantiate** at the time of making an offer? \$ _____ Source: _____

Do you have a financial partner or any other personal source of investment capital? Yes No

If Yes, please explain: _____

Do you have additional income sources? Yes No

If yes, please explain: _____

NET WORTH:

ASSETS

Cash in checking accounts \$ _____

Cash in savings accounts \$ _____

Stocks and bonds \$ _____

IRA's, retirement plans, 401K's \$ _____

Cash surrender of life insurance \$ _____

Real Estate, home \$ _____

Real Estate, other \$ _____

Automobile(s) \$ _____

Your own business \$ _____

Appraised collectibles \$ _____

Money due you \$ _____

Other assets (describe): \$ _____

LIABILITIES

Notes payable to banks \$ _____

Notes payable to finance co's \$ _____

Real estate indebtedness \$ _____

Automobile(s) indebtedness \$ _____

Owing on life insurance \$ _____

Charge accounts \$ _____

Credit Cards \$ _____

Taxes payable \$ _____

Other liabilities (describe): \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

Total: \$ _____

Total: \$ _____

NET WORTH (total assets minus total liabilities): \$ _____

TOTAL MONEY AVAILABLE TO INVESTMENT \$ _____

I certify that the above information is true and correct and acknowledge receipt of a copy of this profile.

Signature

Date