

Bkr	Date

Representation Agreement

Business Name _____

Business Type _____

Address _____

City, State _____ Zip _____

Phone _____ Fax _____

Website _____

Seller(s) _____

Proprietorship Partnership C Corp S Corp LLC

Authorized Signer & Title _____

Home Address _____

City, State _____ Zip _____

Phone _____ Fax _____

Email Address _____

TOTAL LISTING PRICE _____

Owner Claims:

Base Monthly Rent Amount \$ _____

NNN Lease? No Yes Amount \$ _____

Years Remaining on Lease _____ Renewal Option? _____

Full Time Employees _____ # Part Time or Contract _____

Days & Hours of Operation _____

Gross Monthly Revenue _____

Net Monthly Profit _____

Authorized Signer & Title _____

Home Address _____

City, State _____ Zip _____

Phone _____ Fax _____

Email Address _____

Broker: **Liberty Business Advisors of San Francisco** DRE #**01903901** Agent _____ DRE # _____

Address: **675 Ygnacio Valley Road, Suite B-201** Phone _____ Email _____

City, State: **Walnut Creek, California 94596** Representation Termination Date _____

Broker's Fee (as a Percentage of the Sales Price) _____ % Minimum Broker's Fee Amount \$ _____

If Real Estate is Sold or Leased to Buyer or Lessee procured by Broker, then an additional Real Estate fee of Five Percent of the Real Estate Value shall be due Broker. For Lease transactions Broker's Minimum Lease Fee shall be Five Percent (5%) of the total Lease Value.

Seller will not compete against Buyer for _____ years from the close of Escrow within a _____ mile radius of the present location of the business or within the counties of _____

Following the close of Escrow and included in the Purchase Price, Seller will provide training for _____ weeks at _____ hours per Week, or as outlined in the Additional Terms section below.

Reason(s) for Selling: _____

All assets of the business are included except: _____

Additional Terms _____

 Initials initials initials initials

1. Engagement of Broker. Seller grants Broker the sole and exclusive right to dispose of the Business beginning immediately and ending at 11:59 p.m. on the Termination Date (the "Exclusive Period") on the terms on page one or on any other terms to which Seller consents. Seller agrees to pay Broker the percentage of the Purchase Price or the Minimum Broker's Fee as indicated above, whichever is greater, upon any Disposition of the Business, or if Broker, Seller, cooperating broker or any other person procures a buyer who offers to purchase the Business at or above the listing price and upon the terms set forth above or on any other terms agreed to by Seller. The above notwithstanding, if completion of the sale is prevented by a party other than Seller, then such compensation due Broker shall be payable only if and when Seller 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 escrow expenses and the unrecovered expenses of collection, if any. In addition, such compensation due Broker shall not be payable if completion of the sale is prevented because Seller declines to extend credit to the buyer because of Seller's reasonable determination that the buyer is not creditworthy. Seller grants Broker a security interest in the Business for the amount of the Broker's Fee. Broker agrees to make reasonable efforts to sell the Business.

2. Disposition of Business. As used in this Agreement, "Disposition" of the Business includes the sale, merger, lease, trade, exchange or transfer of all or any part of or interest in the Business except for assets sold in the ordinary course of business. Disposition also includes the sale or lease of all or any part or interest in the Seller's real property associated with or used in the Business. This definition includes, without limitation, the transfer or sale of some or all of the stock of a corporation or the retention as an employee or consultant of any prospective buyer or of any person or entity referred to the Business by Broker. If the sale is of an ownership interest (e.g. corporate stock, partnership shares or LLC member interest), "Seller" means the owner of that interest.

3. Purchase Price. For purposes of this Agreement, the "Purchase Price" is defined as the total consideration paid at closing or some future date, directly or indirectly, for the Business or its assets including but not limited to cash; cash equivalents; notes made to Seller or successor beneficiaries; liabilities assumed by buyers; liabilities remaining on the balance sheet at closing; assets retained by Seller except those excluded on page one; real property, equipment, or intellectual property sold, licensed, optioned or leased; non-competition, employment, consulting or management agreements; the value of earnouts, royalties or any other contingent payments as defined herein; and stock or other securities received in exchange for Seller's stock or assets.

For the purpose of determining the Broker's Fee (but not any tax allocation between the buyer and seller), the Purchase Price value of earn-outs, royalties or any other contingent payments shall be:

- Ⓒ The value calculated using the applicable financial metric (e.g., revenue, gross profit, EBITDA or seller discretionary earnings) for the most recent twelve month period for which Seller's financial statements have been completed at the time of the purchase *agreement*, as if there are no changes over the earn out period.
- Ⓒ In accordance with the provisions of the Addendum to this Agreement.

4. Broker's Fee. Seller agrees that the Broker's Fee shall be paid by Seller upon any Disposition of the Business whether made by Broker, Seller or anyone else during the term of this Agreement and any extension. To the extent of the Broker's Fee, Seller hereby irrevocably assigns to Broker any sales proceeds and makes Broker a party to any escrow.

5. Business Information. Within 10 calendar days of Signing, Seller will provide the Broker the following: a) complete lists of all equipment and other assets to be included or excluded in the sale; b) profit and loss statements, balance sheets and tax returns of the Business covering the last three years; c) the most recent interim profit and loss statement, balance sheet and sales tax returns; d) real and personal property leases; e) a completed CABB Seller's Disclosure Statement; f) copies of all patents, licenses, loan documents, contracts or agreements of whatever form; g) all agreements relating to employee benefits; h) any environmental reports; and i) copies of all other documents needed to present a fair and accurate description of the Business to prospective buyers. Seller will provide monthly updates of each such document during the period of this Agreement where any material change has occurred. Seller consents to Broker publishing, advertising or distributing information about the Business to prospective buyers and to cooperating brokers, and contacting landlords and any others regarding any of the information about the Business. Seller will be responsible to Broker for any fee lost by Broker resulting from any material misrepresentations or omissions by Seller of any information relevant to the Business or its transferability.

