

NON-DISCLOSURE AND NON-COMPETING AGREEMENT

This NON-DISCLOSURE AND NON-COMPETING AGREEMENT is made and entered into as of the ____ day of ____ year ____ by and between BF&S, Inc. (The “Intermediary”) and _____ (the “Recipient”).

WHEREAS, the Intermediary requires a procedure whereby its Information will not be disclosed publicly or used without proper written authorization; and WHEREAS, the Intermediary would not disclose Information except in consideration of this Agreement and the Recipient agrees that the disclosure of the Information is valuable and sufficient consideration for its obligations under this Agreement; and NOW THEREFORE, in consideration of the mutual promises, covenants and obligations contained in this Agreement, the parties agree as follow:

1. DEFINITIONS

For the purposes of this Agreement the following terms shall have the meanings set forth below:

“Affiliate” means any Intermediary, company or entity that directly or indirectly controls, is controlled by or is under common control with a party.

“Information” means all information directly or indirectly communicated after the Effective Date by the Intermediary, or an Affiliate thereof, to Recipient in any form or medium (including all information summarized, reproduced or derived there from) that is: (i) designated as being confidential; or (ii) that the Recipient should reasonably regard as being confidential based upon the content of the information and/or circumstances surrounding its disclosure. Information shall include, without limitation, all technical, financial or business information disclosed pursuant to the Business Relationship, including trade secrets, techniques, data, specifications, software, programs, documentation, source code, customer information, business plants or strategies, or other technical, financial or business information in any form.

“Trade Secret” means any Confidential Information that: (i) derive independent economic value from not being generally known and not being readily ascertainable by proper means by others parties who can obtain value from its disclosure or use; and (ii) is the subject of efforts that are reasonable to maintain its secrecy.

2. OBLIGATIONS ARISING FROM DISCLOSURE

Unless specifically authorized is writing by the Intermediary, Recipient and any Affiliate of Recipient shall:

- (a) Use Information solely in connection with the Business Relationship;

NDA & NON-COMPETING AGREEMENT

- (b) Maintain the Information in strict confidence using the same degree of care if uses to safeguard its own confidential or proprietary information, but in no event less than reasonable care;
- (c) Disclose the Information only to its employees with a “need to know” such information as mandated by the Business Relationship;
- (d) Except where expressly permitted in writing by the Intermediary, not copy or duplicate Information or allow any other party not subjected to a confidentiality agreement with the Intermediary to copy or duplicate Information; and
- (e) Promptly return to the Intermediary, upon its request, or certify as destroyed Information in whatever form.

Recipient shall advise all employees with a “need to know” such Information, as set forth above, of the existence and terms of this Agreement. Any violation of this Section 2 by Recipient or by an employee of Recipient is a breach of this Agreement by Recipient.

Recipient’s obligation to protect Information until Intermediary’s prior written consent. The Recipient’s obligation to protect Information which is Trade Secret shall continue as long as such information is entitled to trade secret protection under the Arizona law.

3. EXCEPTIONS

The foregoing obligations set forth in Section 2 hereof shall not apply to any Information that:

- (a) Can be documented as being or becoming generally available to the public other than as a result of a violation of law, a breach of this Agreement or any other obligation of confidentiality;
- (b) The Recipient is required by law to disclose, provided that prior to disclosing any Information, the Recipient promptly notifies the Intermediary. The Recipient shall cooperate with the Intermediary to lawfully limit and/or obtain appropriate protective orders or any other similar orders with respect the portion(s) of such data or information as is/are the subject of any such required disclosure;
- (c) Is actually known to the Recipient prior to the time of receipt of such Information that:
 - (a) actual knowledge of such information can be established by evidence that would be acceptable to a court of competent jurisdiction; and
 - (b) such information is not subject to another obligation of confidentiality;
- (d) Is approved in writing by the Intermediary for release or other use by the Recipient according to the terms set out in such written approval;

The burden of demonstrating the applicability of any of the exceptions in this Section 3 shall be upon the Recipient.

4. INTELLECTUAL PROPERTY

The Recipient hereby acknowledges and agrees that all Information shall be owned solely by the Intermediary.

NDA & NON-COMPETING AGREEMENT

The Recipient further agrees that nothing contained in this Agreement shall be construed as granting any rights, by license or otherwise, under any intellectual property rights of or concerning any of the Information.

5. NON-COMPETING

The Recipient agrees not to carry on, participate or have any interest in any business venture or enterprise for which: (i) the Recipient uses in any manner whatsoever any Information received or acquired during the Business Relationship, (ii) the Recipient agrees not to manufacture products that were developed between intermediary and recipient without the Intermediary's prior written consent, in any manner whatsoever, whether directly or indirectly, on the Recipient's behalf or on behalf of any other person, alone or with any other person, for the period of time beginning on the date hereof and following termination or expiration of the business relationship.

The recipient will not will not during, and following termination or expiration of the Business Relationship, directly or indirectly solicit for any business venture any person who is now or becomes employed by the Intermediary without the Intermediary's prior written consent.

6. SURVIVAL

Unless otherwise agreed to in writing, the parties hereby acknowledge that the covenants and commitments set out herein shall be effective for the term of the Business Relationship. Recipient's obligations as provided in Section 2, 3, 4 and 5 shall survive termination or expiration of this Agreement.

7. ACKNOWLEDGMENT

The Recipient acknowledges that the restrictions contained in this Agreement are necessary for the protection and goodwill of the Intermediary and considers them to be reasonable for that purpose.

8. EQUITABLE REMEDIES

In the event of a breach or threatened breach of any term of this Agreement, the Recipient agrees that the harm suffered by the Intermediary would not be compensable by monetary damages alone and, accordingly, that the Intermediary shall, in addition to other available legal or equitable remedies, be entitled to the issuance of immediate injunctive relief enjoining any breach or threatened breach of the Recipient's obligations hereunder.

9. MISCELLANEOUS

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, US excluding its choice of law's provisions. The parties hereto agree that the Courts of the State of Arizona, US shall have exclusive jurisdiction in reference to any matters herein. Failure of a party to insist upon strict adherence to any term of this Agreement on any occasion or the waiver of a breach of this Agreement in any instance shall not deprive the party of the

NDA & NON-COMPETING AGREEMENT

right thereafter to insist on strict adherence to that term or any other term in this Agreement or be construed as a waiver of any subsequent breach, whether or not similar.

Should any provision of this Agreement be determined to be void, invalid or otherwise unenforceable by any court of competent jurisdiction, such determination shall not affect the remaining provisions of this Agreement which shall remain in full force and effect.

Except as otherwise provided herein, neither party may assign this Agreement, nor may any of either party's rights or obligations hereunder be assigned, delegated or otherwise transferred to any third party, without the prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon and inure for the benefit of the undersigned parties, their respective successors and permitted assigns.

This Agreement may be executed in any number of counterparts, each of which will be an original, and all of which will together constitute one agreement. The headings contained in this Agreement are for convenience of reference only and shall not affect the interpretation or meaning of this Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the matter herein contained.

No modification or addition to this Agreement shall be valid unless made in writing and signed by duly authorized representatives of each of this parties.

IN WITNESS WHEREOF, the parties hereto have caused this Non-Disclosure and Non-Competing Agreement to be executed by their duly authorized representatives as of the date first written above.

The Recipient

By: _____

Name: _____

Address: _____

Telephone: _____

E-Mail:

The Intermediary

By: _____

Name: Carlos Fernandez

Address: 801 Douglas Ave

Douglas, AZ. USA 85607

Telephone: (520) 364-8500

Email:

cfernandez@bfsmanufacturing.org