



OFFER AND AGREEMENT TO PURCHASE ASSETS OF A BUSINESS

Directions: Please complete all blanks; write "none" or "N/A" where not applicable.

Seller:

- Legal name of selling business (**Seller**): _____

- Trade name of selling business (**Trade Name**): _____

- All owners of Seller (**Principal** or **Principals**): (1) _____

(2) _____ (3) _____

- Address for Notice to Seller and Principal(s): Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Fax: _____ email: _____ Phone: _____

Buyer:

- Legal name of business purchaser (**Buyer**): _____

- All owners of Buyer (**Guarantor** or **Guarantors**): (1) _____

(2) _____ (3) _____

- Address for Notice to Buyer and Guarantor(s): Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Fax: _____ email: _____ Phone: _____

Business Information

- Description of Seller's Business (the **Business**): _____

- Address of the Business (**Premises**): _____

- Description of assets being sold under this Agreement of the Business (**Assets**): all assets used by or useful in the Business and owned or leased by Seller or Principal(s), as further described on **Schedule 1**, other than those assets specifically excluded (**Excluded Assets**) as specified on **Schedule 2**.



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Purchase Price:

\$ _____ Earnest money, due upon signing this Agreement (**Earnest Money**)

\$ _____ Cash amount due at Closing (**Cash**)

\$ _____ Seller Financing amount (**Seller Financing**)

\$ _____ Third party financing (**Third-Party Financing**)

\$ _____ Other: _____

\$ _____ TOTAL PURCHASE PRICE (**Purchase Price**)

Other Items:

- The escrow agent (**Escrow Agent**) is: _____
Other Items are continued on the following page _____

- The time and date of Closing (**Closing Date**) is: _____

- The period for due diligence (the "**Due Diligence Period**") shall begin on the Binding Agreement Date and shall terminate on _____ at 6 p.m. (see **Section 8**).

Please note that this document has been completed by a person not licensed to practice law in the state of Georgia. You are strongly urged to have this document reviewed by your own attorney. This Agreement is contingent on approval of Buyer's and Seller's attorney, to the extent such attorneys are retained by the respective parties. This approval contingency shall be deemed waived unless Buyer's or Seller's attorney, on behalf of their client, submits notice in accordance with **Section 23** within 72 hours of the Binding Agreement Date of their disapproval of this Agreement. If Buyer's or Seller's attorney makes such notice, this Agreement shall be void and the full amount of the Earnest Money shall be returned to Buyer, and neither party shall have any further obligations under this Agreement.

Time Limit: The terms of this Agreement shall constitute an offer (**Offer**) which shall be open for acceptance until _____ o'clock _____ .m. on the _____ day of _____, 20____.

Acceptance: This Offer is hereby accepted, without change, at _____ o'clock _____ .m. on the _____ day of _____, 20____ (the **Binding Agreement Date**).



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BUYER:

SELLER

Print Name and Title

Print Name and Title

By:

By:

Signature of Buyer or of Authorized Agent of Buyer

Signature of Seller or of Authorized Agent of Seller

Date Signed

Date Signed

GUARANTORS:

PRINCIPALS

Signature of Guarantor 1

Signature of Principal 1

Print Name of Guarantor 1

Print Name of Principal 1

Signature of Guarantor 2

Signature of Principal 2

Print Name of Guarantor 2

Print Name of Principal 2

Signature of Guarantor 3

Signature of Principal 3

Print Name of Guarantor 3

Print Name of Principal 3

SELLING BROKER OR TRANSACTION BROKER:

LISTING BROKER:

Brokerage Firm's Name

Brokerage Firm's Name

Brokerage Firm's License Number

Brokerage Firm's License Number

By:

By:

Signature of Selling Agent

Date Signed

Signature of Listing Agent

Date Signed

Print Name of Selling Agent

Ga Real Estate License No

Print Name of Listing Agent

Ga Real Estate License No.