6. Agency. Seller acknowledges having received and read the CABB Agency Disclosure form. Seller understands and agrees that Broker may act as a dual agent representing both buyer and Seller.

7. Compliance with Laws. Seller represents and warrants that Seller is now and will remain in full compliance with all local, state and federal laws, rules and regulations regarding the operation and sale of a business of the type described on page one, and that such compliance will not be affected by any transfer of the Business.

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8. **Seller Warranties.** Seller warrants that a) all information relating to the Business which has been or will be provided to the Broker or prospective buyers by the Seller or Seller's agents is complete and accurate, b) Seller has disclosed, or will promptly disclose, all material facts relating to the Business which might reasonably influence a buyer's decision to purchase and the amount a buyer is willing to pay, and c) Broker may rely upon the accuracy of any such information without independent investigation. Seller agrees to promptly notify Broker of any material changes which might affect the operation or value of the Business.

9. **Indemnity.** Seller will protect, indemnify, defend and hold harmless Broker against any claims, including any damages, liabilities, costs and attorney fees resulting from Broker's communication of any information relevant to the Business provided or approved by Seller.

10. **Leases and Contracts.** Seller agrees to transfer all assignable leases and other contracts under which the business assets are held and to obtain any necessary third party consents. Seller acknowledges that Seller may remain liable on such agreements after transfer, unless released by lessor or other contracting party.

11. **Acceleration of Broker's Fee.** Seller agrees to immediately pay the Broker the percentage of the Listing Price or the Minimum Broker's Fee as indicated on page one, whichever is greater, and that Broker shall be released from any further duties and obligations under this Agreement, if during the Exclusive Period, or any extension thereof, Seller a) attempts to cancel this Agreement or withdraw the Business from sale, b) refuses or is unable to comply with the Agreement terms for any reason, thereby preventing Disposition of the Business upon the terms set forth on page one or any other terms accepted by Seller, c) enters into a contract for Disposition of the Business, accepts a deposit, opens an escrow or records a notice of intent to sell the Business without the written consent of the Broker regardless of the amount, terms and conditions accepted by the Seller or d) a franchisor or other party exercises its right of first refusal to purchase the Business after an offer is presented. The cancellation or rescission of any of the foregoing shall not act as a release of the Seller from liability for the Broker's Fee. If any deposit is relinquished by a prospective buyer, the Broker shall be entitled to it up to the amount of the Broker's Fee with any balance to be paid to the Seller.

12. **Referral of Buyers.** Seller agrees to refer to Broker any prospective buyer with whom Seller has or has had discussions regarding the sale of the Business during or prior to the exclusive period.

13. **No Conflicts.** Seller warrants that there are no Representation or other Agreements in force relating to Disposition of the Business.

14. **Safety Clause.** Seller agrees to immediately pay the Broker the percentage of the Purchase Price or the Minimum Broker's Fee as indicated on page one, whichever is greater, upon any Disposition of the Business within 24 months from the Termination Date of this Agreement to any person or entity referred to the Business by the Broker, or to whom Broker or Seller furnished information regarding the Business during the exclusive period.

15. **Sale of Other Business or Real Property.** Seller agrees that the Broker's Fee or Real Estate Fee, as the case may be, shall be immediately due and payable to Broker on the purchase price of any other business or any real property associated with or used in Seller's business(es) in which the Seller, or Seller's principals, has an interest if, during the Exclusive Period or within 24 months of the termination of this Agreement, a buyer introduced by Broker buys any such business or property.

16. **Buyer Deposit.** Broker is authorized to accept and hold on Seller's behalf a buyer's deposit toward the Purchase Price.

17. **Credit Decision.** Seller acknowledges that Broker makes no representation as to the creditworthiness of any buyer or the content of any credit report, and that the decision to extend credit to a buyer is solely the decision of the Seller. Broker will not verify any representations made by buyer as to buyer's creditworthiness, business experience or financial condition. Broker shall not be required to furnish credit reports on any buyer. Seller agrees to look only to buyer for relief and to indemnify, defend and hold Broker harmless in connection with any damage caused Seller.

18. **Mediation of Disputes.** As a condition precedent to initiation of any legal action or arbitration proceeding by either party, Seller and Broker shall mediate any dispute or claim between them arising out of this Agreement or any resulting relationship or transaction between such parties. Either party may demand mediation by notice to the other party, which notice shall state the nature of the dispute to be resolved. From the date such notice is given, the parties shall agree upon a mediator not later than the tenth business day thereafter. If the parties cannot agree upon a mediator, the matter shall be submitted to the American Arbitration Association ("AAA") for appointment of a mediator and to conduct the mediation. Mediation shall occur in the county in which the Business is located at the time of signing this Agreement. The parties shall have 45 days from the selection of the mediator to commence the first mediation session. The parties shall share all mediation costs equally. The parties agree that any mediated settlement agreement may be converted to an arbitration award or judgment (or both) and enforced according to the governing rules of civil procedure. Should either party fail to participate timely and in good faith in the selection process for the mediator, or in the mediation process, such party will be deemed to have refused mediation, thus excusing the condition, and that party shall not be entitled to attorney fees that might be otherwise available to it in any subsequent court action or arbitration.

19. **Advertisement of Sale.** Seller agrees that after the closing Broker may advertise its role in the sale of the Business.

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