

HOW TO

BUY A BUSINESS

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INTRODUCTION

AFTER growing up in Paducah and graduating college at Virginia Tech as an Engineer, Ed started his career at a Fortune 50 company in Lexington, Kentucky working as a manager in the food industry.

He moved back to Paducah as the start-up manager to establish a manufacturing facility for the beverage industry. Here Ed hired all the original employees and set up most of the team structure of the business. Later, Ed was hired to sell capital equipment and eventually rose to the position of President, serving for a number of years.

He then entered the engineering business and eventually was chosen to establish a new manufacturing facility in Paducah. Ed has held the following titles during his career: National Sales Manager, Vice President & General Manager, Business Development Manager, General Manager, President & CEO and Partner & Area Director.

The industries Ed has served include food, beverage, capital equipment manufacturing, light manufacturing, engineering construction, pharmaceutical manufacturing and business advising. Ed currently serves as the Chairman of the Board of Directors for Paducah Water and is a member of the Rotary Club of Paducah. Ed served as Chairman of the Rotary Education Assistance Plan for 10 years.

Ed Barker

STEP 1: TAKING CHARGE

YOU have made the decision to control your financial future by purchasing a business. Owning a business is a great way to build wealth and take charge of your own destiny. Congratulations are in order but you should be wary and frankly somewhat hesitant of taking on this endeavor. Business ownership and or entrepreneurship is not for everyone and you should do some serious soul searching about your skills, passions, maturity, and your support system as you make this decision. However, once you make it.....you must be all in and TAKE CHARGE.

So let's talk a bit about this TAKE CHARGE thing. Being a business owner by definition means that you and you alone are in control of each and every element of what goes on in your business. For those who have not worked for themselves or owned a company this is somewhat of a new concept but critical to understand if you are to successfully navigate the buying process and even more importantly the running of your company / business.

Taking Charge (Leadership) is not often talked about in the context of buying a business but I think it vital and since this is my book I get to talk about it. You will be the person writing the check at the closing and the one running the business long after your broker, your cpa, and your attorney are gone. So as you embark on this process be the one in control of it and the people in it.

You will be putting a team together of professionals in this process to assist you: Attorney, Business Broker and CPA. These three professionals all have specialties and lanes they need to stay in and you as the business owner/ leader need to manage them, lead them and direct them. Think of yourself as the head coach of a football team. You may delegate authority, you may allow a quarterback to call plays, but you and you alone as the head coach are in charge of the winning or losing. The OUTCOMES are your responsibility. You are not going to be able to blame others if something goes wrong so be IN CHARGE.

As you hire your team of advisors be careful that you understand their roles, the scope of their expertise, and set clear guidance on your expectations for their performance and communication amongst each other. One of the major mistakes made with first time buyers is defaulting leadership to their one professional and not setting solid ground rules for respect and professionalism amongst your team. Solid leadership from you is critical. With that you can achieve the objective of navigating this process and buying the business you want.

Let's talk about your team:

A. The Attorney: First your attorney is a fiduciary. Meaning they have an obligation to work on your best behalf. There are good attorneys and bad attorneys as in every profession so choosing the right one is critical. The attorney has a responsibility to act in your best interest but also get the deal done. The skills needed to walk this fine line are rare indeed, so as you interview counsel talk to this point and ensure he/she will communicate proactively and be reachable and give examples of how they navigate the process.

Some things to consider when securing buy side legal counsel:

- i. Will you have direct contact with the attorney or their para legal?
- ii. Are they familiar with the Business Brokers Forms & Contracts?
- iii. Are They available after hours?
- iv. Are they flat fee or hourly rates (how is the hour calculated?)
- v. Have they worked with the brokers in the deal?
- vi. Will they give you references to speak with?
- vii. Are they a Swiss Army Knife Attorney (is your lawyer a patent, divorce, business, patent, or environmental attorney plus business lawyer)
- viii. Reasonableness: being a fiduciary but a solution minded one
- ix. Temperament & Experience: Professionalism in Negotiation/Battle Scars
- x. Licensed: Familiar with the laws respective to the state and counties involved.

Keep in mind your objective is to buy a business. Unlike real estate where a distress doesn't negate the real property value and thus the negotiation can be somewhat hostile. Deals that are at arms-length and involving good will warrant a softer touch. Hiring the loudest, meanest, and most nasty attorney may not be the right thing for a deal. Pick the right tool for the job.