Brokerage Firm's Street Address

Brokerage Firm's Street Address

Brokerage Firm's City, State, Zip

Brokerage Firm's City, State, Zip



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IT IS HEREBY AGREED THAT:

1. **Purchase of Assets.** In consideration of the Purchase Price and the terms and conditions set forth in this Agreement, Buyer offers and agrees to purchase from Seller the Business and the Assets, and to consummate the transactions contemplated herein (the "**Transactions**").
2. **Earnest Money.** Escrow Agent shall hold the Earnest Money Pursuant to an escrow agreement in the form of **Exhibit B**. Escrow Agent shall not be required to pay earned interest on the monies placed in escrow to either party. This Agreement is subject to cancellation by Seller in the event that any checks submitted herewith do not clear upon deposit into the Escrow Agent's account.
3. **Seller Financing.** Buyer shall execute a promissory note in favor of Seller for the Seller Financing amount (the "**Note**") and shall be subordinated to a third party lender if any. The Note shall have the following characteristics:

A. Term _____

B. Interest Rate (Annual) _____

C. Period of Payment (e.g., monthly) _____

D. Amount of Payment per Period _____

E. Other Terms _____

F. The Note will be Secured by [check the appropriate box(es)]:

a personal guaranty of the equity owners of the Buyer

a perfected security interest in the Assets and the proceeds of the Assets

after acquired assets of the Business as operated by Buyer

Other _____

G. If the Note is to be secured as indicated above, Buyer agrees to execute and deliver to Seller a security agreement (the "**Security Agreement**") that will include, at a minimum, a provision that the security interest granted thereby will be subordinate to (i) any existing liens on the Assets assumed by Buyer, but only to the extent of Assumed Liabilities (as hereafter defined) and (ii) any Third-Party Financing.

4. **Third Party Financing**

A. This Agreement is conditioned upon Buyer's ability to obtain a loan of not less than the Third Party Financing amount at an interest rate not to exceed _____% per year for a term not to exceed _____years (the **Financing Contingency**);

B. Buyer shall: (a) make application for a Third Party Financing loan within _____ days from the Binding Agreement Date; (b) immediately give notice to Seller of having applied for such loan (or any subsequent loan), and provide the name and telephone number of the lender and the name and telephone number of the loan originator; (c) pursue qualification of and approval of such loan diligently and in good faith. Should Buyer not timely apply for such loan or diligently pursue such loan, Seller may terminate this Agreement for default if Buyer does not cure the default within five (5) days after receiving written notice thereof by providing Seller with written evidence of having applied for such loan. Buyer and each Guarantor hereby authorizes Buyer's lender to release information to Seller and Listing Broker verifying the amount and terms of any loan for which Buyer has applied.

Buyer's Initials _____; Seller's Initials _____

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- C. Upon Buyer's receipt of a loan commitment letter from Buyer's lender, Buyer shall promptly forward same to Seller and Listing Broker. If Buyer has not obtained a loan commitment letter within _____ days of the Binding Agreement Date (the **Financing Contingency Date**), then Buyer may terminate this Agreement upon written notice to Seller, and Buyer shall be refunded the Earnest Money in full. If Buyer does not give Seller such written notice of termination by the Financing Contingency Date, then Buyer shall be deemed to have waived the Financing Contingency.

Inventory.

- D. The Purchase Price shall include inventory in the amount of _____ (**Minimum Inventory**). For the purpose of valuing any on-hand and in-transit marketable inventory (**Inventory**) the parties shall use one of the following methods:

The lower of Seller's book value or cost (including freight-in); **or**

- E. Buyer and Seller shall take and agree to an itemized physical count of the Inventory on the day prior to the Closing to determine the actual Inventory and adjust the Purchase Price by the difference between the Minimum Inventory and actual Inventory. An increase in Purchase Price shall be added to the Seller's note, or in the absence of a Seller's note, to the Buyer's down payment. A decrease in Purchase Price shall be deducted from the cash due at Closing.

5. **Assumption of Liabilities.** Except for those liabilities specifically listed on **Schedule 3** hereto, which are specifically assumed by Buyer (the **Assumed Liabilities**), Buyer does not and will not assume any liabilities of the Seller or the Business, including but not limited to all accounts payable accruing prior to Closing, regardless of when payment is due.

