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Re: Letter of Intent Regarding the Acquisition of the Assets of \_\_\_\_\_

Dear \_\_\_\_\_:

The purpose of this letter of intent (this “Letter”) is to set forth my intention to form a corporation or a limited liability company (the “Buyer”) to acquire substantially all of the assets of \_\_\_\_\_ (the “Seller”) pursuant to the following terms and conditions:

1. The assets of the Seller that will be acquired by the Buyer will consist of all of the Seller’s assets used in connection with the Seller’s business (the “Business”), including the Assets described in sections 1.1 - 1.5 below (collectively the “Assets”), except for the assets described in section 1.6 below:
  - 1.1 All of the Seller’s furniture, fixtures, and equipment; computer hardware, software, and peripherals; and materials and supplies;
  - 1.2 All of the Seller’s inventory;
  - 1.3 All of the Seller’s good will, its trade name rights in the name “\_\_\_\_\_”, its trademark rights in the mark “\_\_\_\_\_”, including the federal registration of this mark, its URL, www.\_\_\_\_\_.com, and the associated website, including content and software, and any other URLs registered by Seller;
  - 1.4 Seller’s telephone, facsimile, and cellular numbers and e-mail addresses; and
  - 1.5 All of Seller’s records, including electronic records, pertaining to the operation of the Business, including customer records, supplier records, and employee records.
  - 1.6 The following assets are excluded from this transaction: the Seller’s cash, bank accounts and other cash equivalents, accounts receivable relating to goods shipped prior to the effective date of this asset purchase transaction,

security deposits, personal effects, and personal vehicles.

2. The Buyer will pay the Seller \$\_\_\_\_\_ for the Assets, subject to adjustment as set forth below, plus an earnout, payable as follows:
  - 2.1 \$\_\_\_\_\_ as earnest money, to be paid to \_\_\_\_\_ when the parties execute this Letter; such amount shall be returned to the Buyer if this asset purchase transaction does not close because one of the contingencies set forth in Section 7.1 below is not fulfilled.
  - 2.2 A promissory note (the "Note") in the principal amount of \$\_\_\_\_\_ and payable over \_\_\_\_\_ (\_\_) months, with interest at \_\_\_\_ (\_\_) percent per year. The monthly payments shall be in the amount of \$\_\_\_\_\_, with the first payment due one (1) month following the date of Closing, and each subsequent payment shall be due by the same day of each subsequent month. The Note shall be personally guaranteed by \_\_\_\_\_, and it shall be secured by the Assets. There shall be no prepayment penalty, the Seller shall have the customary remedies upon default, and the Note shall be subject to a right of setoff.
  - 2.3 The remainder of the \$\_\_\_\_\_ portion of the purchase price, as adjusted, shall be paid in readily available funds at the closing of this asset purchase transaction (the "Closing").
  - 2.4 The Buyer shall pay an earnout to the Seller calculated as follows: \_\_% of the amount by which the gross sales of the \_\_\_\_\_ business exceeds \$\_\_\_\_\_ during each of calendar years \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ subject to a maximum annual payment of \$\_\_\_\_\_ (amounts earned in excess of \$\_\_\_\_\_ shall be rolled into the following year's payment) and a maximum cumulative earnout of \$\_\_\_\_\_. Amounts earned relating to each of these calendar years will be payable by March 1 of the following year. The earnout shall be personally guaranteed by \_\_\_\_\_. The Buyer agrees to provide the Seller with an accounting of gross sales during the applicable earnout period within \_\_\_\_\_ (\_\_) days after the end of the annual earnout period. In the event that the \_\_\_\_\_ business is sold prior to the Seller's receipt of the full \$\_\_\_\_\_ earnout, the unpaid balance of the earnout shall be due upon the sale of the business.

The parties shall reasonably cooperate with one another regarding determining the allocation of the purchase price. The amount paid at the Closing shall be adjusted to reflect reasonable pro-rations.

In addition, the parties shall jointly conduct an inventory immediately before the Closing. If the marketable inventory and supplies, at the Seller's cost plus freight-in, is greater than \$\_\_\_\_\_, then the amount in excess of \$\_\_\_\_\_ shall be paid for in the form of a

non-interest bearing promissory note payable in full to the Seller \_\_\_\_\_ (\_\_) days following the Closing, with this note personally guaranteed by \_\_\_\_\_; if this note is not paid within the \_\_\_\_\_ (\_\_) day period, this note shall be in default and interest shall accrue on this note at the rate of \_\_\_\_\_ percent (\_\_\_%) per year. If the marketable inventory and supplies, at the Seller's cost plus freight-in, is less than \$\_\_\_\_\_, then the amount of such shortfall shall cause the purchase price, and the funds due at the Closing, to decrease accordingly.

The Buyer will pay any sales or use taxes that arise out of or in connection with the transactions contemplated by this Letter.

3. The Buyer may rent the Seller's building for free for one month, and thereafter the Buyer may rent the Seller's building for up to an additional \_\_\_\_\_ (\_\_) months at a gross rent of \$\_\_\_\_\_ per month.
4. The Closing shall take place by \_\_\_\_\_.
5. The Seller will remain solely liable and responsible for all debts, obligations, duties and liabilities of the Business to the date of Closing, including any accrued vacation time for the Seller's employees. The Buyer shall assume the Seller's obligations, as of the date of Closing, relating to an equipment lease for \_\_\_\_\_
6. At Closing, the Seller and \_\_\_\_\_ (“\_\_\_\_\_”), individually, will enter into a non-competition agreement pursuant to which they each agree not to compete with the Business in regards to the sale of \_\_\_\_\_ and other products related to \_\_\_\_\_ for \_\_\_\_\_ (\_\_) years from the date of Closing within the following area: \_\_\_\_\_.
7. The Closing will be expressly conditioned on, among other things, the following:
  - 7.1 The Buyer being satisfied with the results of its due diligence investigation. The due diligence period will extend for a period of \_\_ days from when the Buyer is able to commence due diligence. If desired by the Buyer, the Buyer's due diligence may include the Buyer meeting with the key employees of the Seller, but it may not contact Seller's employees without the Seller's consent and not until all of the Buyer's other contingencies have been removed.
  - 7.2 The parties reaching agreement regarding the terms of a definitive Asset Purchase Agreement and closing documents.
  - 7.3 The Seller's approval of the Buyer's creditworthiness. Upon acceptance of this offer by all parties, the Buyer agrees to furnish Seller with financial statements, credit reports, and other information reasonably necessary to enable the Seller to assess the Buyer's creditworthiness. The Seller must approve of the Buyer's creditworthiness, in writing, within ten (10)

business days of receipt of the Buyer's financial data.

8. \_\_\_\_\_ will be reasonably available to provide the Buyer with training regarding the operation of the Business as follows: \_\_\_\_\_. Thereafter, \_\_\_\_\_ will be reasonably available to consult with the Buyer by telephone for up to \_\_\_\_\_ (\_\_\_\_) hours per month for the next \_\_\_\_\_ (\_\_\_\_) months, for no additional consideration, and, if the Buyer subsequently requires \_\_\_\_\_ to provide additional training regarding the operation of the Business, such additional training shall be provided pursuant to the terms of a consulting agreement to be agreed upon by the parties and set forth in the Asset Purchase Agreement.
9. Each party shall pay its own fees and expenses associated with completing this transaction.
10. After this Letter is signed by the parties, they will prepare and execute a definitive Asset Purchase Agreement. The definitive Asset Purchase Agreement will contain representations, warranties, covenants, indemnifications, promises and agreements customary in such transactions and satisfactory in form and substance to the parties in their sole discretion. \_\_\_\_\_ shall personally guarantee all representations, warranties and covenants of the Seller.
11. After this Letter is signed by all parties, the Buyer and its legal, accounting and other representatives will be granted reasonable access to the Business and to all of the books and records of the Business upon reasonable notice to the Seller.
12. For a period of \_\_\_\_ days from the date of execution of this Letter, unless this transaction is sooner terminated, the Seller will not discuss or negotiate with any other company or other person, or entertain or consider any inquiries or proposals relating to the possible disposition of the Assets or stock of the Seller.
13. Except for the Seller's obligations under paragraphs 9 and 12 and in any confidentiality agreements entered into by the parties, this proposal shall not constitute a definitive agreement or a binding legal obligation on the part of any party, but merely a letter of intent concerning the main points of my offer.
14. If this Letter accurately sets forth your intentions with respect to the transactions contemplated hereby, kindly so indicate by signing and returning this Letter to me.

Very truly yours,

\_\_\_\_\_  
\_\_\_\_\_

This Letter accurately sets forth our intentions with respect to the transactions described above:

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_