



BUYNAK & FAUVER

PRIVACY AGREEMENT

(Business Advisory No. 8)

Our privacy is important to us, even with the openness that exists in our society. Those close to us on a regular basis - - bookkeepers, managers, technical advisors, service personnel - - are provided or see the private and intimate details of our lives and those of our families. This Advisory provides an agreement to restrict such employees, independent contractors and other persons/entities from disclosing our confidential information.

This Advisory is neither exhaustive nor tailored to your specific situation. You should discuss your circumstances with us or with your own attorney. Our representation is only undertaken through a written engagement letter and not by distribution of this Advisory.

Privacy Agreement. The attached Privacy Agreement is very general and establishes safeguards for a person from the exposure and production of a person's confidential information by a confidant, whether such person or entity is an independent contractor, employee, or otherwise associated with the protected party.

Confidential Information. This refers to any information about a person, their family friends, associates and/or businesses. It is all encompassing. The Agreement provides peace of mind to know such information will not be set forth on the internet, public publications, newspapers or simply verbalized with any other person.

As always, you should be sure that additional legislation has not been enacted or that court decisions have been rendered that would change the above advisements. This Advisory is neither exhaustive nor is it tailored to your specific situation. If you have questions or concerns, you should discuss your individual situation with us or your own attorney. We look forward to being of assistance to you, to refine this Agreement to your needs.

S. Timothy Buynak, Principal
Business and Tax Attorney

Attachment: Privacy Agreement



Privacy Agreement
Page 2 of 7

This Advisory is one of a series of business and tax advisories prepared by the attorneys at Buynak & Fauver, LLP. Should you have further questions regarding the information provided in this Advisory, please contact the author at the number listed below.

Buynak & Fauver, LLP provides business legal services to individuals, business entities and nonprofit organizations from entity formation and start-up, through day-to-day operations and exit strategies.

BUYNAK & FAUVER

820 STATE STREET, 4TH FLOOR | SANTA BARBARA, CALIFORNIA 93101 | (805) 966-7000 TEL | WWW.BUYNAKFAUVER.COM

© 2012 BUYNAK & FAUVER (Rev. 7/3/2012)



PRIVACY AGREEMENT

This Privacy Agreement (**Agreement**) is made and entered into as of the ___ day of _____, 20__, at _____, California, by and between:

- _____ (**Confidant**); and
- _____, (**Protected Party**). Any reference to Protected Party shall include each entity or business associated with, or licensed by, the Protected Party.

with reference to the following facts and intentions:

A. Confidant is an independent contractor retained by the Protected Party or one of the businesses associated with, or licensed by, the Protected Party; and

B. Confidant acknowledges that he/she will learn, obtain, acquire, be exposed to or become aware of certain information relating to Protected Party during her independent contractor relationship with Protected Party; and

C. The parties intend by this Agreement to protect all confidential information pertaining to the Protected Party as a condition of retention as independent contractor.

NOW, THEREFORE, in consideration of the foregoing recitals, and for all the good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Confidential Information. Confidant acknowledges and agrees that during the term of Confidant's independent contractor relationship, Confidant will or may learn, obtain, acquire, be exposed to and/or become aware of (**Acquire**) information, and/or in the past has or may have Acquired information, relating to or concerning: (a) Protected Party; (b) Protected Party's family, friends, associates, and/or businesses; (c) other employees of Protected Party; (d) private and/or confidential matters concerning Protected Party and/or other employees or principals of Protected Party; and (e) financial, business and/or contractual matters of, pertaining to or relating to, Protected Party or any of the foregoing. Confidant further acknowledges and agrees that all of the above information that Confidant Acquires during the term of Confidant's independent contractor relationship (collectively, **Confidential Information**) is private and confidential and that all Confidential Information is exclusively owned and controlled by Protected Party.



2. **Agreement Not to Disclose.** Confidant expressly agrees that Confidant shall not, directly or indirectly, verbally or otherwise, either during or after the term of Confidant's retention by Protected Party, publish, reveal, disseminate, disclose, or cause to be published, revealed, disseminated or disclosed (**Disclosure**) any Confidential Information to any person, firm or entity whatsoever (**Third Parties**), except as expressly required by Protected Party in connection with Confidant's retention as set forth in writing in Confidant's Independent Contractor Agreement, which is executed concurrently with this Agreement or as authorized or approved in writing by Protected Party. Without limiting the generality of the foregoing, Third Parties shall include, without limitation, individuals with whom Confidant comes into contact (including friends, relatives and acquaintances), as well as newspapers, periodicals, magazines, publications, television stations, radio stations, publishers, and any other enterprise involved in the print or electronic media, including individuals working, directly or indirectly, for or on behalf of any of said entities.

3. **Disclosure is Wrongful.** Confidant acknowledges that any Disclosure by Confidant to any Third Party of any Confidential Information shall constitute a serious and material breach of the terms hereof and of the terms of Confidant's employment, and shall constitute, among other things, a breach of trust and confidence, a breach of fiduciary duty, invasion of privacy, a misappropriation of Protected Party's exclusive property rights, and may constitute fraud and deceit.

4. **Property Rights.** Confidant acknowledges Protected Party's substantial and valuable property rights and other proprietary interests in Protected Party's exclusive possession, ownership and use of the Confidential Information.

5. **Disgorgement of Monies.** A breach of this Agreement shall render Confidant liable to Protected Party for any and all damages and injuries incurred by Protected Party as a result thereof, and shall obligate Confidant to account to Protected Party and turn over to Protected Party any and all monies, profits, or other consideration or benefits which Confidant derives from any Disclosure or exploitation of any Confidential Information, without prejudice to any other legal or equitable rights or remedies that Protected Party may have as a result of a violation of the terms hereof.

6. **Liquidated Damages.** CONFIDANT AGREES THAT ANY BREACH OF VIOLATION BY CONFIDANT OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, BY DISCLOSURE TO ANY THIRD PARTIES OF CONFIDENTIAL INFORMATION, SHALL RESULT IN SUBSTANTIAL DAMAGES AND INJURY TO PROTECTED PARTY, THE PRECISE AMOUNT OF WHICH WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. ACCORDINGLY, THE PARTIES HAVE MADE A REASONABLE, GOOD FAITH ATTEMPT TO ESTIMATE A FAIR COMPENSATION TO PROTECTED PARTY FOR POTENTIAL LOSSES AND DAMAGES



TO PROTECTED PARTY AS A RESULT OF SUCH A BREACH AND, THEREFORE, FURTHER AGREE THAT IN ADDITION TO BEING ENTITLED TO RECOVER FROM CONFIDANT THE FULL AMOUNT OF ANY AND ALL MONEY OR OTHER CONSIDERATION DERIVED BY CONFIDANT IN CONNECTION WITH THE DISCLOSURE BY CONFIDANT OF ANY CONFIDENTIAL INFORMATION, CONFIDANT WILL ALSO BE OBLIGATED TO PAY, AND AGREES TO PAY TO PROTECTED PARTY, THE SUM OF FIFTY THOUSAND DOLLARS (\$50,000) AS A REASONABLE AND FAIR AMOUNT OF LIQUIDATED DAMAGES TO COMPENSATE PROTECTED PARTY FOR ANY LOSS OR DAMAGE RESULTING FROM EACH BREACH BY CONFIDANT OF THE TERMS HEREOF. THE PARTIES HERETO FURTHER AGREE THAT SUCH SUM BEARS A REASONABLE AND PROXIMATE RELATIONSHIP TO THE ACTUAL DAMAGES THAT PROTECTED PARTY WILL SUFFER FROM EACH AND EVERY BREACH OF THE TERMS OF THIS AGREEMENT.

7. Remedies.

a. Confidant acknowledges and agrees that any Disclosure by Confidant to Third Parties of any Confidential Information will cause irreparable harm to Protected Party, which damages and injuries will not be measurable or susceptible to calculation. Confidant further acknowledges and agrees that any breach or threatened breach of this Agreement due to the unauthorized Disclosure or threatened Disclosure by Confidant to Third Parties of any Confidential Information shall entitle Protected Party, in addition to any other rights and remedies available to Protected Party, to obtain injunctive and other equitable relief (**Injunctive Relief**) preventing the Disclosure, or any further Disclosure, of any Confidential Information, without the necessity of posting any bond or other undertaking. Protected Party shall be entitled to seek such Injunctive Relief from either a court or arbitrator. Confidant further acknowledges and agrees that this Agreement shall be specifically enforceable in accordance with its terms.

b. Any controversy or claim arising out of, or relating to, this Agreement or its breach, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and any judgment on the award rendered by the arbitrator shall be entered in the Superior Court of the State of California for the County of Santa Barbara, and such other courts as necessary for its enforceability.

c. In rendering an award, the arbitrator shall have the authority to grant any remedy or relief that the arbitrator deems just and equitable, including, but not limited to, an award of punitive or other damages not measured by actual damages, and Injunctive Relief.

d. Consistent with the intent of the parties, except as may be required by law, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder, including, but not limited to, any Confidential Information, without the prior written



consent of both parties. The parties further stipulate that the arbitration or court file shall be sealed and the arbitrator or court shall issue protective orders prohibiting the disclosure of any of the Confidential Information and limiting the disclosure, or access to, of any other information through discovery proceedings.

8. Construction. The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

9. Severability. If any term, provision, covenant or condition of this Agreement shall be or become illegal, null, void or against public policy, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby. The term, provision, covenant or condition that is so invalidated, voided or held to be unenforceable shall be modified or changed by the parties to the extent possible to carry out the intentions and directives stated in this Agreement.

10. Waiver. The waiver of any breach of any provision under this Agreement by any party shall not be deemed to be a waiver of any preceding or subsequent breach, nor shall any waiver constitute a continuing waiver.

11. Governing Law. The validity and interpretation of this Agreement shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws, with venue for all purposes proper only in the County of Santa Barbara, State of California.

12. Captions, Headings and Abbreviations. The captions and headings of this Agreement are for convenience only and have no force and effect in the interpretation or construction of this Agreement. Words indicated in parenthesis signify an abbreviation for the previous set of words or terms, so that when the abbreviation is used within the Agreement, it shall have the same meaning as a full statement of the words or terms.

13. Voluntary Agreement. Confidant has entered into this Agreement freely and voluntarily, and Confidant acknowledges that he/she either consulted with independent counsel before entering into this Agreement, or had the opportunity to consult with counsel but elected not to do so.

14. Entire Agreement and Amendment. In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there



have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature binding except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives its right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CONFIDANT

[NAME]

[ADDRESS]_____

PROTECTED PARTY

[NAME]