6. **Adjustments for Accounts Receivable.** *Please check the appropriate box:*

Seller's accounts receivable (**A/R**), if any, are not being sold as a part of the Assets and shall be retained by Seller; **or**

Seller's accounts receivable (**A/R**) are being sold as part of the Assets hereunder. The Purchase Price shall include A/R in the amount of _____ (**Minimum A/R**). Seller and Buyer agree to calculate the A/R on the day prior to the Closing to determine the actual A/R and adjust the Purchase Price by the difference, if any. An increase in Purchase Price shall be added to the Seller's note, or in the absence of a Seller's note, to the Buyer's down payment. A decrease in Purchase Price shall be deducted from the Cash due at Closing.

7. **Due Diligence; Availability of Third-Party Financing.** At any time prior to Closing, Buyer has the right to review and inspect the Business, its physical location(s), its Assets, its books and records and any other information regarding the Business that Buyer deems necessary to evaluate the Business and the Assets. (collectively, the **Due Diligence Materials**). During the Due Diligence Period, Buyer shall evaluate the Business, the Premises, the lease relating to the premise, if any, the feasibility of the Transactions, the availability of and cost of financing, and any other matter of concern to Buyer. If Buyer determines, based on an evaluation of the above, that it is not desirable to proceed with the Transactions, then Buyer shall notify Seller and Listing Broker prior to the expiration of the Due Diligence Period and, upon such notice, Buyer shall be refunded the Earnest Money in accordance with the Escrow Agreement. If Buyer fails to timely notify Seller that it is not proceeding with the Transactions, Buyer shall waive its rights to terminate this Agreement pursuant to this **Section 8**.

8. **Closing.** The closing of the sale of the Assets contemplated hereby (the **Closing**) shall occur on or before the Closing Date, at the office of counsel for Buyer or its lender or, at the office of a Closing Agent (see below), or such other date and place mutually agreed to by the parties in writing. If Buyer and Seller agree to appoint an attorney to act as a closing agent (the **Closing Agent**) to manage the closing process, then such Closing Agent

Buyer's Initials _____; Seller's Initials _____

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shall be authorized to receive, deposit and distribute funds for the parties, may receive the Earnest Money from the Escrow Agent and shall prepare and obtain execution of escrow instructions, closing documents and instruments evidencing the terms and conditions of this Transaction, as are required for the Closing, conduct the Closing, and provide for recording of the documents. Buyer and Seller shall each pay one-half (1/2) of Closing Agent's fees and expenses. Such expenses may include, without limitation, costs for a judgment, tax and lien search, documentary stamps taxes, and the recording or filing of UCC-1 financing statements in the state records. The parties agree that the Closing Agent will not represent either Seller or Buyer.

9. **Prorations at Closing.** The expenses attributable to the operation of the Business prior to 12:00 p.m. on the Closing Date, including, by way of example and not by way of limitation, expenses for electrical service, natural gas service, telephone service, internet service, pest control service and trash removal, transferable taxes, licenses, rents, utilities, and other customarily prorated items, shall be prorated as of 12:00 p.m. on the Closing Date, and may be made on estimates of amounts prorated; provided that the parties agree to recalculate such prorations when the actual numbers are ascertained. Each party further agrees to pay promptly, but in no event more than ten (10) days of written request therefore, to the other party any overage received and properly payable to the other party. Seller agrees to use commercially reasonable efforts to cause any and all such services that Buyer chooses to retain to be changed to the account of Buyer as of the Closing Date.
10. **Allocation of Purchase Price at Closing.** Buyer and Seller acknowledge that certain Federal and State Income Tax laws may be applicable to this Transaction. The parties acknowledge that each may be required to report this Transaction to the Internal Revenue Service and allocate the Purchase Price among the classes of assets involved. The parties agree to cooperate fully with each other to determine the appropriate allocation. Both parties agree to sign the Internal Revenue Service Form 8594, Asset Acquisition Statement, or its latest revision, at Closing, that will be prepared by Buyer's accountant unless agreed otherwise.
11. **Seller's Obligations at Closing.** At Closing, Seller shall execute and/or deliver to Buyer the following documents (all such documents described in this **Section 12** are collectively **Seller's Closing Documents**):
 - A. an originally executed Closing Statement;
 - B. an originally executed Bill of Sale for all tangible Assets and an originally executed assignment or Bill of Sale for all intangible Assets.
 - C. If Seller is required to pay Sales Tax, a Tax Clearance Letter (a certificate issued in accordance with O.C.G.A § 48-8-46 from the Georgia Tax Commissioner stating that no sales and use taxes, interest, or penalties are due) dated not earlier than 30 days from the Closing Date; and
 - D. All documents and/or items that Seller or any Principal must execute and/or deliver under the terms of this Agreement, including all documents and/or items indicated in **Section 25**.
12. **Buyer's Obligations at Closing.** At Closing, Buyer shall execute and deliver to Seller the following documents (all such documents described in this **Section 13** are collectively **Buyer's Closing Documents**):
 - A. an executed Closing Statement;
 - B. an originally executed Note and any security agreement or personal guaranties of Guarantors required hereunder
 - C. All documents and/or items that Buyer or any Guarantor must execute and/or deliver under the terms of this Agreement, including all documents and/or items indicated in **Section 25**.
13. **Conditions Precedent to Closing.**
 - A. **Conditions in Favor of Buyer.** The obligation of Buyer to consummate the Transactions is conditioned upon satisfaction or waiver of the following conditions precedent:
 - (i) All representations and warranties of Seller and each Principal shall be true and correct on the Binding Agreement Date and as of the Closing;
 - (ii) Seller and each Principal shall have performed all of the covenants undertaken by Seller and Principal(s) in this Agreement to be performed by Seller or Principal(s) at or prior to Closing;

