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| |  | | --- | |  |    ASSET PURCHASE AGREEMENT - W/ REAL ESTATE This Agreement is made on \_\_\_\_\_\_\_\_\_\_\_\_ (the "Effective Date") among [name and address of seller of personal property] ("Seller of Personal Property"), [name and address of seller of real estate] ("Seller of Real Estate"), [name and address of purchaser of personal property] ("Purchaser of Personal Property"), and [name and address of purchaser of real estate] ("Purchaser of Real Estate") (collectively, the "Parties").  RECITALS  This Agreement is made with reference to the following facts and circumstances:  A.    Seller owns and operates a certain [TYPE OF BUSINESS] business and the assets used in connection with such business (collectively referred to as the "Personal Property" or the "Business") under the name of \_\_\_\_\_\_\_\_\_\_\_\_ (the "Name"), located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Location").  B.    Seller owns real property commonly and legally described in this Agreement, together with all improvements and appurtenances (collectively referred to as the "Real Estate" or the "Premises");  C.    Seller desires to sell and Purchaser desires to purchase Seller's interest in the Business as a going concern.  D.    Seller desires to sell and Purchaser desires to purchase Seller's interest in the Real Estate.  E.    [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the owners of Seller (collectively, "Owner"), will receive a substantial economic benefit derived from Purchaser's purchase of the Purchased Assets, as defined in this Agreement, from Seller. In exchange, Owner agrees to make the representations, warranties, covenants, and indemnifications set forth in this Agreement. In addition, Seller and Owner agree not to compete with Purchaser in the conduct of the Business as provided in a noncompetition agreement as described in this Agreement as a condition to Purchaser's purchase of the Purchased Assets from Seller.  F. The Parties have set forth their agreement in writing as follows:  AGREEMENT  1.    Agreement to Purchase and Sell.  1.1    Personal Property. At the Closing (as defined in this Agreement), Purchaser shall purchase and Seller shall sell, assign, convey, transfer, set over, and deliver (by appropriate instrument of transfer) to Purchaser all of the assets, rights, and interests of every conceivable kind or character whatsoever, whether tangible or intangible, that on the Closing Date (as defined in this Agreement) are owned by Seller or in which Seller has an interest of any kind. These include, without limitation, the following (excluding, however, those assets specifically identified in this Agreement as the "Excluded Assets"):  A.    Trade Fixtures. Trade fixtures and equipment, as defined in the [STATE] Uniform Commercial Code (the "UCC"), limited specifically to the assets described in Exhibit 1 (the "Trade Fixtures and Equipment");  B.    Miscellaneous Items. All patents, logos, slogans, trademarks, copyrights, know-how, processes, trade secrets, formulae, inventions, telephone numbers, telephone listings, computer programs, software programs, software and technical libraries, engineering data, electronic data bases, all drawings, license agreements and all other intellectual and/or proprietary information and property and applications therefor or licenses thereof, used in connection with the Business, including Internet addresses for the Business, if any (collectively, the "Miscellaneous Items");  C.    Purchase Orders. Any existing customer purchase orders which have not been completed prior to the Closing (the "Purchase Orders");  D.    Customer List and Miscellaneous Records. Any records, files, lists and other tangible assets that pertain to the Business, including lists and records pertaining to any one or more of the following: Seller's customers, suppliers, advertising, promotional material, sales, services, delivery, and/or operations, except those items, if any, required to be retained by law, including accounting records and returns (collectively, the "Customer List and Miscellaneous Records");  E.    Remote Assets. All assets located off site from the Location or in the possession of others, but used in connection with the Business (collectively, the "Remote Assets"). The situs of the Remote Assets and the person or entity in possession or control thereof shall be delivered by Seller to Purchaser at the Closing;  F.    Contracts. All contracts and service agreements (collectively, the "Contracts") shall be delivered by Seller to Purchaser at the Closing;  G.    Sales, Contracts and Service Records. All contracts and service records for sales, services, or leasing relating to the Business (collectively, the "Sales Contracts/Service Records") shall be delivered by Seller to Purchaser at the Closing; and  H.    Goodwill. The goodwill, telephone and fax numbers, yellow-page advertisements, and Seller's right to use the Name, and all related names and derivations, including the Business Internet address(es), if any (collectively, the "Goodwill").  1.2    Sale of Real Estate. Purchaser shall purchase and Seller shall sell the Real Estate, described on Exhibit 2, together with all improvements and appurtenances (the "Real Estate") (the Personal Property and the Real Estate shall be at times collectively referred to as the "Purchased Assets").  1.3    Covenant Not to Compete. Neither Seller nor Owner shall establish, engage in, or become interested in, directly or indirectly, as an owner, partner, agent, shareholder, employee, independent contractor, consultant, or otherwise, within a radius of \_\_\_\_\_\_\_\_\_\_ miles from the Location in any similar business, trade, or occupation for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. At the Closing, Seller and Owner shall execute an agreement pertaining to the foregoing which shall be in the form attached as Exhibit 3 (the "Noncompetition Agreement").  1.4    Leases; Assignment.  A.    Real Estate Lease; Leasehold Improvements. Seller agrees to assign to Purchaser a lease with regard to the real estate and the leasehold improvements pertaining to the Location (the "Lease" and the "Lease Assignment"), together with security deposits, if any, and coupled with future obligations under the Lease, which is described on Exhibit 4.  B.    Miscellaneous Leases. Seller shall assign to Purchaser and Purchaser shall assume the miscellaneous leases used in connection with the operation of the business, coupled with assumption of future obligation under such leases (collectively, the "Personal Property Leases") described on Exhibit 5.  1.5    Excluded Assets. Except as otherwise set forth in this Agreement, this Agreement contemplates the purchase and sale, inclusive of assignments, of the Purchased Assets. This Agreement specifically excludes, however, the following assets (collectively, the "Excluded Assets"):  A.    Seller's cash, cash equivalents, and investments not relating to the operation of the Business;  B.    Seller's books of account, all accounts receivable, prepaid expenses, prepaid taxes, credit plan reserves, lease deposits (except that deposits pertaining to any leases being assigned by Seller shall also be assigned), and deferred tax credits of Seller;  C.    The liabilities and debts of Purchaser to Seller, including lease obligations prior to assignment of any lease, and all liens and encumbrances granted by Purchaser in favor of Seller to secure any debts to Seller pursuant to the payment terms described in this Agreement;  D.    The miscellaneous items of personal property and possessions of Owner that are not and have not been a part of the operation of the Business, including any policy of life insurance and cash surrender value of such life insurance upon life of any Owner; and  E.    Seller's assets not specifically or by inference included in the above paragraphs of attached Exhibits.  Unless otherwise agreed in writing, Seller, at Seller's expense, shall remove the Excluded Assets from the Location as soon as possible after the Closing Date but in no event later than seven (7) days after the Closing Date. If Seller fails to comply with the foregoing provisions, Purchaser may dispose of such items at Seller's expense or make such other arrangements as Purchaser may determine appropriate.  1.6    Liabilities Assumed and Excluded.  A.    