One of the nice things about forms is the Marketplace has

facilitated norms of behavior. Legal fees consequently which formerly were quite high, are somewhat mitigated to a low number. Therefore, flat fees for transactions and standard forms have limited the hours attorneys have to spend reviewing and revising. Keep in mind that having attorneys familiar with forms and the players involved (opposing counsel, brokers, closing attorneys) also mitigates fees.

Be respectful of your attorneys' time. When they negotiate a flat fee, they are assuming a level of work paired to the deal in question. Realize you are one of many clients (an important one...but one). If you do not get a flat fee negotiated and are billed by the hour have all your questioned grouped and use your time with counsel wisely. Talking about the latest soccer match or the weather is on the clock the time you waste there is still billed. If you do not have an attorney of your own your broker or CPA should give you a list of several or you can look up the affiliate members. Lawyers should not veer from their lane. They should not be giving business advice or financial / tax advice. Ensure your attorney knows the duties performed by the closing attorney (outlined in the standard purchase agreement) so you are not getting double billed.

B. CPA: Your CPA (there is a difference from an accountant) is also a fiduciary. Their job is to vet the numbers and state facts. The mathematical facts are their lane. They are paid by the hour or flat fee and success is not a factor for them. As with the attorney you should seek referrals and speak with prior customers to ensure they are a good fit for you and the deal in question.

They should understand the industry in question and have actually dealt with customers in that vertical. Believe it or not there are subtleties to businesses that do not show up on a balance sheet and may be important to know. For example, if you hire an accountant to look at vacation rental management companies in Kentucky, and he or she is a personal tax accountant in Wisconsin they will miss something. That something could be critical to your financial health. Choose wisely and make an informed decision. Some tips include:

- i. Are they a CPA or Accountant: What is the difference?
- ii. What is their band width to handle due diligence and how fast can they do it?
- iii. Definition of scope of work for the Due Diligence
- iv. What will be the fee? Hourly or Flat?
- v. Are they familiar with the software involved in this transaction?
- vi. Access for Communication with attorneys and brokers?
- vii. Are they familiar with the brokers and attorneys involved?
- viii. Ongoing support post engagement for taxes?
- ix. Do they set up entities?

One area we see CPA's get into trouble with is they sometimes give opinions on prices of businesses. Why is that problematic since they are fiduciaries? Well first there are several ways to value a business and more often than not they use a method different than the prevailing market method. They also as fiduciary state a price that is favorable to you as a buyer...problem is the seller and the market have a value in mind as well, so the CPA opinion is irrelevant. In Kentucky, you have the ability to get comparable sales from Transworld of WKy.

Just ask your broker to run a report by sales, owner benefit, and the physical area. You can even have the subject listing compared graphically to the comps to help you visualize. Keep in mind supply and demand factor into this process as well.

C. Business Broker: Of the three professionals in the on your team this one is the one you will spend the most time with. They are not fiduciaries rather they are contingency based (i.e., they only get paid if you buy) Transaction Brokers predominantly. You can negotiate a fee to have them paid up front or to function as a fiduciary, but it will be pricey given the risk they incur. As with lawyers and accountants you should interview them. The main take away is that the broker is success based. They are transaction brokers which means that they have to act honestly and disclose all matters pertinent to the transaction. They, just like the others should be able to put you in contact with prior clients for referral. They are your access portal to information as they have access to the comps and the listings. Brokers live in the market. A good one can help immensely. A bad one can crater a deal just by being involved. The broker you choose should be full time in the business. Not someone doing this as a hobby.....if you hire on price, likability or anything other than their track record of excellence you will get what you paid for. Some benchmarks for you to think about with regard to business brokers:

- i. They generally do not do residential real estate
- ii. Time in the desert: average time in the business is less than a year so the old dogs have survived the tough times.
- iii. Are They Full Time?
- iv. How skilled are they in technology?

Now that you know the roles of your team members it is your role to make sure that all work together. It is good if they have worked together in the past so there is no disconnect. You need to recognize each professional's value. If you discount one over the other, chances are, you picked a bad team member and its on you from there to repair the disconnect or change the team members. You are in control now and you and your business broker will begin the next step of the Buying Process.

STEP 2: EVALUATION

All buyers should meet their Transworld representative in person. However, if that is not possible due to distance, continuous communication by phone or email can be effective. We begin searching for the right business by gathering detailed information about you to establish your financial capabilities, your skills and experiences, and your personal life goals. This information helps us gain your commitment to the process and determine the best types of business to pursue. Once this is completed, we will start your search using Transworld's considerable market basket of resources.

AFTER meeting and interviewing attorney, accountants, and brokers and having chosen your team the buyer should sit down with their Business Broker (hopefully a Transworld Agent) in person; however, given the nature of the buyer market you should Zoom, Skype or Facetime. I have found that a face-to-face conversation even virtually allows both parties to truly understand and communicate with each other. At this in person meeting detailed information on the buyer should be gathered. I know you want to jump into the search process but if you have picked the right broker and they are truly serving you as an advisor they need to know a lot of things about you.

Things I like to know when I meet with buyers include but are not limited to: professional background, reason for transition, financial position, family makeup (seems odd but age and needs of children can impact some dynamics) Visa/immigration criteria, language skills, employability of spouse vs purchaser, horizon issues / exit planning, industry likes and dislikes and much more. You see evaluation of a purchase is as much about knowing that shape and depth of the "round peg" so I can find the right slot to put it into. The buyer interview is critical because if truth and trust is not established between the parties more than likely the deal will not happen.

Not all searches require that level of insight. Things we have seen however include:

- a. Handicapped Purchasers: Clients with physical limitations
- b. Religious restrictions: Bars are often off limits for some customers
- c. Lifestyle requirements (no weekends): I left the corporate world for a easier life
- d. Family Needs: Young children

Once the interview is complete. Your broker should take time to familiarize you with the various websites you can search from and forms you will need to be familiar with. They should provide you copies of them and go through them all with you in detail. The other sites are for pay sites. For example, on bizbuysell you have most of the same listings but do not have the ability to filter the listings by financial form used for the numbers presented. This is critical...you see although there are about 500 businesses for sale in greater Orlando only about 20% have tax returns as the source for the numbers represented. That would be an important thing to know before you start down the path of inquiry, confidentiality forms, interviews etc. Now that does not mean they don't have books and records. It just means for some reason the broker didn't use them for the listing advertisement. It is however a flag to be paid attention to.

To further illustrate how tough the buying process is for buyers, here is a sobering statistic. 90% of all buyers (defined as those who inquire on a listing) never complete the buying process. One of the key elements is Frustration. The Evaluation Step is critical as it provides the filter to achieve your goals as a buyer. Seek out knowledge from multiple sources like The Deal Board Podcast, books like this, YouTube channels, and the advice of trusted advisors you respect, and even course work from people like Richard Parker with DIOMO.



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STEP 3: EDUCATION

You won't feel comfortable making a decision until you understand what it takes to buy a company. We will explain the process and help you understand the realities of the current marketplace. You will learn how to use online forms, to search the internet for businesses, to read Business Listing Information sheets, to understand basic valuation concepts, and to review our available opportunities.

YOU will not feel comfortable deciding until you fully understand what it takes to buy a business and run a business. I take great pains to talk about all the moving parts, variables, risks, rewards, challenges, triumphs and uncertainties. Buying a Business is a risky proposition and education on it and the industry are vital. Part of your job as a buyer is to be an active learner and researcher. Buying a Business is not a part time job. It should involve a ton of reading and solid research. Your Business Broker can provide tons of information to assist you like: Listings Comps, Sold Comps, Review of sold transaction and business like the target you are looking at, access to the Deal Stats data, access to Peer Comps. He / She should point you toward resources that are solid like "How to Buy A Good Business At A Great Price" and most importantly anecdotal information from their long experience. Your broker should have a teacher's heart. They should be looking to educate you on this process and give you as many resources to help you navigate it safely without being blindly trusting in one "expert". With today's technology the amount of information you have access to is deep and wide. Here is a podcast you may find helpful, " The Deal Board".



Also do not think that business is some overly complicated discipline with fancy words and secrets hidden by old men in white suits. If you are a competent adult with solid instincts who exercises good judgement you will be able to learn and navigate this process. However, you must continue to educate yourself as you run your business because business is ever changing. Just ask Kmart and Sears.

STEP 4: THE SEARCH

Now the hard work of finding the perfect business begins. We will help you search for your company, aid you in signing confidentiality disclosures, get you detailed information on the business, and set up showings with the seller. You will refine your business search and visit opportunities until you decide on a business to purchase. If your search takes longer than a few months, you may need to return to the education step.

NOW the hard work really begins. I want to take a moment to talk about why *THE SEARCH* is step 4 and why *EDUCATION* is step 3. If I were to guess well over 90% of buyers begin with Searching before they do anything else. Therefore, a staggering 90% of all business buyers (defined as those who send an inquiry in) never ever complete a transaction. You see searching on the various web portals and papers is very much a “rabbit hole” with tunnels off and shoots to dens that confuse, disappoint, and muddy what should be a simple process. Following our Process is a tried-and-true method that puts you in a place to succeed and get through the disappointments associated with getting a meeting of the minds on a deal. So back to *THE SEARCH*.

Let us paint the picture of the marketplace. There are about a dozen or so major websites that list businesses with more coming and going daily. The following are the major ones for your reference: BIZBUYSELL, BUSINESSBROKER.NET, DEALSTREAM, BUSINESSESFORSALE.COM, IBBA, GLOBALBX.COM, LOOPNET, MERGERPLACE, BUSINESSMART, and BIZQUEST. Now keep in mind that some of the sites are owned by one company and each are businesses with their own agenda to play in the market. I would also encourage you to consider the Transworld site given that we are the largest brokerage and carry several thousand businesses in our portfolio as well.

At least from a Transworld Business Advisors perspective, every one of our listings appears on all these sites. For the most part the other reputable brokers appear on the major sites like BIZBUYSELL and BUSINESSBROKER.NET (as a side note, when the day comes to sell a business, you need to ask what sites a broker is on).

If they are not on all the sites, then are they really the right broker to work with??

So now that we got that out of the way here are some tips:

- Ignore the prices: Every seller lists high as they want room for negotiation. Many brokers are afraid to tell sellers the truth or do not know how to determine multiples. Understand this the average business lists at a 3 multiple and Sells at a 1.89 multiple of cash flow. IGNORE THE PRICE...the business is worth what it is worth to you and what the market says. You get to make the buying decision, but the market says what it is worth

- Search by profit / cash flow: You are buying income and you must eat. At the end of the day the income is the prime factor to be considered. Location, industry, etc., etc., etc., are secondary. Here is a cool statistic for you 80% of buyers do not buy what they first approach on as when they go through the process, they find out their skills and talent meet a business they never thought of before.

- Embrace the Surprise: Instincts take you to what you know but you may find your talents and skills enhance an industry or business you never thought of or knew about. Your skills could be the thing that is lacking in an industry ripe for the taking.

- Plan the Exit: Learn from this process and recognize you may have to sell someday. Temper your passion for English Tea Rooms with the realities of the market and the need to cash out someday. Immigration, Age of Children, Retirement, Age are all components of life that will happen. You need to be able to exit.



- Know what you don't know: What in the corporate world equates to a SWOT Analysis (Strengths, Weaknesses, Opportunities, Threats). Be Practical and understand how your personal SWOT and the business SWOT and how they match up.

- The 3 P's : Patient, Perspective, and Practicality. The most expeditious way to navigate this buying process is to follow the process. Do not deviate, cut your losses quick, and live-in reality.

- The Market & Reasonable / You Can't Fix Stupid: Deals sell when they are in the "box". Meaning when they and the terms of the deal meet the norms of the market. A good Broker can spot good or bad in seconds and knows when to cut bait quick. Problem is the broker is not in charge...you are. Hire a broker with experience who knows when to cut loose as they are the only ones paid for closing the deal...believe it or not your lawyer and cpa keep getting paid even if the deal craters. The comps are there to gage reasonableness and about banked deals everyone knows what can and can not be done on the lending front. Key phrase to remember is "you can't fix stupid".

Once you have identified a business of interest you will get to review an overview document called a Business Listing Information Sheet or BLI.

RANDOM LISTING CRITIQUE 2

Listing No: BBF-439-449197			
		Public Pictures:  	*Confidential Pictures Available*
Category	: Automotive	SIC	: 7549
Detail	: Auto Restoration	Price	: 3,100,000
County	: Brevard	Down	: 310,000
State/Prov	: Florida	Adj Net	: 723,452
Country	: USA	Sales	: 3,619,861
36 Year Old Auto Restoration Business Located in Central Florida. Customers from All Over this Premium Restoration Business for the upkeep and restoration of classic Auto's Highly Confidential. Over 1 Million in backlogged work on the books.			
Reason for Sale	: Retire		
General Location	: Central Florida		
Organization Type	: Corp 'Sub S' Hours Owner Works: 45		
	: Years Established: 36 Years Owned: 36 Emp FT: 20 Emp PT: 0 Mgrs: 0		
Non Compete	: Miles: 100 Years: 5 Weeks Training: 2 Cost: 0		
Operating dys/hrs	: M-F 7-3:30pm		
Skills/Licenses	: general management auto experience helpful		
Business is	: Relocatable: N Home Based: N Franchise: N Lender P/Q: N		
Data Source	P/L Statement	Tax Return	
Year (Cash Flow)	2018 (N)	2017 (N)	(N)
Gross Revenue	3,619,861	3,938,110	0
Cost of Goods	983,777	1,261,263	0
Gross Profit	2,636,084	2,676,847	0
Expenses	2,210,037	2,268,263	0
Net	426,047	408,584	0
Owner Salary	87,042	188,875	0
Benefits	41,407	27,034	0
Interest Expense	33,893	32,891	0
Depreciation	24,357	65,223	0
Other	110,706	31,716	0
Owner Benefit	723,452	754,323	0

The amount of information you get at a buyer / seller meeting is dependent upon several factors. But understand this...you will not get to do due diligence prior to making an offer. If you are lucky you will get some information in terms of financials but not all. Think of it like a house buy. You do not get to inspect the house prior to an offer that is accepted. So too in business transactions...you make a contingent offer based on due diligence. Then you get to do the due diligence.

STEP 5: OFFER

HERE is where collective experience really matters. The expertise of having actually completed thousands of deals is not to be underestimated. Here in Kentucky, there are standard contracts drawn up by a team of attorneys that help you keep your legal fees to a minimum by redrafting standard docs. Letters of Intent are commonly discussed but for 99% of main street deals not encouraged. I am not giving legal advice here but recognize as a buyer they are viewed by sellers and sellers' brokers as a waste of time. They usually are one sided, they are not binding on sellers, and generally result in the associated expense of drawing up a purchase agreement from scratch. We do see LOI's on larger deals where the terms are more complicated.

Once your offer is tendered (deposit may go with offer or be put in post acceptance) it can be either countered, accepted, or declined. The amount of back and forth is usually minimal i.e., we don't generally see it flying back and forth several times. When accepted and deposit is put in, we go to the next step.... DUE DILIGENCE.



STEP 6: DUE DILIGENCE

This period is where you fully ensure the owner's representations are accurate. Our staff will coordinate the efforts of your legal and accounting and strive to satisfy all contingencies. If there is financing involved, your application must be approved by the lender, proving that you are qualified for repayment of the loan.

THIS is the period where you fully inspect the owner's representations to ensure accuracy. Your broker will coordinate the efforts with your legal and accounting professionals and strive to satisfy all contingencies written into the contract. A point of note here is that the professionals performing due diligence should have some competency in the vertical you are buying. For example, if your CPA has no experience

in the manufacturing business and does not understand work in progress (WIP) they may miss a critical element of the deal that is relevant. You want to make sure communications go through one central point (the broker) and that a record of said communications is compiled and recorded. Your business broker does not perform due diligence...nor would a smart one try to, but they (assuming some depth of experience) can contribute by providing resources and insights from past deals you may find of value. There will be your personal due diligence, your legal due diligence, and then if financing is involved some financial due diligence at a different scope from your bank.

An important note here. Your Business Broker can give you information but please do not ask them to give you financial advice. It is not their job as a Transaction Broker to give you such advice. If they are providing financial advice, frankly they are stepping outside the scope of their practice. This is the arena where your CPA and Lawyer start earning their pay. You will get an initial due diligence list from your CPA and Attorney. Try to make this list as complete as possible. Deal Fatigue can set in with ad homonym requests for information, so tight and succinct is better. Realize something here good businesses are rare, so it is never a buyer's market when you have a good business. Respect the seller and they will respect you and the process. Here are some tips related to managing due diligence:

- All Items should be collated through your broker and consolidated in a central location (dropbox or share drive)
- A definitive period should be set for due diligence: Open ended timelines lead to deal fatigue, and you must create urgency for CPA's and Attorneys to move with a purpose and accountability (Time Kills Deals). Watch the clock and know when due diligence ends.
- If you need more time, ask for it.
- Make sure your team knows the timeline and moves with a purpose.
- You as a buyer should spot check your professional's work. You are the client and presumably can add and subtract. Be active, Ask Questions.
- There is no perfect...all businesses have warts. Look at the business in its' entirety and make your decision to go forward on the due diligence report.
- You will be asked to put a deposit down prior to due diligence. Not putting one down says your not serious. The deposit is going to be contingent on you signing off on the due diligence.

STEP 7: CLOSING

Final preparations will be made for lease assignments, utility transfers, financing, merchant service accounts, inventory counts, and any other last minute preparations to make the transfer as seamless as possible. Your acquisition will usually be completed by an attorney with the signing of several documents and the payment of the balance of the purchase price.

FINAL preparations will be made for lease transfer, utility transfer, financing, merchant account transfer, licensing, inventory counts, and a ton of other items that all occur at the final minute. Remember the seller is running a business all the way up to close so it is complicated, requires attention to detail, and every person to do what they are supposed to do when they are supposed to do it. Your Business Broker is the Bird Dog of this process. When in step one we talked about roles and responsibilities, and we mentioned how important it was for you to understand them and reinforce them... here is where the rubber meets the road.



Someone must quarterback all these moving parts and have the influence to make sure everyone in the deal does what they need to. If you think its easy...well, you are flat out wrong. So, your job....hire the right team in step one....make sure the parties understand the urgency of communication and timely execution. Empower the Broker to do his or her job and address those who are not on board with the process to get on the bus. A smooth close looks

easy but given that less than 50% of deals close...the numbers say otherwise. Deals can and do die all the way up to the closing. There are legions of examples we can share with you where deals died due to preventable factors. Just ask us over a beer and we will gladly share them. At the end of the day though it always comes down to failure to follow the process step by step.

STEP 4: POST CLOSING

Transitional training by the seller may include meetings with employees and clients, technical education, computer updating, and other essential knowledge transfer. Transworld Business Advisors will be available to assist you with any questions or post closing requirements you may have. Remember what you have learned throughout this process, because when the time comes, Transworld will still be here to help your business.

WAY back in step #5 THE OFFER we talked about preparing and presenting an offer. One of the clauses in that document will be the training and transition period. This transitional training can be as short as a day and as long as a year depending on the business and its complexity. It may include meetings with employees and clients, technical education, franchise training, computer updating, transfer of intellectual property and knowledge, transfer of utilities, transfer of websites & communications portals, and then the actual training on the running of the business. Each industry has its special nuances and requirements (one more reason a seasoned brokerage is critical). Your broker should not just disappear once the deal is done. He or she should be a resource to point out elements of focus for you during transition and should share successful strategies and communications they have seen in their experience. Remember, the one party who has been through this process many times is hopefully your broker. Your business broker will be able to give you multiple options and solutions to the inevitable hic-ups that pop up. Call us without hesitation....our commitment to you is one of Trusted Advisor. We will go the distance.



GLOSSARY OF HELPFUL TERMS AND RESOURCES

E2 Visa: A type of immigration status visa used by certain treaty countries to purchase a business and get status in the US

L1 Visa: A type of immigration status visa used by certain countries to purchase a business and get status in the US

EB5 Visa: A type of immigration status visa used by certain countries to purchase a business and get status in the US

Transaction Broker: a limited form of representation assisting both a buyer and seller in the completion of a transaction.

Single Agent: a type of brokerage relationship an agent can have with specific duties including: Dealing honestly and fairly, Loyalty, Confidentiality, Obedience, Full disclosure, Accounting for all funds, Skill, care, and diligence in the transaction, Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

Fiduciary: A fiduciary is a person who holds a legal or ethical relationship of trust with one or more other parties

CPA: a certification for an accountant. There is a fiduciary relationship associated with CPA's
Recast: Recasting is the accepted accounting principle of removing or adjusting items on your financial statements that are unrelated to the ongoing business.

Owner Benefit: are the pretax and pre-interest profits before non-cash expenses, one owner's benefits, one-time investments, and any non-related income or expenses. Also known as SDE or SDI (sellers discretionary earnings / income).

Sellers Discretionary Income / SDE: are the pretax and pre-interest profits before non-cash expenses, one owner's benefits, one-time investments, and any non-related income or expenses

Cash Flow: is the net amount of cash and cash-equivalents being transferred into and out of a business. At the most fundamental level, a company's ability to create value for shareholders is determined by its ability to generate positive cash flows, or more specifically, maximize long-term free cash flow

EBITDA: In simplest terms it is the sum of the earnings before interest, taxes, depreciation and amortization. Different from SDE or Owner Benefit. EBITDA multiples are higher and do not account for owner salary. Primarily used for larger businesses and M&A transactions

Due Diligence: The period post an accepted offer when a buyer gets to review the financials and records of the target business to determine if representations are correct

Contingency: a clause that must be fulfilled in a contract or waived by a party.

Deal Stats: another resource available for purchase showing recent sales by vertical, category, revenue and profits

BRG / Business Reference Guide: a resource compiled by business brokers annually listing pertinent information regarding a business type including but not limited to rules of thumbs, common metrics, and percentages pertinent to the business and industry.

IBBA: The International Business Brokers Association. The largest association of business brokers in the world. Offers training to brokers to get CBI (certified business intermediary certification)

CBI: Certified Business Intermediary earned by completion of coursework from IBBA

CMAP: Certified Mergers & Acquisitions Professional: Earned by completion of coursework at Kennesaw State University in Concert with the M&A Source.

M&AMI: Master Mergers Intermediary: Performance Driven earned by completed CBI Certification and proof of closure

LOI / Letter of Intent: a non-binding document outlining the general terms and price by which a buyer proposes to purchase the assets of a particular business. If signed by the seller, it indicates that both parties intend to move forward in completing the transaction.

PSA / Purchase and Sales Agreement: a purchase and sales agreement. Transworld Business Advisors provides a standard form for Asset Purchases of a business.

Addendum: an agreed-upon addition signed by all parties to the original contract. It details the specific terms, clauses, sections and definitions to be changed in the original contract but otherwise leaves it in full force and effect. Key is in addition to the existing contract.

Rider: A rider is often used to add specific detail and especially specific conditions to a standard contract such as an insurance contract.

Closing / Transaction Attorney: An attorney / agent preparing and executing the closing transaction. Not working for either party as a fiduciary nor providing legal advice. Fees for closing traditionally split by both parties unless negotiated otherwise.

Occupational Licenses / Business Tax Reciept: Otherwise known as a business license is a tax from the county or municipality where business is conducted authorizing your business to conduct trade

NDA/ Non-Disclosure Form: A document used by parties in a transaction to secure the confidentiality of the information shared and nature of the process and facts pertinent to the deal.

The following page lists the standard NDA / Non-Disclosure form.

**Transworld Business Advisors of Western Kentucky
Confidentiality/Disclosure/Registration Agreement (TWCA)**

This Agreement dated and effective as of the latest date below (the "Effective Date") by and between Transworld™ Business Advisors of Western Kentucky ("Broker") and:

Name _____, his/her agents or assigns (individually & together "Prospect")
Address _____ City _____ State _____ Zip _____
Email Address _____ Driver's License /EIN Number# _____
Phone _____ Cell _____ Fax _____

BUSINESS LISTING ID NUMBER (the "Listing")

BUSINESS CATEGORY

- Confidential Information** - Prospect understands that the seller set forth in the Listing referenced above ("Seller") and of the business also set forth in the Listing (the "Business") shall, directly or indirectly through Broker as its conduit, disclose to Prospect certain confidential and proprietary information related to the Business ("Confidential Information"), which shall include information relating to non-public, confidential and proprietary operations, properties, personnel, financial information, materials, products, technology, computer programs, manuals, business plans, software, marketing plans, and other information disclosed or submitted, orally, in writing, or by any other media solely relating to Prospect's interest in purchasing the Business. Prospect agrees not to disclose, publish, or otherwise reveal any of the Confidential Information to any other parties, agents, representative or employees whatsoever without the prior written consent of Seller, except that Prospect may disclose the Confidential Information to Prospect's legal counsel, accountant or lender.
- Conduct** - Prospect understands and agrees that all communications concerning the above BL shall be conducted solely through the Broker and that Prospect shall be obligated to pay Broker its full commission if Prospect interferes with Broker's right to collect its commission as set forth in a separate Marketing Agreement with Seller that includes broker earns a commission when: 1) Prospect is ready, willing and able to purchase the BL at the terms set forth in the BL, or at any other Price and/or terms acceptable to Seller; 2) Prospect buys, leases, receives in trade or otherwise obtains any part of the Business during the two (2) year period commencing from the date of the Effective Date; 3) Seller and Prospect enter into a contract for sale; 4) Prospect, through no fault of Seller, fails or refuses to complete a sale, lease, trade or other disposition of the Business after entering into an agreement to do so; 5) Prospect does any act equivalent of a purchase, or has an employment, independent contractor or consulting relationship directly or indirectly with Seller. Prospect agrees not to approach or contact Seller or its principals or visit the physical business location without an appointment arranged through Broker. Prospect also agrees to not contact or approach Seller's employees, officials, agents, customers, suppliers, and/or competitors without the express written consent of Broker. Prospect shall be fully responsible for any breach of this Agreement by Prospect, Prospect's agents, representatives, or employees.
- Information** - All information and documents provided to Prospect concerning the Business is the property of Seller and must be returned immediately upon written request by Broker or Seller. Any and all representations and warranties shall be made solely by and between Seller and Prospect in a signed purchase/sale agreement and subject to the provisions thereof. Prospect fully understands that Broker makes no representations or warranties whatsoever, expressed or implied, to Prospect with respect to the Business and Confidential Information disclosed to Prospect. Prospect acknowledges that it is and will not rely upon any information, written or oral, furnished by Broker, and Prospect understands that all information received must be independently verified by Prospect. Prospect acknowledges that all information furnished and/or received by Prospect is provided by Seller and not verified in any way by Broker or its agents, and that Broker and its agents are relying upon Seller for the accuracy and completeness of the information. Prospect agrees that any information and documents received by Prospect will not be used in any way to Seller's or Broker's detriment or liability, and Prospect agrees to indemnify and hold Broker harmless from any claims or damages from its use and/or reliance thereon. The provisions in this paragraph shall also inure to the benefit of Broker's agents.
- Seller as Third-Party Beneficiary** - Prospect acknowledges that Seller has the right to protect the Confidential Information and to obtain the benefits hereunder. Accordingly, and for such limited purposes only, Seller shall be considered an intended third-party beneficiary hereunder. The fact that Seller is not a signatory to this Agreement shall not prohibit, alter or limit Seller's or Broker's right to enforce the terms hereof.
- Representation** - Prospect understands and agrees that Broker is a transaction broker as defined in Kentucky. As such, Broker is not a single agent or representative of Seller or Prospect.

- Advice** - Prospect understands, agrees, and acknowledges that Prospect has been advised to consult an attorney and/or certified public accountant for assistance in reviewing and verifying the legal, financial and/or any other pertinent information concerning the Business. Prospect further understands and agrees that Broker is merely acting as a conduit of information and has not made any independent investigation of the accuracy of the information provided by Seller. Prospect agrees to independently verify all representations and warranties made by Seller and understands that Broker has not made, nor will it make any verification or warranty regarding any information provided.
- Procuring Cause** - Prospect hereby recognizes Broker as the procuring cause of any purchase or other act set forth in paragraph 2 above and agrees that for a period of two (2) years from the Effective Date not to deal directly or indirectly with the Seller, its agents, representatives or assigns, without the prior written consent of Broker. If Prospect, or an entity in which Prospect has an interest, or person or entity introduced to the Business and/or Seller by Prospect, enters into a (a) sale and/or purchase agreement, (b) management contract or other financial arrangement with Seller with respect to the Business or part thereof, including leasing the Business premises from Seller or Seller's landlord, Prospect shall be liable to Broker for any and all damages Broker may suffer, including but not limited to the payment of the full commission due Broker under a separate agreement with Seller. To ensure the collection of its compensation, Prospect hereby grants Broker the right to place a lien on the Business assets which may be acquired by Prospect in violation of this Agreement, and Prospect agrees and does hereby appoint Broker its attorney-in-fact to execute all documents necessary to perfect such lien, and this Agreement shall be Prospect's consent to do so as required by Kentucky.
- Warranties** - Prospect represents and warrants that it does not represent any third-party competitor of the Business and is not an employee of a competitor business. Prospect warrants that the sole purpose of requesting and receiving information on the Business is to possibly affect a purchase or merger and/or acquisition, and none other, and Prospect knows that Seller and Broker are relying upon such representations in disclosing the Confidential Information to Prospect. Prospect further warrants that it is financially capable of purchasing the Business, has not filed for an undisclosed bankruptcy, and has not been convicted of any felony or crime.
- No implied waiver** - Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.
- Consent & Jurisdiction** - This Agreement shall be governed by the laws and construed in accordance with the laws of the State of Kentucky, and the parties consent and agree that Calloway County, Kentucky shall be the sole and exclusive venue for all proceedings relating to this Agreement and/or its subject matter, including without limitation the enforcement hereof. Prospect hereby waives all objections to establishing venue elsewhere. Prospect agrees that in the event of any breach or threatened breach of the confidentiality provisions contained herein, Seller or Broker may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect Broker and/or Seller against any such breach or threatened breach.
- Attorney's Fees** - In the event of any dispute or litigation arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees, costs, and expenses incurred in both the trial court and appellate levels.
- Copies** - Prospect has received a copy of this Agreement, and a fax or electronically transmitted copy with signatures shall be considered as an original.

Prospect's Signature _____ Date _____

Ed Barker _____
(Print TWA Agent Name) Date _____



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