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- (iii) Seller and each Principal shall have delivered to Buyer properly executed originals of Seller's Closing Documents; and
- (iv) There shall have been no material adverse change in the Business or the Assets from the Binding Agreement Date through the Closing, except as otherwise provided for in this Agreement.
- (v) If Third Party Financing is contemplated, Buyer shall have satisfied or waived the Financing Contingency.
- (vi) If the Premises are subject to one or more lease agreements, Buyer assuming the existing lease agreement(s) or obtaining a new lease agreement(s) under terms no less favorable than those contained in Seller's existing lease agreement(s).

B. Conditions in Favor of Seller. The obligations of Seller to consummate the Transactions contemplated herein is conditioned upon the satisfaction or waiver of the following conditions precedent:

- (i) All representations and warranties of Buyer and each Guarantor made herein shall be true and correct on the date hereof and shall be true and correct as of the Closing;
- (ii) Buyer and each Guarantor shall have performed all of the covenants undertaken by Buyer in this Agreement to be performed by Buyer at or prior to Closing;
- (iii) Buyer shall have delivered to Seller properly executed originals of the Buyer's Closing Documents; and
- (iv) Buyer shall have paid the Purchase Price, as adjusted in accordance with this Agreement, to Seller.

14. Familiarization and Training. Seller agrees to provide, at no cost to Buyer, for a period of _____ days during normal business hours, of approximately _____ hours per day, exclusive of holidays and Sundays, after the Closing Date, training in the operation of the Business.

15. Representations and Warranties

A. Seller's and Each Principal's Representations and Warranties. As of the Binding Agreement Date and the Closing Date, Seller and each Principal make the representations and warranties to Buyer, if any, as indicated in **Exhibit A**.

B. Buyer's Representations and Warranties. As of the Binding Agreement Date and the Closing Date, Buyer and each Guarantor represents and warrants to Seller that Buyer has the right, power and authority to enter into this Agreement and to consummate the Transactions; and the persons executing this Agreement on behalf of Buyer have been duly and validly authorized by Buyer to execute and deliver this Agreement and shall have the right, power and authority to enter into this Agreement and bind Buyer.

C. Survival of Representations, Warranties and Covenants. All statements, representations, warranties, indemnities, covenants and agreements made by each of the parties hereto shall survive for a period of two (2) years from the date of the Closing, except as otherwise provided herein.

16. Restrictive Covenants. Seller and its Principals shall execute and deliver to Buyer at Closing agreements restricting their ability to perform the activities described below [*select only those items that apply to this transaction; the items not selected shall not apply to this Agreement*]:

- Covenant Not to Compete.** Duration: _____ ; Geographic Scope _____
- Covenant Not to Solicit Customers.** Duration _____ ; Scope: all customers.
- Covenant Not to Solicit Employees.** Duration _____ ; Scope: all employees.
- Covenant Not to Divulge Proprietary Information.** _____

17. Assignment. Buyer, if one or more individuals, may assign Buyer's rights and obligations under this Agreement to a newly formed business entity prior to the Closing. The owner(s) of such business entity shall be jointly and severally liable for the performance of this Agreement as Guarantors. Other than the foregoing, this Agreement is not assignable.

