



**SCHEDULE 1**  
**ASSETS OF THE BUSINESS**

Buyer's Initials \_\_\_\_\_; Seller's Initials \_\_\_\_\_



**SCHEDULE 2  
EXCLUDED ASSETS**

Buyer's Initials \_\_\_\_\_; Seller's Initials \_\_\_\_\_



**SCHEDULE 3  
ASSUMED LIABILITIES**

Buyer's Initials \_\_\_\_\_; Seller's Initials \_\_\_\_\_



**EXHIBIT "A" TO  
ASSET PURCHASE AGREEMENT**

**Representations and Warranties of Seller and Principal(s)**

**Note:** All items below apply to this transaction unless the boxes are marked with an X or struck through. Initial those items that do **not** apply to this transaction. All the remaining items shall be a part of the Asset Purchase Agreement and shall be deemed material for purposes of Buyer's Remedies under Seller's and Principal's Representations and Warranties Paragraph of the Asset Purchase Agreement.

**TITLE:** Seller is the sole owner of the Business and the Assets to be sold hereunder, has good and marketable title to the Assets and will transfer such title to the Assets to Buyer free and clear of all liens and encumbrances. Neither Seller nor any agent of Seller has contracted for or incurred any obligation that could create a security interest in any of the Assets, subject to any exceptions that may be set forth herein.

**OWNERSHIP/ AUTHORITY:** Seller is owned solely by Principal(s) and no other person or entity has any rights in, or rights to acquire, any ownership interests in Seller. Seller has the full authority to enter into this Agreement, perform its obligations hereunder and to conclude the transaction described herein. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will be, as of the Closing, duly authorized by all necessary action on the part of Seller and Principal. This Agreement has been duly executed and delivered by Seller and constitutes the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms. No agreement to which Seller is a party or by which any of the Assets are bound prevents Seller from concluding this transaction in accordance with the terms hereof, nor is the consent of any third party required therefore.

**ORGANIZATION, STANDING AND QUALIFICATION:** Seller is a \_\_\_\_\_duly organized and validly existing and in good standing under the laws of the State of Georgia; it has all requisite power and authority and is entitled to carry on its business as now being conducted and to own, lease or operate its properties as and in the places where such business is now conducted and such properties are now owned, leased or operated; and it is duly qualified, licensed, registered or domesticated as a foreign corporation authorized to do business in all states where the nature of the activities conducted by it or the character of the properties owned, leased or operated by it require such qualification, licensing or domestication.

**TAXES:** All taxes which affect the Assets, including without limitation income, property, sales, use, franchise, added value, employees' income withholding and social security taxes, imposed by the United States or by any foreign country or by any state, municipality, subdivision or instrumentality of the United States or of any foreign country, or by any other taxing authority, which are due or payable by Seller, and all interest and penalties thereon, unless disputed, have been paid in full or will be paid by the Closing Date, and all tax returns required to be filed in connection therewith have been accurately prepared and duly and timely filed, and all deposits required by law to be made by Seller with respect to employees' withholding taxes have been duly made. Seller has not been delinquent in the payment of any foreign or domestic tax, assessment or governmental charge or deposit and has no tax deficiency or claim outstanding, proposed or assessed against it, and there is no basis for any such deficiency or claim.

**LIABILITIES/ LIENS:** Seller warrants that all outstanding liabilities of the Business, except for the Assumed Liabilities, shall be paid in full on or before the Closing and that Buyer will receive possession of the Business and the Assets free and clear of any encumbrances, other than the security interest that may be created or assumed pursuant to this Agreement. In addition, there are no executions, liens, encumbrances of any kind, or unpaid bills of any nature, pending against the Business, the Assets or Seller that could in any way affect the title to the Assets, or constitute a lien thereon, or which would in any way hinder or impede the free and clear transfer of the Business and the Assets, or the use thereof by Buyer, or the continued operation of the Business and Assets by Buyer.

**LICENSES:** All licenses and permits required for the present operation of the Business are current, valid and paid as required by law, and Seller complies with all applicable governmental statutes, rules, codes, ordinances and regulations applicable to the Business, specifically including but not limited to, all applicable fire and business codes.

**LITIGATION:** Except as described in this paragraph, there is no litigation or proceedings pending, or to Seller's knowledge threatened, against or relating to the Business or the Assets nor does Seller know or have reasonable grounds to know of any basis of any such action:

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**CONDITION OF EQUIPMENT:** All equipment, furniture, fittings, tangible personal property and fixtures included in the Assets sold pursuant hereto shall be in working condition, subject to normal wear and tear, as of the date of the Closing.



Seller makes no warranties with respect to the Assets, (other than being in working condition), including but not limited to warranties of merchantability or fitness for any particular purpose. Buyer shall have the right and opportunity to inspect the Assets prior to the Closing and to request that items that are not then in working condition be repaired or replaced by Seller prior to the Closing. Buyer shall have an additional opportunity to re-inspect those items that have been repaired or replaced to determine that, as of the date of Closing, the equipment is in working condition.

**FINANCIAL INFORMATION:** Seller warrants that the financial information supplied to Buyer by Seller, which includes the balance sheet and income statement of Seller for the fiscal year ended (the **Financial Statements**), is true and correct as of the dates of such information and is a fair and accurate presentation of the financial condition and results of operation of the Business as of such dates.

**HAZARDOUS MATERIALS:** Seller has not received actual or constructive notice, either oral or written, that any hazardous or toxic substance, as defined by any State or Federal law applicable to the Business or the Assets (**Hazardous Substance**), is or was located on or under the Premises. Seller has not, not has any of its agents, engaged in any act of improper or illegal processing, storage, disposal or removal of any Hazardous Substance on or under the Premises. Any Hazardous Substance used by Seller has been processed, stored, disposed or removed in full compliance with all local, State and Federal laws, regulations, statutes or ordinances. Seller shall indemnify Buyer for any cost or damage caused by, including the removal of, or penalties relating to, Hazardous Substances and related to Seller's operation of the Business at the Premises.

**EMPLOYMENT MATTERS:** Seller is in compliance with all Federal and State laws and regulations respecting employment and employment practices. Seller is not bound by any collective bargaining agreements, or employment agreements, either oral or written, with any employees or independent contractors, and relating to the Business. Seller has no existing pension or profit sharing plan for employees of the Business, other than those that may be terminated without penalty to Buyer. Further, Buyer may, but is not obligated to hire all or any number of the employee's of the Business without penalty or liability to any party, including as a result of a non-compete agreement, as a result thereof.

**BANKRUPTCY.** Seller represents and warrants that Seller is solvent and has not made a general assignment for the benefit of creditors or been adjudicated a bankrupt or insolvent, nor has a receiver, liquidator or trustee of Seller or any of its respective properties (including the Assets and Premises) been appointed or a petition filed by or against Seller for bankruptcy, reorganization or arrangement pursuant to the Federal Bankruptcy Act or any similar federal or state statute, or any proceeding instituted for the dissolution or liquidation of Seller.

**CERTIFICATES.** To the best of Seller's knowledge, there are presently in effect permanent certificates of occupancy, licenses and permits as may be required for the Premises and, to the best of Seller's knowledge, the present use and occupation of Premises is in compliance and conformity with the certificates of occupancy and all licenses and permits. There has been no notice or request of any municipal departments, insurance company or board of fire underwriters (or organization exercising functions similar thereto) or mortgagee directed to Seller and requesting the performance of any work or alteration in respect to Property which has not been complied with.

**PRE-EXISTING RIGHT TO ACQUIRE.** No person or entity has any right or option to acquire the Business or the Assets or any portion thereof which will have any force of effect after execution hereof, other than Buyer.

**PROCEEDINGS AFFECTING ACCESS.** Seller has not been notified that there are any pending proceedings that could have the effect of impairing or restricting access between the Premises and adjacent public roads and, to the best of Seller's knowledge, no such proceedings are pending or threatened.

**SERVICE CONTRACTS.** Seller has provided Buyer with copies of all existing equipment leases, service and vendor contracts that relate to the operation, management, or maintenance of Assets. All such contracts are in full force and effect in accordance with their respective provisions, and to Seller's knowledge, there is no default, or claim of default, or any event which with the passage of time or notice, or both, would constitute a default on the part of any party to any of such contracts. All such contracts are terminable without penalty or obligation to pay any severance or similar compensation on no more than 30 days' notice.

**ZONING.** The Premises is located on property is currently zoned \_\_\_\_\_ under the applicable zoning ordinances of \_\_\_\_\_ County, Georgia.

**CONDEMNATION.** Seller has not been notified that any condemnation or other taking by eminent domain of Property or any portion thereof has been instituted and, to the best of Seller's knowledge, there are no pending or threatened condemnation or eminent domain proceedings (or proceedings in the nature or in lieu thereof) affecting the Premises or any portion thereof or its use.



**EXHIBIT "B" TO  
ASSET PURCHASE AGREEMENT**

**Escrow Agreement and Statement of Representation**

THIS ESCROW AGREEMENT (the "Agreement") made and entered into this \_\_\_\_\_ day of

\_\_\_\_\_, 20 \_\_\_\_\_, by and among:

\_\_\_\_\_  
("Escrow Agent"),

\_\_\_\_\_  
("Seller"), and

\_\_\_\_\_  
("Buyer").

**BACKGROUND:**

Seller and Buyer have entered into an Asset Purchase Agreement (the "APA") for the sale of the assets of Seller (the "APA"). As required by the APA, Buyer has deposited an earnest money check in the total amount of \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_) (the "Earnest Money") with Escrow Agent. With this Agreement, the parties are directing the Escrow Agent on how the Earnest Money will be disbursed or handled.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Appointment of Escrow Agent; Fees.** Escrow Agent shall hold the Earnest Money in trust on behalf of Seller and Buyer. For its services provided in this Agreement, Escrow Agent shall be paid \$ \_\_\_\_\_; however, this fee shall be waived if the closing contemplated by the APA is completed. Should a dispute arise between Buyer and Seller as to disbursement of the funds, Escrow Agent may, in addition to the above fee, charge for any costs it incurs or time its attorneys and staff incur as a result of said dispute at their then standard hourly rates. All costs and fees shall be born equally by Seller and Buyer and may, at Escrow Agent's option, be deducted from any Earnest Money held by Escrow Agent.

2. **Deposit of Earnest Money.** Escrow Agent shall deposit the Earnest Money in its non-interest-bearing trust account with a national banking association.

**3. Close of Escrow; Disbursal of Earnest Money.**

A. If Buyer becomes entitled under the APA to receive the Earnest Money outside of Closing, then Buyer may request disbursement of the Earnest Money by sending simultaneous written instructions to Escrow Agent and Seller directing Escrow Agent to disburse the Earnest Money to Buyer. Escrow Agent shall wait ten business days from the date of receipt of such written notice. If Escrow Agent receives written instruction from Seller during this ten day period countermanding the prior notice of disbursement, then Escrow Agent shall withhold such disbursement until both Buyer and Seller jointly issue written disbursement instructions to Escrow Agent. If Escrow Agent receives no such notice from Seller, then Escrow Agent shall disburse the Earnest Money to Buyer.

B. If Seller becomes entitled under the APA to receive the Earnest Money outside of Closing, then Seller may send simultaneous written instructions to Escrow Agent and Buyer directing Escrow Agent to disburse the Earnest Money to Buyer. Escrow Agent shall wait ten



business days from the date of receipt of such written notice. If Escrow Agent receives written instruction from Buyer during this ten day period countermanding the prior notice of disbursement, then Escrow Agent shall withhold such disbursement until both Buyer and Seller jointly issue written disbursement instructions to Escrow Agent. If Escrow Agent receives no such notice from Buyer, then Escrow Agent shall disburse the Earnest Money to Seller

C. Anything to the contrary set forth herein notwithstanding, Escrow Agent shall deliver the Earnest Money and close the escrow established by this Escrow Agreement in accordance with any other written instructions issued jointly by Seller and Buyer.

**4. Performance of Duties.**

A. Escrow Agent may conclusively rely, without independent investigation, on a notice of instruction that is furnished to Escrow Agent that conforms to requirements of this Escrow Agreement.

B. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses except for intentional breach of this Agreement, and it shall accordingly not incur any such liability with respect to any action taken or omitted in reliance upon any instrument, including any written or oral notice or instruction provided to Escrow Agent, not only as to its due execution and the validity and effectiveness of its provisions, contained therein, but which Escrow Agent shall in good faith believe to be genuine and authentic. In the event any party disputes a proposed disbursal by Escrow Agent and Escrow Agent is unable to resolve the dispute, Escrow Agent may tender the Earnest Money into a court Escrow Agent deems to be of competent jurisdiction, which shall discharge Escrow Agent of all further duties and liabilities hereunder or under the APA.

**5. Indemnification of Escrow Agent.** Seller and Buyer hereby agree to indemnify and hold harmless Escrow Agent against any and all losses, claims, and counsel fees and disbursements which may be imposed upon Escrow Agent or incurred by Escrow Agent hereunder, except those arising from willful breach by Escrow Agent of the its duties hereunder, including any litigation arising from this Agreement or involving the subject matter hereof.

**6. Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed given when delivered personally or, if mailed, within three (3) days after such mailing, such mailing being registered or certified United States mail, postage prepaid, return receipt requested, to the following addresses, or such other address as either Seller, Buyer or Escrow Agent shall in writing advise the other:

To Escrow Agent:

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

To Seller: At the address given on the signature page

To Buyer: At the address given on the signature page

**7. Additional Terms.**

A. All terms used herein with an initial capital letter shall have the same meaning ascribed thereto in the APA, unless otherwise provided herein.

Buyer's Initials \_\_\_\_\_; Seller's Initials \_\_\_\_\_



B. The terms and conditions of this Agreement shall be construed under the laws of the State of Georgia.

C. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first written above.

**ESCROW AGENT:**

\_\_\_\_\_  
Corporate Name

By: \_\_\_\_\_(SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SELLER:**

\_\_\_\_\_  
Corporate Name

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[CORPORATE SEAL]

**Seller's Address for Notice:**

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

**BUYER:**

\_\_\_\_\_  
Corporate Name (if any)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[CORPORATE SEAL]

**Buyer's Address for Notice:**

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

Buyer's Initials \_\_\_\_\_; Seller's Initials \_\_\_\_\_