

**Confidentiality Agreement**

In order to protect the value and goodwill of a business as a “going concern”, the sale should be a confidential process. This benefits you as the eventual Buyer, as well as the Seller, by maintaining the important relationships with customers, employees, suppliers, and competitors. When the sale is kept confidential, operations can continue smoothly and an effective transition to the new owner as more likely to take place. Sellers expect Restaurant eXchange to use discretion and judgment in the release of sensitive business information. Before Restaurant eXchange can share names, locations and detailed information with You the prospective Buyer; You must agree to the following terms:

- Any information provided about a business shall be used only for the purpose of evaluating the business for possible purchase and acquisition by you or your principal.
- A business’s availability for purchase, and any information related to the business (except that which is common knowledge) cannot be disclosed to any third party including advisors, friends, and relatives. If a third party has a need to know based on the purpose described above, he or she must agree to execute and be bound by the terms of this agreement. (You must request an agreement for the third party).
- You shall not make or distribute copies of any documents provided to you. Upon demand by Restaurant eXchange or the Seller of a business, you shall immediately return all written information about a business to Restaurant eXchange.
- Unless specifically disclosed otherwise, you acknowledge that you first learned of the business’s availability through communication with Restaurant eXchange.
- You agree to conduct all communication with the businesses through Restaurant eXchange. Under no circumstances should you directly contact the owners, employees, landlord, suppliers, customers, and neighboring tenants of a business unless specifically directed to do so by Restaurant eXchange.
- If you develop an interest in a business, you will be allowed and encouraged to interview the Seller and inspect the assets and facility. These activities normally take place outside of business hours, and must be arranged by appointment through Restaurant eXchange.

A breach of this Confidentiality Agreement could result in real financial and operational hardships for the business owner. If you breach this agreement, you will no longer be allowed access to information about business opportunities represented by Restaurant eXchange. Furthermore, if you are found responsible for resulting damages to a business, you will be liable for losses incurred by the Seller and Restaurant eXchange, to include legal fees and collection costs.

**Disclaimer**

Information presented about the business opportunities is provided by the Sellers unless other sources are identified. Financial statements and other representations have not been verified or audited by Restaurant eXchange. While useful, historical financial statements and future projections should not be considered a guarantee of future sales or profitability. An offer to purchase should be based on the information as represented by the Seller, along with your own knowledge and judgment as it relates to the business opportunity. If you enter into an agreement to purchase a business, you will have the opportunity and the responsibility to verify any and all information you are relying upon. This “due diligence” period is a standard condition of sale. While Restaurant eXchange can provide justification for an offering price and other guidance relating to business valuation formulas or models, you must form your own opinion as to the worth and potential of any business.

While most standard documents used in a sale are available from Restaurant eXchange or an escrow service, Restaurant eXchange is not qualified to give legal, accounting or tax advice, or create leases or nonstandard documents. Clients are encouraged to use professional advisors on matters requiring this type of expertise. Referrals are available upon request.

Your signature below indicates acknowledgment and agreement to the terms above:

*Note: Please have all parties to your search and decision sign below*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



2398 Fair Oaks Blvd. #4  
Sacramento, CA 95825

916-482-7979 phone  
916-482-7799 fax

**Agency & Fees**

Buyer registration does not create an obligation for you to work exclusively with Restaurant eXchange in your search for a business. Likewise, it does not obligate Restaurant eXchange to locate a business for you to purchase. Our main focus is on determining if any of the businesses we are marketing for sale will meet your needs. To help you reach your goal of owning a business, Restaurant eXchange can:

- Identify appropriate business opportunities
- Provide you with the information you need to make an educated offer or decision about suitability
- Structure and negotiate a “deal” that will work for both you and the Seller
- Use our knowledge and experience to help minimize risks and liabilities of a sale
- Assist you with the lease assignment, financing, and ABC license transfer as needed
- Guide you through the escrow process and other actions needed to complete the sale

In the performance of our services, Restaurant eXchange may act as a *Seller’s Agent*, a *Buyer’s Agent*, or a *Dual Agent*. The duties of an *Agent* in relation to a *Principal* (client) are to:

- act with utmost care, integrity, honesty and loyalty
- exercise skill and care in the performance of services
- act honestly and fairly without fraud or deceit, and
- disclose all material facts known to the agent which affect the value or desirability of the property (this relates to facts not readily observable by the parties to the transaction)

One additional duty applies to a *Dual Agent*. The *Dual Agent* “may not disclose to the Seller that the Buyer is willing to pay more than the Buyer’s written offer to purchase, nor may a dual agent disclose to the Buyer that the Seller will take less than that which is set forth in the listing agreement”. In other words, the price agreed to between the Buyer and Seller will be an “arms length” negotiation.

If you decide to make an offer on a business represented by Restaurant eXchange, we may act as a *Dual Agent* and represent you in the negotiation and processing of the sale. If we already represent the Seller, it is not possible for us to represent the Buyer only. Restaurant eXchange is authorized to act as a *Dual Agent* unless you notify us otherwise. Because of confidentiality, advertising methods, and the familiarity necessary to communicate the features of a business, dual agency is prevalent (“the norm”) in small business sales; however, you may retain another qualified business broker to represent you separately.

If you are represented by another agent, either now or at any time in the future, you must disclose this immediately, and all communication with Restaurant eXchange, including initial inquiries, should be made through your representative. While our policy is to “cooperate” with experienced business brokers, Restaurant eXchange reserves the right to determine any fee-sharing arrangements on a case-by-case basis. You should be prepared to compensate your representative directly.

If you retain Restaurant eXchange to perform a targeted search on your behalf, we would act as a *Buyer’s Agent*. We could also represent you if you have already identified a business to purchase and desire professional help with completing the transaction. A Buyer’s Representation Agreement would be used to outline the terms of a retainer and other compensation.

Restaurant eXchange is normally compensated from the Seller’s proceeds, upon the closing of a sale. The client businesses marketed by Restaurant eXchange have signed a Representation Agreement that provides for a success fee. It is either a percentage of the sales price, or a fixed minimum amount. As the Buyer, you are not liable for a brokerage fee unless 1) you sign a specific agreement otherwise 2) you choose to hire a separate representative, or 3) you default on a Purchase Agreement without cause, in which case you could be liable for escrow fees, brokerage fees, and damages to the Seller.

Although the brokerage fee is not generally an expense to you as the Buyer, there are other costs associated with purchasing and operating a business. These can vary. so please discuss this with your representative prior to making an offer on any business.

**Language**

If English is not your primary language and you are unable to understand the information being presented, it is your responsibility to provide an interpreter. You must ask for immediate clarification of anything you do not understand. Unless you tell us otherwise, we will believe that you completely understand what we tell you verbally and provide to you in writing.

*Note: Please have all parties to your search and decision sign below*

\_\_\_\_\_   
Print Name

\_\_\_\_\_   
Print Name

\_\_\_\_\_   
Signature

\_\_\_\_\_   
Date

\_\_\_\_\_   
Signature

\_\_\_\_\_   
Date