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18. Termination and Default. In the event of a breach of this Agreement, the non-breaching party may pursue all remedies available at law or in equity (except as limited where the parties have agreed to arbitrate). Notwithstanding the above,

A. Buyer Default. If Buyer breaches Buyer's obligations or representations or warranties herein, Buyer or Seller shall have the option to request that the Escrow Agent pay the Earnest Money to Seller in accordance with the Escrow Agreement, which, if accepted and deposited by Seller, shall constitute liquidated damages in full settlement of all claims Seller or any Principal may have against any person or entity and which relate to the Transactions. The parties agree that such liquidated damages are not a penalty and are a good faith estimate of Seller's actual damages, which damages are difficult to ascertain.

B. Seller Default. If Seller breaches Seller's obligations or representations or warranties herein, Seller shall have the right to submit, and Buyer shall have the right to demand, payment of an amount to Buyer equal to the Earnest Money. Such amount, if accepted and deposited by Buyer, shall constitute liquidated damages in full settlement of all claims Buyer or any Guarantor may have against any person or entity and which relate to the Transactions. The parties agree that such liquidated damages are not a penalty and are a good faith estimate of Buyer's actual damages, which damages are difficult to ascertain.

19. Agency and Brokerage.

A. Agency Disclosure: In this Agreement, the term **Broker** shall mean a licensed Georgia real estate broker or brokerage firm and, where the context would indicate, the broker's affiliated licensees. No Broker in this Transaction shall owe any duty to Buyer or Seller greater than what is set forth in their brokerage engagements and the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. § 10-6A-1 *et. seq.*;

(i) **No Agency Relationship:** Buyer and Seller acknowledge that, if they are not represented by a Broker as indicated on the first page of this Agreement, they are each solely responsible for protecting their own interests, and that Broker's role is limited to performing ministerial acts for that party.

(ii) **Listing Broker:** Broker working with the Seller is identified on the signature page as the **Listing Broker**; and said Broker is , OR is NOT representing Seller;

(iii) **Selling Broker:** Broker working with Buyer is identified on the signature page as **Selling Broker**; and said Broker is , OR is NOT representing Buyer;

(iv) **Dual Agency or Designated Agency.** If Buyer and Seller are both being represented by the same Broker as indicated above, a relationship of either designated agency, OR, dual agency shall exist.

(a) **Dual Agency Disclosure.** *[Applicable only if dual agency has been selected above].* Buyer and Seller are aware that Broker is acting as a dual agent in this Transaction and consent to the same. Buyer and Seller have been advised that:

(1) In serving as a dual agent, Broker is representing two clients whose interests are or at times could be different or even adverse;

(2) Broker will disclose all adverse, material facts relevant to the Transaction and actually known to the dual agent to all parties in the Transaction except for information made confidential by request or instructions from each client which is not otherwise required to be disclosed by law;

(3) Buyer and Seller are not obligated to consent to dual agency and, the consent of Buyer and Seller to dual agency has been given voluntarily and the parties have read and understand their brokerage engagement agreements.

(4) Notwithstanding any provision to the contrary contained herein, Buyer and Seller each hereby direct Broker, while acting as a dual agent, to keep confidential and not reveal to the other party any information that could materially and adversely affect their negotiating position.



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(b) **Designated Agency Assignment.** *[Applicable only if the designated agency has been selected above].* Broker has assigned _____ to work exclusively with Buyer as Buyer's designated agent and _____ to work exclusively with Seller as Seller's designated agent. Each designated agent shall exclusively represent the party to whom each has been assigned as a client and shall not represent in this Transaction the client assigned to the other designated agent.

