



OFFER TO PURCHASE ASSETS OF A BUSINESS

This Offer to Purchase Assets of a Business is made and entered into as of the Binding Offer Date by and between Seller and Buyer.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the parties hereby agree as follows:

ARTICLE I – DIRECTIONS AND DEFINITIONS

1.1 Directions. Please complete all blanks. Write “none” or “N/A” where not applicable. If a blank does not provide sufficient space to insert the needed information, create an exhibit to attach hereto and reference the exhibit in the space provided.

1.2 Definitions. The following terms shall have the following meanings for the purposes of this Offer.

1.2.1 “Acquired Assets” shall mean the assets listed on Schedule 1.1 attached hereto.

1.2.2 “Address for Buyer Notice” shall mean:

- i. Name: _____
ii. Address: _____
iii. City: _____
iv. State: _____
v. Zip Code: _____
vi. Facsimile: _____
vii. E-mail: _____
viii. Phone: _____

1.2.3 “Address for Seller Notice” shall mean:

- ix. Name: _____
x. Address: _____
xi. City: _____
xii. State: _____
xiii. Zip Code: _____
xiv. Facsimile: _____
xv. E-mail: _____

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xvi. Phone: _____

1.2.4 “Binding Offer Date” shall mean the date on which the last of Buyer and Seller sign this Offer, so long as that signature occurs prior to the Offer Expiration.

1.2.5 “Broker” shall mean a licensed Georgia business broker with an active and valid license or brokerage firm and, where the context would indicate, the broker’s affiliated licensees.

1.2.6 “Business” shall mean _____

1.2.7 “Buyer” shall mean the legal entity purchasing the Acquired Assets, which is as follows:

1.2.8 “Buyer Principals” shall mean all of the owners of Buyer, which are as follows:

1.2.9 “Buyer’s Closing Documents” shall mean the documents listed in Section 6.2 of this Offer.

1.2.10 “Closing” shall mean the closing and final consummation of the transactions contemplated by this Offer.

1.2.11 “Closing Agent” shall mean an attorney agreed upon by Buyer and Seller to manage the closing process. The Buyer and Seller agree that the following attorney shall be the Closing Agent:

1.2.12 “Closing Date” shall mean _____, 20_____.

1.2.13 “Closing Location” shall mean the office of counsel for Buyer or Buyer’s lender or, at the office of a Closing Agent, or such other date and place mutually agreed to by the parties in writing, and, if Buyer and Seller fail to agree upon a location for Closing, then the Closing Location shall be the Premises

1.2.14 “Due Diligence Period” shall mean the period of time commencing on the Binding Offer Date and concluding at 6:00 p.m. _____ days after the Binding Offer Date.

1.2.15 “Earnest Money” shall mean \$ _____ US Dollars.

1.2.16 “Encumbrances” shall mean all liabilities, obligations, liens, security interests, claims, charges, restrictions and defects in title whatsoever.

1.2.17 “Escrow Agent” shall mean _____,
and Buyer and Seller shall engage Escrow Agent and define the Escrow Agent’s relationship with Buyer and Seller by a separate escrow agreement.

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1.2.18 “Excluded Assets” shall mean the assets listed on Schedule 1.2 attached hereto.

1.2.19 “Financing Contingency” shall mean Buyer’s limited opportunity to terminate this Offer because of Buyer’s failure, after good faith efforts, to obtain financing of the Third-Party Financing Amount at an interest rate not to exceed _____ % per annum for a term not to exceed _____ years.

1.2.20 “Financing Contingency Date” shall mean _____ days after the Binding Offer Date.

1.2.21 “GABB” shall mean the Georgia Association of Business Brokers.

1.2.22 “Inventory Purchase Amount” shall mean the amount of money paid by Buyer to Seller, in addition to the Purchase Price for the inventory, which is estimated to be \$_____ US Dollars, which is subject to adjustment pursuant to the terms of this Offer.

1.2.23 “Offer” shall mean this Offer to Purchase Assets of a Business.

1.2.24 “Offer Expiration” shall mean the date and time listed herein whereby this Offer shall automatically terminate if not accepted by the last of the parties to sign this Offer. This Offer Expiration shall be _____ a.m/p.m. (Atlanta, GA time) on _____, 20_____.

1.2.25 “Premises” shall mean the address of the Business, which is as follows:

1.2.26 “Purchase Price” shall mean \$_____ US Dollars.

1.2.27 “Restricted Territory” shall mean a geographic radius of _____ miles from the Premises.

1.2.28 “Seller” shall mean the legal entity owning the Acquired Assets, which is as follows:

1.2.29 “Seller Financing Promissory Note” shall mean a promissory note signed by obligating Buyer to pay to Seller \$_____ US Dollars with interest accruing at _____ % per annum in installments over a period of _____ months, with a monthly payment amount of \$_____. The promissory note agreed upon by Buyer, Buyer Principals, and Seller shall supersede any provisions in this definition which are inconsistent with the language of said promissory note. Check the following as to security that will be provided, if any, for the Seller Financing Promissory Note:

_____ a personal guaranty of Buyer Principals;

_____ a perfected security interest in the Acquired Assets;

_____ a perfected security interest in after acquired assets of the Business operated by Buyer;

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_____ Other security described as follows: _____
_____.

If the Seller Financing Promissory Note is to be secured as indicated above, Buyer agrees to sign and deliver to Seller a security agreement that will include, at a minimum, a provision that the security interest(s) granted thereby by will be subordinate to (i) any existing liens on the Acquired Assets only to the extent of liabilities expressly assumed pursuant to the terms of this Offer and any third-party financing of the Third-Party Financing Amount.

1.2.30 “Seller Principals” shall mean all of the owners of Seller, which are as follows:

1.2.31 “Seller’s Closing Documents” shall mean the documents listed in Section 6.1 of this Offer.

1.2.32 “Third-Party Financing Amount” shall mean the portion of the Purchase Price for which the Financing Contingency is applicable, which shall be \$_____ US Dollars.

1.2.33 “Trade Name” shall mean the trade name used by the Business, which is as follows:

ARTICLE II – ACQUIRED ASSETS, EXCLUDED ASSETS, AND LIABILITIES

- 2.1 Acquired Assets.** On the basis of the representations and warranties contained in this Offer, and subject to the other terms and conditions of this Offer, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest in and to all of the Acquired Assets. The conveyance, transfer, assignment and delivery of the Acquired Assets shall be made free and clear of all Encumbrances.
- 2.2 Excluded Assets.** The Excluded Assets shall be excluded from the Acquired Assets and shall be retained by Seller.
- 2.3 Liabilities of Sellers.** Except only for liabilities and obligations expressly provided for in this Offer, Buyer is not assuming, and Buyer shall not be responsible for, any of Seller’s liabilities. Without limiting the generality of the foregoing, Buyer is not assuming, and Buyer shall have no responsibility for, any expenses, debts, obligations, payables, liabilities, taxes, claims, demands, fines or penalties, whether fixed or contingent, past, present or future, direct or indirect, arising out of or in connection with the conduct by Seller of the Business prior to the Closing (including without limitation breach of contracts, failure to comply with applicable law, invasion of privacy, violation of Data Security Requirements or Intellectual Property infringement in connection with the Business) or the ownership and use of the Acquired Assets prior to the Closing, or any other acts or omissions of Seller in connection therewith.

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ARTICLE III – PURCHASE PRICE

3.1 Earnest Money. Buyer shall provide Earnest Money to the Escrow Agent at the time Buyer delivers this Offer, signed by Buyer, to Seller. In the event (i) the Earnest Money is not deposited within two (2) business days after the Binding Offer Date or (ii) the payment of the Earnest Money is dishonored by a financial institution, then Seller may, in its sole discretion, terminate this Offer.

3.3 Purchase Price. In consideration of Seller’s and Seller Principals performance of this Offer and Seller’s transfer and delivery of the Acquired Assets to Buyer, and Seller’s and Seller Principals performance of their other obligations under this Offer, Buyer shall pay to Seller the Purchase Price, which shall be paid to Seller by Buyer as follows:

- a. The Earnest Money;
- b. \$_____ Cash from Buyer due at Closing;
- c. The Seller Financing Promissory Note;
- d. The Third-Party Financing Amount;
- e. \$_____ Other Payment, which is described herein as follows:

3.4 Financing Contingency Termination Right. This Offer is conditioned upon the Financing Contingency. Buyer shall: (i) make application for the third party financing loan within days from the Binding Offer Date; (ii) 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; (iii) 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 Offer 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 of Buyer’s Principals 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. 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 by the Financing Contingency Date, then Buyer may terminate this Offer 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 and the amount set forth in this Offer as the Third-Party Financing Amount shall be due at Closing from Buyer in cash.

3.5 Inventory. In addition to the Purchase Price, an additional amount estimated at Inventory Payment Amount will be paid at Closing by Buyer to Seller for marketable non-obsolete inventory of Seller which is transferred to Buyer. Buyer shall value such inventory in good faith and provide its reasoning to Seller within fourteen (14) days after the Closing Date.

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ARTICLE IV – DUE DILIGENCE AND CLOSING

4.1 Due Diligence. During the Due Diligence Period, Buyer has the right to review and inspect the Business, its physical location(s), the Acquired Assets, the Business’s books and records and any other information regarding the Business that Buyer deems necessary to evaluate the Business and the Acquired Assets. During the Due Diligence Period, Buyer shall evaluate the Business, the Premises, any lease relating to the premise, if any, the feasibility of the transactions contemplated in this Offer, 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 contemplated in this Offer, 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 and this Offer shall terminate. If Buyer fails to timely notify Seller that it is not proceeding with the Transactions, Buyer shall be deemed to have waived its rights to terminate this Offer pursuant to this Section 4.1.

4.2 Closing. The Closing shall take place at 5:00 p.m. on the Closing Date at the Closing Location, unless a different time, date, and/or location are agreed to in writing by Buyer and Seller prior to the Closing Date.

If Buyer and Seller appointed a Closing Agent in the definitions section of this Offer, to manage the closing process, then such Closing Agent 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.

4.3 Post-Closing 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.

ARTICLE V – PRORATIONS AND ALLOCATIONS

5.1 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 a.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.

5.2 Allocation of Purchase Price. Buyer and Seller acknowledge that certain Federal and State Income Tax laws may be applicable to this Transaction. The parties acknowledge that each may

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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.

ARTICLE VI – CLOSING OBLIGATIONS AND CONDITIONS PRECEDENT

- 6.1 **Seller's Obligations at Closing.** At Closing, Seller shall execute and/or deliver to Buyer the Sellers's Closing Documents, which shall consist of the following documents:
- a. an originally executed Closing Statement;
 - b. an originally executed Bill of Sale for all tangible Acquired Assets and an originally executed assignment or Bill of Sale for all intangible Acquired 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 Seller Principal must execute and/or deliver under the terms of this Offer, including all documents and/or items indicated in the Special Stipulations set forth in this Offer.
- 6.2 **Buyer's Obligations at Closing.** At Closing, Buyer shall execute and deliver to Seller the Buyer's Closing Documents, which shall consist of the following documents:
- a. an originally executed Closing Statement;
 - b. an originally executed Seller Financing Promissory Note and any security agreement or personal guaranties of Buyer Principals required hereunder;
 - c. all documents and/or items that Buyer or any Buyer Principal must execute and/or deliver under the terms of this Offer, including all documents and/or items indicated in the Special Stipulations set forth in this Offer.
- 6.3 **Conditions Precedent to Closing.**
- i. Conditions in Favor of Buyer. The obligation of Buyer to consummate the Closing is conditioned upon satisfaction or waiver of the following conditions precedent:
 - a. All representations and warranties of Seller and Seller Principals shall be true and correct on the Binding Offer Date and as of the Closing;
 - b. Seller and Seller Principals shall have performed all of the covenants undertaken by Seller and Principals in this Offer to be performed by Seller or Principals at or prior to Closing;

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- c. Seller and Seller Principals shall have delivered to Buyer properly executed originals of Seller's Closing Documents;
 - d. There shall have been no material adverse change in the Business or the Assets from the Binding Offer Date through the Closing, except as otherwise provided for in this Offer;
 - e. If Third Party Financing is contemplated, Buyer shall have satisfied or waived the Financing Contingency;
 - f. 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).
- ii. 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:
- a. All representations and warranties of Buyer and Buyer Principals made herein shall be true and correct on the date hereof and shall be true and correct as of the Closing;
 - b. Buyer and Buyer Principal shall have performed all of the covenants undertaken by Buyer in this Offer to be performed by Buyer at or prior to Closing;
 - c. Buyer shall have delivered to Seller properly executed originals of the Buyer's Closing Documents; and
 - d. Buyer shall have paid the Purchase Price, as adjusted in accordance with this Offer, to Seller.

ARTICLE VII – REPRESENTATIONS AND WARRANTIES

- 7.1 **Seller's and Seller Principals' Representations and Warranties.** As of the Binding Offer Date and the Closing Date, Seller and Seller Principals, each make the representations and warranties, if any, to Buyer, as indicated on Exhibit A attached hereto.
- 7.2 **Buyer's Representations and Warranties.** As of the Binding Offer 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 Offer and to consummate the Transactions; and the persons executing this Offer on behalf of Buyer have been duly and validly authorized by Buyer to execute and deliver this Offer and shall have the right, power and authority to enter into this Offer and bind Buyer.
- 7.3 **Survival of Representations and Warranties.** All representations and warranties made pursuant to Section 7.1 or Section 7.2 shall survive for a period of two (2) years from the date of the Closing Date, unless otherwise stated on Exhibit A.

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ARTICLE VIII – RESTRICTIVE COVENANTS

- 8.1 **Restrictive Covenants.** In consideration of the promises herein contained, and in partial consideration of the Purchase Price to be paid by Buyer to Seller (which will accrue directly to the benefit of Covenantor), Seller and Seller Principals each hereby agree as follows: For a period of forty-eight (48) months following the Closing Date, Seller and Covenantor covenant and agree that Seller and Seller Principals shall not, directly or indirectly, for Seller’s and/or Sellers Principals’ own account, or as a partner, participant, joint venturer, employee, agent, consultant, representative, salesperson, advisor, shareholder or the like, enter into, engage in, contribute Seller’s or Seller Principals’ knowledge to, participate in, cause others to do, encourage others to do, or aid others in doing, any of the following:
- i. Engaging in competition with Buyer with respect to Buyer’s operation of the Business (for purposes of this provision the foregoing reference to “Business” shall be deemed to refer to Buyer’s operation of the Business within the scope of business as conducted by Seller as of the Closing Date) anywhere within the Restricted Territory.
 - ii. Communicating with any person or entity that was an existing client or existing prospective client of the Business as of the Closing Date or within twelve months prior to the Closing date for the purpose of soliciting, accepting, or diverting away from the Business any of that person’s or entity’s business for any purpose competitive with the Business (for purposes of this provision the foregoing reference to “Business” shall be deemed to refer to Buyer’s operation of the Business within the scope of business as conducted by Seller as of the Closing Date) as of the Closing Date.
 - iii. Owning, managing, operating, controlling or participating in the ownership, management, operation or control of, or being connected in any manner (as an employee, contractor or otherwise) with any business enterprise which directly or indirectly engages in business activities competitive with the Business (for purposes of this provision the foregoing reference to “Business” shall be deemed to refer to Buyer’s operation of the Business within the scope of business as conducted by Seller as of the Closing Date) anywhere within the Restricted Territory.
 - iv. Communicating with any employee that performed services for the Business within the twenty-four-month period prior to the Closing Date, or with any independent contractor that performed services for the Business within the twenty-four month period prior to the Closing Date, for the purposes of encouraging said employee or independent contractor to change his or her relationship with the Business or to perform services for any other business.
- 8.2 **Acknowledgment.** Seller and Seller Principals and Buyer acknowledge that the Restricted Territory as defined above is reasonable in light of the business activities of the Business and the need to protect the legitimate interests of the Business. Seller and Seller Principals further acknowledge that the restrictions contained in this Section VIII are reasonable and that since a breach of such restrictions by Seller and/or Seller Principals would cause immediate and irreparable harm to Buyer, for which damages would be difficult to ascertain, Buyer shall, in addition to any other remedies or rights which it may have, be entitled to specific performance of the obligations

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set forth in this paragraph, and/or injunctive and other equitable relief, against Seller and Seller Principal for any breach of this Section VIII.

- 8.3 **Confidentiality.** From and after the Closing, each of Seller and Seller Principals shall hold in confidence any and all information, whether written or oral, concerning the Business, except to the extent that Seller or Seller Principals can show that such information (a) is generally available to and known by the public through no fault of Seller or Seller Principals; or (b) is lawfully acquired by Seller or Seller Principals from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Seller or Seller Principals are compelled to disclose any information by judicial or administrative process or by other requirements of law, Seller or Seller Principals, as applicable, shall promptly notify Buyer in writing and shall disclose only that portion of such information which Seller or Seller Principals, as applicable, is advised by its counsel in writing is legally required to be disclosed, *provided that* Seller and Seller Principals shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.
- 8.4 **Severability.** Should any part or provision contained in this Section VIII be rendered or declared invalid by reason of any existing or any subsequently enacted legislation or by any decree of a court of competent jurisdiction, the remaining **provisions** shall nevertheless remain in full force and effect to the maximum extent permitted by law; and the court having power to make such an adjudication is further authorized to modify any provisions hereof which may be deemed unduly restrictive or otherwise unenforceable, to the end that such restrictions, as modified, shall be reasonable and valid. Buyer, Seller and Seller Principals expressly agree that such provisions, as modified by such court, shall be binding upon all parties.

ARTICLE IX – TERMINATION AND DEFAULT

- 9.1 **Termination and Default.** In the event of a breach of this Offer, 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:
- i. **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 Seller Principals may have against any person or entity and which relate to this Offer. 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.
 - ii. **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 Buyer Principal may have against any person or entity and which relate to this Offer. 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.

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ARTICLE X – AGENCY AND BROKERAGE

10.1 Agency and Brokerage.

i. Agency Disclosure: 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.*;

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

b. *Listing Broker*: Broker working with the Seller is identified on the signature page as the Listing Broker, and (check one) _____ is OR _____ is not representing Seller.

c. *Selling Broker*: Broker working with Buyer is identified on the signature page as Selling Broker, and (check one) _____ is OR _____ is not representing Buyer.

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

i. *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.

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.

ii. *Designated Agency Assignment*. [*Applicable only if the designated agency has been selected above*]. Broker has assigned _____ to

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work exclusively with Buyer as Buyer’s designated agent and Broker has assigned _____ 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.

ii. 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.

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

a. Listing Broker (check one) _____ will not or _____ will be receiving referral fees or commissions from third parties. The fee or commission sources are: _____

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

iv. Material Relationship Disclosure. Broker and/or affiliated licensees have no material relationship with any of Buyer, Buyer Principals, Seller, or Seller Principals, except as follows:

10.2 **Information Acknowledgement; Disclaimer and Release of Broker.** Buyer and Seller acknowledge 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 acknowledge that Buyer and Seller 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 Acquired 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

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of the purchase and sale of the Business and the Acquired Assets, and Buyer, Buyer Principals, Seller, and Seller Principals each release each Broker and their respective agents and representatives, of any and all claims arising from or relating to the Information.

ARTICLE XI – INDEMNIFICATION AND RIGHT OF SETOFF

11.1 **Indemnification by Seller and Seller Principals.** Seller and Seller Principals, jointly and severally, indemnify 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 Acquired Assets, except any assumed liabilities expressly provided for in this Offer and, (ii) the breach or violation of any of Seller’s or any Seller Principals’ 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 Acquired 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 Seller Financing Promissory Note, if any, or any other obligation owed to Seller under this Offer.

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.

11.2 **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 Acquired Assets, except any liabilities or debts retained by Seller hereunder, and, (ii) the breach or violation of any of Buyer’s or Buyer Principals’ 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 Seller Principals, 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.

ARTICLE XII – EXHIBITS, SCHEDULES, AND ADDENDA

12.1 **Exhibits, Schedules, and Addenda.** All schedules, exhibits, and addenda referenced below are hereby incorporated into this Offer:

i. Schedules

a. Schedule 1.1 – Acquired Assets

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b. Schedule 1.2 – Excluded Assets

c. Schedule 2 – Special Stipulations

ii. Exhibits

a. Exhibit A – Seller’s Representations and Warranties

b. _____

c. _____

iii. Addenda

a. _____

b. _____

c. _____

ARTICLE XIII – SPECIAL STIPULATIONS

13.1 **Special Stipulations.** If the Buyer and Seller have agreed upon special stipulations, those special stipulations are set forth on Schedule 1.2 hereto.

13.2 **Conflict:** To the extent there is a conflict between these special stipulations and any other term of this Offer, the special stipulations set forth herein shall control.

ARTICLE XIV – MISCELLANEOUS

14.1 **Notices**

i. 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.

ii. 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.

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iii. Facsimile Notices.

- a. All Faxed notices to Listing Broker or Selling Broker shall be sent to their respective Fax numbers identified on the signature page of this Offer. Fax notices to the designated agent for Buyer shall be sent to the facsimile number of Selling Broker. Fax notices to the designated agent for Seller shall be sent to the facsimile number of Listing Broker. All facsimile notices to an unrepresented Buyer or unrepresented Seller shall be sent to the facsimile numbers listed for the appropriate party in either Section 1.2.2 or Section 1.2.3 of this Offer.
- b. Notice sent by facsimile shall be deemed to be given and received as of the date and time it is transmitted provided that the sending facsimile 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 facsimile shall be sent to such other facsimile number as the receiving party may from time to time specify by notice to the party sending the facsimile. Any party sending notice by facsimile shall send an original copy of the notice if so requested by the other party. A facsimiled signature of a party shall constitute an original signature binding upon that party.
- iv. 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.

14.2 **Loss/Damage.** In the event there is any loss or damage to any of the Acquired 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.

14.3 **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. Without Buyer's written approval, Seller agrees that after the Offer Effective Date, Seller will not enter or alter any contracts that will affect the Acquired Assets after Closing (i.e. Seller will not further encumber any of the Acquired Assets in any way).

14.4 **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.

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- 14.5 **Confidentiality of this Offer and the Transactions Contemplated Herein.** Buyer and Seller agree not to divulge any information about this Transaction or this Offer 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.
- 14.6 **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 attorney's 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.
- 14.7 **Governing Law; Dispute Resolution; Attorney's Fees.**
- i. This Offer will be governed by, construed, and enforced in accordance with, the laws of the State of Georgia, without regard to the conflict of law rules thereof.
 - ii. Except as to any litigation involving Section VIII of this Offer, any and all disputes, claims, questions, or disagreements arising from or relating in any way to this Offer shall be fully and finally settled in a binding arbitration by a single arbitrator administered by _____ . If Buyer and Seller cannot agree on the arbitrator within fifteen (15) days of the date the Demand for Arbitration is served, Buyer and Seller agree that the arbitrator will be by arbitration provider. The Parties and the arbitrator will keep the resolution of the arbitration confidential. The decision of the arbitrator shall be binding, conclusive, and not appealable. Notwithstanding the forgoing, judgement on the arbitration award may be entered in accordance with applicable law in any court having proper jurisdiction to confirm the award.
 - iii. If there is litigation relating to Section VIII of this Offer, said litigation shall be brought in the Superior Court of the Georgia county in which the defendant party resides or has its principal place of business. If the defendant does not have a residence or principal place of business in any county in Georgia, the Seller and Buyer agree that said lawsuit will be filed in the Superior Court of Fulton County, Georgia, and Seller and Buyer submit themselves to the personal jurisdiction of this Court and agree that venue is proper in said Court.
 - iv. In any arbitration matter relating to this Offer, the arbitrator shall have the discretion to award the prevailing party in such arbitration an award of reasonable attorney's fees, costs, and expenses.
- 14.8 **Waiver.** No waiver of any provisions of this Offer 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.

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- 14.9 **Survival.** All conditions and stipulations in this Offer, which the parties agree shall be performed or fulfilled after the Closing, shall survive Closing until said condition or stipulations are performed or filled.
- 14.10 **Typewritten and 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.
- 14.11 **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 Offer. 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.
- 14.12 **Legal, Tax, and Other Advice.** This Offer is a form document provided by the GABB. Seller and Buyer understand and acknowledge that GABB (including counsel for GABB that prepared this form document) is not providing legal, tax, or any other advice to Seller or Buyer and is not warranting that the provisions of this form are suitable for the transaction contemplated by Seller and Buyer or the preferred tax treatment of the transaction contemplated by Seller and Buyer. GABB (including counsel for GABB that prepared this form document) is not providing any advice of any kind to Buyer and/or Seller. Seller and Buyer should consult their own respective legal counsel, tax professional, and/or other advisors to determine whether the provisions of this Offer are suitable to Seller and Buyer. Seller and Buyer agree to indemnify and hold GABB (including counsel for GABB that prepared this form document) harmless from any and all claims or damages arising out of the use of this form document.
- 14.13 **Severability.** If any term, provision, covenant or condition of this Offer is determined by an arbitrator to be invalid, void or unenforceable, in whole or in part, and such invalid, void or unenforceable term, provision, covenant or condition does not materially affect the purpose and intent of this Offer, then this determination will not affect any other provision of this Offer or the remaining portion of a partially invalid provision, which shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the provision in question shall be modified, as appropriate, by the arbitrator so as to be rendered enforceable, and if modification is not possible, said provision term, provision, covenant or condition, shall be severed from the Offer.
- 14.14 **Counterparts.** This Offer may be signed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Electronic signature of this Offer shall be as effective as physical signature. Facsimile or electronic copies (including PDF or other image copies) of the signed Offer shall be as valid and enforceable as an original.
- 14.15 **Entire Agreement.** This Offer constitutes the entire and only understanding and agreement between Seller and Buyer with respect to the subject matter addressed herein. All prior or contemporaneous agreements, discussions, inducements, representations, statements and/or understandings with respect to said subject matter, whether oral or written, are expressly superseded by this Offer. The Parties expressly disavow any reliance on any representations, statements, understandings or warranties that are not expressly stated within this Offer.

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14.16 **Approval Contingency.** If this Offer was completed by a person not licensed to practice law in the state of Georgia, then Seller and Buyer are strongly urged to have this document reviewed by their respective attorneys. This Offer 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 the Notice provision of this Offer within three calendar days after the Binding Offer Date of their disapproval of this Offer. If Buyer's or Seller's attorney makes such notice, this Offer 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 Offer.

IN WITNESS WHEREOF, intending to be legally bound hereby, Seller, Seller Principals, Buyer, and Buyer Principals have signed and delivered this Offer effective as of the Binding Offer Date.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE TO FOLLOW]

OFFER TO PURCHASE ASSETS OF A BUSINESS

BUYER: _____
Print Name of Buyer

SELLER: _____
Print Name of Seller

By: _____
Signature of Buyer's Signor

By: _____
Signature of Seller's Signor

Title of Signor: _____

Title of Signor: _____

Date of Signature: _____

Date of Signature: _____

BUYER PRINCIPALS:

SELLER PRINCIPALS:

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

SELLING OR TRANSACTION BROKER:

LISTING BROKER:

Brokerage Firm: _____

Brokerage Firm: _____

Brokerage Firm License #: _____

Brokerage Firm License #: _____

Signature: _____

Signature: _____

Print Selling Agent Name: _____

Print Listing Agent Name: _____

GA Real Estate License #: _____

GA Real Estate License #: _____

Date Signed: _____

Date Signed: _____

Brokerage Firm Address:

Brokerage Firm Address:

