



This **CONFIDENTIALITY AGREEMENT** (the “Agreement”) is made and is effective as of the latest date set forth below the signature lines appearing at the end of this Agreement (the “Effective Date”), by and between A&H Acquisitions, LLC (the “Seller”) and _____ (the “Prospective Purchaser”).

RECITALS

- A. Prospective Purchaser and/or its agent have inquired about the potential purchase of the going concern, business assets, tangible and intangible, equipment, inventory, and related assets (hereinafter “Assets”);
- B. As part of the Prospective Purchaser’s due diligence, the Prospective Purchaser has requested information related to the Assets located in Northeast Wichita, Kansas, and otherwise identified in material provided by Seller;
- C. The requested information, together with any discussions or negotiations related to the potential sale and purchase of the Assets, represents confidential and proprietary information of the Seller;
- D. The Seller is allowing Prospective Purchaser to review financial statements, pricing schedules, equipment information including maintenance records, inventory records, and tax returns; and
- E. Seller is agreeable to providing the requested information and negotiating with the Prospective Purchaser in accordance with the terms of this Agreement.

For and in consideration of the mutual promises, covenants, and payments hereinafter set out, the parties agree as follows:

- 1. **CONFIDENTIALITY:** The Prospective Purchaser will keep all Confidential Information strictly confidential and will not disclose the terms, substance, or existence of any discussions or negotiations regarding the potential sale and purchase of the Assets. Moreover, the parties’ obligations to maintain confidentiality as required by this Agreement will be an ongoing covenant and agreement between the parties regardless of whether Prospective Purchaser is the high bidder at any auction and regardless of whether any contract or other agreement related to the purchase of the Assets is ultimately reached between the parties.
- 2. **CONFIDENTIAL INFORMATION:** As used in this Agreement, the term “Confidential Information” means all communication, whether oral or written, whether or not marked confidential, and all material exchanged between the parties related to the operation, financial health, or profits & losses of the Assets together with any discussions or negotiations related to the potentially agreeable terms related to the purchase of the Assets including, but not limited, to specific terms, price, or other aspects of the potential purchase; provided however, that Confidential Information does not include information that is in the public domain or becomes known in the public domain through no fault or wrongful act of the parties.
- 3. **RETURN OF CONFIDENTIAL INFORMATION:** In the event that Confidential Information may have been provided to Prospective Purchaser and in the event that the Prospective Purchaser elects not to proceed with an attempt to purchase the Assets, is not the successful high bidder at the auction; or upon the request of the Seller, the Prospective Purchaser will promptly return to Seller any and all Confidential Information then in Prospective Purchaser’s possession and, thereafter, Prospective Purchaser may not use or permit the use of the Confidential Information, or any portion thereof, or disclose Confidential Information, or any portion thereof, to any person. Potential Purchaser shall also confirm in writing that any such Confidential Information has been destroyed if requested by the Seller.
- 4. **REMEDIES:** The parties acknowledge and agree that a breach of any covenant contained in this Agreement will cause damage to the Seller that will be difficult to measure and that the remedies at law will accordingly be inadequate. The parties therefore agree that if Prospective Purchaser breaches a covenant contained in this Agreement, Seller will be entitled to injunctive relief against Prospective Purchaser, without posting bond or other security. The parties further agree that, in the event of a breach of this Agreement by Prospective Purchaser, Prospective Purchaser will pay \$25,000.00 to the Seller as liquidated damages and not as a penalty, the parties recognizing that it would be extremely difficult to ascertain the extent of actual damages caused by Prospective Purchaser’s breach and that \$25,000.00 represents as fair approximation of such actual damages as the parties can now determine.
- 5. **ATTORNEYS’ FEES:** If suit is brought to enforce this Agreement, or to seek damages for its breach, and Seller is successful on the merits, Prospective Purchaser will pay to Seller, in addition to the liquidate damages described herein, all attorneys’ fees incurred by Seller in seeking such relief.
- 6. **INDEMNIFICATION:** The parties agree to waive, release, indemnify, and hold harmless McCurdy Real Estate & Auction, LLC against any and all losses, claims, damages, liabilities, or expenses, including costs of investigation, attorneys’ fees, and disbursements, which may be incurred by McCurdy Auction, LLC relative to this Agreement.

7. **GOVERNING LAW, VENUE, AND JURISDICTION:** This Agreement is to be governed by and construed in accordance with the laws of Kansas, but with regard to Kansas's rules regarding conflict of laws. Exclusive venue for all disputes lies in either the Sedgwick County Kansas District Court or the United States District Court in Wichita, Kansas. The parties submit to and accept the jurisdiction and venue of such courts.
8. **WAIVER OF JURY TRIAL:** The parties waive the right to trial by jury in all matters regarding this Agreement.
9. **MODIFICATION AND NON-WAIVER:** This Agreement may be amended only by an agreement, in writing, signed by all the parties. A failure by either party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof will not constitute a waiver of any such breach or any other covenant, duty, agreement, or condition. A waiver upon one or more occasions will not constitute a bar or a waiver of any right or remedy on any future occasion.
10. **SEVERABILITY:** In the event that any provision contained in this Agreement is determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions of the Agreement will not be in any way impaired.
11. **FURTHER ACTS:** The parties agree to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other action as may be reasonably necessary or convenient to carry out the intent and purpose of this Agreement.
12. **MERGER:** This Agreement constitutes the entire agreement and understanding between the parties thereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.
13. **INTERPRETATION:** The headings used in this Agreement are for convenience only and do not constitute a part of this Agreement. All references in the singular are to be construed to include the plural where applicable and the masculine to include the feminine or neuter gender where applicable, and all covenants, agreements, and obligations herein assumed by the parties are joint and several covenants, agreements, and obligations. The language used in this Agreement is to be deemed to be the language chosen by the parties to express their mutual intent and no rule of strict construction is to be applied against any party. If any date under this Agreement on which an event is to occur or notice is to be given falls on a Saturday, Sunday, or federal holiday, then such date will be the first business day following such Saturday, Sunday, or federal holiday.
14. **SIGNATURE BY ELECTRONIC MAIL AND IN COUNTERPART, AGREEMENT TO USE ELECTRONIC SIGNATURES:** This Agreement may be executed in any number of counterparts, and each such counterpart will be deemed to be an original instrument, but all such counterparts together will constitute one Agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or as a PDF attached to an email will constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. The parties agree that this transaction may be conducted through electronic means in accordance with the Kansas Uniform Electronic Transactions Act (K.S.A. § 16-1601 *et seq.*).

(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and delivered as indicated below.

SELLER:

Signature Date

Print

Title Company

Signature Date

Print

Title Company

PROSPECTIVE PURCHASER:

Signature Date

Print

Title Company

Signature Date

Print

Title Company