B. Brokerage. Broker(s) identified herein have performed valuable brokerage services and are to be paid a commission pursuant to a separate agreement or agreements. Unless otherwise provided for herein, the Listing Broker will be paid a commission by Seller, and the Selling Broker will receive a portion of the Listing Broker's commission pursuant to a cooperative brokerage agreement. The Broker(s) commission(s) shall be paid at closing out of the proceeds of the sale. If the sale proceeds are insufficient to pay the full commission, the party owing the commission will pay any shortfall at closing. If more than one Broker is involved in the transaction, each Broker shall be paid its respective portion of said commission. In the event the sale is not closed because of default by Buyer or Seller, the defaulting party shall immediately pay the Broker(s) the full commission the Broker(s) would have received had the sale Closed, and the Selling Broker and Listing Broker may jointly or independently pursue the non-performing party for their portion of the commission.

C. Disclosure of Commission, Rebate, or Direct Profit.

- (i) Listing Broker will not or will be receiving referral fees or commissions from third parties. The fee or commission sources are: _____.
- (ii) Selling Broker, if different from Listing Broker, will not or will be receiving referral fees or commissions from third parties. The fee or commission sources are: _____.

D. Material Relationship Disclosure. Broker and/or affiliated licensees have no material relationship with any of Buyer, Seller or Principal(s) except as follows: _____

20. Information Acknowledgement; Disclaimer and Release of Broker. Buyer and Seller acknowledges that the delivery of any information (the "Information") relating to the Business has not been verified or audited by any Broker, and no Broker makes any warranties or representations concerning the accuracy of the Information. Buyer acknowledges that the Brokers have advised Buyer to, and Buyer understands that before making any decisions based upon the Information Buyer should, exercise due diligence through Buyer's own independent investigation or through the retention of an appropriate professional or expert to verify and evaluate the Information. Buyer and Seller further acknowledges that it will not rely upon any advice, statements or opinions of any kind, either verbally or in writing, of any Broker or their agents, in connection with the purchase and sale of the Business or Assets. Buyer and Seller agree to indemnify and hold each Broker harmless from any and all such claims, actions, or losses incurred as a result of the purchase and sale of the Business and the Assets, and Buyer, Seller, each Guarantor and each Principal release each Broker and their respective agents and representatives, of any and all claims arising from or relating to the Information.

Buyer's Initials _____; Seller's Initials _____



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21. Indemnification and Right of Setoff.

A. Indemnification by Seller and Each Principal. Each of Seller and Principal(s), jointly and severally, indemnifies Buyer and shall hold Buyer harmless from all debts, liabilities, claims, actions, losses, damages and attorney's fees (collectively, a "**Claim**"), existing or that may arise from or be related to (i) Seller's operation and ownership of the Business or the Assets, except any Assumed Liabilities and, (ii) the breach or violation of any of Seller's or any Principal's representations, warranties, covenants or other agreements contained herein or in any of Seller's Closing Documents. In the event Buyer should become aware of any such Claim against the Business or Assets not disclosed by Seller prior to Closing and not assumed by Buyer, Buyer shall promptly notify Seller in writing of such Claim. In the event Seller does not satisfy said Claim or said Claim is not disputed within ten (10) days from the receipt of such notice, Buyer may, in addition to any other appropriate remedies, at its sole option, subsequent to Closing, pay such Claim and receive full credit against the next payment(s) due under the Note, if any, or any other obligation owed to Seller under this Agreement.

In the event of a claim by a third party, Seller shall be responsible for the defense of such claim, at its sole cost and expense, with counsel reasonably acceptable to Buyer. Buyer may retain its own counsel at its expense. Seller shall not settle any such claim without the consent of Buyer, unless such settlement does not require any admission of liability or any action outside the ordinary course of business by Buyer.

B. Indemnification by Buyer. Buyer indemnifies Seller and shall hold Seller harmless from all Claims existing or that may arise from or be related to (i) Buyer's operation and ownership of the Business or the Assets, except any liabilities or debts retained by Seller hereunder, and, (ii) the breach or violation of any of Buyer's or any Guarantor's representations, warranties, covenants or other agreements contained herein or in any of Buyer's Closing Documents. In the event Seller should become aware of any such Claim against Seller or any Principal, Seller shall promptly notify Buyer in writing of such Claim. In the event Buyer does not satisfy said Claim or said Claim is not disputed within ten (10) days from the receipt of such notice, Seller may, at its sole option, pay such claim and recover such amount from Buyer.

In the event of a claim by a third party, Buyer shall be responsible for the defense of such claim, at its sole cost and expense, with counsel reasonably acceptable to Seller. Seller may retain its own counsel at its expense. Buyer shall not settle any such claim without the consent of Seller, unless such settlement does not require any admission of liability or any action outside the ordinary course of business by Seller.

22. Notices.

A. All Notices Must Be In Writing. All notices, including, but not limited to, offers, counteroffers, acceptances, amendments, notices to terminate and demands, required or permitted hereunder shall be in writing, signed by the party giving the notice and delivered either: (a) in person; (b) by an overnight delivery service, prepaid; (c) by facsimile transmission; or (d) by the United States Postal Service, postage prepaid, registered or certified return receipt requested.

B. When Notice to Broker Is Notice to Client. Except in Transactions where Broker is practicing designated agency, notice to Broker shall for all purposes be deemed to be notice to the party being represented by Broker as a client. In Transactions where Broker is practicing designated agency, notice to the designated agent shall be deemed to be notice to the party being represented by the designated agent. Notice to Broker shall not be deemed to be notice to any party who is only a customer of Broker.

C. Faxed Notices.

(i) All Faxed notices to Listing Broker or Selling Broker shall be sent to their respective Fax numbers identified on the signature page of this Agreement. Fax notices to the designated agent for Buyer shall be sent to the Fax number of Selling Broker. Fax notices to the designated agent for Seller shall be sent to the Fax number of Listing Broker. All Fax notices to an unrepresented Buyer or unrepresented Seller shall be sent to the following facsimile numbers listed on the first page of this Agreement.

Buyer's Initials _____; Seller's Initials _____

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(ii) Notice sent by Fax shall be deemed to be given and received as of the date and time it is transmitted provided that the sending Fax produces a written confirmation showing the correct date and the time of the transmission and the telephone number referenced herein to which the notice should have been sent. Any notice sent by Fax shall be sent to such other Fax number as the receiving party may from time to time specify by notice to the party sending the Fax. Any party sending notice by Fax shall send an original copy of the notice if so requested by the other party. A faxed signature of a party shall constitute an original signature binding upon that party.

D. **Miscellaneous.** Except as may be provided herein, notices shall be deemed to be given as of the date and time they are received. The notice requirements referenced herein shall be strictly construed.

23. Other Provisions.

A. **Loss/Damage.** In the event there is any loss or damage to any of the Assets, the Business or the Premises prior to the Closing, the risk of loss shall be upon Seller. Immediately from and after completion of the Closing of this sale, all risk of loss or damage shall be upon Buyer.

B. **Operation of the Business Prior to Closing.** Seller represents and warrants that Seller shall carry on the business activities and operations of the Business diligently and in substantially the same manner as has been customary in the past, and shall not remove, transfer or lease any item, with the exception of product inventory sold in the normal course of business. Without limiting the generality of the foregoing, Seller shall: (i) continue to operate the Business in substantially the same manner as it has been conducted in the past and substantially in accordance with all applicable laws and regulations; (ii) maintain and keep the Premises, including heating, cooling, plumbing and electrical systems, built-in fixtures, together with all Assets, in working order, and to maintain and leave the Premises in a clean, orderly condition; (iii) perform all of Seller's obligations under contracts and agreements with other parties; (iv) not undertake any advertising or other promotional campaigns which would obligate Buyer to provide services or products to customers at less than the ordinary and customary retail cost; and (v) maintain and preserve the Business in general, including without limitation, relationships with suppliers, employees, independent contractors, customers and others having business relations with the Business, so that such relationships will be preserved for Buyer on and after the date of the Closing.

C. **Business Trade Name.** If the company name of Seller is the same or similar name of the Business or any of its trade names, Seller shall at closing shall change its company name to a name unrelated to such trade name and provide proof to Buyer immediately on receipt of name change confirmation from Secretary of State. .

D. **Confidentiality of this Transaction.** Buyer and Seller agree not to divulge any information about this Transaction or this Agreement prior to Closing, except to the party's attorneys, accountants or other professional advisors. Buyer agrees not to visit the Premises prior to Closing without Seller's prior approval, which shall not be unreasonably withheld.

E. **Bulk Transfer.** While not acknowledging the applicability to this Transaction of the bulk transfer provisions of the Georgia Bulk Sales Act, O.C.G.A. § 11-6-101, et seq., the parties agree as follows: (i) Buyer hereby waives performance of Seller's duties under the provisions of the Georgia Bulk Sales Act as it may apply to this Transaction; and (ii) Seller and Principal(s), jointly and severally, in consideration of Buyer's waiver of the provisions of the Georgia Bulk Sales Act, if applicable, hereby indemnifies and holds harmless Buyer from any and all liabilities, costs and expenses, including but not limited to reasonable attorneys fees that Buyer

may incur from Buyer's waiver with respect to the Business and the Assets. Buyer may set-off against any amounts due to Seller in the event of liability with respect to the choice by Seller not to comply with the Georgia Bulk Sales Act.



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- F. **Dispute Resolution; Attorneys Fees.** Other than enforcement of the above provisions relating to restrictive covenants, the parties agree that if a dispute arises out of or relating to this Agreement, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation. The parties agree to conclude mediation within sixty (60) days of filing of a written request with the other party. If any dispute is not resolved by direct discussions or by mediation, the dispute shall be decided by arbitration, in accordance with the rules of the American Arbitration Association, unless the parties mutually agree otherwise. Demand for arbitration shall be filed in writing with the other party and with an arbitrator chosen by the American Arbitration Association or mutually agreeable between the parties. The arbitration award shall be final and a judgment upon the award may be entered upon it in accordance with applicable law in any court having jurisdiction. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs and necessary disbursements.
- G. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to its principles of conflicts of laws.
- H. **Waiver.** No waiver of any provisions of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted and any such waiver shall only be applicable to the specific instance to which it relates and shall not be deemed a continuing waiver.
- I. **Survival of Agreement.** All conditions and stipulations in this Agreement, which the parties agree shall be performed or fulfilled after the Closing, shall survive Closing until said condition or stipulations are performed or filled.
- J. **Time of Essence.** Time is of the essence of this Agreement.
- K. **Terminology.** As the context may require in this Agreement: (i) the singular shall mean the plural and vice versa; and (ii) all pronouns shall mean and include the person, entity, firm or corporation to which they relate.
- L. **Entire Agreement; Captions.** This Agreement, its amendments and all Exhibits, Schedules and Special Stipulations attached hereto or to any amendment constitute the entire agreement and understanding of the parties with respect to the Transactions, and cannot be modified except in writing executed by all parties. Captions and paragraph headings in this Agreement are for convenience and reference only.
- M. **Typewritten or Handwritten Provisions.** Typewritten or handwritten provisions inserted in this form and acknowledged by the parties as evidenced by the date and initials of all the parties shall control all printed provisions in conflict therewith.
- N. **Further Actions.** The parties agree to take such further actions and to execute such additional documents as may be necessary to fully effect the intentions of the parties as stated in this Agreement. Should any inadvertent errors or omissions later be discovered in any of the Closing Documents, the parties shall promptly execute such corrective documents and remit such sums as may be required to adjust or correct such errors or omissions. Buyer agrees to give Seller reasonable access to the business records of the Business applicable to the time Seller owned the Business to enable Seller to prepare tax returns.
24. **Exhibits, Schedules and Addenda.** All Exhibits, Schedules and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement. If any such exhibit, schedule or addendum conflicts with any preceding paragraph, said Exhibit, Schedule or addendum shall control:
- A. **Schedules:**
- (i) **Schedule 1** – Assets of the Business
 - (ii) **Schedule 2** – Excluded Assets
 - (iii) **Schedule 3** – Assumed Liabilities

Buyer's Initials _____; Seller's Initials _____



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B. Exhibits:

- (iv) **Exhibit A** – Representations and Warranties of Seller and Principal(s)
- (v) **Exhibit B** – Escrow Agreement

25. **Special Stipulations.** The following Special Stipulations, if conflicting with any exhibit or preceding paragraph, shall control:

Mark box if additional Special Stipulations are attached.

Buyer's Initials _____; Seller's Initials _____



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END OF AGREEMENT

Buyer's Initials _____; Seller's Initials _____