Assumed Liabilities. As of the Closing Date, Purchaser shall assume, pay, and perform in due course the liabilities of Seller under the Contracts arising after the close of business on the Closing Date and those trade payables and other liabilities specifically identified on attached Exhibit 6 (the "Assumed Liabilities"). At the Closing, such Exhibit shall be updated and delivered by Seller to Purchaser; and Purchaser, at Purchaser's election, may assume any liabilities in excess of the specific dollar amount described in Exhibit 6.  B.    Excluded Liabilities. Except for the Assumed Liabilities, Purchaser does not assume nor shall Purchaser be obligated for any other liabilities or responsibilities whatsoever of Seller or the Business as conducted by Seller through the Closing Date, inclusive of obligations or liabilities resulting from Seller's total or partial withdrawal from any pension, profit sharing, or retirement plans (the "Excluded Liabilities").  2.    Purchase Price.  2.1    Purchase Price; Allocation of Assets. The purchase price for the Purchased Assets, including the Noncompetition Agreement, is $\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_) (the "Purchase Price"). The Purchase Price is allocated in the manner as set forth on attached Exhibit 7.  2.2    Tax Purposes. The Parties agree (1) to be bound by the allocation of assets on Exhibit 7 for all federal, state, and local income tax purpose and (2) to file Internal Revenue Service form 8594 (and other forms required by law) in accordance with the allocation of assets on Exhibit 7.  3.    Terms of Payment.  3.1    Deposit. Simultaneous with the execution of this Agreement, Purchaser shall deposit with Seller the sum of $\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_), which shall be an earnest money deposit (the "Deposit"), and shall remain in the possession of Seller's agent or attorney in a separate non-interest bearing account. At the Closing, subject to the conditions of this Agreement, the Deposit shall be applied toward payment of the Purchase Price.  3.2    Payment. The Purchase Price, excluding the Noncompetition Agreement consideration that shall be paid by Purchaser according to terms of the Noncompetition Agreement, shall be paid as follows:  A.    Personal Property.  1. Initial Payment. $\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_)shall be paid at the Closing in immediately available funds (the "Personal Property Initial Payment") as payment upon the Personal Property Purchase Price. The Deposit shall be applied to the Personal Property Initial Payment.  2. Unpaid Balance at Closing. Except as set forth in this Agreement, $\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_) shall be paid pursuant to the terms and provisions of a promissory note (the "Note") that Purchaser shall execute at the Closing. The Note will provide for monthly installment payments at a rate of $\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_) or more; the payments shall include interest on the unpaid balance. Interest shall accrue on the unpaid balance at a rate of \_\_\_\_\_\_\_ percent (\_\_\_\_%) per annum. The installment payments of the Note shall commence at a mutually agreeable date approximately one month from the Closing Date and shall continue monthly thereafter until the principal and interest are fully paid; provided, however, that the unpaid principal and interest shall be fully paid no later than \_\_\_\_\_\_\_\_\_\_\_ from the effective date of the Note.  B.    Real Estate.  The total Purchase Price shall be paid at the Closing, subject to the following:  1. Initial Payment. The Deposit shall be applied to the Purchase Price.  2. Unpaid Balance Paid with Borrowed Funds. The unpaid balance of the Purchase Price shall be paid in full by bank money order, wire transfer or other immediately available bank funds approved by Seller at the Closing, contingent on Purchaser's ability to obtain a commercial loan in the amount equal to or greater than \_\_\_\_\_\_\_ percent (\_\_\_\_%) of the Purchase Price at a commercially reasonable rate (the "Commercial Loan"). Purchaser shall immediately apply for the Commercial Loan in accordance with the provisions set forth in this Agreement and accept the Commercial Loan promptly if tendered.  3.3    Security Agreement. As security for the payment of the Note and other obligations of Purchaser owed to Seller, Purchaser shall execute a security agreement granting a security interest to Seller in the assets described in this Agreement (the "Security Agreement") together with a UCC-1 financing statement (the "Financing Statement").  3.4    Additional Security; Guaranty. As additional security, the following shall be provided at the Closing:  A.    Personal Guaranty. A guaranty regarding the performance of Purchaser's obligation (the "Guaranty") shall be executed at the Closing by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Guarantor").  B.    Collateral Assignment of Insurance. Guarantor shall provide a collateral assignment of insurance upon the life of Guarantor to the extent of unpaid indebtedness (the "Collateral Assignment").  [Optional clause:] C.    Pledge of Shares or Membership Interest; Proxy. As additional security for the Personal Guaranty, Guarantor shall pledge all of the issued and outstanding shares and/or membership interest of Purchaser (the "Shares") and shall deliver an irrevocable proxy for such Shares, subject only to any lien or encumbrance from Purchaser's Primary Lender.  3.5    Default. If Purchaser defaults on any obligation (i.e., the Commercial Loan or the Land Contract), such default shall constitute a default on any other obligation, regardless of the identity of the other Purchaser, and any rights of acceleration shall apply to each obligation.  4.    Personal Property Inventory and Accounts Receivable.  4.1    Inventory. In addition to the purchase and sale of the Purchased Assets, Seller shall sell and Purchaser shall purchase the inventory of saleable merchandise of Seller. The Parties further agree as follows:  A.    Purchase and Sale of Merchandise Inventory. An inventory of all merchandise shall be made upon the date of transfer, or some otherwise mutually agreeable date, and Seller shall sell, transfer, and deliver to Purchaser all of the merchandise. As used in this Agreement, the "Merchandise" shall include only unopened merchandise and merchandise that is not obsolete.  B.    Method of Taking Inventory. Unless the Parties agree otherwise, the Parties shall employ an inventory service company to determine the amount and purchase price of the Merchandise. The expense, if any, of counting the inventory and determining the purchase price of the Merchandise shall be borne equally by the Parties.  C.    Inventory Purchase Price; Payment Terms. The purchase price of the Merchandise shall be determined and paid as follows:  1. The Merchandise shall be purchased at Seller's then-current wholesale cost. Seller shall provide written evidence of Seller's then-current wholesale cost, which [WILL/WILL NOT] include the cost of the delivery of the Merchandise, if any.  2. The Merchandise shall be paid at the Closing.  4.2    Accounts Receivable. All accounts receivable for transactions occurring before the Closing Date shall remain the property of Seller irrespective of any payment for it to Purchaser. If Purchaser receives payment for any accounts receivable existing as of the Closing Date, Purchaser shall forward payment directly to Seller.  5.    Adjustments. At the Closing, the following shall be adjusted or apportioned and, to the extent practicable, all such prorations shall be computed and paid at the Closing, and to the extent not practicable, as soon as practicable after the Closing:  5.1    Personal Property.  A.    Taxes on Personal Property. Purchaser shall pay all taxes and assessments, extraordinary as well as ordinary, that may be levied on any Personal Property which become due after the Closing Date and which arise from actions of Purchaser after the Closing; provided that Seller shall pay for all taxes upon Personal Property that arise from Seller's ownership of the Personal Property on or before the Closing and which may be due on, before, or after the Closing Date. Current personal property taxes shall be prorated and adjusted between the Parties as of the Closing Date.  B.    Miscellaneous Business Taxes. All Social Security, sales, use, unemployment, withholding, and single business taxes for all years up to and including the last completed tax year and all quarters for the current tax year immediately preceding the Closing Date shall be paid in full by Seller, regardless of when payment of such amounts shall become due.  C.    Miscellaneous. If applicable, adjustments shall be made for payroll and any other prepaid items, and any other unspecified unpaid taxes.  D.    Escrow Fund; Holdback Agreement. At the Closing, a reserve fund in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_) shall be deposited by Seller with an escrow agent to be agreed on by the Parties ("Escrow Agent"). Escrow Agent shall hold the fund until a certificate of conditional tax clearance from the Revenue Commissioner of the State of [STATE] showing that Seller has filed all tax returns and reports required to be filed before Closing and that Seller has paid all taxes due and until evidence of any other information is furnished to assure transfer of unencumbered title to the Purchased Assets, subject to the provisions of this Agreement.  5.2    Real Estate.  A.    Real Estate Taxes. All taxes and assessments of every kind and description, extraordinary as well as ordinary, and now of record, that may be levied on the Real Estate, shall be paid by Seller; provided, however, any future installments for ordinary, special or extraordinary taxes that are now a lien on the Real Estate but are not due and payable, shall be paid by Purchaser as such installments become due and payable.  B.    Recording Fees. Purchaser shall assume the costs of recording the deed when it is delivered by Seller to Purchaser.  C.    Revenue Stamps; State Transfer Tax. Seller shall assume the costs for the issuance of revenue stamps and state transfer taxes when due.  5.3    Transfer Fees; Sales Taxes. Purchaser shall pay all transfer fees and applicable sales taxes, if any, (but excluding Seller's income or other taxes in the nature thereof) arising under or on account of the purchase and sale of the Purchased Assets.  5.4    Timing of Adjustment. Except as otherwise provided in this Agreement, the net amount of any of the adjustments set forth in this Agreement shall be either an increase or a decrease of the payments to be made at the Closing to the extent practicable.  6.    Title.  6.1.    Personal Property. At the Closing, title to the Personal Property shall be free, clear, and unencumbered, except as specifically set forth in this Agreement.  A.    Lien Search. Seller shall provide Purchaser a tax lien search and financing statement search, both certified to a date later than the Effective Date.  B.    Application for Conditional Tax Clearance. Immediately after the Closing, Seller shall make application for issuance of a conditional tax clearance to the [STATE] Department of Treasury pertaining to sales, use, single business, income, payroll withholding, and unemployment taxes. Seller shall assume the responsibility for the preparation of all appropriate returns and reports for submission of application for issuance of conditional tax clearance.  C.    Objection. If objection to title is made based on a written opinion of Purchaser's attorney that the title is not in the condition required for performance under this Agreement, Seller shall have ten (10) days from the date Seller is notified in writing of the particular defects claimed to either (1) remedy the title, or make arrangements to remedy title at the Closing; or (2) on written demand made by Purchaser, to refund the Deposit in full termination of this Agreement if Seller is unable to remedy title. Purchaser may elect to complete the purchase and sale and reserve any right to recover any damages arising out of the defect in title.  6.2.    Real Estate. The title to the Real Estate is free, clear, and unencumbered, subject to the following:  A.    Condition of Title. The Real Estate shall be conveyed subject to the following:  1. Zoning. Any zoning regulations or ordinances.  2. Survey. Any conditions or other disclosures that an accurate survey may disclose; each survey, if any, to be acquired by Purchaser at Purchaser's expense.  3. Restrictions. Any covenants, building restrictions, easements, or reservations in the chain of title, or of record, or that would show on an examination of the Real Estate, including any right of way granted to the State of [STATE] that does not affect the marketability of title.  4. Taxes. Any future installments of ordinary, special, or extraordinary taxes that are now a lien on the Real Estate but are not now due and payable.  5. Liens. Any liens or encumbrances that may accrue after the date of execution of a Land Contract pertaining to the Real Estate through any acts or omissions of any party other than Seller.  A.    Evidence of Title. As evidence of marketable title, Seller (at Seller's expense unless otherwise set forth in this Agreement) shall furnish Purchaser as soon as possible, but no later than fourteen (14) days after the Effective Date, a commitment for a title insurance policy in an amount not less than the Real Estate Purchase Price, bearing a date later than the Effective Date.  B.    Objection. On receipt of evidence of marketable title, Purchaser shall have ten (10) days to object to title. If objection to title is made based on a written opinion of Purchaser's attorney that the title is not in the condition required for performance under this Agreement, Seller shall have thirty (30) days from the date Seller is notified in writing of the particular defects claimed to (1) remedy the title; (2) obtain title insurance insuring the defect; or (3)refund the deposit in full termination of this Agreement if Seller is unable to remedy title or obtain title insurance. If Seller remedies title or obtains a title insurance policy within the time specified, Purchaser agrees to complete the sale within ten (10) days after receiving written notification of such action, or on the date set for the Closing, whichever occurs later. If Seller fails to remedy the title, to obtain such title insurance, or to give Purchaser written notification within such thirty (30) days, the Deposit shall be refunded immediately in full termination of the rights of the Parties under this Agreement.  7.    Creditors of Seller.  7.1    Agreement of Payment. In addition to the warranties and representations contained in this Agreement, if for any reason any creditor or third party who is owed a debt by Seller on or before the Closing, or who otherwise possesses any type of right or interest in the Purchased Assets arising from the ownership or operation of the Business, including the Purchased Assets, by Seller prior to the Closing, holds or obtains a lien on the Purchased Assets, then the following shall apply:  A.    Seller, on written notice given by Purchaser to Seller, shall pay such monies arising from the ownership or operation of the Business, including the Purchased Assets, by Seller prior to the Closing required to obtain the release of any lien on the property within\_\_\_\_\_ months of such notice or before the seizure of the property, whichever occurs earlier.  B.    In the event of default by Seller as to the foregoing, Purchaser, on written notice given by Purchaser or Seller, shall have the right to pay for the same and/or obtain the release of lien, if any, and receive a credit toward the payment of any obligations owing by Purchaser to Seller until the indebtedness is paid in full or satisfied.  C.    If the indebtedness is paid in full or satisfied by Purchaser, then Seller shall immediately reimburse Purchaser for any payment made by Purchaser.  7.2    Disclosure. Before the Closing, Seller shall furnish to Purchaser a true and complete list of all existing creditors. This list shall set forth the names and addresses of all of Seller's creditors and shall contain information regarding the nature and extent of the claim or claims of each creditor. Seller shall afford to Purchaser or Purchaser's authorized representatives access to Seller's books and records related to each claim and shall furnish Purchaser with such financial and operating data and other information regarding each such claim as Purchaser may from time to time reasonably request.  8.    Representations, Covenants, and Warranties of Seller. Seller and Owner (as evidenced by the signature of Owner) represent, covenant, and warrant the following to be true, which representations, covenants, and warranties shall survive the Closing:  8.1    Status of Seller. Seller is a [STATE] [TYPE OF ENTITY] duly organized, validly existing, and in good standing under the laws of the State of [STATE]; and, further, is properly authorized, according to its governing instruments, and duly adopted Resolution, to enter into and carry out the transactions contemplated by this Agreement. Furthermore, Seller has not in the last five years used or assumed any other name in connection with the conduct of the Business.  8.2    Authority. When executed, this Agreement and all instruments necessary to carry out the transactions contemplated by this Agreement (the "Related Documents") will be legal, valid, and binding obligations of each party signing such instruments on behalf of Seller.  8.3    Financial Statements. Upon Purchaser's written notice, Seller shall provide Purchaser with financial statements concerning the Business as of the fiscal year preceding the Effective Date (together with any subsequently prepared financial statements supplied by Seller to Purchaser, collectively, the "Financial Statements"). The Financial Statements (1) fairly present both the financial position of Seller as of the respective dates indicated and the results of operations, retained earnings, and changes in financial position of Seller for the respective periods indicated, and (2) have been prepared in accordance with generally accepted accounting principles, as modified by Seller's standard accounting practices.  8.4    Absence of Undisclosed Liabilities. Notwithstanding anything contained in this Agreement to the contrary, as of the dates of and except to the extent reserved or reflected in the Financial Statements, Seller had no known liabilities or obligations. Seller represents that Seller does not know or have reasonable grounds to know of any basis for the assertion against Seller, as of such dates, of any liability of any nature or in any amount not fully reserved or reflected in the Financial Statements.  8.5    Title to Properties. Seller has good and marketable title to all its properties and assets, including those reflected in the Financial Statements (except those since sold or otherwise disposed of in the ordinary course of business), subject to no mortgage, pledge, lien, encumbrance, security interest, or charge, except for the following: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Further, except as set forth in this Agreement, there are no imperfections of title that would affect the marketability of title of Seller's assets.  8.6    Seller's Name. Seller agrees that from and after the Closing Date, Purchaser shall have the right to use in or in connection with the conduct of any business (whether carried on by Purchaser directly or through any affiliate) (1) the Name; or (2) any part or portion of the Name, either alone or in combination with one or more other words. Seller warrants to Purchaser that it has taken all necessary action to protect the Name in the State of [STATE] and agrees to take or cause to be taken any and all steps or actions that shall be or become permissible, proper, or convenient to enable or permit Purchaser to use the Name, or any portion of the Name, either alone or in combination with one or more other words, except as presently restricted. It is contemplated that on or as soon as practicable after the Closing Date, Seller will terminate Seller's interest in the Name. After the Closing Date, Seller agrees that it will not use the Name directly or indirectly, either alone or in combination with one or more other words, in or in connection with any business, activities, or operations that Seller directly or indirectly may carry on or conduct.  8.7    Status of Contracts. Seller has, to the best of Seller's knowledge, complied with all of the provisions of contracts described in this Agreement and of all other contracts and commitments to which Seller is a party. Further, other than those contracts or agreements specifically described in this paragraph, Seller has no contract or commitment extending beyond the Closing Date, except: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  8.8    Insurance. All assets owned by Seller are and will be adequately insured against fire and casualty to the Closing Date; and, in addition, the leased premises occupied by Seller are and will be adequately insured for fire and extended coverage, personal liability, and property damage (collectively, the "Policies"). Further, the Policies are and will be outstanding and duly enforced and the premiums to become due on the Policies to the Closing Date will be paid when due. Seller has not received any notice of any cancellation of the Policies.  8.9    Taxes; Unemployment Liabilities; Tax Returns and Audits.  A.    Taxes. All personal property taxes and other taxes of any nature assessed against Seller and/or the Purchased Assets are and will be fully paid by Seller when due through the Closing Date. Without limiting the generality of the foregoing, all federal, state, county, and local taxes, including without limitation, income, corporate franchise, single business, stamp, transfer, sales and use, employee withholding, and ad valorem taxes due and payable by Seller on or before the Closing Date have been or will have been paid or provided for by Seller, including any unemployment tax liability and any deficit balance in Seller's [STATE] Unemployment Insurance Agency ("UIA") account.  B.    Tax Returns; Audits. Seller has, and as of the Closing Date will have, filed all taxes and reports required to be filed by Seller pursuant to the operation of the Business with all such taxing authorities, including UIA. Seller does not have any outstanding or unsatisfied deficiency assessments with respect to any taxes, and there are no current audits or investigations by or disputes with any authority with respect to any taxes.  C.    No Dispute. Seller is not involved in any dispute with any tax authority about the amount of taxes due, nor has it received any notice of any deficiency, audit, or other indication of deficiency from any tax authority not disclosed to the Parties to this Agreement.  8.10    Licenses and Permits. Seller presently possesses and will continue to possess at the Closing Date all governmental licenses, permits, certificates of inspection, other authorizations, filings, and registrations which are necessary for Seller to own and operate the Business as presently conducted.  8.11    Litigation or Insolvency Proceedings.  A.    Litigation. There are no actions, suits, claims, investigations, or legal, administrative, or arbitration proceedings pending or, to the best of Seller's and Owner's knowledge, threatened or likely to be asserted by or against Seller or relating to the Purchased Assets, this Agreement and/or the transactions contemplated hereby, before any court, governmental agency, or other body, including any quasi-judicial or administrative forum, and no judgment, order, writ, injunction, decree, or other similar command of any course, governmental agency, or body has been entered against or served upon Seller or upon any individual Owner, except:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  B.    Insolvency Proceedings. Seller is not involved in any proceeding by or against it in any court under the Bankruptcy Code or any other insolvency or debtor's relief act, whether state or federal, or for the appointment of a trustee, receiver, liquidator, assignee, or other similar official of Seller or Seller's property.  8.12    Labor Relations—Employees.  A.    Collective Bargaining Agreements. There are no collective bargaining agreements currently in effect between Seller and labor unions or organizations representing any of Seller's employees; and there does not now exist and there has been no formal or informal request to Seller for collective bargaining or for an employee election from any union or from the National Labor Relations Board (the "NLRB").  B.    Termination of Employees. As of the Closing Date, Seller will terminate all employees and will pay to all employees all wages, salaries, commissions, bonuses, benefit plan contributions, and other compensation. Purchaser may, in its discretion, re-employ some or all of such employees on the day after the Closing Date. After this Agreement is executed, Seller and Purchaser shall jointly announce the Agreement to Seller's employees, and shall cooperate so that Seller's notices of termination and any offers of employment by Purchaser are delivered simultaneously so that appropriate management representatives may explain the termination and any offers of employment to the employees.  C.    Employment Regulations Compliance. Seller is in compliance with all applicable federal, state, and local laws and regulations respecting employment and employment practices, terms, and conditions of employment and wages and hours; and further, (1) there are no unfair labor practice complaints against Seller pending before the NLRB, and no such complaints have been threatened; (2) there is no labor strike, dispute slowdown, or stoppage actually in progress or threatened against Seller; (3) no grievance or arbitration proceedings are pending and no such claim has been asserted; and (4) Seller shall not incur any liability or obligation of any kind arising out of Seller's employment of or termination of Seller's employees nor for any other claim by any of Seller's employees arising out of any employment relationship with Seller.  D.    Exclusion of Employee Benefits. Seller acknowledges: (1) Purchaser does not assume any employee benefits of Seller whatsoever, unless such employee benefits are specifically assumed as Assumed Liabilities; and (2) Purchaser shall have no obligation to provide employee benefits other than such benefits as Purchaser shall agree to provide to its employees in the exercise of Purchaser's sole discretion.  8.13    Environmental Matters. To the best of Seller's knowledge, there is no Hazardous Material in, on, or under the Location. In addition, there are no presently pending or threatened administrative or enforcement actions, investigations, compliance orders, claims, demands, actions, or litigation based on environmental laws or regulations or otherwise related to the presence of Hazardous Material, in, on, or under the Location. Seller makes no other environmental representations or warranties, but Seller acknowledges that neither Party is required to close the transactions contemplated by this Agreement unless satisfied with the environmental reports or assessments conducted in accordance with this Agreement. For purposes of this paragraph, the term "Hazardous Material" shall mean any toxic or hazardous waste or substance (including without limitation asbestos and petroleum products) which is regulated by applicable local, state, or federal environmental laws or regulations.  8.14    Conduct of Business. From the date of the most recent Financial Statements delivered by Seller to Purchaser to the Effective Date, the Business of Seller has been (and until the Closing Date shall be) open and conducted by Seller in a normal and regular manner; and further, Seller has not:  A.    Amended its governing instruments;  B.    Issued or declared any dividend or other distribution or payment with respect to Seller's corporate shares or membership interests;  C.    Entered into any contract or commitment extending beyond the Closing, except normal commitments made in the ordinary course of business;  D.    Modified the compensation or benefits payable to or to become payable by Seller to any officer, employee, or agent;  E.    Encumbered any Purchased Assets;  F.    Experienced any adverse change or any material damage, destruction, or loss affecting its assets or the Business; and/or  G.    Entered into any agreement not in the ordinary course of business or agreed to do any of the foregoing.  8.15    Condition of Purchased Assets. The following representations are made with respect to the Purchased Assets:  A.    The Purchased Assets are presently operating and have been regularly maintained and will be in the same working condition as of the Closing Date.  B.    There are no known defects that have not been disclosed to Purchaser.  C.    There are no outstanding citations issued by any health, building, or other governmental agency, under the Occupational Safety and Health Act and/or under the Americans with Disabilities Act having jurisdiction over the operation of the Purchased Assets and/or the Business, including any claims of any violation of any federal, state, or local environmental statutes, regulations, ordinances, or other environmental regulatory requirements, except:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  8.16    No Violation or Breach. The performance of this Agreement will not be in violation of any laws, statutes, local ordinances, state or federal regulations, court or administrative order, or ruling, nor is the performance of this Agreement in violation of the conditions or restrictions in effect for financing pursuant to any loan documents, whether any such loan is secured or unsecured.  8.17    ERISA Plans. Seller has no employee benefit plans now in effect which are subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") other than: . The Plan complies in all respect with the Internal Revenue Code of 1986, as amended, and ERISA and the regulations thereto, and no "Reportable Event" under ERISA or its regulations has occurred with respect to the Plan, and there exist no conditions or set of circumstances which would result in a Reportable Event. The value of all accrued benefits is fully funded by the assets of the Plan to the extent required by applicable law.  8.18    Full Disclosure. This Agreement and any other information furnished to the Purchaser in connection with the transactions contemplated by this Agreement neither contain any untrue statement of material fact nor omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.  8.19    Competitors. Neither Seller nor any individual Owner has any direct or indirect interest in any person or entity engaged or involved in any business which is competitive with the Business.  8.20    Directors, Managers, Officers, and Owners. The names of directors, managers, officers, and the resident agent of Seller, together with each individual Owner, are set forth on attached Exhibit 8.  8.21    Broker's or Finder's Fees. No agent, broker, investment banker, person, or firm acting on behalf of Seller is or will be entitled to any broker's or finder's fees or any other commission or similar fee directly or indirectly from either of the Parties in connection with the sale of the assets contemplated hereby, except: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  8.22    Patents, Trademarks, etc. of Seller. Seller has no patents, patent applications, trademarks, trade names, copyrights, and/or licenses presently owned or held by the Seller, except the following: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  8.23    Customer List of Seller. Seller shall provide Purchaser with a customer list and, to that end, Seller authorizes the release of pertinent information pertaining to the customer list to Purchaser. Seller is in a position to know and knows of no intention on the part of any customer of Seller to terminate the existing contracts for the services conducted by Seller.  8.24    Assumed Name of Seller. The name under which the Business is conducted is [ASSUMED NAME]. The foregoing name has been properly filed with the appropriate agency having jurisdiction over the filing of the name.  8.25    Compliance. Seller shall assume all notes or notices of violation of law or municipal ordinances, orders, or requirements noted in or issued by any governmental department or agency having jurisdiction against or affecting the premises as of the date of this Agreement. Seller agrees to obtain any Certificate of Compliance for the premises, if required. Seller also agrees to hold the other party free from any obligation, duty, or liability pertaining to the issuance of any Certificate of Compliance for the Personal Property and Real Estate.  8.26    Reliance. The foregoing representations and warranties are made by the Seller with the knowledge and expectation that Purchaser is placing complete reliance on them.  9.    Representations, Covenants, and Warranties of Purchaser. Purchaser represents, covenants, and warrants the following to be true, which representations, covenants and warranties shall survive the Closing:  9.1    Status of Purchaser. Purchaser is a [STATE] [TYPE OF ENTITY] duly organized, validly existing, and in good standing under the laws of the State of [STATE]; and, further, is properly authorized, according to its governing instruments, and duly adopted Resolution, to enter into and carry out the transactions contemplated by this Agreement. Upon request of Seller, Purchaser shall provide certification of the foregoing.  9.2    Authority. This Agreement and all Related Documents when executed will be legal, valid, and binding obligations of each party signing such instruments on behalf of Purchaser.  9.3    Awareness of Purchaser. Purchaser acknowledges the following:  A.    During the negotiations prior to the execution of this Agreement, Seller furnished to Purchaser financial data and other data which Purchaser considers necessary or advisable to enable Purchaser to form a decision concerning the purchase of the Business, the Real Estate, and the Purchased Assets.  B.    Purchaser has had an opportunity to examine the Purchased Assets and agrees to accept the same "As Is," subject to the remaining conditions and other provisions of this Agreement.  C.    Purchaser has, either individually or through agents or employees of Purchaser, sufficient knowledge, expertise, and financial capacity to operate the Business; and, further, Purchaser is capable of evaluating the merits and risks of the purchase of the Business.  9.4    Litigation. There are no actions, suits, or proceedings pending or, to Purchaser's knowledge, threatened or likely to be asserted, against the Purchaser, before any court, administrative agency, or other body; and no judgment, order, writ, injunction, decree, or other similar command of any court or governmental agency has been entered against or served upon Purchaser relating to this Agreement and/or the transactions contemplated by this Agreement.  9.5    Broker's or Finder's Fees. No agent, broker, investment banker, person, or firm acting on behalf of Purchaser is or will be entitled to any broker's or finder's fees or any other commission or similar fee directly or indirectly from either of the Parties in connection with the sale of the assets contemplated by this Agreement, except: .  9.7    Reliance. The foregoing representations and warranties are made by Purchaser with the knowledge and expectation that Seller is placing complete reliance on them.  10.    Pre-Closing Actions and Miscellaneous Covenants. From the Effective Date until the Closing:  10.1    Purchaser's Access. Seller shall permit Purchaser and Purchaser's representatives to make a full business, financial, accounting, and legal review of the Business, the Purchased Assets, and Seller's tax returns to the extent Purchaser deems necessary (the "Due Diligence Review"). Seller shall take all reasonable steps necessary to cooperate with Purchaser in undertaking the Due Diligence Review. Except as set forth in this Agreement or as agreed by the Parties, the Due Diligence Review by Purchaser or Purchaser's representatives shall not affect the representations and warranties of Seller or Purchaser's reliance on them.  10.2    Due Diligence Review by Purchaser.  A.    Review Period. Purchaser shall have \_\_\_\_\_\_\_\_ days from the Effective Date (the "Review Period") to conduct the Due Diligence Review.  B.    Satisfaction of Conditions. If (1) the Purchased Assets are not in satisfactory condition, and/or (2) records do not substantiate the financial information previously furnished by Seller to Purchaser, Purchaser may, upon written notice to Seller, terminate this Agreement and shall be entitled to a full refund of the Deposit. If no written objection or written notice of non-satisfaction by Purchaser is delivered to Seller within the Review Period, then such right of termination is waived as of the close of business on the last day of the Review Period.  C.    Ongoing Duty to Provide Information. Seller's duty to provide information to Purchaser shall continue through the Closing even if the Review Period has ended.  10.3    Accuracy of Representations and Warranties; Satisfaction of Conditions. Seller will immediately advise Purchaser in writing if (1) any of Seller's representations or warranties are untrue or incorrect in any material respect or (2) Seller becomes aware of the occurrence of any event or any state of facts that results in any of the representations and warranties of Seller being untrue or incorrect as if Seller were then making them. Seller will not take any action, or omit to take any action, that would result in any of Seller's representations and warranties set forth in this Agreement to be untrue or incorrect as of the Closing Date. Seller will use its best efforts to cause all conditions within Seller's control that are set forth in this Agreement to be satisfied as promptly as practicable under the circumstances.  10.4    Conduct of Business. Except as otherwise specifically provided in this Agreement, Seller will use all reasonable efforts to keep the Business organization intact; to preserve the relationships with Seller's customers, suppliers, and others having business dealings with Seller; and to preserve the services of Seller's employees, agents, and representatives, if any. Without limitation of the foregoing:  A.    Seller shall not undertake any action without the prior written consent of Purchaser that, if taken before the date of this Agreement, would have been required to be disclosed on any Exhibit or required to be disclosed pursuant to the provisions of this Agreement; and  B.    Seller will not undertake any action which would alter the nature of the Business or result in any change in the Purchased Assets, other than in the ordinary course of business consistent with past practices.  10.5    Environmental Studies and Remediation Activities  A.    Environmental Studies. Within ten (10) days after the Effective Date, Seller shall provide to Purchaser, at Seller's cost and expense, copies of (1) all existing Environmental Site Assessments (whether Phase I, Phase II, or otherwise) covering all or any portion of the Real Estate, to the extent the same are in Seller's possession or Seller has access to them, and (2) any other environmental studies, reports and information, including, without limitation, correspondence from governmental authorities, concerning the environmental condition of the Real Estate, to the extent the same are in Seller's possession or Seller has access to them (the foregoing information, whether obtained by Purchaser or provided by Seller, is referred to collectively as the "Environmental Information"). At Purchaser's option, subject to the consent of the owner of the Real Estate, Purchaser may obtain (1) new or updated Environmental Site Assessments for the Real Estate certified to Purchaser so that Purchaser may rely on same, and/or (2) certification of the existing Environmental Site Assessments to Purchaser, and/or (3) Phase II Environmental Site Assessments certified to both Seller and Purchaser. Without in any way limiting the provisions of the preceding sentence, Purchaser and its contractors and representatives, at Purchaser's expense, shall have at least sixty (60) days from the date hereof (the "Feasibility Period") within which to conduct any and all engineering, environmental, and economic feasibility studies and tests of the Real Estate which Purchaser, in Purchaser's sole discretion, deems necessary to determine whether the Real Property is suitable for Purchaser's intended use in terms of its engineering, environmental, and economic aspects. Seller grants to Purchaser and its contractors and representatives access to the Real Estate for the purpose of performing such studies or tests. Such persons shall conduct their studies and tests in such a manner as to minimize interference with the Business, and, upon completion of their activities on the Real Estate, shall restore each parcel of real property as nearly as is reasonably possible to the condition it was in immediately prior to such activities.  B.    Remediation. In the event that any of the Environmental Information or any studies or tests performed or commissioned by Purchaser indicate the existence of any environmental conditions on the Real Estate, Seller shall have a period of thirty (30) days after notification thereof in which to remediate or otherwise cure the same in accordance with all applicable governmental requirements or to give notice in writing to Purchaser that it will not undertake such remediation. In the event that an environmental condition exists or is discovered on the Real Estate and Seller fails or refuses to remediate or otherwise cure such environmental condition within the required thirty (30) day period, or in the event such environmental condition is not capable of being remediated or otherwise cured within such 30-day period, then Purchaser shall have the following options: (1) cancel this Agreement by written notice of cancellation given to Seller prior to the Closing Date, in which event the Parties shall have no further obligations under this Agreement, (2) if, subject to the consent of the owner of the Real Estate, the environmental condition can be remediated or cured for $5,000 or less, Purchaser may remediate or cure and deduct the cost of such remediation or cure from the Purchase Price; (3) if the environmental conditions affect a portion, but not all of the Real Estate, Purchaser may elect to delete the portion of the real property so affected from the definition of Real Estate hereunder and to lease only the newly defined "Real Estate" at Closing, or (4) waive in writing the remediation or cure of such environmental condition (without in any way waiving Purchaser's rights under this Agreement pertaining to Seller's indemnification) and proceed to close the sale contemplated by this Agreement.  10.6    Purchaser Financing. This Agreement is conditioned upon Purchaser obtaining the Commercial Loan. If Purchaser does not deliver proof that Purchaser has accepted a Commercial Loan commitment that may be reasonably satisfied by Purchaser on or before \_\_\_\_\_\_\_\_ days from the Effective Date, Seller may thereafter at any time treat this contingency as not having been satisfied and may then terminate this Agreement and receive the Deposit in full termination of the rights of the Parties under this Agreement.  11.    Conditions Precedent to Obligations of Purchaser at Closing. The obligations of Purchaser to perform this Agreement at the Closing are subject to the satisfaction at or prior to the Closing of the following conditions, unless waived in writing by Purchaser:  11.1    Accuracy of Representations and Warranties. The representations and warranties of Seller contained in this Agreement and all Related Documents shall be true and correct at and as of the Closing Date as though such representations and warranties were made on the Closing Date. Further, upon request of Purchaser, Seller shall deliver to Purchaser a certificate certifying that as of the Closing Date all of the representations and warranties of Seller contained in this Agreement are true and correct.  11.2    Performance of Covenants. Unless otherwise agreed or waived, Seller shall have in all respects performed and complied with all covenants, agreements, and conditions that this Agreement and all Related Documents require to be performed or complied with before or on the Closing Date. In addition, Seller and Owner shall have properly executed and delivered the Noncompetition Agreement.  11.3    Lien Search. Purchaser shall have received UCC searches in form and content satisfactory to Purchaser. If objection to title is made by Purchaser based upon a written opinion of Purchaser's attorney that title is not in the condition as required for performance hereunder, Seller shall have ten (10) days from the date Seller is notified in writing of the particular defects claimed either (1) to remedy title, or make arrangements to remedy title at the Closing;or (2) upon written demand made by Purchaser, to refund any Deposit in full termination of this Agreement, if unable to remedy title. Purchaser may, however, elect to complete the purchase and sale and reserve any right to recover any damages arising out of the defect in title.  11.4    Closing Documents; Instruments of Transfer, Etc. Purchaser shall have received the following:  A.    All bills of sale, general instruments of transfer, conveyances, assurances, transfers, assignments, approvals, consents by third parties, and any other instruments and documents containing the usual and customary covenants and warranties of title that are consistent with the requirements and the warranties of Seller in this Agreement and that shall be convenient, necessary, or reasonably required to effectively transfer the Purchased Assets to Purchaser with good title, free and clear of all encumbrances.  B.    An opinion of counsel for Seller in a form acceptable to Purchaser, dated on the Closing Date and addressed to Purchaser.  C.    Acknowledgment of each party in possession of any Remote Assets of Seller's ownership of the Remote Assets, free of any claims, set-offs, or charges, and the transfer of the Remote Assets to Purchaser.  D.    Resolutions of the Owner and Seller's board of directors approving and authorizing this Agreement and the transactions contemplated by this Agreement, and identifying the officers authorized to execute all documents.  E.    Evidence that all non-Owner employees of Seller have been terminated.  11.5    Certificate Regarding Tax Returns by State of [STATE]. Seller shall have applied for a certificate from the Revenue Commissioner of the State of [STATE] showing that Seller has filed all tax returns and reports required to be filed before Closing and that it has paid all taxes due.  11.6    Key Management Employee. Purchaser, at Purchaser's option, shall have entered into any employment agreement with non-Owner key employees on such terms and conditions as are reasonably satisfactory to Purchaser.  11.7    Due Diligence Satisfaction. Purchaser shall be satisfied, in Purchaser's sole discretion, with the result of Purchaser's Due Diligence Review, inclusive of the inspection and valuation of the Purchased Assets.  11.8    Environmental Reports or Assessments. The Parties shall have received environmental reports or assessments on the Real Estate and operations which show the Real Estate and the Purchased Assets in an environmental condition reasonably satisfactory to Purchaser and Seller.  11.9    No Litigation. No action, suit, or other proceeding shall be pending or threatened before any court, governmental authority, or other lawful body seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain damages in connection with this Agreement, or involving a claim that consummation of this Agreement shall be in violation of any law, decree, or regulation. No other material adverse actions or proceedings shall have been instituted or threatened against Seller or the Business.  11.10    No Material Adverse Change. Except as described in this Agreement, there shall have been no material adverse change or development in the Business, its properties, results of operations, financial condition, assets, or volume of sales or service orders; and no fact or condition shall exist or be contemplated or threatened which will, or in Purchaser's reasonable judgment will be likely to, cause such a change or development.  11.11    Fire or Other Casualty/Risk of Loss.  A.    Assumption of Risk—Seller. Except as set forth in this Agreement, Seller assumes all risks of destruction, loss, or damage due to any casualty, including any liability arising out of ownership of the Purchased Assets, up to the time of the Closing.  B.    Assumption of Risk—Purchaser. Notwithstanding the foregoing, Purchaser assumes all risks of destruction, loss, or damage due to any casualty caused by Purchaser's negligence and in such event Purchaser assumes all risks of destruction, loss, or damage pertaining to any of the Purchased Assets placed in the possession of Purchaser prior to the Closing except defects in the Purchased Assets, ordinary wear and tear, and a malfunction which results from Purchaser's ordinary use of the Purchased Assets to assist Seller in the Business prior to Closing.  C.    Insurance. In the event of casualty or malfunction of any of the Purchased Assets prior to Closing, Seller's insurance shall be applied toward repair or replacement of any such property. Any liability of Purchaser shall be limited to damages in excess of any insurance proceeds received by Seller or Purchaser and applied toward repair or replacement of the property. Seller shall expeditiously file a claim with its insurance carrier upon notice of any such casualty or malfunction covered by insurance.  D.    Damage to Seller's Property. If any of the Purchased Assets is materially damaged at any time before the Closing, and the damages cannot reasonably be repaired on payment of the sums available by insurance settlement or from any sums to be paid by Purchaser to Seller at the Closing, Purchaser, at Purchaser's option, shall have the right to terminate this Agreement and, upon giving notice of such election, Purchaser shall immediately receive a refund of any deposit in full termination of Purchaser's rights under this Agreement. This paragraph shall not apply if damages are caused by Purchaser's negligence.  11.12    Possession. Purchaser shall have received operating control and possession of all of the Purchased Assets.  12.    Conditions Precedent to Obligations of Seller at Closing. The obligations of Seller to perform this Agreement at the Closing are subject to satisfaction at or prior to the Closing of the following conditions, unless waived in writing by Seller:  12.1    Representations and Warranties. The representations and warranties of Purchaser set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date.  12.2    Performance of Obligations of Purchaser. Purchaser shall have performed all obligations required to be performed by it under this Agreement prior to the Closing.  12.3    Closing Documentation. Seller shall have received the following payment and documents:  A.    The Deposit.  B.    The Note, Security Agreement, and Financing Statement.  C.    All other instruments and documents reasonably required by this Agreement to be delivered by Purchaser to Seller, and such other instruments and documents as Seller shall reasonably request which are not inconsistent with the provisions of this Agreement.  D.    An opinion of counsel for Purchaser in a form acceptable to Seller, dated on the Closing Date and addressed to Seller.  13.    Confidentiality. Purchaser acknowledges that, pursuant to the right to inspect Seller's books, records, and other documents and materials, Purchaser may become privy to confidential information of Seller, and that communication of such confidential information to third parties (whether or not such communicated information is authorized by Purchaser) could injure Seller's business in the event that this transaction is not completed. Purchaser agrees to take reasonable steps to ensure that such information about Seller, obtained by Purchaser, shall remain confidential and shall not be disclosed or revealed to outside sources, and further agrees not to solicit any customers of Seller disclosed from such confidential information. As used in this Agreement, "confidential information" includes information ordinarily known only to Seller's personnel, and information such as customer lists, supplier lists, trade secrets, channels of distribution, pricing policy and records, inventory records, and other information normally understood to be confidential or designated as such by Seller.  14.    Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if delivered or mailed, first-class postage prepaid, to Seller, at Seller's address given in this Agreement, or to Purchaser, at Purchaser's address given in this Agreement, or to any other address that Purchaser or Seller shall designate in writing.  15.    Indemnification.  15.1    Indemnification by Seller. Seller shall defend, indemnify, and hold harmless Purchaser and Purchaser's agents and employees, heirs, representatives, successors, and assigns from and against any and all costs, losses, claims, liabilities, fines, expenses, penalties, and damages (including reasonable legal fees) in connection with or resulting from:  A.    All debts, liabilities, and obligations of Seller, whether accrued, absolute, contingent, known, unknown, or otherwise;  B.    Any inaccuracy in any representation or breach of any warranty of Seller contained in this Agreement or the Noncompetition Agreement; and  C.    Any failure by Seller to perform or observe in full, or to have performed or observed in full, any covenant, agreement, or condition to be performed or observed by the Seller under this Agreement or the Noncompetition Agreement.  15.2    Indemnification by Purchaser. Purchaser shall defend, indemnify, and hold harmless Seller and Seller's agents and employees, heirs, representatives, successors and assigns from and against any and all costs, losses, claims, liabilities, fines, expenses, penalties, and damages (including reasonable legal fees) in connection with or resulting from:  A.    All debts, liabilities, and obligations of Purchaser, whether accrued, absolute, contingent, known, unknown, or otherwise;  B.    Any inaccuracy in any representation or breach of any warranty of Purchaser contained in this Agreement; and  C.    Any failure by Purchaser to perform or observe in full, or to have performed or observed in full, any covenant, agreement, or condition to be performed or observed by the Purchaser under this Agreement.  16.    Consultation. Owner, as an independent contractor engaged by Seller, shall provide to Purchaser consultation, customer relations, general assistance, and informational services pertaining to Seller on a limited basis, as reasonably requested by Purchaser (but based upon Owner's reasonable availability), without any charge for a period of thirty (30) days commencing on the Closing Date.  17.    Termination of Agreement. Except as otherwise specifically set forth in this Agreement:  17.1    Right of Termination. This Agreement may be terminated at any time before the Closing Date as follows:  A.    By Purchaser and Seller in a written instrument;  B.    By Purchaser or Seller if the Closing does not occur on the Closing Date;  C.    By Purchaser or Seller if there has been a material breach of any of the representations or warranties set forth in this Agreement on the part of the other Party, and such breach by its nature cannot be cured before the Closing; or  D.    By Purchaser or Seller if there has been a breach of any of the covenants or agreements set forth in this Agreement on the part of the other Party, and this breach is not cured within ten (10) business days after the breaching Party or Parties receive written notice of the breach from the non-breaching Party.  17.2    Effect of Termination; Election of Remedies. If this Agreement is terminated:  A.    As provided in subparagraph 17.1A, this Agreement shall forthwith become void and have no effect, except for provisions of next succeeding subparagraph.  B.    As provided in subparagraphs 17.1B, C, or D, no Party shall be relieved or released from any liabilities or damages arising out of such Party's breach of any provision of this Agreement; however, in the event of Purchaser's breach, Seller, at Seller's option, may by written notice declare a forfeiture and retain the Deposit as liquidated damages, or may elect any other remedy allowed by law.  17.3    Exclusion. Notwithstanding anything contained to the contrary in this Agreement, (1) the terms of any previously executed confidentiality agreement shall survive the Closing and (2) each Party will not, during the six-month period following the termination, directly or indirectly solicit any employee, if any, of the other Party to leave the other Party's employment.  18.    Closing.  18.1    Closing Date. The Closing shall be held on \_\_\_\_\_\_\_\_\_\_\_\_ or such later date as may be agreed upon by the Parties (the "Closing Date").  18.2    Closing Location. The Closing shall be held on the Closing Date at such location as may be agreed upon by the Parties.  18.3    Documents. At the Closing and at any time after it, the Parties shall execute all documents necessary to put into effect the terms of this Agreement.  19.    Miscellaneous.  19.1    Amendment. This Agreement shall not be amended, altered, or terminated except by a writing executed by each Party.  19.2    Choice of Law. This Agreement shall be governed in all respects by the laws of the State of [STATE].  19.3    Headings. The paragraph headings used in this Agreement are included solely for convenience.  19.4    Entire Agreement. This Agreement sets forth the entire understanding of the Parties; further, this Agreement shall supersede and/or replace any oral or written agreement(s) relating to this subject matter entered into by the Parties before the date of this Agreement.  19.5    Waiver. The waiver by any party of any breach or breaches of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of any provision of this Agreement.  19.6    Binding Effect. This Agreement, inclusive of its terms and provisions, shall survive the Closing and shall be binding on and inure to the benefit of, and be enforceable by, the respective heirs, legal representatives, successors, and assigns of the Parties.  19.7    Construction of Agreement. Each Party and its respective legal counsel has reviewed and revised this Agreement and has had equal opportunity for input into this Agreement. Neither Party nor their respective legal counsel shall be construed to be the drafter or primary drafter of this Agreement. In the event of any dispute regarding the construction of this Agreement or any of its provisions, ambiguities or questions of interpretation shall not be construed more in favor of one Party than the other; rather, questions of interpretation shall be construed equally as to each Party.  19.8    Consent. Unless otherwise provided, any required consent of a Party shall not be unreasonably withheld or delayed by such Party.  Purchaser and Seller have executed this Agreement on the following dates to be effective as of the "Effective Date":  [SELLER]  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [PURCHASER]  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |