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CORPORATE COMMERCIAL

Chapter 5

Buying and Selling a Business

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TABLE OF CONTENTS

TABLE OF CONTENTS	1
A. INTRODUCTION	4
B. THE ROLE OF LAWYERS.....	5
1. The Object of the Exercise	5
2. Areas of the Lawyer’s Expertise	6
C. BUILDING THE TEAM.....	7
1. The Accountant	7
2. The Business Advisor	7
3. The Broker	7
4. The Environmental Consultant.....	8
5. The Appraiser	8
6. The Lender	8
7. The Investor	8
D. ETHICAL ISSUES	10
1. Who is “the Client”?	10
2. Billing and Costs	10
3. Acting for More Than One Party – Buyers and Lenders.....	11
E. A BRIEF OVERVIEW OF THE TRANSACTION	13
1. Expression of Interest.....	13
2. Assets or Shares?	13
3. Letter of Intent	14
4. The Agreement of Purchase and Sale.....	15
5. Due Diligence	16
6. Before Closing	17
7. Closing.....	18
8. Post-Closing	18

F.	DUE DILIGENCE: RECOMMENDED SEARCHES	19
1.	Standard Searches and Investigations	19
G.	DRAFTING THE AGREEMENT OF PURCHASE AND SALE	23
1.	Sources for the Agreement.....	23
2.	General Format of the Agreement.....	24
3.	Essential Elements of an Asset Purchase Agreement	25
H.	CLOSING ARRANGEMENTS	34
1.	Asset Purchase	34
2.	Share Purchase	34
3.	Payment of Purchase Price and Purchase Obligations	35
4.	Registrations and Filings	35
I.	REPORT	36
J.	CHECKLISTS, FORMS AND PRECEDENTS	37
1.	Letter of Intent (Share Purchase)	37
3.	Letter of Intent (Asset Purchase).....	43
4.	Share Purchase Agreement	48
5.	Asset Purchase Agreement.....	78
6.	Due Diligence Checklist	108
7.	Closing Agenda (Share Purchase).....	113
8.	Closing Agenda (Asset Purchase)	119
9.	Statement of Adjustments	124
10.	Bill of Sale	126
11.	Assignment and Assumption of Contracts.....	128
12.	Statutory Declaration	132
13.	Authorizing Resolutions of Directors (Buyer of Shares).....	133
14.	Authorizing Resolutions of Directors (Seller of Shares)	134
15.	Authorizing Resolutions of Directors and Shareholders (Seller of Assets) ...	135
16.	Authorizing Resolutions of Directors (Buyer of Assets)	137
17.	Mutual Undertaking to Readjust	138

18.	GST Joint Election Form	140
19.	Casual Purchaser's Return	141
20.	Reporting Letter of Buyer's Counsel (Purchase of Assets).....	142

A. INTRODUCTION

This chapter covers matters that must be dealt with by the lawyers representing the parties to the purchase and sale of a business, and is intended to illustrate the many issues which may arise in such transactions.

For the most part, these materials have been designed with the purchase and sale of a small business in mind. For this chapter, a “small” business may have some or all of the following characteristics, namely:

- one location;
- a single owner/operator, or a closely-held group of owners; and
- a relatively small labour force.

Annual revenues and profits do not have a bearing on the definition of a “small” business in these materials. First, size is not necessarily reflected in profits. Second, revenues and profitability tend to be moving targets, reflecting world and national economies, market forces, management, and related influences.

As the business becomes larger and more complex, the particular issues facing the lawyers acting for the parties will likely multiply as well.

B. THE ROLE OF LAWYERS

1. The Object of the Exercise

The lawyers acting on a purchase and sale must ensure that the transaction is completed according to its terms so that when the transaction is completed, the clients have what they bargained for – no less in terms of assets or money and no more in terms of liabilities or security.

The lawyer acting for the buyer must advise the client about the best method of acquiring a new business without subsequent legal liability.

The lawyer's obligations to the buying client include assessing, identifying and advising the buyer of the risks. The lawyer will negotiate and settle the details of the agreement of purchase and sale, investigate the seller's title, investigate encumbrances against the business and assets, complete all relevant and necessary closing documents, settle any trust conditions that may be appropriate, and report to the buyer.

In the course of completing the necessary work, the buyer's lawyer must be satisfied that, within the scope of the client's instructions, all appropriate inquiries have been made to determine what the assets consist of, and what liabilities (if any) attach to the business or may accrue to the buyer.

The lawyer acting for the seller must advise the client about the best method of disposing of the business, while at the same time limiting, if not eliminating, any continuing legal liability.

In negotiating the agreement of purchase and sale, the seller's lawyer must carefully review the substance of the representations and warranties sought by the buyer's lawyer and must be satisfied that the seller fully understands them. If the agreement contemplates that the seller will not compete with the buyer after closing, the lawyer must review the non-competition agreement or restrictive covenant carefully to ensure that it is not worded more broadly than is necessary to put the parties' agreement on that issue into effect.

The buyer's lawyer typically prepares the first draft of the offer to purchase or agreement of purchase and sale. Once the parties have settled on the terms and conditions of their agreement, the seller's lawyer usually prepares first drafts of the essential transfer

documents (e.g., transfer of land, bill of sale, assignment of contracts, powers of attorney to transfer stock) and, if a portion of the purchase price will remain unpaid after closing, the security documents as well (e.g., vendor take-back note, general security agreement, pledge of shares, mortgage).

The seller's lawyer then must communicate with the buyer's lawyer to settle all adjustments to the purchase price and the trust conditions necessary to ensure that the seller receives all funds and, if appropriate, security bargained for. Finally, each lawyer must report to their respective client and account for all monies received and disbursed in the course of closing the transaction.

2. Areas of the Lawyer's Expertise

Unless the lawyer has some special expertise in the business area, the lawyer's role is not to advise the client about the business decisions, even if the lawyer may have some better-than-average familiarity with the business issues. Rather, the role of the lawyer is focused on the *legal* aspects of the transaction, as follows:

- negotiating and settling the details of the agreement and sale;
- identifying and obtaining the necessary regulatory and other approvals and consents;
- investigating title to the assets, determining the extent of any liabilities, liens and encumbrances, work orders, and the like;
- preparing closing documents;
- attending upon closing;
- reporting and rendering the necessary opinions; and
- discharging the encumbrances against the assets.

C. BUILDING THE TEAM

In acting for the buyer or the seller, the lawyer and client must build a team of advisors with the necessary expertise.

1. The Accountant

At an early stage, the buyer must make the fundamental decision of whether to acquire the target business by purchasing the assets comprising it, or the shares of the corporation owning the business assets. The accountant plays a crucial role in advising the buyer on this issue. In that regard, the tax implications are usually determinative, subject to the parties' relative bargaining strength. Similarly, the accountant for the seller must provide corresponding advice as to the effects of the structure of a transaction on the seller's tax position.

Of equal importance, the accountants advise as to the calculation of the purchase price (including any post-closing purchase price adjustments), and the most efficacious method of payment.

The accountant of one party may be asked to perform a pre-closing audit or closing calculation and, if necessary, to take inventory of the assets comprising the target business, to determine any adjustments to the final purchase price. In particular, the accountants may be asked to recommend the allocation of the purchase price which will best suit the buyer's and the seller's tax and financial positions.

2. The Business Advisor

The lawyer must be sensitive to the particular circumstances in which the transaction occurs. A business advisor (whether retained by the lawyer on behalf of the client or by the client directly) may provide insights as to the customs of the trade, the timeliness of the transaction, competition, the regulatory approvals needed and how to obtain them, regulatory practicalities, and the like. For a person who is in the position of having both the desire and sufficient resources to acquire a business, but does not know where to look for one, the business advisor may also be able to assist in locating the target business. For some sellers, the business advisor may have been specifically retained to ready the business for sale.

3. The Broker

Occasionally one of the parties engages a business broker to assist in the sale or acquisition of a business. Frequently, the business broker is a real estate agent acting for the seller in advertising a business for sale and soliciting offers for its purchase or sale. Some brokers assist prospective buyers in identifying businesses available for sale. They may also be able to offer advice as to market and price.

4. The Environmental Consultant

Given the liabilities imposed by federal and provincial environmental legislation, the buyer may need the particular expertise of an environmental consultant. The consultant advises as to the environmental considerations and, in particular, as to the potential liabilities attaching to the subject assets.

The environmental consultant may also assist in preparing the presentation of environmental issues and concerns to prospective lenders and investors.

5. The Appraiser

While the parties themselves may have quite definite ideas of what the business is worth, it may at some stage become necessary to engage outside, objective advice to determine the matter. Qualified business valuers offer this kind of advice.

6. The Lender

Often the lender will be an essential member of the buyer's team. The lender's requirements (which will vary from lender to lender) will have to be satisfied before financing is approved and then the necessary conditions of approval must be met before funds are advanced to or on the buyer's behalf. At a minimum, the lender will want to have a clear picture of the business itself, a reasonably complete idea of the assets comprising it, the buyer's capital input, the buyer's assets and those of its principals (if the buyer is a corporation), and the client's plan for the acquisition.

If the lender is prepared to commit the necessary financing, it will stipulate how it will want to secure repayment of the monies advanced (e.g. general security agreement, mortgage to be registered against the real property, or a personal guarantee of the principals if the buyer is a corporation). Again, security requirements may vary, whether from lender to lender or relative to the method of financing.

7. The Investor

The buyer may be able to minimize its borrowing from commercial lenders with capital from private investors. Without resorting to a public offering (which would come within the jurisdiction of *The Securities Act*) the buyer may be able to rely on one or more parties who are prepared to contribute capital without becoming involved in the day-to-day management of the business. No two cases will be the same and the lawyer must understand and address the investors' expectations and requirements. The structure of the transaction may have to be altered to accommodate them.

In building the team for the client, the lawyer must have two considerations in mind:

- Who is responsible for engaging the team members? (Does the client have an established relationship with the advisor, or is the client relying on the lawyer to assist in locating the necessary advice?)
- Who is paying the bill for each advisor?

The lawyer must define the payment obligations at the outset. If the lawyer engages the consultant on behalf of the client, unless all parties agree otherwise at the time of engagement, the outside consultant is entitled to look to the lawyer for payment directly, regardless of whether the client has paid the lawyer or if the lawyer and client have agreed that the client will pay the consultant directly.

D. ETHICAL ISSUES

At the outset, the lawyer must be sensitive to fundamental ethical concerns.

1. Who is “the Client”?

It is essential at the outset to identify the party whom the lawyer is representing. It is equally important to make sure that those for whom the lawyer is not acting understand what that means for them.

The lawyer should rarely, if ever, act for both the buyer and the seller in the same transaction. There is an inherent conflict of interest between buyer and seller. Refer to the *Code of Professional Conduct* for the strict rules regarding those rare situations where the lawyer is permitted to act on a joint retainer for both sides.

It is better practice for the lawyer to accept a retainer to act for only one of the parties and to recommend that the other party retain a lawyer to represent their legal interests. The lawyer must make it clear to the other party who does not retain a lawyer that there is no joint representation.

2. Billing and Costs

To avoid misunderstandings between lawyer and client, confirm all arrangements for:

- payment of legal services fees (including details as to whether a money retainer is required, on what basis the fees will be calculated, when the account will be rendered, the lawyer’s expectations of the client regarding payment of the account, whether and what interest will be charged on overdue accounts); and
- disbursements (out of pocket expenses), including details about what are considered disbursements and when and how they must be paid.

Such considerations must be addressed when the client retains the lawyer or as soon afterwards as is practicable. The lawyer and client must revisit the issues to make changes if circumstances change.

See [Code Rule 3.6](#)

Commercial practitioners often overlook the necessity of confirming all fee arrangements in writing, with the mistaken belief that their long-standing relationship with the client makes it unnecessary to discuss fees. And yet, invariably, the client wants to know what their legal costs are likely to be. Even if the client doesn’t explicitly inquire, the lawyer is ethically obliged

to take the initiative and address the issue. The lawyer must then confirm the salient points of the discussion on fees and disbursements in an engagement or retainer letter. See the module on [Retainers](#) in the Law Society Education Center for more information.

3. Acting for More Than One Party – Buyers and Lenders

When called upon to prepare or register security documents in connection with the buyer's financing, the lawyer must be aware that they are being retained to act for and take instructions from the **lender**. [Code Rule 3.4](#) provides guidance for joint retainers in this situation.

[Rule 3.4-2](#)

A lawyer must not represent a client in a matter when there is a conflict of interest unless there is express or implied consent from all affected clients and the lawyer reasonably believes that he or she is able to represent the client without having a material adverse effect upon the representation of or loyalty to the client or another client.

- (a) Express consent must be fully informed and voluntary after disclosure.*
- (b) Consent may be inferred and need not be in writing where all of the following apply:
 - (i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel;*
 - (ii) the matters are unrelated;*
 - (iii) the lawyer has no relevant confidential information from one client that might reasonably affect the other; and*
 - (iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.**

[Rule 3.4-5](#)

Before a lawyer acts in a matter or transaction for more than one client, the lawyer must advise each of the clients that:

- (a) the lawyer has been asked to act for both or all of them;*
- (b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and*
- (c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.*

Rule 3.4-6

If a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts joint employment for that client and another client in a matter or transaction, the lawyer must advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

Rule 3.4-7

When a lawyer has advised the clients as provided under rules 3.4-5 and 3.4-6 and the parties are content that the lawyer act, the lawyer must obtain their consent.

Commentary to Rule 3.4-7

Consent in writing, or a record of the consent in a separate written communication to each client is required. Even if all the parties concerned consent, a lawyer should avoid acting for more than one client when it is likely that a contentious issue will arise between them or their interests, rights or obligations will diverge as the matter progresses.

At the very least, the lawyer must obtain the parties' acknowledgements in writing of the matters set out in Rule 3.4-5.

The lawyer cannot impose any trust condition for the benefit of one client on the other client when acting for both parties in the same transaction. For example, having received instructions to prepare and register security documents in the transaction, the lawyer cannot report to the lender "in trust on the condition that" the lender advance the proceeds of the loan to the lawyer. Rather, report in the normal course and request the proceeds of the loan.

E. A BRIEF OVERVIEW OF THE TRANSACTION

Business acquisition transactions typically unfold in the following stages:

1. Expression of Interest

Usually, the prospective buyer and seller have had some preliminary discussions and reached some measure of tentative accord (at least regarding the salient business terms of the purchase and sale transaction) by the time they seek advice and assistance from their respective lawyers. This may be through a letter of intent, which may or may not be binding, or some similar document. This will vary from transaction to transaction.

2. Assets or Shares?

At an early stage, the parties must determine the structure of the transaction. A business may be acquired in two basic ways:

- by purchasing the shares of the corporation carrying on the business; or
- by purchasing the assets comprising the business itself.

For the buyer, the decision whether to purchase shares or assets may be complex, requiring participation by the lawyer, the accountant, and any proposed lender, all of whom should be well acquainted with both the client and the operations of the target business.

For the seller, the decision whether to sell shares or assets may also be complex, requiring participation by both the lawyer and the accountant. The seller typically will want to know the amount of the net proceeds they can expect to receive from the transaction, after taking into account any taxes which may be payable.

a) Purchase of Assets

To limit its exposure to unwanted liabilities that would exist if a buyer purchased shares of a corporation, the buyer may wish to acquire the business by purchasing the assets comprising the business. Buying assets allows the buyer an opportunity to determine the tax cost of the business for depreciation purposes.

The sale of assets in a declining business may enable the seller to realize gains to offset prior capital losses, which may lead to a beneficial tax result. In any event, the purchase of assets will permit the buyer to select the liabilities of the business to be assumed.

The purchase price will have to be allocated carefully among the assets being purchased. Different documentation may be required depending on the nature of the asset being acquired. The title to the assets must be confirmed. Among other things,

the parties have to comply with *The Retail Sales Tax Act* as to PST and the *Excise Tax Act* as to GST payable as a result of the purchase of assets.

The seller will have to consider the tax effect of the allocation of the purchase price, including possible recapture of depreciation. The parties must also consider termination of employment of employees by the seller and the hiring of the employees by the buyer. Any contracts that are to be assigned by the seller to the buyer will have to be reviewed to determine if any third-party consent is required to the assignment of the contract.

b) Purchase of Shares

On a share purchase, the buyer acquires the corporation which operates the business, and all assets and all liabilities of the target business continue with the corporation acquired, although occasionally a specific asset or liability can be excluded from the transaction as a condition of closing.

Only the shares are transferred. The parties can avoid the complex conveyancing requirements of an asset purchase because title to the assets used to carry on the business remains in the corporation which carries on the target business. However, the parties will have no opportunity to allocate the purchase price to the various assets.

To ensure that the shares being acquired have value, the buyer and the buyer's lawyer will have to examine the values of and title to each of the assets of the corporation carrying on the target's business, the nature and extent of each of the corporation's liabilities, the status of the contracts to which it is a party, the status of its corporate existence, and rights of other security holders. To avoid unwanted or unforeseen liabilities, the buyer's due diligence must be careful and thorough.

c) Tax Considerations in Determining Whether to Acquire Assets or Shares

Tax considerations are crucial elements in determining whether the transaction should involve the acquisition of assets or shares, and may be highly determinative of the purchase price. Each of the parties should weigh the relative tax cost of the proposed transaction.

3. Letter of Intent

Once the buyer is reasonably satisfied that the parties share a common desire to complete the transaction, the buyer's solicitors may be instructed to prepare a letter of intent for the seller's signature.

The letter of intent sets out the basic terms and conditions of the proposed transaction and, in rough, the game plan through to closing. As its name implies, it expresses the parties' intentions for the transaction but is not usually meant to create binding and enforceable obligations excepting in some important respects. Generally, these are:

- the parties' respective obligations to negotiate in good faith towards the execution and delivery of a definitive and binding agreement of purchase and sale;
- the right of the intending buyer to investigate the business and affairs of the target corporation (if the transaction concerns the purchase of shares), or of the business carried on with the subject assets (if the transaction concerns the purchase of assets), which investigations are commonly described as the buyer's due diligence; and
- the obligation of the intending buyer to maintain the strict confidentiality of all information received in the course of its due diligence, and to use it only in connection with the proposed transaction. (Both parties may also be obliged to keep the very fact of their discussions in confidence, and to coordinate any public announcements.)

The buyer may also seek the seller's binding covenant not to seek offers from or conduct any negotiations with any other prospective buyer for some defined period, usually sufficiently long to permit the buyer to complete its due diligence and to negotiate, execute, and deliver a definitive agreement of purchase and sale.

While the buyer may eventually determine that it wants to acquire the business under the auspices of a corporation, that decision may not be possible at an early stage. For this reason, it is not uncommon to see letters of intent made by the individual buyer "on behalf of a corporation to be incorporated." The law of pre-incorporation contracts tells us that, absent any such indication, the buyer will be regarded as personally bound.

4. The Agreement of Purchase and Sale

The letter of intent may expressly contemplate that the buyer's lawyer will prepare the first draft of a definitive purchase and sale agreement. Alternatively, matters may simply progress to a point where the intending buyer determines that a deal is achievable, at which stage one of the parties' solicitors (usually the buyer's) will produce the first draft.

This first draft is often most responsive to the needs and concerns of the party instructing the lawyer drafting it, and less responsive to the other party's needs. Bias in the first draft may be unavoidable. Still, the more even-handed the first draft is, the shorter and less costly the negotiation process will be and, in many cases, the more likely it will be that a definitive agreement will be signed and the transaction closed. The parties' lawyers should attempt to avoid conducting themselves in so adversarial a manner as to destroy any trust and confidence nurtured by the buyer and seller themselves. To the extent the parties' trust and confidence in each other is threatened, the transaction itself is imperilled.

The general format of agreements of purchase and sale is discussed below.

5. Due Diligence

Unless the parties are themselves already involved in the same business as partners or shareholders, and sometimes even in those situations, the buyer's due diligence will be an essential component of a successful transaction.

The notion of due diligence has a broad meaning:

Generally, due diligence falls into two main categories – so called *legal due diligence* and *business due diligence* – and even those categories overlap.

The *legal due diligence* involves such matters as minute book reviews, including the constating documents, by-laws, organizational proceedings, minutes, resolutions, some related financial statement review, normal corporate searches, title searches and searches to determine security interests held by others, reviews and confirmations of lease terms, reviews of material contracts, reviews of loan agreements, etc. These permit the proposed buyer to satisfy itself that the seller owns the shares or assets being sold and that they are free from all encumbrances other than those that the proposed buyer may have agreed to assume and, in the case of a share purchase, that the shares being purchased have been duly allotted and issued, are fully paid and otherwise unencumbered.

The *business due diligence* involves an understanding of the material contracts, contacts with customers and suppliers, reviews of inventories of raw materials, work in process and finished goods, employee relations, the status of payables and receivables, banking relations, and the like.

Usually, lawyers conduct the legal due diligence and businesspeople conduct the business due diligence. The proposed buyer always conducts due diligence reviews of the seller and/or the corporation whose shares or assets are being purchased.

The seller may also conduct due diligence reviews on the proposed buyer where, for instance, the seller is taking back debt, whether secured or unsecured, as part of the purchase price or is receiving shares or other securities of the buyer as part of the purchase price. Generally, however, the vendor's due diligence will not involve as extensive a review as the buyer's.¹

¹ Aird and Berlis LLP & West, *Business Acquisition Agreements An Annotated Guide*, 2d ed. (Toronto: Carswell, 2011).

Specific details of the searches to be conducted are discussed below under Due Diligence: Recommended Searches. The lawyer may also be called upon to identify any restrictions in assigning material contracts or any consents required in a change of control of the ownership of the corporation being purchased.

6. Before Closing

a) Ancillary Closing Documents

In addition to the agreement of purchase and sale itself, counsel for the parties have to prepare several ancillary documents to give effect to particular aspects of the transaction.

For example, whether the transaction involves the acquisition of assets or shares, the parties have to prepare and see to the execution of the appropriate resolutions of directors and shareholders authorizing the transaction, the execution of the agreement, and all ancillary documents. Additionally, the necessary conveyancing documents must be prepared for execution and delivery.

In an asset purchase, the seller will be expected to deliver appropriate transfer documents, which may include relevant title documents, a transfer of land, a bill of sale, an assignment of leases (together with the lessors' consents, if required), an assignment of contracts (together with any third party consents, if required), and a non-competition agreement (if that is part of the transaction).

b) Closing Agenda

Before closing, counsel for the parties must settle upon a closing agenda identifying:

- the parties to the transaction;
- the documents to be delivered, who is responsible to prepare them, and to whom they will be delivered;
- actions to be taken and registrations to be completed at or before closing to give effect to the transaction as contemplated in the agreement of purchase and sale;
- escrow arrangements pending the satisfaction of all interim requirements and conditions; and
- post-closing responsibilities to pay tax, make filings, obtain certificates in respect of retail sales tax or Worker's Compensation, and obtain discharges of security.

c) Final Preparations

After completing these investigations, counsel for the buyer must ensure that the buyer's conditions are satisfied or waived, financing arrangements are complete, and all required documents are, or are prepared to be, signed.

Counsel for the seller must ensure that the seller has complied with all of its obligations and covenants under the agreement of purchase and sale, that all required closing documents are ready for execution and delivery, and that the client has obtained the necessary commitment from any lender who must release its security in the assets or shares of the seller.

7. Closing

The agreement of purchase and sale must stipulate the date upon which, and how the transaction is to close. The buyer, the seller, their respective principals and solicitors may attend at one place on the closing date to sign the required documents, deliver payment of the purchase price and shake hands. Often commercial transactions are simply closed by correspondence per trust and escrow arrangements applicable to the particular transaction. Before delivering closing documents and payment of the purchase price, the parties check again that all conditions precedent to closing for the benefit of all parties have been satisfied.

8. Post-Closing

Where conveyancing or security documents have to be registered, the buyer's lawyer typically attends to doing so. Often the parties have several additional covenants that must be completed, and trust conditions that have to be satisfied, after closing.

F. DUE DILIGENCE: RECOMMENDED SEARCHES

Outlined below are many of the searches and investigations which are typically undertaken on behalf of the buyer of a business – whether the transaction involves the purchase of assets or shares. (In this context, *purchased business* means the business being carried on by the corporation whose shares are being acquired or the business whose assets are being acquired). Where the transaction is a share sale, certain searches should be done both against the purchased business and the seller(s).

Although a list of standard searches is provided, each transaction is unique. The lawyer acting for the buyer must not adhere to a standard checklist, which could preclude independent consideration of which additional searches and investigations are necessary or desirable in the circumstances. In making this determination, the lawyer's goal is to ensure that the client is getting what was bargained for, without unpleasant surprises once the purchased business is in the client's hands.

1. Standard Searches and Investigations

Generally, the following searches should be completed (or at least considered) with regard to acquisitions involving real and personal property. To determine the appropriate searches, the lawyer must consider the nature of the entities involved, the nature of the business being acquired, the nature of the assets themselves, the nature of the transaction, and the client's instructions. Ensure that the client sufficiently understands both the purpose and the cost of each search, so that the client can make an informed decision.

a) General Searches

Whether the transaction involves assets or shares, the buyer's lawyer will likely need to conduct a number of searches to obtain satisfactory evidence that the seller's representations and warranties in the agreement of purchase and sale are accurate and true. A list of these searches is set out in the due diligence checklist found in the precedents.

The buyer's lawyer should conduct these searches as early in the transaction as possible to maximize the time available to address any new issues that arise.

Because many statutory lien searches require the consent of the corporation comprising the subject matter of the inquiry, it should be a term of the agreement and any letter of intent that the corporation be required to grant all necessary authorizations and otherwise cooperate in the buyer's due diligence investigations.

The buyer's lawyer should check with the other parties to material contracts (e.g., leases, licence agreements, long-term supply agreements, and collective bargaining agreements) to ensure that the seller is not in default and that the agreements will not conflict with the buyer's contractual obligations. The parties to the contracts being assigned will have to give their consent if required by the contract in question.

The buyer's lawyer should obtain confirmation from each creditor of the amount and terms of repayment of each liability being assumed. If the liability is secured by a mortgage or other security, the lawyer should ensure that the seller is not in default under the security agreement. Alternatively, the buyer client may be prepared to rely on the seller's warranty as to the status of the liabilities and the seller's covenant to repay any difference between the actual and represented amount.

If searches are conducted before executing the agreement, such searches will also give both lawyers the necessary information for adjustments to the purchase price or additional conditions or indemnities required in the purchase agreement.

b) Additional Searches for the Acquisition of Shares

If the transaction entails the acquisition of shares, the buyer's lawyer should perform the following additional searches before closing to ensure that the seller is complying with its representations and warranties in the agreement:

- (1) obtain certificates of its status in the jurisdiction of incorporation and in any other jurisdiction where it and any subsidiaries carry on business;
- (2) check extra-provincial licences or registrations and registration of business names;
- (3) examine the articles and by-laws for unusual provisions (which the buyer may want to change), authorized capital, share conditions, pre-emptive rights, restrictions on the transfer of shares, powers of officers, signing authorities, the requirement of special majorities for directors' and shareholders' approvals. The execution of closing documents should be checked against these;
- (4) examine the minutes of meetings of the target company to ensure all material meetings were properly called, constituted, and conducted, major transactions including the enactment of by-laws, the election of directors, issues of shares, transfers of shares, borrowing, debenture issues, etc. were properly approved, all shares have been allotted and issued as fully paid and non-assessable, no one has any option or right to acquire any securities other than as represented; bonus plans, profit-sharing plans, stock option and share purchase plans, life insurance and other fringe benefits for employees were properly approved;

- (5) examine the registers of officers, directors, shareholders, transfers and securities to ensure they are up to date and coincide with the directors' minutes and show no other security holders, except as noted in the agreement;
- (6) examine share certificates to ensure that cancelled certificates have been properly endorsed and cancelled, that the shares have been properly transferred, and that all outstanding share certificates are accounted for as noted in the transfer and shareholders' ledgers and directors' resolutions originally allotting and issuing the shares;
- (7) check for arrears of contributions under the *Employment Insurance Act*, the *Income Tax Act* and the *Excise Tax Act* of Canada;
- (8) search the titles of any subsidiary to its assets and confirm its liabilities with its creditors as if the buyer was acquiring these underlying assets and liabilities rather than the shares, and obtain audited financial statements, certificates of status, check the adequacy of its licences, and examine its corporate records; and
- (9) obtain opinions of counsel on any litigation pending or threatened and on the corporate status of the target company, together with an opinion on such other matters as may be more particularly detailed in the agreement of purchase and sale.

c) Seller's Searches

If the seller is not already familiar with the background, means, and business of the buyer, it may be appropriate for the seller's lawyer to conduct a number of the essential searches in respect of the buyer. At a minimum, the seller's lawyer should confirm the buyer's corporate status, but may also want to search at the Canadian Securities Registration Systems (Bank Act Security Department), Bankruptcy Office, courts, Personal Property Registry and Sheriff's Office.

d) Representations and Warranties in the Agreement of Purchase and Sale

The agreement of purchase and sale is an essential component of the lawyer's due diligence on behalf of the buyer.

By detailing the seller's representations and warranties in favour of the buyer, the agreement compels the seller to turn its mind to all aspects of the purchased business and to disclose fully to the buyer all salient information regarding the current state and future prospects of the purchased business.

This point is significant because, in most agreements, the seller is required to indemnify the buyer for any losses suffered in the event any representation or warranty is later found to be inaccurate or untrue. It is therefore difficult to compile a complete checklist of searches and investigations on behalf of the buyer without reviewing the seller's representations and warranties in the agreement, and vice versa.

Also, several of the necessary searches and investigations will not be possible unless the buyer and its advisors have access to books and records within the control of the seller. Some searches will not be possible at all unless the buyer has written authorizations from the seller addressed to the relevant governmental and municipal departments, agencies and offices. In this event, the agreement of purchase and sale must expressly give the buyer the right of access to all necessary materials, and require the seller to provide all necessary authorizations.

Agreements of purchase and sale occasionally may require the seller to deliver an opinion from its solicitors that the corporation is duly organized and validly existing, that the transaction is duly authorized by all necessary corporate action, and that the documents in pursuance of the transaction have been duly executed and delivered. Even if the buyer's lawyer is able to obtain that kind of opinion from the seller's lawyer, the buyer's lawyer will still need to complete all necessary searches and investigations.

G. DRAFTING THE AGREEMENT OF PURCHASE AND SALE

1. Sources for the Agreement

At the outset, the lawyer will need to choose a precedent to use in preparing a first draft. The lawyer will have many alternatives, various form books, the last transaction in which the lawyer was involved, and the form which is stored on the lawyer's computer.

When drafting, keep in mind the following:

- Every transaction is different and the agreement, from the initial draft, should show that it has been prepared for the specific transaction. It is worth the time to make sure that a lawyer's drafting shows that thought has been given to the agreement, that the lawyer has not simply pulled their last agreement off the shelf.
- The lawyer must never include provisions that they are not prepared to argue for and defend intelligently.
- Do not go to a closing binder from another transaction and draft from that final agreement. In most cases, that will be a fully negotiated agreement already reflecting the concessions made by the parties and the specifics of that transaction. The lawyer should refer to a first draft or back to the original precedent used in that transaction.

Several excellent resources are available, depending upon the nature of the transaction. These include:

- *O'Brien's Encyclopedia of Forms*, Eleventh Edition, Thomson Reuters. A comprehensive collection of forms (searchable online) on a broad range of legal topics, including commercial forms.
- *Annotated Business Agreements* (Thomson Reuters, binder/looseleaf). This book includes annotated precedents for the most common business organization agreements.

A word of caution: a precedent or draft prepared by counsel for the other party is never going to be perfectly tailor-made to a client's situation.

After reviewing the draft, the lawyer should always sit back and ask, what is missing from the agreement that should be included for the benefit of the client? The lawyer should go back to the initial discussion with the client about the reasons for buying or selling and what is important to them.

2. General Format of the Agreement

The general format of agreements of purchase and sale is consistently similar, whether the agreement relates to the acquisition of assets or shares. The following matters are generally covered:

- identification of the parties;
- definitions;
- the seller's commitment to sell, the buyer's commitment to buy, and the subject matter of the transaction;
- the purchase price, allocation of the price, and terms of payment;
- any adjustments to the purchase price based on closing financial statements;
- whether the buyer is assuming any of the seller's liabilities and, if so, identifying them;
- seller's representations and warranties as to ownership, encumbrances, financial status, labour and employment matters, and the like;
- buyer's representations and warranties;
- seller's covenants;
- buyer's covenants;
- survival of representations, warranties and covenants;
- due diligence investigations;
- conditions precedent to closing for the benefit of the buyer (e.g., that the buyer is satisfied with the results of its due diligence investigations, all financing is in place, all material consents have been obtained);
- conditions precedent to closing for the benefit of the seller (e.g., that all necessary consents have been obtained from the bank, landlord and lessors);
- indemnities;
- non-competition and non-solicitation covenants, if any;
- closing arrangements (e.g., time, place, documents to be delivered); and
- provisions having to do generally with the subject matter of the transaction, the interpretation of the agreement and the relationship between the parties.

This list is by no means exhaustive. Other provisions may have to be added to suit the particular transaction.

3. Essential Elements of an Asset Purchase Agreement

a) Who Should be a Party?

The lawyer will need to be careful in identifying the buyer and seller. For example, is the buyer acting on behalf of a corporation to be incorporated? Has the lawyer conducted a corporate search to satisfy that the lawyer has the correct and complete name of the seller?

It is important to consider whether any other person or corporation should be made a party to the agreement in addition to the buyer and seller. For example, a sole shareholder of the seller who covenants not to compete with the corporation after the sale may be a party to the agreement. Further, the lawyer may want an indemnity from the shareholder as well as from the seller corporation, and may also want the shareholder to join in with the seller corporation in making the representations and warranties.

A seller who is providing financing in the way of a vendor take back promissory note and security may demand guarantees from the principals of the purchasing company as greater security. In that case, the individual who is to provide the guarantee may be a party to the agreement and the agreement should contain a corresponding covenant by that individual (or corporation) to provide the guarantee.

b) What Are You Buying/Selling?

If a client is buying specific assets, then the lawyer will be concerned about matters such as title to and the condition of the assets. The scope of representations and warranties will be narrower.

If the buyer wishes to purchase the business as a going concern, the agreement should state that the buyer is purchasing all of the assets as a going concern and specifically list the items included. It may seem redundant to state that the client is buying all of the assets and then proceed with a long list of the assets, but the specific listing of assets is often required for purposes of the representations and warranties as well as to ensure that there is no confusion as to what is being included in the assets being purchased.

As well as the list of items included, the lawyer may need to list assets specifically excluded. Acting for a seller, the lawyer will want to make sure that the list of excluded assets is complete since anything not on the list falls into the basket of assets that the buyer expects to receive.

c) Calculation of Price

The price will be agreed upon by the parties but is often subject to adjustment at closing for matters such as cash, accounts receivable, inventory, and prepaid expenses. In the case of an adjustment for inventory or prepaid expenses, the parties must agree upon the method to value those items.

It is not unusual to require the buyer to pay an amount on closing based upon the estimated inventories and prepaids and then to adjust later once the actual values have been determined. This is generally a factor of the size of the transaction – the parties may be able to conduct the inventory count on the day before closing and determine the final price at closing.

The buyer may want to place a cap on the level of the inventories on the date of closing to limit the maximum cash outlay or financing required.

The lawyer should pay specific attention to the deposit provisions. As in any transaction, the buyer will wish to place as little as possible on deposit and the seller will want to maximize the deposit to ensure the performance by the buyer.

Acting for the seller, the lawyer will want to watch for any stipulation that, in the event of default by the buyer, the deposit is to be paid to the seller *“in full and final satisfaction of any and all claims”* against the buyer. If the lawyer does not make the client (the seller) aware of that stipulation and the buyer withdraws from the agreement, the seller may be unhappy to learn that they have no right to sue and must simply take the deposit as agreed upon damages because of that stipulation.

d) Representations and Warranties

For a buyer, the representations and warranties are a critical part of the transaction. This is the buyer’s opportunity to elicit written statements from the seller concerning the status of the assets and the business. It will also form the basis for any claim or suit for indemnity.

In the negotiations over the terms of the purchase, counsel for the parties may spend considerable time negotiating the specific wording of the representations and warranties to be made by the seller. Be careful not to become wedded to a particular form or precedent which may result in the lawyer insisting on language which is irrelevant to the particular client and transaction.

The lawyer must also understand the practical meaning of each of the representations and warranties and avoid getting caught up in arguing over minutiae which are insignificant in the overall context of the transaction. Avoiding these traps will result in a more effective representation of the client's interests and better relations with fellow lawyers.

Think about the representations from a buyer's perspective. It is the buyer who requires the most protection and the most descriptive detail because the buyer is acquiring an assorted basket of things, ideas and people (a business as a "going concern") while the seller usually is simply focused on receiving the purchase price.

The lawyer and the buyer client may legitimately pursue three essential purposes in requiring representations by the seller:

- **Complete, true and informative disclosure.** If the seller or the seller's lawyer bristle at providing a particular representation requested by the lawyer or the lawyer's buyer client, this should be an early warning bell for trouble spots and may prompt the buyer to focus here during the investigation.
- **Set a basis for the buyer to walk away from the deal.** Once the lawyer has established in the representations the expectations from the seller, the buyer has a legal right not to close, if the lawyer's due diligence proves that the representation is not correct.
- **Set a basis for post-closing indemnification.** If the buyer's reasonable assumptions about what is being purchased, as defined by the representations, prove false in any significant respect and result in damages, then the breach of the representation forms a basis for a claim for breach of contract.

No honest seller can have any reasonable objection to the first purpose. Nevertheless, the seller's counsel may complain that it will take too long and cost too much in legal fees to negotiate the representation and warranty, or that it will disrupt the business and upset the employees, or the classic "my client does not know all the details, the client just runs a successful business."

In many deals, the seller will provide substantial information before the lawyer for the buyer is involved and before the agreement has been signed, and will try to beg off by saying "we already gave you that." While the lawyer's client may have received the information, the lawyer should have that representation and warranty put into the agreement so that it is definable and easy to point to the written representation when a problem arises rather than referring to a document delivered outside of the agreement.

Sellers often have legitimate concerns about the second and third purpose of the representations and warranties. Some sellers, for example, have no problem with providing post-closing indemnification because they are certain they have a clean

business without any significant likelihood of future difficulties. But that same seller may be worried about a failed representation allowing the buyer to walk away from the transaction if the seller is in dire financial straits or is convinced that the business is at its peak and any delay would decrease its value.

Another seller may be concerned that there be no post-closing claims based upon the representations and warranties. Some sellers take the view that they are selling the business as is and the buyer can take all the time to “kick the tires” but once the buyer buys, there are no rights to further claims. So, when a major piece of equipment breaks down or the major customer finds an alternative supplier, the seller does not want to face a claim by the buyer. The seller may be giving up the future value of the business in large part to be free of these concerns.

e) Representations and Warranties – Qualifiers

In negotiating the agreement, it may be helpful to qualify one or more representations and warranties on the basis of knowledge and materiality. Counsel for the seller may ask to add a knowledge limitation here or a materiality standard there. As counsel for the buyer, it is essential to understand the effect of these limitations.

The seller and the seller’s lawyer intuitively want all of the representations and warranties to be limited by the phrase “to the best of the seller’s knowledge” or even to the lesser standard of “to the seller’s knowledge”. The seller may say, “look, I’ll tell you everything I know about my business, but you can’t expect me to tell you the things I don’t know.” As counsel for the buyer, try to reject this notion on the basis that, as between the seller and the buyer, it should be the seller who should bear the risk of unknown liability, since the seller is in a much better position to know the business and its condition.

However, on some occasions, it may be appropriate to concede to the knowledge limitation. For example:

- When a representation involves complex and arcane matters, especially those dealing with legal requirements or effects, the knowledge qualifier can overcome the seller’s objection and preserve at least some protection for the buyer.

For example, the typical representation requiring the seller corporation to state that it complies with all applicable laws and regulations, federal, provincial, and local. Few businesses can truthfully make this representation, but the seller should be required to state that it has no notice of non-compliance or you may settle on a provision that the seller makes an unlimited representation and the buyer accepts a non-compliance that has no material adverse effect on the purchased assets or the business.

- Seller's counsel may ask for a knowledge qualifier to the litigation representation, particularly when the seller is a large corporation. "We don't want the buyer to be able to walk away because there is a claim in a small claims court in northern Manitoba" is the argument. That argument goes to materiality and it should be handled in that fashion. The existing or pending litigation should never be limited to the seller's knowledge, but it is an acceptable practice to agree to a knowledge qualifier for threatened litigation.
- Some representations involve predictions of unspecified future events and can be limited by the knowledge qualifier.

For example, the representation that no current event or condition will materially adversely affect the seller's business or business prospects can be limited to knowledge. On the other hand, where the future event is of a narrower scope, for example, the collectability of accounts receivable, the lawyer should resist any knowledge limitation.

Lawyers have begun to tinker with the language of the knowledge qualifier, making it clear that there are different kinds of knowledge. Some practitioners now believe that the simple phrase "to the best of the seller's knowledge" is ambiguous – does it mean actual knowledge or does it instead imply some diligent inquiry to ascertain the facts? To be certain and impose a higher duty to investigate, the qualifier should be modified to read "to the best of the seller's knowledge after diligent inquiry."

Most sellers want a liberal sprinkling of materiality qualifiers throughout the representations and warranties. The seller will be concerned that without these limitations, the buyer will be able to walk away from the transaction because of some insignificant matter, or that after the closing a nitpicking buyer will seek indemnification for every minor misrepresentation.

The buyer's counsel should suggest that the seller can be protected against indemnification claims over minor matters by a negotiated "basket" provision that excludes insignificant items.

Once again, skills in negotiation may be tested and the lawyer may accede to some of the seller's requests where they will do the lawyer's client the least harm. The buyer client does not want to hear that the deal was killed because the other side was insisting upon too many materiality limitations.

f) Representations and Warranties – Financial Statements

If the buyer is simply buying a selected list of assets and is not paying for the future earnings of the business, it may not be necessary to review the financial statements and include a representation and warranty by the seller that the financial statements are accurate and fairly reflect the business. The client will form their own opinion upon the value of the assets being purchased.

However, if the client is purchasing the business in the expectation of future income, then it will be essential that the buyer receive and review the financial statements and that express representations and warranties regarding those financial statements are included. A proper representation and warranty will protect the buyer from financial statements with overstated sales or understated expense figures.

g) Representations and Warranties – Categories

The extent of the representations and warranties will depend upon the assets being purchased. If the assets include land, personal property, and goodwill, then the agreement will have all of the representations and warranties relevant to a land purchase with further representations and warranties regarding the other assets.

h) Conditions

Again, it is the buyer who is primarily interested in negotiating appropriate conditions into the agreement for protection. On the other side, the seller will want to make sure that the conditions are definable and limited in time so that the purchase agreement does not turn into an option agreement that allows the buyer to look at the business, kick the tires and then decide whether to close or not.

Conditions can be a great concern to a seller who is under severe financial constraints or who has other potential buyers in the wings, or where the buyer is a rival who may be simply looking for inside information on the seller's business. A seller may not want to allow a competitor to review financial records to determine the cost at which the seller buys from a mutual supplier unless the seller has a firm commitment of purchase and sale or, at the very least, a tightly worded confidentiality and non-disclosure agreement.

Some buyers take a long-term view of the negotiation process and are prepared to sign an agreement with many conditions, conduct their due diligence, and then return to the table to explain to the seller all of the problems that they have identified in the business. The buyer will then insist upon renegotiating the price and other terms, all the while driving the seller frantic because once a seller has invested significant time and effort in dealing with the buyer, the seller is often much more reluctant to walk away from the deal.

If you find an agreement that has so many loose conditions that it is an option disguised as an agreement, counsel should advise their seller client of this fact, and attempt to put time limitations on the conditions so that the client will know as soon as possible whether the buyer will be pulling out of the transaction. It is not unusual to have a series of dates by which certain specific conditions must be met, rather than waiting for a single date sometime in the future by which all of the conditions of the buyer must be satisfied.

i) Indemnities

The first draft of an acquisition agreement prepared by the buyer's lawyer will almost invariably have a detailed set of indemnities requiring the seller to reimburse the buyer for any losses caused by either misrepresentation or any other breach by the seller of any of its covenants or other agreements or for liability of the buyer to third parties. The indemnification section typically begins by citing that all of the representations and warranties survive the closing of the transaction and any investigation made by the buyer.

Some lawyers do not employ indemnification provisions at all and take the view that the specific indemnification provisions are unnecessary because, under general contract law principles, the buyer is entitled to collect from the seller for breaches which cause damages.

This is a minority view and overlooks the fact that carefully drafted indemnification provisions serve a number of purposes including providing remedies not otherwise available under general contract law. For example, the indemnification section may provide that all of the buyer's losses, including legal fees, are within the protected category; it may specifically handle obligations regarding the defence of indemnifiable matters and establish an agreed structure to deal with third-party claims; it may even pick up matters that are not misrepresentations but which are for proper buyer protection, for example, continuing liability of the seller for pending lawsuits or income tax liability.

When negotiating indemnification provisions, the seller's lawyer may raise the issue of a cap, that is, a negotiated dollar limit on the extent of the seller's indemnities in favour of the buyer. The seller's lawyer may argue that the seller was determined to sell the business on an as-is basis and has made complete disclosure, the buyer knows what is being purchased and the seller should not be on the hook for an indefinite amount.

The buyer's lawyer will resist any proposed cap. As a compromise, the buyer's lawyer may determine which representations and covenants are the most important to the

client (i.e., pose the greatest risk of loss) and then propose that these indemnities be uncapped, agreeing to a reasonable aggregate limit on others.

The seller's lawyer may also suggest a cutoff date for indemnity claims. For example, it may be appropriate to limit the survival of representations and warranties to two years after closing, except in the case of representations and warranties pertaining to income tax matters, which should continue until the Canada Revenue Agency's right to reassess has expired.

The buyer's lawyer must speak to their client to determine when all significant problems will likely be known and then determine what will be an appropriate length of time. This will depend on matters such as the complexity of the business, the geographical area of its operations, the shared number of types of assets, the level of confidence in the disclosure, and due diligence.

For a buyer, an appropriate period might be one full year after closing plus time to complete the first audit. The lawyer may wish to consider carving out certain representations for lengthier periods (such as environmental representations) and also consider whether certain representations (such as good and marketable title to the purchased assets or claims against the assets by governmental agencies for unpaid taxes) should never expire.

The final issue under the indemnity debate is the question of security for the indemnity. If the seller is retiring and moving out of the jurisdiction, there is an appealing argument that the buyer is entitled to a ready source of payment for its indemnity claims. This may include a holdback of a portion of the purchase price for a set period or use of deferred payment of the purchase price such as a vendor take back note. Some buyers like to negotiate a take back note as part payment of the price so that they have some measure of comfort if they eventually have an indemnity claim that they wish to set off against the note.

j) Non-Competition Covenants

Covenants not to compete are typical in sales of private businesses. A buyer who has just paid a substantial sum to acquire a business does not want the seller to open the same business across the street, at least not until the buyer has had sufficient time to capture the goodwill of the customers and recover all or a significant portion of its investment.

In Manitoba, as in other jurisdictions, non-competition agreements are closely scrutinized by the courts and must be reasonable in their time and their geographic and business limitations.

The buyer should consider whether there are any key employees other than the seller who may have the ability and inclination to start a competing business if the buyer does not sign them to long term employment arrangements with non-competition agreements included.

k) Confidentiality Covenants

Acting for the seller, counsel will want to include a confidentiality clause requiring the buyer to keep all information provided by the seller confidential. The agreement should provide that this covenant survives any termination of the agreement.

The confidentiality covenant should also limit the distribution of the information within the buyer's organization so that only the employees of the buyer who need to know have access to the information. A complicating factor is whether the seller has a direct right of action against an employee of the buyer who discloses the information. While the seller may sue the buyer based on vicarious liability, that remedy may not be satisfactory and the seller should consider demanding that the buyer's employees also sign a separate covenant.

H. CLOSING ARRANGEMENTS

1. Asset Purchase

On closing an asset sale, the seller should deliver, in registrable form where necessary, such assignment, transfer, or conveyance documents as are appropriate, given the assets being sold. These may include:

- (1) transfers of land respecting real property (and duplicate titles if applicable);
- (2) bills of sale;
- (3) assignment of leases, with the lessors' consent where required;
- (4) assignment of contracts, with the necessary consents of the other parties to the contracts where required;
- (5) certificate under section 45 of *The Tax Administration and Miscellaneous Taxes Act* (which is obtained and delivered post-closing);
- (6) certificate under section 81.1(2) of *The Workers Compensation Act* (which is obtained and delivered post-closing);
- (7) [dissolution of business name registration](#) and the seller's consent to the [buyer's use of the same name](#);
- (8) assignment of trademarks, copyrights, and patents in the forms required by the applicable statutes;
- (9) bills of sale for vehicles, boats, and aircraft in the prescribed forms (if applicable);
- (10) [GST Form 44](#) re: Joint Election under the *Excise Tax Act*;
- (11) bring down certificate confirming that all conditions precedent to closing are satisfied and restating the current truth of the representations and warranties; and
- (12) statutory declaration confirming its registration for purposes of GST.

2. Share Purchase

In a share purchase or, if the shares of a subsidiary are being acquired in an asset purchase, the following should be delivered in addition to the above, if necessary:

- (1) certified copies of requisite directors' or shareholders' resolution;
- (2) other evidence required by the agreement to be delivered on closing;
- (3) share certificates for the purchased shares endorsed in blank for transfer or with a power of attorney to transfer stock;
- (4) certified copies of the articles, by-laws and extra-provincial licences;

- (5) resignations of the current directors and officers of the corporation;
- (6) releases, as contemplated by the agreement;
- (7) certificate of status;
- (8) minute books and corporate registers and seal; and
- (9) opinions of the seller's lawyer if required under the purchase agreement.

Immediately after closing, the new shareholders and directors will have to meet, or pass resolutions to elect the buyer's nominees as directors and to effect any corporate changes such as corporate name, by-laws, number of directors, new directors and officers and to pass a new borrowing by-law in the form required by the buyer's bank and new banking resolutions changing banks and the authorized signing officers. The change in directors and the share transfer should be noted in the registers and ledgers of directors, transfers, and shareholders.

3. Payment of Purchase Price and Purchase Obligations

The purchase price, or that portion payable on closing, should be paid by bank draft, certified cheque, solicitor's trust cheque, or wire transfer.

If the buyer is paying part of the purchase price by way of issuing its own securities (e.g. shares or a debenture) the directors of the buyer will have to meet either to allot and issue the shares, fix the consideration to be received for shares, confirm the value of the assets being received for the shares, or to create, under the power in the borrowing by-law, the debt security being issued, and the fixed or floating charges to be contained therein.

4. Registrations and Filings

The buyer's lawyer may need to file a notice of changes in directors, officers and shareholders, and a notice of change of registered office for the corporation. Notice of a change in the seller's partnership or business name should be given as required under *The Corporations Act* or the *Canada Business Corporations Act* and *The Business Names Registration Act*.

Also, the buyer's lawyer may need to register a transfer of land under *The Real Property Act*, an assignment of trademarks under the *Trademarks Act* or a transfer of aircraft under the *Aeronautics Act* etc.

The buyer of assets must ensure that all necessary insurance is in place (e.g., fire, boiler, liability) and make requisite filings with the [Workers Compensation Board](#) and the [Canada Employment Insurance Commission](#).

I. REPORT

On completion of the transaction, counsel will need to report to the client summarizing the agreement, closing and the registrations completed by the lawyer's office.

J. CHECKLISTS, FORMS AND PRECEDENTS

1. Letter of Intent (Share Purchase)

[LETTERHEAD OF BUYER]

[INSERT DATE]

[INSERT ADDRESS OF SELLER]

Attention: •

Dear Sir/Madam:

Re: Proposal to Purchase all of the Shares of [INSERT NAME OF TARGET CORPORATION]

We understand that [INSERT NAME OF TARGET CORPORATION] (the “Corporation”) owns and operates an [INSERT DESCRIPTION OF BUSINESS THAT TARGET CORPORATION CARRIES ON] (the “Business”). This letter agreement confirms our discussions to date and our mutual understanding with respect to the potential acquisition (the “Proposed Transaction”) by [INSERT NAME OF BUYER] or a nominee established in furtherance of the Proposed Transaction (the “Buyer”) of all of the issued and outstanding shares of the Corporation (the “Purchased Shares”) from [INSERT NAME OF SELLER] (the “Seller”).

This letter agreement sets out the general terms of our initial discussions regarding the Proposed Transaction, including certain terms and conditions that are proposed to be included in a definitive purchase agreement with respect to the Proposed Transaction (the “Definitive Agreement”).

1. **Purchase Price.** Subject to due diligence, the contemplated purchase price (the “Purchase Price”) for the Purchased Shares is \$●. The Purchase Price will be paid in immediately available funds on Closing, subject to such adjustments as may be negotiated in the Definitive Agreement. The Purchase Price is subject to Buyer’s due diligence and, without limitation, assumes that the Seller owns all of the Purchased Shares and can and will sell good and marketable title to all of the Purchased Shares to the Buyer free and clear of all encumbrances.
2. **Timing.** Immediately upon signing this letter agreement, the Buyer and the Seller will work diligently and in good faith to proceed through typical due diligence investigations of the Seller, the Business, and the Corporation and to settle the Definitive Agreement with a view to signing the Definitive Agreement within 30 days of the date of execution of this letter by the Seller and the Corporation, and completing the Proposed Transaction by December 31, 20__ (the “Closing Date”); provided however, that the parties may agree in writing to an earlier or later Closing Date. The Buyer or its Representatives (as defined below) will prepare the first draft of the Definitive Agreement.

3. **Definitive Agreement.** The Definitive Agreement will contain covenants, representations and warranties, indemnities, terms and conditions typical of a transaction of like nature and size. As of the Closing Date, the Purchased Shares shall be owned by the Seller and shall be free and clear of all liens and encumbrances except permitted encumbrances. The Seller will indemnify the Buyer for any losses suffered due to breach of representation or warranty and for any liabilities of the Corporation of any kind existing as of the Closing Date or related to the operation of the Business prior to the Closing Date, including without limitation, any liability for any tax, pension, employment, workplace safety, or environmental matters, as specifically provided for in the Definitive Agreement.

The Buyer shall not execute the Definitive Agreement unless and until the following matters are resolved or the Definitive Agreement is made subject to conditions precedent for the benefit of the Buyer in relation to the following matters:

- (i) the Buyer shall have completed a final due diligence investigation and review of the Corporation, the Business, the Purchased Shares, and the Seller satisfactory to the Buyer in its sole and subjective discretion (as more particularly set out in Section 5); and
- (ii) the Buyer shall have obtained confirmation of financing on terms and conditions satisfactory to it, in its sole discretion.

Among other things, the Definitive Agreement will also provide that Closing of the Proposed Transaction will not occur unless (i) there has been no material adverse change to the Business or the Corporation or the prospects for the Business prior to the Closing Date; (ii) all necessary third party consents to the transfer of the Purchased Shares to the Buyer have been obtained; and (iii) all debt obligations of the Corporation relating to the period prior to the Closing Date have been fully paid and discharged, or provision has been made for their payment and discharge out of the proceeds to be received by the Seller on the sale of the Purchased Shares to the Buyer.

4. **Effect of this Letter.** Sections 1, 2, and 3 of this letter agreement represent the mutual intent of the Buyer and the Seller with respect to the Proposed Transaction and do not constitute a legally binding obligation of the Buyer to purchase the Purchased Shares. The parties acknowledge and confirm that until the Definitive Agreement is signed, there are no legally binding obligations between the Buyer and the Seller relating to the Proposed Transaction, whether set out in this letter agreement or otherwise, except for the obligations set out in this Section 4 and in Sections 5 through 14 below, which for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, are and shall remain legally binding on the Buyer and the Seller, subject to Section 11.
5. **Due Diligence.** Until the earlier to occur of the Closing Date or the date that the parties agree in writing to terminate their negotiations in connection with the Proposed Transaction, the Seller and the Corporation shall give the Buyer and the agents, directors, officers, employees, consultants, representatives and advisors (the “**Representatives**”) of the Buyer access to, and shall make available to them for inspection and review, all books of account, audit work (if any), financial statements, income tax returns, business and financial records, minute books, leases, agreements and other documents of or relating to the Business, the employees of the Business and the Corporation that the Buyer or its Representatives reasonably consider

to be necessary or advisable. This information shall include, without limitation, supplier lists, inventory lists, material contracts (including any leases, licenses, supply agreements, warranty agreements, prepayment arrangements, etc.), land surveys and environmental reports. The Seller and the Corporation shall make its accountants, legal counsel, and other Representatives available for consultation and verification of any information so obtained by the Buyer. Without limiting the generality of the foregoing, it is agreed that forthwith following execution of this letter of intent and at all times during the interim period between execution of this letter of intent and the Closing Date, the Seller agrees that it shall give, or cause to be given, to the Buyer and its Representatives, full access during normal business hours (or such other hours as may be agreed upon by the parties, each acting reasonably) to the Business and all of its assets, to conduct such investigations, inspections, surveys, or tests thereof and of the financial and legal condition of the Corporation, the Business, and the Seller as the Buyer deems necessary or desirable. The Seller and the Corporation shall co-operate fully in facilitating such investigations, inspections, surveys, and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Buyer. The Seller and the Corporation shall execute and deliver any authorizations required to permit such investigations, inspections, surveys and tests.

6. **Confidentiality.** The agreement resulting from acceptance of this letter agreement ("**this Agreement**") applies to all non-public information furnished by either party to the other together with analyses, compilations, forecasts, studies or other documents prepared by the receiving party, its agents, representatives (including attorneys, accountants, and financial advisors) or employees which contain or otherwise reflect such information or the receiving party's review of, or interest in, the other: all such information is hereinafter referred to as the "**Information**". This Letter of Intent is considered confidential Information of both parties. In consideration of each party furnishing the other with the Information as provided above, each party agrees that the other's Information will be kept strictly confidential and shall not, without the prior written consent of the disclosing party, be disclosed by the receiving party, or by its agents, representatives or employees, in any manner whatsoever, in whole or in part, and shall not be used by the receiving party, or by its agents, representatives or employees, other than in connection with the transaction described above and as permitted in this Agreement.

Moreover, the receiving party agrees to reveal the Information only to its agents (including its advisors and bankers), representatives, directors, and employees who need to know the Information for the purpose of evaluating the transaction described above, who are informed by the receiving party of the confidential nature of the Information and who shall agree to act in accordance with the terms and conditions of this Agreement. The term Information shall not include such portions of the Information which (a) are or become generally available to the public other than as a result of a disclosure by the receiving party, or (b) become available to the receiving party on a non-confidential basis from a source other than the disclosing party or its agents which is not prohibited from disclosing such information to the receiving party by a legal, contractual or fiduciary obligation to the disclosing party, or (c) was rightfully in the receiving party's possession prior to the date of disclosure, except through a prior confidential disclosure by the disclosing party.

7. **Exclusive Dealing.** The Seller and the Corporation acknowledge that the due diligence investigation and review and the preparation and negotiation of the Definitive Agreement contemplated by this letter agreement will involve the expenditure of substantial time and money by the Buyer as well as the commitment by the Buyer of substantial operational resources and strategic planning. The Seller and the Corporation shall immediately suspend and cease any negotiations or other discussions or communications of any nature with any other party concerning any Alternative Transaction (as defined below). During the period from the date this letter agreement is signed by the parties hereto until the earlier of: (i) 30 days from the date of execution of this letter by the Seller and the Corporation; (ii) a closing of the Proposed Transaction on the Closing Date; or (iii) the date that the parties agree in writing to terminate discussions in connection with a Proposed Transaction (the “**Exclusivity Period**”), neither the Seller, the Corporation nor any of either of their Representatives, shall directly or indirectly in any manner (a) entertain, solicit or encourage, (b) furnish or cause to be furnished any information to any persons or entities (other than the Buyer or its Representatives) in connection with, or (c) negotiate or otherwise pursue, respond to or conclude, any proposal or discussions for or in connection with any equity or debt investment in the Corporation or any possible sale of the shares of the Corporation or of any assets of the Business outside the ordinary course of business, no matter how structured, including without limitation, by sale or license of all or any significant part of the properties or assets of the Corporation, or by any merger or other business combination involving the Corporation or otherwise (each of the foregoing proposals or discussions, whether written or oral, an “**Alternative Transaction**”). The Seller and the Corporation shall immediately notify the Buyer in writing of (i) the receipt during the Exclusivity Period by the Corporation or the Seller of any proposal for an Alternative Transaction or any requests for any information relating to the Corporation, any of the assets of the Corporation or the Business or for access to the properties, books or records related to the Business by any person or entity which has informed the Corporation or the Seller that such person or entity is considering making, or has made, a proposal for an Alternative Transaction; and (ii) the terms of any such Alternative Transaction. During the Exclusivity Period, the Corporation shall operate the Business in the ordinary course and shall not undertake any actions which might reasonably be expected to materially diminish the Buyer’s assessment of the value of the Purchased Shares or the Business. The Seller and the Corporation shall be responsible for any breach by their Representatives or the Corporation’s employees of any of the provisions of this Section 7.
8. **Public Announcement.** None of the Buyer, the Corporation or the Seller shall make any public announcement concerning the Proposed Transaction or related negotiations without the other party’s prior written approval, except as may be required by law. If such an announcement is required by law, the party required to make the announcement shall inform the other party of the contents of the announcement proposed to be made and shall use its reasonable efforts to obtain the other party’s approval for the announcement, which approval may not be unreasonably withheld.
9. **Expenses.** Each party hereto shall be responsible for and bear all of its own costs and expenses incurred in connection with the Proposed Transaction, including any broker’s or finder’s fees and expenses of their respective Representatives, incurred at any time in connection with pursuing or consummating the Proposed Transaction.

10. **Assignment.** No party shall assign any of its rights and obligations provided for or referred to in this letter agreement without the prior written consent of the other parties, except that Buyer may assign this letter agreement to a nominee.
11. **Termination.** Sections 6, 8, 9, 10, 13 and 14 shall survive termination of this letter agreement. Other than Sections 6, 8, 9, 10, 13 and 14, this letter agreement shall terminate without liability on the earlier of: (i) the date the Definitive Agreement is signed by the parties; or (ii) the date following the expiry of the Exclusivity Period.
12. **Counterparts.** This letter agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. To evidence the fact that it has executed this Agreement, a party may send a copy of its executed counterpart to the other parties by facsimile or electric mail transmission.
13. **Governing Law.** This letter agreement shall be governed by and construed in accordance with the laws of Manitoba and the federal laws of Canada applicable therein.
14. **Entire Agreement.** This letter agreement supersedes any and all prior communications issued in respect of the Proposed Transaction.

To confirm the foregoing, please sign and return one copy of this letter agreement. This letter agreement is open for acceptance until [time]. (CST) on [day, date, 20___, after which it will be deemed null and void.

Yours very truly,

[INSERT NAME OF BUYER]

Per:_____

Name

Title:

Confirmed this ___ day of _____, 20___ at _____ (a.m./p.m.).

[INSERT NAME OF SELLER]

Per:_____

Name

Title:

[INSERT NAME OF CORPORATION]

Per:_____

Name

Title:

2. Letter of Intent (Asset Purchase)

[LETTERHEAD OF BUYER]

[INSERT DATE]

[INSERT ADDRESS OF SELLER]

Attention: •

Dear [INSERT NAME OF SELLER]:

Re: Proposal to Purchase substantially all of the Assets of [INSERT NAME OF SELLER]

We understand that [INSERT NAME OF SELLER] (the “**Seller**”) owns and operates an [INSERT DESCRIPTION OF BUSINESS THAT SELLER CARRIES ON] (the “**Business**”) and that the sole principal of the Seller is [INSERT THE NAME OF THE INDIVIDUAL THAT OWNS ALL OF THE SHARES OF THE SELLER] (the “**Principal**”). This letter agreement confirms our discussions to date and our mutual understanding with respect to the potential acquisition (the “**Proposed Transaction**”) by [INSERT NAME OF BUYER], or a nominee established in furtherance of the Proposed Transaction (the “**Buyer**”) of all of the assets of the Business, including, without limitation, all inventory, machinery, equipment and fixtures (the “**Purchased Assets**”).

This letter agreement sets out the general terms of our initial discussions regarding the Proposed Transaction, including certain terms and conditions that are proposed to be included in a definitive purchase agreement with respect to the Proposed Transaction (the “**Definitive Agreement**”).

1. **Purchase Price.** Subject to due diligence, the contemplated purchase price (the “**Purchase Price**”) for the Purchased Assets is \$●, plus an additional amount for the inventory of the Business on Closing Date, based on an inventory count to be mutually conducted by the parties on Closing Date. The Purchase Price will be paid in immediately available funds on Closing, subject to such adjustments as may be negotiated in the Definitive Agreement. The Purchase Price is subject to Buyer’s due diligence and, without limitation, assumes that the Seller owns all of the Purchased Assets and can and will sell good and marketable title to all of the Purchased Assets to the Buyer free and clear of all encumbrances.
2. **Timing.** Immediately upon signing this letter agreement, the Buyer, the Seller, and the Principal will work diligently and in good faith to proceed through typical due diligence investigations of the Business and the Seller and to settle the Definitive Agreement with a view to signing the Definitive Agreement within 30 days of the date of execution of this letter by the Seller and the Principal, and completing the Proposed Transaction by December 31, 20● (the “**Closing Date**”); provided however, that the parties may agree in writing to an earlier or later Closing Date. The Buyer or its Representatives (as defined below) will prepare the first draft of the Definitive Agreement.

3. **Definitive Agreement.** The Definitive Agreement will contain covenants, representations and warranties, indemnities, terms and conditions typical of a transaction of like nature and size. As of the Closing Date, the Purchased Assets shall be owned by the Seller and shall be free and clear of all liens and encumbrances (except permitted encumbrances). The Seller and the Principal will jointly and severally indemnify the Buyer for any losses suffered due to breach of representation or warranty and for any liabilities of the Seller of any kind existing as of the Closing Date or related to the operation of the Business prior to the Closing Date, including without limitation, any liability for any tax, pension, employment, workplace safety or environmental matters, as specifically provided for in the Definitive Agreement.

The Buyer shall not execute the Definitive Agreement unless and until the following matters are resolved or the Definitive Agreement is made subject to conditions precedent for the benefit of the Buyer in relation to the following matters: (i) the Buyer shall have completed a final due diligence investigation and review of the Seller, the Business and the Purchased Assets satisfactory to the Buyer in its sole discretion (as more particularly set out in Section 5); and (ii) the Buyer shall have obtained confirmation of financing on terms and conditions satisfactory to it, in its sole discretion.

Among other things, the Definitive Agreement will also provide that Closing of the Proposed Transaction will not occur unless (i) there has been no material adverse change to the Business or the Purchased Assets or the prospects for the Business prior to the Closing Date; (ii) all necessary third party consents to the transfer of the Purchased Assets to the Buyer have been obtained; and (iii) all debt obligations of the Seller relating to the Purchased Assets and the Business have been fully paid and discharged, or provision has been made for their payment and discharge out of the proceeds to be received by the Seller on the sale of the Purchased Assets to the Buyer.

4. **Effect of this Letter.** Sections 1, 2, and 3 of this letter agreement represent the mutual intent of the Buyer, the Seller and the Principal with respect to the Proposed Transaction and do not constitute a legally binding obligation of the Buyer to purchase the Purchased Assets. The parties acknowledge and confirm that until the Definitive Agreement is signed, there are no legally binding obligations between the Buyer, the Seller, and the Principal relating to the Proposed Transaction, whether set out in this letter agreement or otherwise, except for the obligations set out in this Section 4 and in Sections 5 through 14 below, which for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, are and shall remain legally binding on the Buyer, the Seller and the Principal, subject to Section 11.
5. **Due Diligence.** Until the earlier to occur of the Closing Date or the date that the parties agree in writing to terminate their negotiations in connection with the Proposed Transaction, the Seller and the Principal shall give the Buyer and the agents, directors, officers, employees, consultants, representatives, and advisors (the “**Representatives**”) of the Buyer access to, and shall make available to them for inspection and review, all books of account, audit work (if any), financial statements, income tax returns, business and financial records, minute books, leases, agreements and other documents of or relating to the Business, the employees of the Business and the Seller that the Buyer or its Representatives reasonably consider to be necessary or advisable. This information shall include, without limitation supplier lists, inventory lists, material contracts (including any leases, licenses, supply agreements, warranty agreements, prepayment arrangements, etc.), land surveys, and environmental reports. The Seller shall make its accountants, legal counsel and other Representatives available for

consultation and verification of any information so obtained by the Buyer. Without limiting the generality of the foregoing, it is agreed that forthwith following execution of this letter of intent and at all times during the interim period between execution of this letter of intent and the Closing Date, the Seller and the Principal agree that they shall give, or cause to be given, to the Buyer and its Representatives, full access during normal business hours (or such other hours as may be agreed upon by the parties, each acting reasonably) to the Business and all of the other Purchased Assets, to conduct such investigations, inspections, surveys or tests thereof and of the financial and legal condition of the Seller and the Business as the Buyer deems necessary or desirable. The Seller and the Principal shall co-operate fully in facilitating such investigations, inspections, surveys and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Buyer. The Seller shall execute and deliver any authorizations required to permit such investigations, inspections, surveys and tests.

6. **Confidentiality.** The agreement resulting from acceptance of this letter agreement ("**this Agreement**") applies to all non-public information furnished by either party to the other together with analyses, compilations, forecasts, studies or other documents prepared by the receiving party, its agents, representatives (including attorneys, accountants, and financial advisors) or employees which contain or otherwise reflect such information or the receiving party's review of, or interest in, the other: all such information is hereinafter referred to as the "**Information**". This Letter of Intent is considered confidential Information of both parties. In consideration of each party furnishing the other with the Information as provided above, each party agrees that the other's Information will be kept strictly confidential and shall not, without the prior written consent of the disclosing party, be disclosed by the receiving party, or by its agents, representatives or employees, in any manner whatsoever, in whole or in part, and shall not be used by the receiving party, or by its agents, representatives or employees, other than in connection with the transaction described above and as permitted in this Agreement. Moreover, the receiving party agrees to reveal the Information only to its agents (including its advisors and bankers), representatives, directors and employees who need to know the Information for the purpose of evaluating the transaction described above, who are informed by the receiving party of the confidential nature of the Information and who shall agree to act in accordance with the terms and conditions of this Agreement. The term Information shall not include such portions of the Information which (a) are or become generally available to the public other than as a result of a disclosure by the receiving party, or (b) become available to the receiving party on a non-confidential basis from a source other than the disclosing party or its agents which is not prohibited from disclosing such information to the receiving party by a legal, contractual or fiduciary obligation to the disclosing party, or (c) was rightfully in the receiving party's possession prior to the date of disclosure, except through a prior confidential disclosure by the disclosing party.
7. **Exclusive Dealing.** The Seller and the Principal acknowledge that the due diligence investigation and review and the preparation and negotiation of the Definitive Agreement contemplated by this letter agreement will involve the expenditure of substantial time and money by the Buyer as well as the commitment by the Buyer of substantial operational resources and strategic planning. The Seller and the Principal shall immediately suspend and cease any negotiations or other discussions or communications of any nature with any other party concerning any Alternative Transaction (as defined below). During the period from the date this letter agreement is signed by the parties hereto until the earlier of: (i) 30 days from

the date of execution of this letter by the Principal and the Seller; (ii) a closing of the Proposed Transaction on the Closing Date; or (iii) the date that the parties agree in writing to terminate discussions in connection with a Proposed Transaction (the **"Exclusivity Period"**), neither the Seller, the Principal, nor any of their Representatives, shall directly or indirectly in any manner (a) entertain, solicit or encourage, (b) furnish or cause to be furnished any information to any persons or entities (other than the Buyer or its Representatives) in connection with, or (c) negotiate or otherwise pursue, respond to or conclude, any proposal or discussions for or in connection with any equity or debt investment in the Seller or any possible sale of the shares of the Seller or of any assets of the Business outside the ordinary course of business, no matter how structured, including without limitation, by sale or license of all or any significant part of the properties or assets of the Seller, or by any merger or other business combination involving the Seller or otherwise (each of the foregoing proposals or discussions, whether written or oral, an **"Alternative Transaction"**). The Seller and the Principal shall immediately notify the Buyer in writing of (i) the receipt during the Exclusivity Period by the Seller or the Principal of any proposal for an Alternative Transaction or any requests for any information relating to the Seller, any of the Purchased Assets or the Business or for access to the properties, books or records related to the Business by any person or entity which has informed the Seller or the Principal that such person or entity is considering making, or has made, a proposal for an Alternative Transaction; and (ii) the terms of any such Alternative Transaction. During the Exclusivity Period, the Seller and the Principal shall operate the Business in the ordinary course and shall not undertake any actions which might reasonably be expected to materially diminish the Buyer's assessment of the value of the Purchased Assets or the Business. The Seller and the Principal shall be responsible for any breach by their Representatives or the Seller's employees of any of the provisions of this Section 7.

8. **Public Announcement.** None of the Buyer, the Seller or the Principal shall make any public announcement concerning the Proposed Transaction or related negotiations without the other party's prior written approval, except as may be required by law. If such an announcement is required by law, the party required to make the announcement shall inform the other party of the contents of the announcement proposed to be made and shall use its reasonable efforts to obtain the other party's approval for the announcement, which approval may not be unreasonably withheld.
9. **Expenses.** Each party hereto shall be responsible for and bear all of its own costs and expenses incurred in connection with the Proposed Transaction, including any broker's or finder's fees and expenses of their respective Representatives, incurred at any time in connection with pursuing or consummating the Proposed Transaction.
10. **Assignment.** No party shall assign any of its rights and obligations provided for or referred to in this letter agreement without the prior written consent of the other parties, except that Buyer may assign this letter agreement to a nominee.
11. **Termination.** Sections 6, 8, 9, 10, 13 and 14 shall survive termination of this letter agreement. Other than Sections 6, 8, 9, 10, 13 and 14, this letter agreement shall terminate without liability on the earlier of (i) the date the Definitive Agreement is signed by the parties; or (ii) the date following the expiry of the Exclusivity Period.
12. **Counterparts.** This letter agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same

instrument. To evidence the fact that a party has executed this Agreement, a party may send a copy of its executed counterpart to the other parties by facsimile or electric mail transmission.

13. **Governing Law.** This letter agreement shall be governed by and construed in accordance with the laws of Manitoba and the federal laws of Canada applicable therein.
14. **Entire Agreement.** This letter agreement supersedes any and all prior communications issued in respect of the Proposed Transaction.

To confirm the foregoing, please sign and return one copy of this letter agreement. This letter agreement is open for acceptance until [time] (CST) on [day date __, 20__ after which it will be deemed null and void.

Yours very truly,

[INSERT NAME OF BUYER]

Per: _____

Name

Title:

Confirmed this ____ day of _____, 20__ at _____ (a.m./p.m.).

[INSERT NAME OF SELLER]

Per: _____

Name

Title:

[INSERT NAME OF PRINCIPAL]

3. Share Purchase Agreement

SHARE PURCHASE AGREEMENT

THIS AGREEMENT made the ____ day of _____, 20 ____

BETWEEN:

[INSERT NAME OF SELLER],
(the "Seller"),

- and -

-

[INSERT NAME OF BUYER],
(the "Buyer"),

- and -

-

[INSERT NAME OF TARGET CORPORATION],
(the "Corporation").

THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants, agreements, representations, warranties and indemnities herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each party, the parties covenant and agree as follows:

1. PURCHASE AND SALE OF PURCHASED SHARES

- 1.1. **Purchase and Sale of Purchased Shares.** Subject to the terms and conditions hereof, the Seller covenants and agrees to sell, assign and transfer to the Buyer and the Buyer covenants and agrees to purchase from the Seller all but not less than all of the Purchased Shares.
- 1.2. **Purchase Price.** The purchase price payable by the Buyer to the Seller for the Purchased Shares (the "Purchase Price") shall be the sum of \$● payable by certified cheque or banker's draft in immediately available funds to or to the order of the Seller at the Time of Closing.
- 1.3. **Allocation.** The allocation of the Purchase Price amongst the Purchased Shares shall be as follows:

2. REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to the Buyer as follows and acknowledges that the Buyer is relying on such representations and warranties in connection with its purchase of the Purchased Shares:

- 2.1. **Organization.** The Seller is a corporation duly incorporated and organized and validly subsisting under the Laws of the Province of Manitoba and has the corporate power to own or lease its property, to own the Purchased Shares, to enter into this Agreement and to perform its obligations hereunder. The Corporation is duly incorporated and organized and validly subsisting under the Laws of the Province of Manitoba and has the corporate power to own or lease its property, to carry on the Business as now being conducted by it, to enter into this Agreement and to perform its obligations hereunder. The Corporation is duly qualified as a corporation to do business in each jurisdiction in which the nature of the Business or the property and assets owned or leased by it makes such qualification necessary.
- 2.2. **Authorization.** This Agreement has been duly authorized, executed and delivered by each of the Seller and the Corporation and is a legal, valid and binding obligation of each of the Seller and the Corporation, enforceable against the Seller or the Corporation, as the case may be, by the Buyer in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other Laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.
- 2.3. **No Other Agreements to Purchase.** No person other than the Buyer has any written or oral agreement or option or any right or privilege (whether by Law, pre-emptive or contractual) capable of becoming an agreement or option for the purchase or acquisition from the Seller of any of the Purchased Shares.
- 2.4. **Capitalization.** The authorized capital of the Corporation consists of an unlimited number of common shares, of which • common shares, and no more, have been duly authorized, are validly issued and are outstanding as fully paid and non-assessable.
- 2.5. **Options.** No person, firm or corporation has any agreement or option or any right or privilege (whether by Law, pre-emptive or contractual) capable of becoming an agreement, including convertible securities, warrants or convertible obligations of any nature, for the purchase, subscription, allotment or issuance of any unissued shares or other securities of the Corporation.
- 2.6. **Ownership of Shares.** The Seller is the beneficial owner of record of the Purchased Shares, with good and marketable title thereto, free and clear of all Encumbrances and, without limiting the generality of the foregoing, none of the Purchased Shares are subject to any voting trust, shareholder agreement or voting agreement. Upon completion of the transaction contemplated by this Agreement, all of the Purchased Shares will be owned by the Buyer as the beneficial owner of record, with a good and marketable title thereto, except for such Encumbrances as may have been granted by the Buyer.

- 2.7. **No Subsidiaries.** The Corporation does not own and does not have any agreements of any nature to acquire, directly or indirectly, any shares in the capital of or other equity or proprietary interests in any person, firm or corporation, and the Corporation does not have any agreements to acquire or lease any other business operations.
- 2.8. **No Violation.** The execution and delivery of this Agreement by the Seller and the Corporation and the consummation of the transactions herein provided for will not result in either:
- (a) the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the acceleration of any obligation of the Seller or the Corporation under:
 - (i) any Contract to which the Seller or the Corporation is a party or by which any of them is or either of their properties are bound;
 - (ii) any provision of the constating documents, by-laws or resolutions of the board of directors (or any committee thereof) or shareholders of the Seller or the Corporation;
 - (iii) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over the Seller or the Corporation;
 - (iv) any licence, permit, approval, consent or authorization held by the Seller or the Corporation or necessary to the ownership of the Purchased Shares or the operation of the Business; or
 - (v) any applicable Law; or
 - (b) the creation or imposition of any Encumbrance on any of the Purchased Shares or any of the property or assets of the Corporation.
- 2.9. **Business of the Corporation.** The Business is the only business operation carried on by the Corporation, and the property and assets owned or leased by the Corporation are sufficient to carry on the Business. All of the property and assets owned and used by the Corporation are in good operating condition and are in a state of good repair and maintenance. During the two years preceding the date of this Agreement, there has not been any significant interruption of operations being an interruption of more than one day, of the Business due to inadequate maintenance of any of the property and assets owned and used by the Corporation. With the exception of inventory in transit, all the tangible assets of the Corporation are situated at the locations set out in Schedule 2.
- 2.10. **Title to and Condition of Property.** All of the property and assets used by the Corporation, located in its premises, or shown in the Financial Statements or acquired after the date thereof are owned beneficially by the Corporation as the beneficial owner thereof with a good and marketable title thereto, free and clear of all Encumbrances other than the Permitted Encumbrances. All of the property and assets of the Corporation have been maintained on a regular basis and in a manner consistent with normal industry practice in

good operating condition and repair (subject to normal wear and tear), such that no ordinarily prudent maintenance has been deferred.

2.11. **Location of Real and Leased Property.** Schedule 4 sets forth a municipal address and a complete and accurate legal description of all the real property owned by the Corporation (the "Real Property") and leased by the Corporation (the "Leased Property"). The Corporation does not own or lease and has not agreed to acquire or lease any real property or interest in real property other than the Real Property and the Leased Property.

2.12. **Real and Leased Property.**

- (a) ***Title.*** The Corporation is not the beneficial or registered owner of and has not agreed to acquire any real property or any interest in any real property other than the Real Property. The Corporation has the exclusive right to possess, use and occupy, and has good and marketable title in fee simple to all the Real Property, free and clear of all Encumbrances, easements or other restrictions of any kind other than Permitted Encumbrances.
- (b) ***Encroachments.*** The Improvements situate on the Real Property are wholly situate within the boundaries of the Real Property, and there are no encroachments upon the Real Property by buildings, other structures or improvements of any adjoining property.
- (c) ***Compliance With Laws.*** The Real Property, the Leased Property, the current uses thereof and the conduct of the Business comply with all restrictive covenants, governmental and quasi-governmental regulations, ordinances, statutes, enactments, requirements, Laws and bylaws including, without limitation, those dealing with zoning, town planning schemes, parking, access, loading facilities, landscaped areas, building, electrical and plumbing codes, fire and public health and safety and Environmental Laws.
- (d) ***No Work Orders.*** No alteration, repair, improvement or other work has been ordered, directed or requested in writing to be done or performed to or in respect of the Real Property, the Leased Property or to any Improvement thereon by any municipal, provincial or other competent authority, which alteration, repair, improvement or other work has not been completed, and the Seller knows of no written notification having been given to it of any such outstanding work being ordered, directed or requested, other than those that have been complied with.
- (e) ***No Builders Liens.*** All accounts for work and services performed and materials placed or furnished upon or in respect of the Real Property or the Leased Property at the request of the Corporation have been fully paid and satisfied, and no person is entitled to claim a lien under *The Builders Liens Act* (Manitoba) or similar legislation in other jurisdictions against the Real Property, the Leased Property or any part thereof, other than current accounts in respect of which the payment due date has not yet passed.
- (f) ***Accounts.*** Nothing is owing in respect of the Real Property or the Leased Property by the Corporation to any municipal corporation or to any other corporation or commission owning or operating a public utility for water, gas, electrical power or

energy, steam or hot water, or for the use thereof, other than current accounts in respect of which the payment due date has not yet passed.

- (g) **Expropriation.** No part of the Real Property or the Leased Property has been taken or expropriated by any federal, provincial, municipal or other competent authority nor has any notice or proceeding in respect thereof been given or commenced.
- (h) **Condition.** Each of the Real Property and the Leased Property and their Improvements is fit for its present use, and there are no material or structural repairs or replacements that are necessary or advisable and, without limiting the foregoing, there are no repairs to, or replacements of, the roof or the mechanical, electrical, heating, ventilating, air-conditioning, plumbing or drainage equipment or systems that are necessary or advisable, and none of the Real Property or the Leased Property or their Improvements is currently undergoing any alteration or renovation nor is any such alteration or renovation contemplated; and
- (i) **Service and Access.** Each of the Real Property and Leased Property is fully serviced and has suitable access to public roads, and there are no outstanding levies, charges or fees assessed against the Real Property or the Leased Property by any public authority (including development or improvement levies, charges or fees).

2.13. **Real Property Leases.** The Corporation is not a party to any lease or agreement in the nature of a lease in respect of any real property, whether as lessor or lessee, other than the leases (the "Leases") described in Schedule 4 relating to the Leased Property. Schedule 4 sets out the parties to each of the Leases, their dates of execution and expiry dates, any options to renew, the locations of the leased lands and premises, the rent payable thereunder and all advances, deposits and prepayments made by the Corporation in respect of the Leases. Except as described in Schedule 4, the Corporation occupies the Leased Property and has the exclusive right to occupy and use the Leased Property. Each of the Leases has been and is in good standing and in full force and effect without amendment thereto, and neither the Corporation nor any other party thereto ever was or is in breach of any covenants, conditions or obligations contained therein. The Seller has provided a true copy of each Lease to the Buyer.

2.14. **Inventories.** The inventories of the Corporation do not include any material items that are slow-moving, below standard quality or of a quality or quantity not useable or saleable in the normal course of business, the value of which has not been written down on its books of account to net realizable market value. The inventory levels of the Corporation have been maintained at such amounts as are required for the operation of the Business as previously conducted and as proposed to be conducted, and such inventory levels are adequate therefor.

2.15. **Accounts Receivable.** All accounts receivable, book debts and other debts due or accruing to the Corporation are *bona fide* and good and, subject to an allowance for doubtful accounts that has been reflected on the books of the Corporation in accordance with GAAP, are collectible without setoff or counterclaim.

- 2.16. **Intellectual Property.** Attached hereto as Schedule 5 is a complete and accurate list of all trademarks, trade names, business names, patents, inventions, know-how, copyrights, software, service marks, brand names, industrial designs and all other industrial or intellectual property owned or used by the Corporation in carrying on the Business and all applications therefor and all goodwill connected therewith, including, without limitation, all licences, registered user agreements and all like rights used by or granted to the Corporation in connection with the Business and all right to register or otherwise apply for the protection on any of the foregoing (collectively, the "Intellectual Property"). Schedule 5 also includes complete and accurate particulars of all registrations or applications for registration of the Intellectual Property. The Intellectual Property comprises all trademarks, trade names, business names, patents, inventions, know-how, copyrights, software, service marks, brand marks, industrial designs and all other industrial or intellectual property necessary to conduct the Business. The Corporation is the beneficial owner of the Intellectual Property, free and clear of all Encumbrances, and is not a party to or bound by any Contract or other obligation whatsoever that limits or impairs its ability to sell, transfer, assign or convey, or that otherwise affects, the Intellectual Property. No person has been granted any interest in or right to use all or any portion of the Intellectual Property. Neither the Seller nor the Corporation is aware of a claim of any infringement or breach of any industrial or intellectual property rights of any other person by the Corporation, nor has the Seller or the Corporation received any notice that the conduct of the Business, including the use of the Intellectual Property, infringes upon or breaches any industrial or intellectual property rights of any other person, and neither the Seller nor the Corporation, after due inquiry, has any knowledge of any infringement or violation of any of their rights or the rights of the Corporation in the Intellectual Property. The conduct of the Business does not infringe upon the patents, trademarks, licences, trade names, business names, copyright or other industrial or intellectual property rights, domestic or foreign, of any other person. Neither the Seller nor the Corporation is aware of any state of facts that casts doubt on the validity or enforceability of any of the Intellectual Property. The Seller has provided to the Buyer a true and complete copy of all Contracts and amendments thereto that comprise or relate to the Intellectual Property. Each item of Intellectual Property owned or used by the Corporation immediately prior to the closing hereunder will be owned or available for use by the Corporation on identical terms and conditions immediately subsequent to the closing hereunder.
- 2.17. **Insurance.** The Corporation has all of its property and assets insured against loss or damage by all insurable hazards or risks on a replacement cost basis and such insurance coverage will be continued in full force and effect to and including the Time of Closing. Schedule 6 sets out all insurance policies (specifying the insurer, the amount of the coverage, the type of insurance, the policy number and any pending claims thereunder) maintained by the Corporation on its property and assets or personnel as of the date hereof and true and complete copies of the most recent inspection reports, if any, received from insurance underwriters or others as to the condition of the property and assets of the Corporation. The Corporation is not in default with respect to any of the provisions contained in any such insurance policy and has not failed to give any notice or present any claim under any such insurance policy in a due and timely fashion. The Seller has provided to the Buyer a true copy of each insurance policy referred to in Schedule 6.

- 2.18. **No Expropriation.** No property or asset of the Corporation has been taken or expropriated by any federal, provincial, state, municipal or other authority nor has any notice or proceeding in respect thereof been given or commenced nor is the Seller or the Corporation aware of any intent or proposal to give any such notice or commence any such proceeding.
- 2.19. **Contracts.** Except as described on Schedule 4, Schedule 5, Schedule 7, Schedule 15 and Schedule 17, the Corporation is not a party to or bound by any Contract relating to the property, assets, Business or operations of the Corporation, including, without limiting the generality of the foregoing:
- (a) any distributor, sales, advertising, agency or manufacturer's representative Contract;
 - (b) any collective bargaining agreement or other Contract with any labour union;
 - (c) any continuing Contract for the purchase of materials, supplies, equipment or services involving more than \$● in respect of all such Contracts.
 - (d) any employment or consulting Contract or any other written Contract with any officer, employee or consultant other than oral Contracts of indefinite hire terminable by the employer without cause on reasonable notice;
 - (e) any profit sharing, bonus, stock option, pension, retirement, disability, stock purchase, medical, dental, hospitalization, insurance or similar plan or agreement providing benefits to any current or former director, officer, employee or consultant;
 - (f) any trust indenture, mortgage, promissory note, loan agreement, guarantee or other Contract for the borrowing of money or a leasing transaction of the type required to be capitalized in accordance with GAAP;
 - (g) any commitment for charitable contributions;
 - (h) any Contract for capital expenditures in excess of \$● in the aggregate;
 - (i) any Contract for the sale of any assets, other than sales of inventory to customers in the ordinary course of the Business;
 - (j) any Contract pursuant to which the Corporation is a lessor of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property;
 - (k) any confidentiality, secrecy or non-disclosure Contract (whether the Corporation is a beneficiary or obligor thereunder) relating to any proprietary or confidential information or any non-competition or similar Contract;
 - (l) any licence, franchise or other agreement that relates in whole or in part to any Intellectual Property;
 - (m) any agreement of guarantee, support, indemnification, assumption or endorsement of, or any other similar commitment with respect to, the obligations, Liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any other person (except for cheques endorsed for collection);

- (n) any Contract that expires, or may expire if the same is not renewed or extended at the option of any person other than the Corporation, more than one year after the date of this Agreement;
- (o) any Contract entered into by the Corporation other than in the ordinary course of the Business; or
- (p) any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

The Corporation has performed all of the obligations required to be performed by it and is entitled to all benefits under, and is not in default or alleged to be in default in respect of, any Contract to which it is a party or by which it is bound. The other contracting party or parties to each Contract has performed all of its or their obligations required to be performed by it or him and is not in default in respect of such Contract. All such Contracts are in good standing and in full force and effect, and no event, condition or occurrence exists that, after notice or lapse of time or both, would constitute a default under any of the foregoing. The Seller has provided to the Buyer a true and complete copy of each Contract listed or described on Schedule 4, Schedule 5, Schedule 7, Schedule 15 and Schedule 17 and all amendments thereto.

2.20. **Compliance with Laws; Governmental Authorization.** The Corporation has complied with and is fully licensed under all Laws. Schedule 8 sets out a complete and accurate list of all licences, permits, approvals, consents, certificates, registrations and authorizations (whether governmental, regulatory or otherwise) (the "Licences") held by or granted to the Corporation, and there are no other licences, permits, approvals, consents, certificates, registrations or authorizations necessary to carry on the Business or to own or lease any of the property or assets utilized by the Corporation. Each Licence is valid, subsisting and in good standing and the Corporation is not in default or breach of any Licence and, to the knowledge of the Seller, no proceeding is pending or threatened to revoke or limit any Licence. The Seller has provided a true and complete copy of each Licence and all amendments thereto to the Buyer.

2.21. **Consents and Approvals.** There is no requirement to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any governmental or regulatory authority as a condition to the lawful consummation of the transactions contemplated by this Agreement, except for the filings, notifications, licences, permits, certificates, registrations, consents and approvals described in Schedule 9 or that relate solely to the identity of the Buyer or the nature of any business carried on by the Buyer. There is no requirement under any Contract relating to the Business or the Corporation to which the Seller or the Corporation is a party or by which it is bound to give any notice to, or to obtain the consent or approval of, any party to such agreement, instrument or commitment relating to the consummation of the transactions contemplated by this Agreement except for the notifications, consents and approvals described in Schedule 10.

2.22. **Financial Statements.** The Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with prior periods, are correct and complete and present fairly the assets, liabilities and financial condition of the Corporation as at the respective

dates of the Financial Statements and the sales, earnings and results of operations of the Corporation for the respective periods covered by the Financial Statements. Except as set out in the Financial Statements, the Corporation has no Liabilities. Without limitation to the foregoing, the Seller has no knowledge of any contingent Liability or Liability for Taxes that are not reflected in the Financial Statements.

2.23. **Books and Records.** The books and records of the Corporation fairly and correctly set out and disclose in accordance with GAAP the financial position of the Corporation as at the date hereof and all financial transactions of the Corporation have been accurately recorded in such books and records.

2.24. **Absence of Changes.** Since ●, the Corporation has carried on the Business and conducted its operations and affairs only in the ordinary and normal course consistent with past practice and there has not been:

- (a) any material adverse change in the condition (financial or otherwise), assets, Liabilities, operations, earnings, business or prospects of the Corporation;
- (b) any damage, destruction or loss (whether or not covered by insurance) affecting the property or assets of the Corporation;
- (c) any liability incurred by the Corporation, other than those incurred in the ordinary and normal course and consistent with past practice;
- (d) any payment, discharge or satisfaction of any Encumbrance or Liability of the Corporation other than payment of accounts payable and Tax Liabilities incurred in the ordinary course of business consistent with past practice;
- (e) any declaration, setting aside or payment of any dividend or other distribution with respect to any shares in the capital of the Corporation or any direct or indirect redemption, purchase or other acquisition of any such shares;
- (f) any issuance or sale by the Corporation or any Contract entered into by the Corporation for the issuance or sale of any shares in the capital of or securities convertible into or exercisable for shares in the capital of the Corporation;
- (g) any labour trouble adversely affecting the Corporation;
- (h) any licence, sale, assignment, transfer, disposition, pledge, mortgage or granting of a security interest or other Encumbrance on or over any property or assets of the Corporation, other than sales of inventory to customers in the ordinary and normal course of the Business;
- (i) any write-down of the value of any inventory or any write-off as uncollectible of any accounts or notes receivable or any portion thereof of the Corporation in amounts exceeding \$● in each instance or \$● in the aggregate;
- (j) any cancellation of any debts or claims or any amendment, termination or waiver of any rights of value to the Corporation in amounts exceeding \$● in each instance or \$● in the aggregate;

- (k) any general increase in the compensation of employees of the Corporation (including, without limitation, any increase according to any Employee Plan or commitment), or any increase in any such compensation or bonus payable to any officer, employee, consultant or agent thereof (having an annual salary or remuneration in excess of \$●) or the execution of any employment contract with any officer or employee (having an annual salary or remuneration in excess of \$●), or the making of any loan to, or engagement in any transaction with, any employee, officer or director of the Corporation;
- (l) any capital expenditures or commitments of the Corporation in excess of \$● in the aggregate;
- (m) any forward purchase commitments in excess of the requirements of the Corporation for normal operating inventories or at prices higher than the current market prices;
- (n) any forward sales commitments other than in the ordinary and normal course of the Business or any failure to satisfy any accepted order for goods or services;
- (o) any change in the accounting or Tax practices followed by the Corporation;
- (p) any change adopted by the Corporation in its depreciation or amortization policies or rates;
- (q) any change in the credit terms offered to customers of, or by suppliers to the Corporation; or
- (r) any change to any employment Contract, written or oral, including any increase in the compensation of any employee, director or officer.

2.25. **Taxes.** The Corporation has duly filed on a timely basis, completely and accurately and in accordance with all applicable laws all tax returns required to be filed by it and has paid all taxes that are due and payable, and all assessments, reassessments, governmental charges, penalties, interest and fines due and payable by it. The corporation has made adequate provision for taxes payable by it for the current period and any previous period for which tax returns are not yet required to be filed. There are no actions, suits, proceedings, audits, investigations or claims pending or, to the knowledge of the Corporation and the Seller, threatened against, the Corporation in respect of taxes, governmental charges or assessments, nor are any material matters under discussion with any governmental authority relating to taxes, governmental charges or assessments asserted by any such authority. The Corporation has withheld from each payment made to any of its past or present employees, officers or directors, and to any non-resident of Canada, the amount of all taxes and other deductions required to be withheld therefrom and has paid the same to the proper tax or other receiving officers within the time required under any applicable legislation. The Corporation has remitted to the appropriate tax authority when required by law to do so all amounts collected by it on account of GST. The Canadian federal income tax liability of the Corporation has been assessed by Canada Revenue Agency for all fiscal years up to and including the fiscal year ended ● and there are no agreements, waivers or other arrangements providing for an extension of time with respect to the filing of any tax return by, or payment of any tax, governmental charge or deficiency against, the Corporation.

The Seller has provided to the Buyer a true copy of all tax returns filed by the Corporation in respect of the five last completed fiscal years of the Corporation.

- 2.26. **Litigation.** Except as described in Schedule 11, there are no actions, suits or proceedings (whether or not purportedly on behalf of the Corporation) pending or, to the knowledge of the Seller or the Corporation, after due inquiry, threatened against or affecting, the Corporation at, law or in equity, or before or by any federal, provincial, municipal or other governmental department, court, commission, board, bureau, agency or instrumentality, domestic or foreign, or by or before an arbitrator or arbitration board. Neither the Seller nor the Corporation is aware of any ground on which any such action, suit or proceeding might be commenced with any reasonable likelihood of success.
- 2.27. **Residency.** The Seller is not a non-resident of Canada for the purposes of the ITA.
- 2.28. **GST Registration.** The Corporation is a registrant for purposes of the ETA whose registration number is ●.
- 2.29. **Accounts and Attorneys.** Schedule 12 sets forth a true and complete list showing:
- (a) the name of each bank, trust company or similar institution in which the Corporation has accounts or safe deposit boxes, the number or designation of each such account and safe deposit box and the names of all persons authorized to draw thereon or to have access thereto; and
 - (b) the name of each person, firm, corporation or business organization holding a general or special power of attorney from the Corporation and a summary of the terms thereof.
- 2.30. **Directors and Officers.** Schedule 13 sets forth the names and titles of all the officers and directors of the Corporation.
- 2.31. **Dividends.** Since ● the Corporation has not, directly or indirectly, declared or paid any dividends or declared or made any other distribution on any of its shares of any class and has not, directly or indirectly, redeemed, purchased or otherwise acquired any of its outstanding shares of any class or agreed to do so.
- 2.32. **Non-Arm's Length Transactions.** The Corporation has not since ● made any payment or loan to, or borrowed any moneys from or is otherwise indebted to, any officer, director, employee, shareholder or any other person not dealing at arm's length with the Corporation (within the meaning of the ITA), except as disclosed in the Financial Statements and except for usual employee reimbursements and compensation paid in the ordinary and normal course of the Business. Except for Contracts of employment, the Corporation is not a party to any Contract with any officer, director, employee, shareholder or any other person not dealing at arm's length with the Corporation (within the meaning of the ITA). No officer, director or shareholder of the Corporation and no entity that is an Affiliate or Associate of one or more of such individuals:

- (a) owns, directly or indirectly, any interest in (except for shares representing less than one percent of the outstanding shares of any class or series of any publicly-traded company), or is an officer, director, employee or consultant of, any person which is, or is engaged in business as, a competitor of the Business or the Corporation or a lessor, lessee, supplier, distributor, sales agent or customer of the Business or the Corporation;
- (b) owns, directly or indirectly, in whole or in part, any property that the Corporation uses in the operation of the Business; or
- (c) has any cause of action or other claim whatsoever against, or owes any amount to, the Corporation in connection with the Business, except for any Liabilities reflected in the Financial Statements and claims in the ordinary and normal course of business, such as for accrued vacation pay and accrued benefits under the Employee Plans.

2.33. **Environmental.**

- (a) **Compliance.** Except as described in Schedule 14, the Corporation has been and is in compliance with all applicable federal, provincial, state and municipal laws and decisions rendered by any ministry, department or administrative or regulatory agency (collectively, "Environmental Laws") relating to the protection of the environment, occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, discharge, transport or handling of any pollutants, contaminants, chemicals or industrial, toxic or hazardous wastes or substances ("Hazardous Substances");
- (b) **Licences.** The Corporation has obtained all licences, permits, approvals, consents, certificates, registrations and other authorizations under Environmental Laws (the "Environmental Permits") required for the operation of the Business, all of which are described in Schedule 8. Each Environmental Permit is valid, subsisting and in good standing and the Corporation is not in default or breach of any Environmental Permit and no proceeding is pending, or threatened, to revoke or limit any Environmental Permit;
- (c) **Generation of Hazardous Substances.** The Corporation has not used or permitted to be used, except in compliance with all Environmental Laws, any of its property (including the Leased Property) or facilities or any property or facility that it previously owned or leased, to generate, manufacture, process, distribute, use, treat, store, dispose of, transport or handle any Hazardous Substance;
- (d) **Notices and Orders.** The Corporation has never received any notice of, nor been prosecuted for an offence alleging non-compliance with any Environmental Laws, and neither the Seller nor the Corporation has settled any allegation of non-compliance short of prosecution. There are no orders or directions relating to environmental matters requiring any work, repairs, construction or capital expenditures with respect to the Business or any property of the Corporation, nor has the Corporation received notice of any of the same;

- (e) **Changes to Environmental Laws.** Except as disclosed in Schedule 14, there are no pending or proposed changes to Environmental Laws that would render illegal or restrict the manufacture or sale of any product manufactured or sold or service provided by the Corporation;
- (f) **Release of Hazardous Substances.** The Corporation has not caused or permitted, nor does the Seller or the Corporation have any knowledge of, the release, in any manner whatsoever, of any Hazardous Substance on or from any of its properties (including any of the Leased Property) or assets or any property or facility that it previously owned or leased, or any such release on or from a facility owned or operated by third parties but with respect to which the Corporation is or may reasonably be alleged to have Liability. All Hazardous Substances and all other wastes and other materials and substances used in whole or in part by the Corporation or resulting from the Business have been disposed of, treated and stored in compliance with all Environmental Laws. Schedule 14 identifies all of the locations where Hazardous Substances used in whole or in part by the Corporation have been or are being stored or disposed of;
- (g) **Corrective Action.** The Corporation has not received any notice that it is potentially responsible for a federal, provincial, municipal or local clean-up site or corrective action under any Environmental Laws. The Corporation has not received any request for information in connection with any federal, provincial, municipal or local inquiries as to disposal sites;
- (h) **Environmental Audits.** The Seller has delivered to the Buyer true and complete copies of all environmental audits, evaluations, assessments, studies or tests relating to the Corporation of which it is aware.

2.34. **Employee Plans.** Schedule 15 identifies each retirement, pension, bonus, stock purchase, profit-sharing, stock option, deferred compensation, severance or termination pay, insurance, medical, hospital, dental, vision care, drug, sick leave, disability, salary continuation, legal benefits, unemployment benefits, vacation, incentive or other compensation plan or arrangement or other employee benefit that is maintained or otherwise contributed to, or required to be contributed to, by the Corporation for the benefit of employees or former employees of the Corporation (the "Employee Plans") and a true and complete copy of each Employee Plan has been provided to the Buyer. Each Employee Plan has been maintained in compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations that are applicable to such Employee Plan. The Seller has delivered to the Buyer the actuarial valuations, if any, prepared for each Employee Plan during the past • years. Except as described in Schedule 15:

- (a) **Contributions.** All contributions to, and payments from each Employee Plan that may have been required to be made in accordance with the terms of any such Employee Plan, or with the recommendation of the actuary for such Employee Plan, and, where applicable, the Laws of the jurisdictions that govern such Employee Plan, have been made in a timely manner;

- (b) **Reports.** All material reports, returns and similar documents (including applications for approval of contributions) with respect to any Employee Plan required to be filed with any governmental agency or distributed to any Employee Plan participant have been duly filed on a timely basis or distributed;
- (c) **Claims.** There are no pending investigations by any governmental or regulatory agency or authority involving or relating to an Employee Plan, no threatened or pending claims (except for claims for benefits payable in the normal operation of the Employee Plans), suits or proceedings against any Employee Plan or asserting any rights or claims to benefits under any Employee Plan that could give rise to a Liability nor, to the knowledge of the Seller, are there any facts that could give rise to any liability in the event of such investigation, claim, suit or proceeding;
- (d) **Complaints.** No notice has been received by the Corporation of any complaints or other proceedings of any kind involving the Corporation or, to the Seller's or the Corporation's knowledge, any of the employees of the Corporation before any pension board or committee relating to any Employee Plan or to the Corporation; and
- (e) **No Liability.** The assets of each Employee Plan are at least equal to the liabilities of such Employee Plans based on the actuarial assumptions utilized in the most recent valuation performed by the actuary for such Employee Plan, and neither the Buyer nor any of its Associates or Affiliates (other than the Corporation) will incur any liability with respect to any Employee Plan as a result of the transactions contemplated by this Agreement.

2.35. **Collective Agreements.** Except as described in Schedule 15, the Corporation has not made any Contracts with any labour union or employee association nor made commitments to or conducted negotiations with any labour union or employee association with respect to any future agreements and, except as set out in Schedule 15, neither the Seller nor the Corporation is aware of any current attempts to organize or establish any labour union or employee association with respect to any employees of the Corporation, nor is there any certification of any such union with regard to a bargaining unit.

2.36. **Employees.** Schedule 15 contains a complete and accurate list of the names of all individuals who are employees or sales or other agents or representatives of the Corporation specifying:

- (a) with respect to the unionized employees, the rate of hourly pay, whether or not such employee is absent for any reason such as lay off, leave of absence or workers' compensation, the length of service, age and title; and
- (b) with respect to salaried employees and sales or other agents or representatives, the length of service, age, title, rate of salary and commission structure for each such employee, agent or representative.

No notice has been received by the Corporation of any complaint filed by any of the employees against the Corporation claiming that the Corporation has violated *The Employment Standards Code* (Manitoba) or *The Human Rights Code* (Manitoba) (or any applicable employee or human rights or similar legislation in the other jurisdictions in which the Business is conducted or the Corporation operates) or of any complaints or proceedings of any kind involving the Corporation or, to the Seller's and the

Corporation's knowledge, after due inquiry, any of the employees of the Corporation before any labour relations board, except as disclosed in Schedule 15. There are no outstanding orders or charges against the Corporation under *The Workplace Safety and Health Act* (Manitoba) (or any applicable health and safety legislation in the other jurisdictions in which the Business is conducted). All levies, assessments and penalties made against the Corporation pursuant to *The Workers Compensation Act* (Manitoba) (and any applicable workers compensation legislation in the other jurisdictions in which the Business is conducted) have been paid by the Corporation and the Corporation has not been reassessed under any such legislation during the past • years.

- 2.37. **Employee Accruals.** All accruals for unpaid vacation pay, premiums for unemployment insurance, health premiums, Canada Pension Plan premiums, accrued wages, salaries and commissions and employee benefit plan payments have been reflected in the books and records of the Corporation.
- 2.38. **Customers and Suppliers.** Schedule 16 sets out the major customers and suppliers of the Corporation (being those customers of the Corporation accounting for more than •% of sales and those suppliers accounting for more than •% of purchases for the period • to •) and there has been no termination or cancellation of, and no modification or change in, the Corporation's business relationship with any major customer or supplier, or group of major customers or suppliers. The relationship with any of the major customers or suppliers of the Corporation will remain unaffected and shall continue after the Closing Date in substantially the same manner as prior to the date of this Agreement.
- 2.39. **Product Warranties.** Schedule 17 is a complete list of all express, written warranties given to Buyers of products supplied by the Corporation.
- 2.40. **Full Disclosure.** Neither this Agreement nor any document to be delivered pursuant to this Agreement by the Seller or the Corporation nor any certificate, report, statement or other document furnished by the Seller or the Corporation in connection with the negotiation of this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading. There has been no event, transaction or information that has come to the attention of the Seller or the Corporation that has not been disclosed to the Buyer in writing that could reasonably be expected to have a material adverse effect on the assets, business, earnings, prospects, properties or condition (financial or otherwise) of the Corporation.

3. REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller as follows and acknowledges and confirms that the Seller is relying on such representations and warranties in connection with the sale by the Seller of the Purchased Shares:

- 3.1. **Organization.** The Buyer is a corporation validly subsisting under the Laws of the Province of Manitoba and it has the corporate power to enter into and perform its obligations pursuant to this Agreement.

- 3.2. **No Violation.** The execution and delivery of this Agreement by the Buyer and the consummation of the transactions provided for herein will not result in the violation of, or constitute a default under, or conflict with or cause the acceleration of any obligation of the Buyer under:
- (a) any Contract to which the Buyer is a party or by which it is bound;
 - (b) any provision of the constating documents or by-laws or resolutions of the board of directors (or any committee thereof) or shareholders of the Buyer;
 - (c) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over the Buyer; or
 - (d) any applicable Law.
- 3.3. **Authorization.** This Agreement has been duly authorized, executed and delivered by the Buyer and is a legal, valid and binding obligation of the Buyer, enforceable against the Buyer by the Seller in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other Laws affecting the enforcement of rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- 3.4. **Consents and Approvals.** There is no requirement for the Buyer to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any government or regulatory authority as a condition to the lawful consummation of the transactions contemplated by this Agreement.
- 3.5. **GST Registration.** The Buyer is a registrant for purposes of the ETA whose registration number is ●.

4.SURVIVAL OF REPRESENTATIONS AND WARRANTIES

- 4.1. **Survival of Representations and Warranties of the Seller.** To the extent that they have not been fully performed at or prior to the Time of Closing, the covenants, representations and warranties of the Seller contained in this Agreement and any agreement, instrument, certificate or other document executed or delivered pursuant hereto shall survive the closing of the transactions contemplated hereby and, notwithstanding such closing, nor any investigation made by or on behalf of the Buyer, shall continue in full force and effect for three (3) years.
- 4.2. **Survival of Representations and Warranties of the Buyer.** To the extent that they have not been fully performed at or before the Time of Closing, the covenants, representations and warranties of the Buyer contained in this Agreement and any agreement, instrument, certificate or other document executed or delivered pursuant hereto shall survive the closing of the transactions contemplated hereby and, notwithstanding such closing, nor any investigation made by or on behalf of the Seller, shall continue in full force and effect for three (3) years.

5.COVENANTS

5.1. **Access to the Corporation.** The Seller shall forthwith make available to the Buyer and its authorized representatives and, if requested by the Buyer, provide a copy to the Buyer of, all title documents, contracts, financial statements, minute books, share certificate books, share registers, plans, reports, licences, orders, permits, books of account, accounting records, constating documents and all other documents, information or data relating to the Corporation and the Business. The Seller and the Corporation shall afford the Buyer and its authorized representatives every reasonable opportunity to have free and unrestricted access to the Business and the property, assets, undertaking, records and documents of the Corporation. At the request of the Buyer, the Seller shall execute or cause to be executed such consents, authorizations and directions as may be necessary to permit any inspection of the Business and any property of the Corporation or to enable the Buyer or its authorized representatives to obtain full access to all files and records relating to any of the assets of the Corporation maintained by governmental or other public authorities. At the Buyer's request, the Seller shall cooperate with the Buyer in arranging any such meetings as the Buyer should reasonably request with:

- (a) employees of the Corporation;
- (b) customers, suppliers, distributors or others who have or have had a business relationship with the Corporation; and
- (c) auditors, solicitors or any other persons engaged or previously engaged to provide services to the Corporation who have knowledge of matters relating to the Corporation and the Business.

In particular, without limitation, the Seller shall permit the Buyer's representatives or consultants to conduct all such testing and inspection in respect of environmental matters at such locations of the Business as the Buyer may determine, in its sole discretion, as may be required to satisfy the Buyer in respect of such matters, and the Seller shall cause the Corporation to conduct, and the Corporation shall conduct, in cooperation with the representatives or consultants of the Buyer, such physical review of the equipment of the Business as is necessary so as to enable the confirmation of the values carried on the respective balance sheets of the Corporation in respect of such assets, to the reasonable satisfaction of the Buyer. The exercise of any rights of inspection by or on behalf of the Buyer under this section 5.1 shall not mitigate or otherwise affect the representations and warranties of the Seller hereunder, which shall continue in full force and effect as provided in section 4.1.

5.2. **Delivery of Books and Records.** At the Time of Closing there shall be delivered to the Buyer, by the Seller, all of the books and records of and relating to the Corporation and the Business. The Buyer agrees that it will preserve the books and records so delivered to it for six years from the Closing Date, or for such longer period as is required by any applicable law, and will permit the Seller or its authorized representatives reasonable access thereto in connection with the affairs of the Seller relating to its matters, but the Buyer shall not be responsible or liable to the Seller for or as a result of any accidental loss or destruction of or damage to any such books or records.

- 5.3. **Conduct Prior to Closing.** Without in any way limiting any other obligations of the Seller and the Corporation hereunder, during the period from the date hereof to the Time of Closing:
- (a) ***Conduct Business in the Ordinary Course.*** The Seller shall cause the Corporation to conduct, and the Corporation shall conduct, the Business and the operations and affairs of the Corporation only in the ordinary and normal course of business consistent with past practice, and the Corporation shall not, without the prior written consent of the Buyer, enter into any transaction or refrain from doing any action that, if effected before the date of this Agreement, would constitute a breach of any representation, warranty, covenant or other obligation of the Seller or the Corporation contained herein, and provided further that the Seller shall not enter into any material supply arrangements relating to the Corporation or make any material decisions or enter into any material Contracts with respect to the Corporation without the consent of the Buyer, which consent shall not be unreasonably withheld;
 - (b) ***Continue Insurance.*** The Seller shall cause the Corporation to continue, and the Corporation shall continue, to maintain in full force and effect all policies of insurance or renewals thereof now in effect, shall take out, at the expense of the Buyer, such additional insurance as may be reasonably requested by the Buyer and shall give all notices and present all claims under all policies of insurance in a due and timely fashion;
 - (c) ***Discharge Liabilities.*** The Seller shall cause the Corporation to pay and discharge, and the Corporation shall pay and discharge, the liabilities of the Corporation in the ordinary course in accordance and consistent with the previous practice of the Corporation, except those contested in good faith by the Corporation;
 - (d) ***Best Efforts.*** The Seller shall use its best efforts to satisfy the conditions contained in section 6.1.
- 5.4. **Delivery of Documents.** The Seller shall deliver to the Buyer all necessary transfers, assignments and other documentation reasonably required to transfer the Purchased Shares to the Buyer with a good and marketable title, free and clear of all Encumbrances, except for Permitted Encumbrances.
- 5.5. **Delivery of Seller's Closing Documentation.** The Seller shall execute and deliver or cause to be executed and delivered to the Buyer four copies of such documents relevant to the closing of the transaction contemplated hereby as the Buyer, acting reasonably, may request.
- 5.6. **Delivery of Buyer's Closing Documentation.** The Buyer shall execute and deliver or cause to be executed and delivered four copies of such documents relevant to the closing of the transaction contemplated hereby as the Seller, acting reasonably, may request.

6.CONDITIONS OF CLOSING

- 6.1. **Conditions of Closing in Favour of the Buyer.** The sale and purchase of the Purchased Shares is subject to the following terms and conditions for the exclusive benefit of the Buyer, to be fulfilled or performed at or before the Time of Closing:

- (a) **Representations and Warranties.** The representations and warranties of the Seller contained in this Agreement shall be true and correct in all material respects at the Time of Closing, with the same force and effect as if such representations and warranties were made at and as of such time, and a certificate of the President of the Seller dated the Closing Date to that effect shall have been delivered to the Buyer, such certificate to be in form and substance satisfactory to the Buyer, acting reasonably;
- (b) **Covenants.** All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Seller at or before the Time of Closing shall have been complied with or performed in all material respects and a certificate of the President of the Seller dated the Closing Date to that effect shall have been delivered to the Buyer, such certificate to be in form and substance satisfactory to the Buyer, acting reasonably;
- (c) **Regulatory Consents.** There shall have been obtained, from all appropriate federal, provincial, municipal or other governmental or administrative bodies, such licences, permits, consents, approvals, certificates, registrations and authorizations as are required to be obtained by the Seller to permit the change of ownership of the Purchased Shares contemplated hereby including, without limitation, those described in Schedule 9;
- (d) **Contractual Consents.** The Seller shall have given or obtained the notices, consents and approvals described in Schedule 10, in each case in form and substance satisfactory to the Buyer, acting reasonably;
- (e) **Material Adverse Change.** There shall have been no material adverse changes in the condition (financial or otherwise), assets, Liabilities, operations, earnings, business or prospects of the Corporation since the date of the Audited Financial Statements;
- (f) **No Action or Proceeding.** No legal or regulatory action or proceeding shall be pending or threatened by any person to enjoin, restrict or prohibit the purchase and sale of the Purchased Shares contemplated hereby;
- (g) **No Material Damage.** No material damage by fire or other hazards to the whole or any material part of the property or assets of the Corporation shall have occurred from the date hereof to the Time of Closing;
- (h) **Legal Matters.** All actions, proceedings, instruments and documents required to implement this Agreement or instrumental thereto, and all legal matters relating to the purchase of the Purchased Shares, including the title of the Seller to the Purchased Shares, shall have been approved as to form and legality by●, counsel for the Buyer, acting reasonably; and
- (i) **Resignation of Directors and Officers.** Such directors and officers of the Corporation as the Buyer may specify shall have resigned in favour of nominees of the Buyer effective as of the Time of Closing.

If any of the conditions contained in this section 6.1 shall not be performed or fulfilled at or before the Time of Closing to the satisfaction of the Buyer, acting reasonably, the Buyer may, by notice to the

Seller, terminate this Agreement and the obligations of the Seller and the Buyer under this Agreement, other than the obligations contained in sections 9.12 and 9.13, provided that the Buyer may also bring an action pursuant to Article 8 against the Seller for damages suffered by the Buyer where the non-performance or non-fulfillment of the relevant condition is as a result of a breach of covenant, representation or warranty by the Seller. Any such condition may be waived in whole or in part by the Buyer without prejudice to any claims it may have for breach of covenant, representation or warranty.

6.2. **Conditions of Closing in Favour of the Seller.** The purchase and sale of the Purchased Shares is subject to the following terms and conditions for the exclusive benefit of the Seller, to be fulfilled or performed at or before the Time of Closing:

- (a) ***Representations and Warranties.*** The representations and warranties of the Buyer contained in this Agreement shall be true and correct in all material respects at the Time of Closing, with the same force and effect as if such representations and warranties were made at and as of such time, and a certificate of the President of the Buyer dated the Closing Date to that effect shall have been delivered to the Seller, such certificate to be in form and substance satisfactory to the Seller, acting reasonably;
- (b) ***Covenants.*** All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Buyer at or before the Time of Closing shall have been complied with or performed in all material respects and a certificate of the President of the Buyer dated the Closing Date to that effect shall have been delivered to the Seller, such certificate to be in form and substance satisfactory to the Seller, acting reasonably;
- (c) ***Regulatory Consents.*** There shall have been obtained, from all appropriate federal, provincial, municipal or other governmental or administrative bodies, such licences, permits, consents, approvals, certificates, registrations and authorizations as are required by Law to be obtained by the Buyer to permit the change of ownership of the Purchased Shares contemplated hereby including those described in Schedule 9, in each case in form and substance satisfactory to the Seller, acting reasonably;
- (d) ***No Action or Proceeding.*** No legal or regulatory action or proceeding shall be pending or threatened by any person to enjoin, restrict or prohibit the purchase and sale of the Purchased Shares contemplated hereby; and
- (e) ***Legal Matters.*** All actions, proceedings, instruments and documents required to implement this Agreement, or instrumental thereto, shall have been approved as to form and legality by ●, counsel for the Seller, acting reasonably.

If any of the conditions contained in this section 6.2 shall not be performed or fulfilled at or before the Time of Closing to the satisfaction of the Seller, acting reasonably, the Seller may, by notice to the Buyer, terminate this Agreement and the obligations of the Seller and the Buyer under this Agreement, other than the obligations contained in sections 9.12 and 9.13, provided that the Seller may also bring an action pursuant to Article 8 against the Buyer for damages suffered by the Seller where the non-performance or non-fulfillment of the relevant condition is as a result of a breach of covenant, representation or warranty by the Buyer. Any such condition may be waived in whole or in

part by the Seller without prejudice to any claims it may have for breach of covenant, representation or warranty.

7.CLOSING ARRANGEMENTS

- 7.1. **Place of Closing.** The closing shall take place at the Time of Closing at the offices of •.
- 7.2. **Transfer.** At the Time of Closing, upon fulfillment of all the conditions set out in Article 6 that have not been waived in writing by the Buyer or the Seller, the Seller shall deliver to the Buyer certificates respecting all the Purchased Shares, duly endorsed in blank for transfer, and will cause transfers of such shares to be duly and regularly recorded in the name of the Buyer, or its nominee(s), and will cause a meeting of the board of directors of the Corporation to be held, at which the directors and officers of the Corporation specified by the Buyer will resign in favour of nominees of the Buyer whereupon, subject to all other terms and conditions hereof being complied with, payment of the Purchase Price shall be paid and satisfied in the manner provided in Article 1.
- 7.3. **Further Assurances.** Each party to this Agreement covenants and agrees that, from time to time after the Closing Date, it will, at the request and expense of the requesting party, execute and deliver all such documents, including, without limitation, all such additional conveyances, transfers, consents and other assurances and do all such other acts and things as any other party hereto, acting reasonably, may from time to time request be executed or done in order to better evidence or perfect or effectuate any provision of this Agreement or of any agreement or other document executed pursuant to this Agreement or any of the respective obligations intended to be created hereby or thereby.

8.INDEMNIFICATION

- 8.1. **Indemnification by the Seller.** The Seller agrees to indemnify and save harmless the Buyer from all Losses suffered or incurred by the Buyer as a result of or arising directly or indirectly out of or in connection with:
- (a) any breach by the Seller or the Corporation of or any inaccuracy of any representation or warranty of the Seller or the Corporation contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto (provided that the Seller shall not be required to indemnify or save harmless the Buyer in respect of any breach or inaccuracy of any representation or warranty unless the Buyer shall have provided notice to the Seller in accordance with section 8.3 on or before the expiration of the applicable time related to such representation and warranty set out in section 4.1);
 - (b) any breach or non-performance by the Seller or the Corporation of any covenant to be performed by it that is contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto;
 - (c) all debts, Liabilities or contracts whatsoever (whether accrued, absolute, contingent or otherwise) of the Corporation existing at the Time of Closing or discovered after the Time of Closing which relates to any period up to and including the Time of Closing, including any Liabilities for federal, provincial, sales, excise, income, corporate or any

other Taxes of the Corporation for any period up to and including the Time of Closing, and not disclosed on, provided for or included in the balance sheets forming part of the Financial Statements, except those Liabilities:

- (i) disclosed in this Agreement or any Schedule hereto; or
 - (ii) accruing or incurred after (date of Audited Financial Statements) in the ordinary course of the Business; and
- (d) any claims, demands, judgments, orders, duties imposed by law or by administrative action or other obligations or liabilities of any kind whatsoever suffered or incurred by the Corporation in respect of pollution, contamination or other environmental matters, including, without limitation, those referred to in section 2.33, caused or arising or otherwise existing at or before the Time of Closing, whether or not disclosed in this Agreement or any Schedule hereto or otherwise known to the Buyer or to its representatives or within the power of the Buyer or its representatives to discover.

8.2. **Indemnification by the Buyer.** The Buyer agrees to indemnify and save harmless the Seller from all Losses suffered or incurred by the Seller as a result of or arising directly or indirectly out of or in connection with:

- (a) any breach by the Buyer of or any inaccuracy of any representation or warranty contained in this Agreement or in any agreement, instrument, certificate or other document delivered pursuant hereto (provided that the Buyer shall not be required to indemnify or save harmless the Seller in respect of any breach or inaccuracy of any representation or warranty unless the Seller shall have provided notice to the Buyer in accordance with section 8.3 on or prior to the expiration of the applicable time period related to such representation and warranty set out in section 4.2); and
- (b) any breach or non-performance by the Buyer of any covenant to be performed by it that is contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto.

8.3. **Notice of Claim.** If a party (the "Indemnified Party") shall become aware of any claim, proceeding or other matter (a "Claim") in respect of which another party (the "Indemnifying Party") agreed to indemnify the Indemnified Party under this Agreement, the Indemnified Party shall promptly give written notice thereof to the Indemnifying Party. Such notice shall specify whether the Claim arises as a result of a claim by a person against the Indemnified Party (a "Third Party Claim") or whether the Claim does not so arise (a "Direct Claim"), and shall also specify with reasonable particularity (to the extent that the information is available) the factual basis for the Claim and the amount of the Claim if known.

If through the fault of the Indemnified Party, the Indemnifying Party does not receive notice of any Claim in time to contest effectively the determination of any liability susceptible of being contested, the Indemnifying Party shall be entitled to set off against the amount claimed by the Indemnified Party the amount of any losses incurred by the Indemnifying Party resulting from the Indemnified Party's failure to give such notice on a timely basis.

- 8.4. **Direct Claims.** With respect to any Direct Claim, following receipt of notice from the Indemnified Party of the Claim, the Indemnifying Party shall have 60 days to make such investigation of the Claim as is considered necessary or desirable. For such investigation, the Indemnified Party shall make available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate the claim, together with all such other information as the Indemnifying Party may reasonably request. If both parties agree at or before the expiration of such 60 day period (or any mutually agreed upon extension thereof) to the validity and amount of such claim, the Indemnifying Party shall immediately pay to the Indemnified Party the full agreed-upon amount of the claim, failing which the matter shall be referred to binding arbitration in such manner as the parties may agree or shall be determined by a court of competent jurisdiction.
- 8.5. **Third Party Claims.** With respect to any Third Party Claim, the Indemnifying Party shall have the right, at its expense, to participate in or assume control of the negotiation, settlement or defence of the Claim and, in such event, the Indemnifying Party shall reimburse the Indemnified Party for all the Indemnified Party's out-of-pocket expenses as a result of such participation or assumption. If the Indemnifying Party elects to assume such control, the Indemnified Party shall have the right to participate in the negotiation, settlement or defence of such Third Party Claim and to retain counsel to act on its behalf, provided that the fees and disbursements of such counsel shall be paid by the Indemnified Party unless the Indemnifying Party consents to the retention of such counsel or unless the named parties to any action or proceeding include both the Indemnifying Party and the Indemnified Party and representation of both the Indemnifying Party and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences). If the Indemnifying Party, having elected to assume such control, thereafter fails to defend the Third Party Claim within a reasonable time, the Indemnified Party shall be entitled to assume such control, and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim. If any Third Party Claim is of a nature such that the Indemnified Party is required by applicable Law to make a payment to any person (a "Third Party") with respect to the Third Party Claim before the completion of settlement negotiations or related legal proceedings, the Indemnified Party may make such payment and the Indemnifying Party shall, forthwith after demand by the Indemnified Party, reimburse the Indemnified Party for such payment. If the amount of any Liability of the Indemnified Party under the Third Party Claim in respect of which such payment was made, as finally determined, is less than the amount that was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party shall, forthwith after receipt of the difference from the Third Party, pay the amount of such difference to the Indemnifying Party.
- 8.6. **Settlement of Third Party Claims.** If the Indemnifying Party fails to assume control of the defence of any Third Party Claim, the Indemnified Party shall have the exclusive right to contest, settle or pay the amount claimed. Whether or not the Indemnifying Party assumes control of the negotiation, settlement or defence of any Third Party Claim, the Indemnifying Party shall not settle any Third Party Claim without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed; provided, however, that the Liability of the Indemnifying Party shall be limited to the proposed settlement amount if any such consent is not obtained for any reason.

- 8.7. **Cooperation.** The Indemnified Party and the Indemnifying Party shall cooperate fully with each other with respect to Third Party Claims, and shall keep each other fully advised with respect thereto (including supplying copies of all relevant documentation promptly as it becomes available).
- 8.8. **Exclusivity.** The provision of this Article 8 shall apply to any Claim for breach of any covenant, representation, warranty or other provision of this Agreement or any agreement, certificate or other document delivered pursuant hereto (other than a claim for specific performance or injunctive relief) with the intent that all such Claims shall be subject to the limitations and other provisions contained in this Article 8.

9.MISCELLANEOUS

- 9.1. **Currency.** Unless otherwise indicated, all dollar amounts referred to in this Agreement are expressed in Canadian funds.
- 9.2. **Sections and Headings.** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to a section or a Schedule refers to the specified section of or Schedule to this Agreement.
- 9.3. **Number, Gender and Persons.** In this Agreement, words importing the singular number only shall include the plural and vice versa, words importing gender shall include all genders and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities.
- 9.4. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.
- 9.5. **Time of Essence.** Time shall be of the essence of this Agreement.
- 9.6. **Applicable Law.** This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Manitoba and the federal laws of Canada applicable therein. and each party hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.
- 9.7. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

- 9.8. **Enurement.** This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and, where the context so permits, their respective heirs, personal representatives, successors and permitted assigns. Subject to section 9.14, no party may assign any of its rights or obligations hereunder without the prior written consent of the other parties.
- 9.9. **Amendment and Waivers.** No amendment or waiver of any provision of this Agreement shall be binding on any party unless consented to in writing by such party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise expressly provided.
- 9.10. **Schedules.** The following Schedules are attached to and form a part of this Agreement:
- | | | |
|-------------------|---|----------------------------------|
| Schedule 1 | - | Financial Statements |
| Schedule 2 | - | Location of Assets |
| Schedule 3 | - | Permitted Encumbrances |
| Schedule 4 | - | Owned and Leased Real Property |
| Schedule 5 | - | Intellectual Property |
| Schedule 6 | - | Insurance Policies |
| Schedule 7 | - | Material Contracts |
| Schedule 8 | - | Licences and Permits |
| Schedule 9 | - | Regulatory Consents |
| Schedule 10 | - | Third Party Consents |
| Schedule 11 | - | Legal and Regulatory Proceedings |
| Schedule 12 | - | Accounts and Attorneys |
| Schedule 13 | - | Directors and Officers |
| Schedule 14 | - | Environmental Matters |
| Schedule 15 | - | Employee Matters |
| Schedule 16 | - | Major Customers |
| Schedule 17 | - | Product Warranties |
| Glossary of Terms | | |

9.11. **Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by telecopy or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:

(i) if to the Seller:

-
- Attention: •
- Facsimile No.: •

(ii) if to the Buyer:

-
- Attention: •
- Facsimile No.: •

(iii) if to the Corporation:

-
- Attention: •
- Facsimile No.: •

Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or if such day is not a Business Day, on the next following Business Day) or, if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted using recorded electronic communication as aforesaid. Any party may at any time change its address for service from time to time by giving notice to the other parties in accordance with this section.

9.12. **Disclosure.** Before any public announcement of the transaction contemplated hereby pursuant to section 9.13, neither party shall disclose this Agreement or any aspect of such transaction except to its board of directors, its senior management, its legal, accounting, financial or other professional advisors, any financial institution contacted by it with respect to any financing required in connection with such transaction and counsel to such institution, or as may be required by any applicable law or any regulatory authority or stock exchange having jurisdiction.

9.13. **Public Announcements.** No public announcement or press release not required by law or by applicable stock exchange rule concerning the purchase and sale of the Purchased Shares shall be made by the Seller, the Corporation or the Buyer without the consent and joint approval of the Seller and the Buyer.

9.14. **Assignment by Buyer.** The Buyer may assign its rights under this Agreement in whole or in part to any other person, provided, however, that any such assignment shall not relieve the Buyer from any of its obligations hereunder.

9.15. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF this Agreement has been executed by the parties.

[INSERT NAME OF SELLER]

Per:

[INSERT NAME OF BUYER]

Per:

[INSERT NAME OF TARGET CORPORATION]

Per:

GLOSSARY OF TERMS

For this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

"Act" means *The Corporations Act* (Manitoba) as in effect on the date hereof;

"Affiliate" has the meaning attributed to that term in the Act;

"Associate" has the meaning attributed to that term in the Act;

"Business" means the business currently carried on by the Corporation consisting of ●;

"Business Day" means any day (other than a Saturday or a Sunday) on which the main branch of Royal Bank of Canada in Winnipeg, Manitoba, is open for business;

"Claim" has the meaning set out in section 8.3;

"Closing Date" means ●, 20___ or such other date as may be mutually agreed upon by the Seller and the Buyer;

"Contract" means any agreement, indenture, contract, lease, deed of trust, licence, option, instrument, or other commitment, whether written or oral;

"Direct Claim" has the meaning set out in section 8.3;

"Employee Plans" has the meaning set out in section 2.34;

"Encumbrance" means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, right of occupation, any matter capable of registration against title, option, right of pre-emption, privilege, or any Contract to create any of the foregoing;

"Environmental Laws" has the meaning set out in subsection 2.33(a);

"Environmental Permits" has the meaning set out in subsection 2.33(b);

"ETA" means the *Excise Tax Act* (Canada), as amended from time to time;

"Financial Statements" means the audited [consolidated] financial statements of the Corporation as at and for the financial years ended December 31, 20___ and 20___, including the notes thereto and the report of the Corporation's auditors thereon, a copy of which is annexed hereto as Schedule 1;

"GAAP" means generally accepted accounting principles as approved from time to time by the Canadian Institute of Chartered Accountants or any successor thereto;

"GST" means any and all taxes payable under Part IX of the ETA or under any provincial legislation similar to Part IX of the ETA;

"Hazardous Substances" has the meaning set out in subsection 2.33(a);

"Improvements" means all buildings, structures, improvements and appurtenances situate or hereinafter situate on the Real Property or Leased Property, as the case may be, without limitation, all buildings, fences, plant, machinery, fixtures, erections, furnaces, boilers, electric light fixtures, window coverings, appliances, floor coverings, doors, air conditioning, plumbing, cooling and heating equipment placed on, installed or affixed on the Real Property or Leased Property, as the case may be, and all apparatus and equipment appurtenant thereto;

"Indemnified Party" has the meaning set out in section 8.3;

"Indemnifying Party" has the meaning set out in section 8.3;

"Intellectual Property" has the meaning set out in section 2.16;

"ITA" means the *Income Tax Act* (Canada), as amended from time to time;

"Laws" means all laws, by-laws, statutes, ordinances, regulations, rules, codes, judgments, decrees, directives, or orders applicable to the Business, the Seller, the Corporation, or the property and assets of the Seller and the Corporation;

"Leased Property" has the meaning set out in section 2.11;

"Leases" has the meaning set out in section 2.13;

"Liability" means any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due), including any liability for Taxes;

"Licences" has the meaning set out in section 2.20;

"Losses", in respect of any matter, means all claims, demands, proceedings, losses, damages, Liabilities, deficiencies, costs, and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, penalties, and amounts paid in settlement) arising directly or indirectly as a consequence of such matter;

"Permitted Encumbrances" means the Encumbrances described in Schedule 3;

"Purchase Price" has the meaning set out in section 1.2;

"Purchased Shares" means all of the issued and outstanding shares of the Corporation;

"Real Property" has the meaning set out in section 2.11;

"Tax" or "Taxes" means:

- (i) any and all forms of taxation, whenever created or imposed, including but not limited to taxes, assessments, charges, duties, fees, levies, and other governmental charges, and whether of the country or Province of incorporation or elsewhere, and whether imposed by a local, municipal, governmental, provincial, federal, or foreign taxing authority and, without limiting the generality of the foregoing, shall include income, alternative or add-on minimum, GST, excise, sales, use, ad valorem, value added, turnover, capital, gross receipts, franchise, transfer, recording, stamp duty, profits, license, lease, service, business, tangible, withholding, unemployment insurance, workers' compensation, payroll, school employment, health, excise, occupation, or property premium or tax, customs, or similar duties, and retirement charges (both the employer's and employee's parts, if applicable); or similar charges of any kind whatsoever due to any governmental authority having jurisdiction for any period for which assessment or reassessment of Tax Liability is not yet barred by operation of Law;
- (ii) any interest, penalties, and additions to Taxes, or additional amounts imposed by any governmental authority responsible for the imposition of any amount described in (i);
- (iii) any Liability of the Corporation for the payment of any amounts of the type described in (i) or (ii) as a result of being a member of any affiliated, consolidated, combined or other group for any applicable period; and
- (iv) any Liability of the Corporation for the payment of any amounts described in (i), (ii) or (iii) as a result of any known express or implied obligation to indemnify any other person or entity.

"Third Party" has the meaning set out in section 8.5;

"Third Party Claim" has the meaning set out in section 8.3; and

"Time of Closing" means • (Central Standard time) on the Closing Date.

4. Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

THIS AGREEMENT made in duplicate this ____ day of _____, 20____

BETWEEN:

[INSERT NAME OF SELLER],
(the "Seller"),

- and -

[INSERT NAME OF BUYER],
(the "Buyer").

THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants, agreements, representations, warranties, and indemnities of the parties herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each party, the parties agree as follows:

1. PURCHASE AND SALE OF PURCHASED ASSETS

1.1. **Purchased Assets**. Subject to the provisions of this Agreement, the Seller agrees to sell, assign, and transfer to the Buyer, and the Buyer agrees to purchase from the Seller, effective as of the close of business on the Closing Date, all of the property and assets used in connection with or otherwise relating to the Purchased Business (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description and wheresoever situate, as a going concern (collectively, the "Purchased Assets"), including, without limitation:

- (a) ***Real Property***. All real property, together with all Improvements, including, without limitation, the real property described in Schedule 1;
- (b) ***Leases of Real Property***. All rights (whether as lessee or lessor) under leases of real property, together with all leasehold improvements relating thereto, including, without limitation, all rights under the leases described in Schedule 2;

- (c) **Machinery and Equipment.** All machinery, equipment, fixtures, furniture, furnishings, parts, tooling molds, dies, jigs or patterns, and other fixed assets, including, without limitation, the machinery and equipment described in Schedule 3;
- (d) **Vehicles.** All trucks, cars and other vehicles, including, without limitation, the vehicles described in Schedule 4;
- (e) **Inventories.** All inventories, including, without limitation, raw materials, work-in-process, finished goods, and replacement parts;
- (f) **Accounts Receivable.** All accounts receivable, trade accounts, notes receivable, book debts, and other debts due or accruing due to the Seller and the benefit of all security for such accounts, notes, and debts;
- (g) **Prepaid Expenses.** All prepaid expenses;
- (h) **Agreements.** All rights under leases of personal property, orders or contracts for the sale of goods or services (whether as buyer or seller), by the Seller, distribution and agency agreements, and other Contracts not otherwise referred to in this section 1.1, including, without limitation, the Contracts described in Schedule 5;
- (i) **Licenses and Permits.** All licenses, permits, approvals, consents, registrations, certificates and other authorizations, including, without limitation, those described in Schedule 6;
- (j) **Intellectual Property.** All trade or brand names, business names, trademarks, trademark registrations and applications, service marks, service mark registrations and applications, copyrights, copyright registrations and applications, patents, patent registrations and applications and other patent rights (including any patents issued on such applications or rights), trade secrets, proprietary manufacturing information and know-how, equipment and parts lists and descriptions, instruction manuals, inventions, inventors' notes, research data, unpatented blue prints, drawings and designs, formulae, processes, technology and other intellectual property, together with all rights under licenses, registered user agreements, technology transfer agreements and other agreements or instruments relating to any of the foregoing (collectively, "Intellectual Property"), including, without limitation, the trademarks, copyrights, patents, licenses and agreements described in Schedule 7;
- (k) **Computer Hardware and Software.** All computer hardware and software, including all rights under licenses and other agreements or instruments relating thereto;
- (l) **Books and Records.** All books and records (other than those required by law to be retained by the Seller, copies of which will be made available to the Buyer), including, without limitation, customer lists, sales records, price lists and catalogues, sales literature, advertising material, manufacturing data, production records, employee manuals, personnel records, supply records, inventory records, and correspondence files (together with, in the case of any such information that is stored electronically, the media on which the same is stored); and

- (m) **Goodwill.** All goodwill, together with the exclusive right for the Buyer to represent itself as carrying on the Purchased Business in succession to the Seller and the right to use any words indicating that the Purchased Business is so carried on, including the exclusive right to use the name "●" or any variation thereof, as part of the name or style under which the Purchased Business or any part thereof is carried on by the Buyer.

1.2. **Excluded Assets.** The Purchased Assets shall not include any of the following property and assets (collectively, the "Excluded Assets"):

- (a) **Cash.** All cash on hand or in banks or other depositories;
- (b) **Income Taxes.** All income tax instalments paid by the Seller and the right to receive any refund of income taxes paid by the Seller.

2. PURCHASE PRICE

2.1. **Purchase Price.** The aggregate purchase price (the "Purchase Price") payable by the Buyer to the Seller for the Purchased Assets shall be \$●, and shall be paid and satisfied as follows plus or minus the adjustments set out in section 2.2:

- (a) **Deposit.** \$● by cheque made payable to the Seller's solicitor, upon execution of this Agreement to be held in trust by the Seller's solicitor in accordance with the terms and conditions of this Agreement;
- (b) **Closing Balance.** \$●.

2.2. **Adjustments.** The Purchase Price shall be adjusted by all ordinary and usual adjustments as between Seller and Buyer.

2.3. **Allocation of Purchase Price.** The Seller and the Buyer agree to allocate the Purchase Price among the Purchased Assets in accordance with Schedule 8 and to report the sale and purchase of the Purchased Assets for all federal, provincial and local Tax purposes in a manner consistent with such allocation.

2.4. **ETA Election.** The Buyer and the Seller shall elect jointly under subsection 167(1) of the ETA, in the form prescribed for the purposes of that subsection, in respect of the sale and transfer of the Purchased Assets hereunder, and the Buyer shall file such election in its GST return for its reporting period that includes the Closing Date.

2.5. **Transfer Taxes.** The Buyer shall be liable for and shall pay all federal and provincial sales taxes (including any retail sales taxes and land transfer taxes) and all other taxes, duties, fees or other like charges of any jurisdiction properly payable in connection with the transfer of the Purchased Assets by the Seller to the Buyer.

3. ASSUMPTION OF LIABILITIES

3.1. **Assumption of Certain Liabilities by the Buyer.** Subject to the provisions of this Agreement, the Buyer agrees to assume, pay, satisfy, discharge, perform, and fulfill, from and after the

Time of Closing, all obligations and Liabilities of the Seller existing as at the Time of Closing (the "Assumed Liabilities") under:

- (a) **Contracts.** The Contracts described in Schedule 2, Schedule 5 and Schedule 7;
- (b) **Licences.** The licences, permits, approvals, consents, registrations, certificates, and other authorizations described in Schedule 6;
- (c) **Purchase Orders.** The agreements entered into by the Seller in the ordinary course of the Purchased Business for the provision of services or goods to the Seller; and
- (d) **Sales Orders.** The agreements entered into by the Seller in the ordinary course of the Purchased Business for the sale of inventories by the Seller or the provision of services by the Seller.

4. REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to the Buyer as follows and acknowledges that the Buyer is relying on such representations and warranties in connection with its purchase of the Purchased Assets:

- 4.1. **Organization.** The Seller is a corporation duly incorporated and organized and validly subsisting under the laws of the Province of Manitoba and has the corporate power to own or lease its property, to carry on the Purchased Business as now being conducted by it and to enter into this Agreement and to perform its obligations hereunder. The Seller is duly qualified as a corporation to do business in each jurisdiction in which the nature of the Purchased Business or the Purchased Assets makes such qualification necessary.
- 4.2. **Authorization.** This Agreement has been duly authorized, executed, and delivered by the Seller and is a legal, valid, and binding obligation of the Seller enforceable against the Seller by the Buyer in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, and other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.
- 4.3. **No Other Agreements to Purchase.** No person other than the Buyer has any written or oral agreement or option or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option for the purchase or acquisition from the Seller of any of the Purchased Assets.
- 4.4. **No Violation.** The execution and delivery of this Agreement by the Seller and the consummation of the transactions herein provided for will not result in:
 - (a) the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the acceleration of any obligation of the Seller under any Contract to which the Seller is a party or by which it is or its properties are bound, any provision of the constating documents or by-laws or resolutions of the board of directors or shareholders of the Seller, any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over the Seller, any licence, permit, approval, consent or authorization held by the Seller or necessary to the

operation of the Purchased Business or any applicable law, statute, ordinance, regulation or rule; nor

(b) the creation or imposition of any Encumbrance on any of the Purchased Assets.

4.5. **Sufficiency of Purchased Assets.** The Purchased Assets owned or leased by the Seller are sufficient to carry on the Purchased Business. All Purchased Assets owned and used by the Seller in connection with the Purchased Business are in good operating condition and are in a state of good repair and maintenance. During the two years preceding the date of this Agreement, there has not been any significant interruption of operations (being an interruption of more than one day) of the Purchased Business due to inadequate maintenance of any of the Purchased Assets. With the exception of inventory in transit, all the tangible assets of the Purchased Business are situated at the locations set out in Schedule 9.

4.6. **Title to Personal Property.** The Purchased Assets are owned by the Seller with a good and marketable title thereto, free and clear of all Encumbrances other than Permitted Encumbrances.

4.7. **Location of Real Property.** Schedule 1 sets forth the municipal addresses and complete and accurate legal descriptions of all the real property that is used in the Purchased Business and of which the Seller is the beneficial or registered owner (the "Real Property") and Schedule 2 sets forth the real property that is used in the Purchased Business and leased by the Seller (the "Leased Property").

4.8. **Real Property.**

(a) ***Title:*** The Seller is not the beneficial or registered owner of and has not agreed to acquire any real property or any interest in any real property other than the Real Property. The Seller has the exclusive right to possess, use and occupy, and has good and marketable title in fee simple to all the Real Property and Improvements, free and clear of all Encumbrances, easements or other restrictions of any kind other than Permitted Encumbrances.

(b) ***Encumbrances.*** The Improvements situate on the Real Property are wholly situate within the boundaries of the Real Property, and there are no encroachments upon the Real Property by buildings, other structures or improvements of any adjoining property.

(c) ***Compliance With Laws.*** The Real Property, the current uses thereof and the conduct of the Business comply with all restrictive covenants, governmental and quasi governmental regulations, ordinances, statutes, enactments, requirements, Laws and by-laws including, without limitation, those dealing with zoning, town planning schemes, parking, access, loading facilities, landscaped areas, building, electrical and plumbing codes, fire and public health and safety, and Environmental Laws.

(d) ***No Work Orders.*** No alteration, repair, improvement, or other work has been ordered, directed or requested in writing to be done or performed to or in respect of the Real Property or to any Improvement thereon by any municipal, provincial or other competent authority, which alteration, repair, improvement, or other work has not

been completed, and the Seller knows of no written notification having been given to it of any such outstanding work being ordered, directed, or requested, other than those that have been complied with.

- (e) **No Builders Liens.** All accounts for work and services performed and materials placed or furnished upon or in respect of the Real Property at the request of the Seller have been fully paid and satisfied, and no person is entitled to claim a lien under *The Builders Liens Act* (Manitoba) against the Real Property.
 - (f) **Accounts.** There is nothing owing in respect of the Real Property or the Leased Property by the Seller to any municipal corporation or to any other corporation or commission owning or operating a public utility for water, gas, electrical power or energy, steam, or hot water, or for the use thereof, other than current accounts in respect of which the payment due date has not yet passed.
 - (g) **Expropriation.** No part of the Real Property has been taken or expropriated by any federal, provincial, municipal, or other competent authority nor has any notice or proceeding in respect thereof been given or commenced.
 - (h) **Condition.** The Real Property and its Improvements is fit for its present use, and there are no material or structural repairs or replacements that are necessary or advisable and, without limiting the foregoing, there are no repairs to, or replacements of, the roof or the mechanical, electrical, heating, ventilating, air-conditioning, plumbing or drainage equipment or systems that are necessary or advisable, and none of the Real Property or the Leased Property or their Improvements is currently undergoing any alteration or renovation nor is any such alteration or renovation contemplated; and
 - (i) **Service and Access.** The Real Property is fully serviced and has suitable access to public roads, and there are no outstanding levies, charges or fees assessed against the Real Property by any public authority (including development or improvement levies, charges or fees).
- 4.9. **Leased Property.** The Seller is not a party to any lease or agreement to lease in respect of any real property, whether as lessor or lessee, other than the leases (the "Leases") described in Schedule 2 relating to the Leased Property. Schedule 2 sets out the parties to each of the Leases, their dates of execution and expiry dates, any options to renew, the locations of the leased lands and premises and the rent payable thereunder. Except as described in Schedule 2, the Seller occupies the Leased Property and has the exclusive right to occupy and use the Leased Property. Each of the Leases is in good standing and in full force and effect, and neither the Seller nor any other party thereto is in breach of any covenants, conditions or obligations contained therein. The Seller has provided a true and complete copy of each Lease and all amendments thereto to the Buyer.
- 4.10. **Inventories.** The inventories of the Seller relating to the Purchased Business do not include any material items that are slow moving, below standard quality, or of a quality or quantity not usable or saleable in the normal course of business, the value of which has not been written down on its books of account to net realizable market value. The inventory levels of the Seller have been maintained at such amounts as are required for the operation of the

Purchased Business as previously conducted and as proposed to be conducted, and such inventory levels are adequate therefor.

- 4.11. **Accounts Receivable.** All accounts receivable, book debts, and other debts due or accruing to the Seller in connection with the Purchased Business are bona fide and good and, subject to an allowance for doubtful accounts that have been reflected on the books of the Seller in accordance with GAAP, collectible without set-off or counterclaim.
- 4.12. **Intellectual Property.** Attached hereto as Schedule 7 is a complete and accurate list of all trademarks, trade names, business names, patents, inventions, know-how, copyrights, software, service marks, brand names, industrial designs, and all other industrial or intellectual property owned or used by the Seller in carrying on the Purchased Business and all applications therefor and all goodwill connected therewith, including, without limitation, all licenses, registered user agreements, and all like rights used by or granted to the Seller in connection with the Purchased Business and all right to register or otherwise apply for the protection on any of the foregoing (collectively, the "Intellectual Property"). Schedule 7 also includes complete and accurate particulars of all registrations or applications for registration of the Intellectual Property. The Intellectual Property comprises all trademarks, trade names, business names, patents, inventions, know-how, copyrights, software, service marks, brand marks, industrial designs, and all other industrial or intellectual property necessary to conduct the Purchased Business. The Seller is the beneficial owner of the Intellectual Property, free and clear of all Encumbrances, and is not a party to or bound by any Contract or other obligation whatsoever that limits or impairs its ability to sell, transfer, assign or convey, or that otherwise affects, the Intellectual Property. No person has been granted any interest in or right to use all or any portion of the Intellectual Property. The Seller is not aware of a claim of any infringement or breach of any industrial or intellectual property rights of any other person, nor has the Seller received any notice that the conduct of the Purchased Business, including the use of the Intellectual Property, infringes upon, or breaches any industrial or intellectual property rights of any other person, and the Seller, after due inquiry, does not have any knowledge of any infringement or violation of any of their rights or the rights of the Seller in the Intellectual Property. The conduct of the Purchased Business does not infringe upon the patents, trademarks, licenses, trade names, business names, copyright, or other industrial or intellectual property rights, domestic or foreign, of any other person. The Seller is not aware of any state of facts that casts doubt on the validity or enforceability of any of the Intellectual Property. The Seller has provided to the Buyer a true and complete copy of all Contracts and amendments thereto that comprise or relate to the Intellectual Property. Each item of Intellectual Property owned or used by the Seller immediately prior to the closing hereunder will be owned or available for use by the Buyer on identical terms and conditions immediately subsequent to the closing hereunder.
- 4.13. **Insurance.** The Seller has the Purchased Assets insured against loss or damage by all insurable hazards or risks on a replacement cost basis and such insurance coverage will be continued in full force and effect to and including the Time of Closing. Schedule 11 sets out all insurance policies (specifying the insurer, the amount of the coverage, the type of insurance, the policy number and any pending claims thereunder) maintained by the Seller on the Purchased Assets or personnel as of the date hereof and true and complete copies of the most recent inspection reports, if any, received from insurance underwriters or others as to

the condition of the Purchased Assets. The Seller is not in default with respect to any of the provisions contained in any such insurance policy and has not failed to give any notice or present any claim under any such insurance policy, in due and timely fashion. The Seller has provided a true copy of each insurance policy referred to in Schedule 11 to the Buyer.

- 4.14. **No Expropriation.** No part of the Purchased Assets has been taken or expropriated by any federal, provincial, municipal, or other authority, nor has any notice or proceeding in respect thereof been given or commenced, nor is the Seller aware of any intent or proposal to give any such notice or commence any such proceedings.
- 4.15. **Agreements and Commitments.** Except as described in Schedule 2, Schedule 5, Schedule 7 and Schedule 11, the Seller is not a party to or bound by, any Contract relating to the Purchased Business or Purchased Assets including, without limiting the generality of the foregoing:
- (a) any distributor, sales, advertising, agency or manufacturer's representative Contract;
 - (b) any collective bargaining agreement or other Contract with any labour union;
 - (c) any continuing Contract for the purchase of materials, supplies, equipment or services involving more than \$● in respect of any one such Contract or more than \$● in respect of all such Contracts;
 - (d) any employment or consulting Contract or any other Contract with any officer, employee or consultant, other than oral Contracts of indefinite hire terminable by the Seller without cause or reasonable notice;
 - (e) any profit sharing, bonus, stock option, pension, retirement, disability, stock purchase, medical, dental, hospitalization, insurance, or similar plan or agreement providing benefits to any current or former director, officer, employee, or consultant;
 - (f) any trust indenture, mortgage, promissory note, loan agreement, guarantee, or other Contract for the borrowing of money or a leasing transaction of the type required to be capitalized in accordance with generally accepted accounting principles;
 - (g) any commitment for charitable contributions;
 - (h) any Contracts for capital expenditures in excess of \$● in the aggregate;
 - (i) any Contract for the sale of any assets, other than sales of inventory to customers in the ordinary course of the Purchased Business;
 - (j) any Contract pursuant to which the Seller is a lessor of any machinery, equipment, motor vehicles, office furniture, fixtures, or other personal property;
 - (k) any confidentiality, secrecy or non-disclosure Contract (whether the Seller is a beneficiary or obligor thereunder) relating to any proprietary or confidential information or any non-competition or similar Contract;

- (l) any licence, franchise, or other agreement that relates in whole or in part to any Intellectual Property;
- (m) any agreement of guarantee, support, indemnification, assumption or endorsement of, or any other similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any other person, except for cheques endorsed for collection in the ordinary course of the Purchased Business;
- (n) any Contract that expires, or may expire if the same is renewed or extended at the option of any person other than the Seller, more than one year after the date of this Agreement; or
- (o) any Contract entered into by the Seller other than in the ordinary course of the Purchased Business.

The Seller has performed all of the obligations required to be performed by it and is entitled to all benefits under, and is not in default or alleged to be in default in respect of, any Contract relating to the Purchased Business or Purchased Assets to which it is a party or by which it is bound; all such Contracts are in good standing and in full force and effect, and no event, condition, or occurrence exists that, after notice or lapse of time or both, would constitute a default under any of the foregoing. The Seller has provided to the Buyer a true and complete copy of each Contract listed or described in Schedule 2, Schedule 5, Schedule 7 and Schedule 11 and all amendments thereto.

- 4.16. **Compliance with Laws: Governmental Authorization.** The Seller has complied with all Laws applicable to the Purchased Business or the Purchased Assets. Schedule 6 sets out a complete and accurate list of all licenses, permits, approvals, consents, certificates, registrations, and authorizations (whether governmental, regulatory or otherwise) (the "Licenses") held by or granted to the Seller, and there are no other licences, permits, approvals, consents, certificates, registrations or authorizations necessary to carry on the Purchased Business or to own or lease any of the Purchased Assets. Each License is valid, subsisting and in good standing and the Seller is not in default or breach of any License and, to the knowledge of the Seller, no proceeding is pending or threatened to revoke or limit any License. The Seller has provided a true and complete copy of each License and all amendments thereto to the Buyer.
- 4.17. **Consents and Approvals.** There is no requirement to make any filing with, give any notice to, or to obtain any license, permit, certificate, registration, authorization, consent, or approval of, any governmental or regulatory authority as a condition to the lawful consummation of the transactions contemplated by this Agreement, except for the filings, notifications, licences, permits, certificates, registrations, consents, and approvals described in Schedule 12 or that relate solely to the identity of the Buyer or the nature of any business carried on by the Buyer. There is no requirement under any Contract relating to the Purchased Business or Purchased Assets to which the Seller is a party or by which it is bound to give any notice to, or to obtain the consent or approval of, any party to such agreement, instrument or commitment relating to the consummation of the transactions contemplated by this Agreement, except for the notifications, consents and approvals described in Schedule 13.
- 4.18. **Financial Statements.** The Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with prior periods, are correct and complete, and present

fairly the assets, Liabilities and financial condition of the Seller as at the respective dates of the Financial Statements and the sales, earnings and results of operations of the Seller for the respective periods covered by the Financial Statements. The Seller has provided true and complete copies of the Financial Statements to the Buyer.

- 4.19. **Books and Records.** The books and records of the Seller fairly and correctly set out and disclose, in accordance with GAAP, the financial position of the Seller as at the date hereof, and all financial transactions of the Seller relating to the Purchased Business have been accurately recorded in such books and records.
- 4.20. **Absence of Changes.** Since ●, the Purchased Business has been carried on only in the ordinary and normal course consistent with past practice and there has not been:
- (a) any material adverse change in the condition (financial or otherwise), assets, Liabilities, operations, earnings, business, or prospects of the Purchased Business;
 - (b) any damage, destruction, or loss (whether or not covered by insurance) affecting the Purchased Assets;
 - (c) any obligation or liability (whether absolute, accrued, contingent or otherwise, and whether due or to become due) incurred by the Seller in connection with the Purchased Business, other than those incurred in the ordinary and normal course of the Purchased Business and consistent with past practice;
 - (d) any payment, discharge, or satisfaction of any Encumbrance, liability, or obligation of the Seller in relation to the Purchased Business or the Purchased Assets (whether absolute, accrued, contingent or otherwise, and whether due or to become due) other than payment of accounts payable and tax liabilities incurred in the ordinary and normal course of business consistent with past practice;
 - (e) any labour trouble adversely affecting the Purchased Business or the Purchased Assets;
 - (f) any license, sale, assignment, transfer, disposition, pledge, mortgage, or granting of a security interest or other Encumbrance on or over any Purchased Assets, other than sales of inventory to customers in the ordinary and normal course of the Purchased Business;
 - (g) any write-down of the value of any inventory or any write-off as uncollectible of any accounts or notes receivable or any portion thereof relating to the Purchased Business in amounts exceeding \$● in each instance or \$● in the aggregate;
 - (h) any cancellation of any debts or claims or any amendment, termination, or waiver of any rights of value to the Purchased Business in amounts exceeding \$● in each instance or \$● in the aggregate;
 - (i) any general increase in the compensation of employees of the Seller involved in the Purchased Business (including, without limitation, any increase pursuant to any Employee Plan or commitment), or any increase in any such compensation or bonus payable to any officer, employee, consultant, or agent thereof (having an annual salary

or remuneration in excess of \$●) or the execution of any employment contract with any officer or employee (having an annual salary or remuneration in excess of \$●), or making of any loan to, or engagement in any transaction with, any employee, officer, or director of the Seller in relation to the Purchased Business;

- (j) any capital expenditures or commitments relating to the Purchased Business or Purchased Assets in excess of \$● in the aggregate;
- (k) any forward purchase commitments in excess of the requirements of the Purchased Business for normal operating inventories or at prices higher than the current market prices;
- (l) any forward sales commitments other than in the ordinary and normal course of the Purchased Business or any failure to satisfy any accepted order for goods or services;
- (m) any change in the accounting or tax practices followed by the Seller; or
- (n) any change adopted in the depreciation or amortization policies or rates; or any change in the credit terms offered to customers of, or by suppliers to, the Purchased Business.

4.21. **Non-Arm's Length Transactions.** With respect to the Purchased Business:

- (a) the Seller has not since ● made any payment or loan to, or borrowed any moneys from or is otherwise indebted to, any officer, director, employee, shareholder, or any other person not dealing at arm's length with the Seller (within the meaning of the ITA) or any Affiliate or Associate of any of the foregoing, except as disclosed on the Financial Statements and except for usual employee reimbursements and compensation paid in the ordinary course of the Purchased Business; and
- (b) except for Contracts of employment, the Seller is not a party to any Contract with any officer, director, employee, shareholder, or any other person not dealing at arm's length with the Seller (within the meaning of the ITA) or any Affiliate or Associate of any of the foregoing.
- (c) No officer, director, or shareholder of the Seller and no entity that is an Affiliate or Associate of one or more of such individuals:
 - (i) owns, directly or indirectly, any interest in (except for shares representing less than one per cent of the outstanding shares of any class or series of any publicly traded company), or is an officer, director, employee, or consultant of, any person that is, or is engaged in business as, a competitor of the Purchased Business or a lessor, lessee, supplier, distributor, sales agent or customer of the Purchased Business;
 - (ii) owns, directly or indirectly, in whole or in part, any property that the Seller uses in the operations of the Purchased Business; or
 - (iii) has any cause of action or other claim whatsoever against, or owes any amount to, the Seller in connection with the Purchased Business, except for

any liabilities reflected in the Financial Statements and claims in the ordinary course of business such as for accrued vacation pay and accrued benefits under Employee Plans.

- 4.22. **Taxes.** The Seller has duly filed on a timely basis all tax returns required to be filed by it and has paid all taxes that are due and payable, and all assessments, reassessments, governmental charges, penalties, interest, and fines due and payable by it. The Seller has made adequate provision for taxes payable in respect of the Purchased Business for the current period and any previous period for which tax returns are not yet required to be filed. There are no actions, suits, proceedings, investigations, or claims pending or, to the knowledge of the Seller, threatened against the Seller in respect of taxes, governmental charges or assessments, nor are any material matters under discussion with any governmental authority relating to taxes, governmental charges or assessments asserted by any such authority. The Seller has withheld from each payment made to any of its past or present employees, officers, or directors, and to any non-resident of Canada, the amount of all taxes and other deductions required to be withheld therefrom, and has paid the same to the proper tax or other receiving officers within the time required under any applicable legislation. The Seller has remitted to the appropriate tax authority, when required by law to do so, all amounts collected by it on account of GST.
- 4.23. **Litigation.** Except as described in Schedule 14, there are no actions, suits, or proceedings (whether or not purportedly on behalf of the Seller) pending or, to the best knowledge of the Seller, after due inquiry, threatened against or affecting the Seller at law or in equity or before or by any federal, provincial, municipal, or other governmental department, court, commission, board, bureau, agency or instrumentally, domestic or foreign, or before or by an arbitrator or arbitration board. The Seller is not aware of any ground on which any such action, suit, or proceeding might be commenced with any reasonable likelihood of success.
- 4.24. **Residency.** The Seller is not a non-resident of Canada for the purposes of the ITA.
- 4.25. **GST Registration.** The Seller is a registrant, for purposes of the ETA, whose registration number is ●.
- 4.26. **Environmental.**
- (a) ***Compliance.*** The Seller, in respect of the Purchased Business and the Purchased Assets, has been and is in compliance with all applicable federal, provincial, municipal, and local laws, statutes, ordinances, bylaws and regulations, and orders, directives, and decisions rendered by any ministry, department, or administrative or regulatory agency ("Environmental Laws") relating to the protection of the environment, occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any pollutants, contaminants, chemicals, or industrial toxic or hazardous wastes or substances ("Hazardous Substances").
 - (b) ***Licenses.*** The Seller has obtained all licenses, permits, approvals, consents, certificates, registrations and other authorizations under Environmental Laws (the "Environmental Permits") required for the operation of the Purchased Business,

all of which are described in Schedule 6. Each Environmental Permit is valid, subsisting and in good standing, and the Seller is not in default or breach of any Environmental Permit and no proceeding is pending or threatened to revoke or limit any Environmental Permit.

- (c) **Generation of Hazardous Substances.** The Seller, in connection with the Purchased Business, has not used or permitted to be used, except in compliance with all Environmental Laws, any of its property (including any of the Leased Property) or facilities to generate, manufacture, process, distribute, use, treat, store, dispose of, transport, or handle any Hazardous Substance.
 - (d) **Notices and Orders.** The Seller has never received any notice of or been prosecuted for non-compliance with any Environmental laws, nor has the Seller settled any allegation of non-compliance short of prosecution. There are no orders or directions relating to environmental matters requiring any work, repairs, or construction or capital expenditures to be made with respect to the Purchased Business or the Purchased Assets, nor has the Seller received notice of any of the same.
 - (e) **Changes to Environmental Laws.** There are no pending or proposed changes to Environmental Laws that would render illegal or restrict the manufacture or sale of any product manufactured or sold or service provided by the Seller in connection with the Purchased Business.
 - (f) **Release of Hazardous Substances.** The Seller has not caused or permitted, nor does it have any knowledge of, the release, in any manner whatsoever, of any Hazardous Substance on or from any of its properties or assets (including any of the Leased Property) utilized in the Purchased Business, or any such release on or from a facility owned or operated by third parties but with respect to which the Seller in connection with the Purchased Business is or may reasonably be alleged to have liability. All Hazardous Substances and all other wastes and other materials and substances used in whole or in part by the Seller in connection with the Purchased Business or resulting from the Purchased Business have been disposed of, treated and stored in compliance with all Environmental Laws.
 - (g) **Corrective Action.** The Seller has not received any notice that the Seller is potentially responsible for a federal, provincial, municipal, or local clean-up site or corrective action under any Environmental Laws in connection with the Purchased Business. The Seller, in connection with the Purchased Business, has not received any request for information in connection with any federal, provincial, municipal, or local inquiries as to disposal sites.
 - (h) **Environmental Audits.** The Seller has delivered to the Buyer a true and complete copy of all environmental audits, evaluations, assessments, studies, or tests relating to the Purchased Business or Purchased Assets of which it is aware.
- 4.27. **Customers and Suppliers.** Schedule 15 sets out the major customers of the Purchased Business (being those customers of the Purchased Business accounting for more than ●% of sales) and there has been no termination or cancellation of, and no modification or change in, the Seller's business relationship with any major customer or group of major customers.

The Seller has no reason to believe that the benefits of any relationship with any of the major customers or suppliers of the Purchased Business will not continue after the Closing Date in substantially the same manner as prior to the date of this Agreement.

- 4.28. **Product Warranties.** Schedule 16 is a complete list of all express, written warranties given to buyers of products supplied by the Seller in connection with the Purchased Business.
- 4.29. **Employee Plans.** Schedule 5 identifies each retirement, pension, bonus, stock purchase, profit sharing, stock option, deferred compensation, severance or termination pay, insurance, medical, hospital, dental, vision care, drug, sick leave, disability, salary continuation, legal benefits, unemployment benefits, vacation, incentive or other compensation plan or arrangement, or other employee benefit that is maintained, or otherwise contributed to or required to be contributed to, by the Seller relating to the Purchased Business or the Purchased Assets for the benefit of employees or former employees of the Seller (the "Employee Plans") and a true and complete copy of each Employee Plan has been furnished to the Buyer. Each Employee Plan has been maintained in compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules, and regulations that are applicable to such Employee Plan. The Seller has delivered to the Buyer the actuarial valuations, if any, prepared for each Employee Plan during the past • years. Except as described in Schedule 5:
- (a) all contributions to, and payments from, each Employee Plan that may have been required to be made in accordance with the terms of any such Employee Plan, or with the recommendation of the actuary for such Employee Plan, and, where applicable, the laws of the jurisdictions that govern such Employee Plan, have been made in a timely manner;
 - (b) all material reports, returns and similar documents (including applications for approval of contributions) with respect to any Employee Plan required to be filed with any government agency or distributed to any Employee Plan participant have been duly filed in a timely manner or distributed;
 - (c) there are no pending investigations by any governmental or regulatory agency or authority involving or relating to any Employee Plan, no threatened or pending claims (except for claims for benefits payable in the normal operation of the Employee Plans), suits or proceedings against any Employee Plan or asserting any rights or claims to benefits under any Employee Plan that could give rise to a liability nor, to the knowledge of the Seller, are there any facts that could give rise to any liability in the event of such investigation, claim, suit or proceeding;
 - (d) no notice has been received by the Seller of any complaints or other proceedings of any kind involving the Seller or, to the Seller's knowledge, any of the employees of the Seller before any pension board or committee relating to any Employee Plan or to the Purchased Business or the Purchased Assets; and
 - (e) the assets of each Employee Plan are at least equal to the liabilities of such Employee Plans based on the actuarial assumptions utilized in the most recent valuation performed by the actuary for such Employee Plan, and neither the Buyer nor any of

its Associates or Affiliates will incur any liability with respect to any Employee Plan as a result of the transactions contemplated by this Agreement.

- 4.30. **Collective Agreements**. Except as described in Schedule 5, the Seller has not made any Contracts with any labour union or employee association nor made commitments to or conducted negotiations with any labour union or employee association with respect to any future agreements and, except as set out in Schedule 5, the Seller is not aware of any current attempts to organize or establish any labour union or employee association with respect to any Employees of the Seller nor is there any certification of any such union with regard to a bargaining unit. There are no grievances against the Seller for which the Seller has received written notice under any collective agreement.
- 4.31. **Employees**. Schedule 5 contains a complete and accurate list of the names of all individuals who are employees or sales or other agents or representatives of the Seller employed or engaged in the Purchased Business as of the date of this Agreement specifying:
- (a) with respect to the unionized employees, the rate of hourly pay, whether or not such employee is absent for any reason such as lay-off, leave of absence or workers compensation; and
 - (b) with respect to salaried employees and sales or other agents or representatives, the length of service, age, title, rate of salary and commission or bonus structure for each such employee, agent or representative.

No notice has been received by the Seller of any complaint filed by any of the employees against the Seller claiming that the Seller has violated *The Employment Standards Code* (Manitoba) or *The Human Rights Code* (Manitoba) (or any applicable employee or human rights or similar legislation in the other jurisdictions in which the Purchased Business is conducted) or of any complaints or proceedings of any kind involving the Seller or, to the Seller's knowledge, after due inquiry, any of the employees of the Seller before any labour relations board, except as disclosed in Schedule 5. There are no outstanding orders or charges against the Seller under *The Workplace Safety and Health Act* (Manitoba) (or any applicable health and safety legislation in the other jurisdictions in which the Purchased Business is conducted). All levies, assessments and penalties made against the Seller pursuant to *The Workers Compensation Act* (Manitoba) (and any applicable workers compensation legislation in the other jurisdictions in which the Purchased Business is conducted) have been paid by the Seller and the Seller has not been reassessed under any such legislation.

- 4.32. **Employee Accruals**. All accruals for unpaid vacation pay, premiums for unemployment insurance, health premiums, Canada Pension Plan premiums, accrued wages, salaries, and commissions and employee benefit plan payments have been fully paid.
- 4.33. **No Liabilities**. There are no Liabilities of the Seller or its Associates or Affiliates, whether or not accrued and whether or not determined or determinable, in respect of which the Buyer may become liable on or after the consummation of the transaction herein provided for, other than the Assumed Liabilities.
- 4.34. **Full Disclosure**. Neither this Agreement nor any document to be delivered by the Seller nor any certificate, report, statement, or other document furnished by the Seller in connection

with the negotiation of this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading. There has been no event, transaction, or information that has come to the attention of the Seller that has not been disclosed to the Buyer in writing that could reasonably be expected to have a material adverse effect on the assets, business, earnings, prospects, properties, or condition (financial or otherwise) of the Purchased Business.

5. REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller as follows and acknowledges and confirms that the Seller is relying on such representations and warranties in connection with its sale of the Purchased Assets:

- 5.1. **Organization.** The Buyer is a corporation duly incorporated and organized and validly subsisting under the laws of the Province of Manitoba and has the corporate power to enter into this Agreement and to perform its obligations hereunder.
- 5.2. **Authorization.** This Agreement has been duly authorized, executed, and delivered by the Buyer and is a legal, valid and binding obligation of the Buyer, enforceable against the Buyer by the Seller in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- 5.3. **No Violation.** The execution and delivery of this Agreement by the Buyer and the consummation of the transactions herein provided for will not result in the violation of, or constitute a default under, or conflict with or cause the acceleration of any obligation of the Buyer under:
 - (a) any Contract to which the Buyer is a party or by which it is bound;
 - (b) any provision of the constating documents or by-laws or resolutions of the board of directors or shareholders of the Buyer;
 - (c) any judgment, decree, order, or award of any court, governmental body or arbitrator having jurisdiction over the Buyer; or
 - (d) any applicable law, statute, ordinance, regulation, or rule.
- 5.4. **Consents and Approvals.** There is no requirement for the Buyer to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any government or regulatory authority as a condition to the lawful consummation of the transactions contemplated by this Agreement.
- 5.5. **GST Registration.** The Buyer is a registrant for purposes of the ETA, whose registration number is ●.

6.SURVIVAL OF COVENANTS, REPRESENTATIONS AND WARRANTIES

- 6.1. **Survival of Representations and Warranties of the Seller.** To the extent that they have not been fully performed at or prior to the Time of Closing, the covenants, representations, and warranties of the Seller contained in this Agreement and any agreement, instrument, certificate or other document executed or delivered pursuant hereto shall survive the closing of the transactions contemplated hereby and, notwithstanding such closing, nor any investigation made by or on behalf of the Buyer, shall continue in full force and effect for a period of three (3) years.
- 6.2. **Survival of Representations and Warranties of the Buyer.** To the extent that they have not been fully performed at or prior to the Time of Closing, the covenants, representations, and warranties of the Buyer contained in this Agreement and any agreement, instrument, certificate or other document executed or delivered pursuant hereto shall survive the closing of the transactions contemplated hereby and, notwithstanding such closing, nor any investigation made by or on behalf of the Seller, shall continue in full force and effect for a period of three (3) years.

7.COVENANTS

- 7.1. **Access to Purchased Business and Purchased Assets.** The Seller shall forthwith make available to the Buyer and its authorized representatives and, if requested by the Buyer, provide a copy to the Buyer of, all title documents, contracts, financial statements, policies, plans, reports, licenses, orders, permits, books of account, accounting records, and all other documents, information, and data relating to the Purchased Business. The Seller shall afford the Buyer and its authorized representatives every reasonable opportunity to have free and unrestricted access to the Purchased Assets and all other property and assets utilized in the Purchased Business. At the request of the Buyer, the Seller shall execute such consents, authorizations, and directions as may be necessary to permit any inspection of the Purchased Business or any of the Purchased Assets or to enable the Buyer or its authorized representatives to obtain full access to all files and records relating to any of the Purchased Assets maintained by governmental or other public authorities. At the Buyer's request, the Seller shall cooperate with the Buyer in arranging any such meetings as the Buyer should reasonably request with:
- (a) employees employed in the Purchased Business;
 - (b) customers, suppliers, distributors or others who have or have had a business relationship with the Seller in respect of the Purchased Business; and
 - (c) the auditors, solicitors or any other persons engaged or previously engaged to provide services to the Seller who have knowledge of matters relating to the Purchased Business or Purchased Assets.

In particular, without limitation, the Seller shall permit the Buyer's representatives or consultants to conduct all such testing and inspection in respect of environmental matters at such locations of the Purchased Business as the Buyer may determine, in its sole discretion, as may be required to satisfy

the Buyer in respect of such matters and the Seller shall conduct, in cooperation with the representatives or consultants of the Buyer, such physical review of the equipment of the Purchased Business as is necessary so as to enable the confirmation of the values carried on the balance sheets of the Seller in respect of such assets, to the reasonable satisfaction of the Buyer. The exercise of any rights of inspection by or on behalf of the Buyer under this section shall not mitigate or otherwise affect any of the representations and warranties of the Seller hereunder, which shall continue in full force and effect as provided in section 6.1.

- 7.2. **Delivery of Books and Records.** At the Time of Closing, there shall be delivered to the Buyer by the Seller all the books and records described in subsection 1.1(l). The Buyer agrees that it will preserve the books and records so delivered to it for a period of six years from the Closing Date, or for such longer period as is required by any applicable law, and will permit the Seller or its authorized representatives reasonable access thereto in connection with the affairs of the Seller relating to its matters, but the Buyer shall not be responsible or liable to the Seller for or as a result of any accidental loss or destruction of or damage to any such books or records.
- 7.3. **Change and Use of Name.** The Seller agrees that within thirty days from the Closing Date it shall change its name and the name of any of its Associates or Affiliates that include the words "●" to a name that does not include the words "●" or any part thereof or any similar words. The Seller agrees that from and after the Closing Date neither the Seller nor any of its Associates or Affiliates will use the words "●" or any part thereof or any similar words.
- 7.4. **Conduct of Purchased Business Prior to Closing.** Without in any way limiting any other obligations of the Seller hereunder, during the period from the date hereof to the Time of Closing:
- (a) ***Conduct Business in the Ordinary Course.*** The Seller shall conduct the Purchased Business only in the ordinary and normal course consistent with past practice and the Seller shall not, without the prior written consent of the Buyer, enter into any transaction or refrain from doing any action that, if effected before the date of this Agreement, would constitute a breach of any representation, warranty, covenant, or other obligation of the Seller contained herein, and the Seller shall not enter into any material supply arrangements relating to the Purchased Business or make any material decisions or enter into any material Contracts with respect to the Purchased Business without the consent of the Buyer, which consent shall not be unreasonably withheld;
 - (b) ***Continue Insurance.*** The Seller shall continue to maintain in full force and effect all policies of insurance or renewals thereof now in effect, shall take out, at the expense of the Buyer, such additional insurance as may be reasonably requested by the Buyer and shall give all notices and present all claims under all policies of insurance in a due and timely fashion;
 - (c) ***Discharge Liabilities.*** The Seller shall pay and discharge the Liabilities of the Seller relating to the Purchased Business in the ordinary course in accordance and consistent with the previous practice of the Seller, except those contested in good faith by the Seller;

- (d) **Best Efforts.** The Seller shall use its best efforts to satisfy the conditions contained in section 8.1.

7.5. **Employees.** The Seller agrees to provide the Buyer with an up-to-date list of the names of the Employees at least two Business Days and not more than four Business Days prior to the Closing Date. The Buyer agrees that it shall offer employment to all Employees, effective as at the Time of Closing, on substantially the same terms and conditions of employment as are then applicable to the Employees. The Seller shall indemnify and hold harmless the Buyer from and against all Losses suffered or incurred by the Buyer as a result of or arising directly or indirectly out of, in connection with or pursuant to any claims by any, employees of the Purchased Business, other than claims by Transferred Employees who accept the Buyer's offers of employment with respect to their employment with the Buyer. No employee of the Purchased Business shall be entitled to any rights under this section 7.5 or under any other provisions of this Agreement. The Seller shall employ all of the employees set out in Schedule 5 until the Time of Closing, except for any employees who prior to the Time of Closing:

- (a) are terminated for cause;
- (b) are terminated with the Buyer's consent, which consent shall not be unreasonably withheld;
- (c) voluntarily resign; or
- (d) retire.

The Seller shall not attempt in any way to discourage any of the Employees from accepting any offer of employment to be made by the Buyer and shall not solicit the services of any of the Employees during the three year period following the Closing Date without the consent in writing of the Buyer, which consent may be unreasonably withheld.

8.CONDITIONS OF CLOSING

8.1. **Conditions of Closing in Favour of the Buyer.** The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of the Buyer, to be performed or fulfilled at or prior to the Time of Closing:

- (a) **Representations and Warranties.** The representations and warranties of the Seller contained in this Agreement shall be true and correct at the Time of Closing with the same force and effect as if such representations and warranties were made at and as of such time, and a certificate of the President of the Seller, dated the Closing Date, to that effect shall have been delivered to the Buyer, such certificate to be in form and substance satisfactory to the Buyer, acting reasonably;
- (b) **Covenants.** All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Seller at or before the Time of Closing shall have been complied with or performed, and a certificate of the President of the Seller, dated the Closing Date, to that effect shall have been delivered to the Buyer, such certificate to be in form and substance satisfactory to the Buyer, acting reasonably;

- (c) **Regulatory Consents.** There shall have been obtained from all appropriate federal, provincial, municipal, or other governmental or administrative bodies such licences, permits, consents, approvals, certificates, registrations, and authorizations as are required to be obtained by the Seller to permit the change of ownership of the Purchased Assets contemplated hereby, including, without limitation, those described in Schedule 12, in each case in form and substance satisfactory to the Buyer, acting reasonably;
- (d) **Contractual Consents.** The Seller shall have given or obtained the notices, consents and approvals described in Schedule 13, in each case in form and substance satisfactory to this Buyer, acting reasonably;
- (e) **No Action or Proceeding.** No legal or regulatory action or proceeding shall be pending or threatened by any person to enjoin, restrict, or prohibit the purchase and sale of the Purchased Assets contemplated hereby;
- (f) **No Material Damage.** No material damage by fire or other hazard to the whole or any material part of the Purchased Assets shall have occurred from the date hereof to the Time of Closing;
- (g) **No Material Adverse Change.** There shall have been no material adverse changes in the condition (financial or otherwise), assets, Liabilities, operations, earnings, business, or prospects of the Purchased Business since the date of the Financial Statements; and
- (h) **Legal Matters.** All actions, proceedings, instruments, and documents required to implement this Agreement, or instrumental thereto, and all legal matters relating to the purchase of the Purchased Assets, including title of the Seller to the Purchased Assets, shall have been approved as to form and legality by ●, counsel for the Buyer, acting reasonably.

If any of the conditions contained in this section 8.1 shall not be performed or fulfilled at or prior to the Time of Closing to the satisfaction of the Buyer, acting reasonably, the Buyer may, by notice to the Seller, terminate this Agreement and the obligations of the Seller and the Buyer under this Agreement, other than the obligations contained in sections 11.10, and 11.11, provided that the Buyer may also bring an action pursuant to Article 10 against the Seller for damages suffered by the Buyer where the non-performance or non-fulfillment of the relevant condition is as a result of a breach of covenant, representation or warranty by the Seller. Any such condition may be waived in whole or in part by the Buyer without prejudice to any claims it may have or breach of covenant, representation or warranty.

8.2. **Conditions of Closing in Favour of the Seller.** The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of the Seller, to be performed or fulfilled at or prior to the Time of Closing:

- (a) **Representations and Warranties.** The representations and warranties of the Buyer contained in this Agreement shall be true and correct at the Time of Closing with the same force and effect as if such representations and warranties were made at and as of such time, and a certificate of the President of the Buyer, dated the Closing Date, to

that effect shall have been delivered to the Seller, such certificate to be in form and substance satisfactory to the Seller, acting reasonably;

- (b) **Covenants.** All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Buyer at or before the Time of Closing shall have been complied with or performed, and a certificate of the President of the Buyer, dated the Closing Date, to that effect shall have been delivered to the Seller, such certificate to be in form and substance satisfactory to the Seller, acting reasonably;
- (c) **Regulatory Consents.** There shall have been obtained from all appropriate federal, provincial, municipal or other governmental or administrative bodies such licences, permits, consents, approvals, certificates, registrations and authorizations as are required to be obtained by the Buyer to permit the change of ownership of the Purchased Assets contemplated hereby, including those described in Schedule 12, in each case in form and substance satisfactory to the Seller, acting reasonably;
- (d) **No Action or Proceeding.** No legal or regulatory action or proceeding shall be pending or threatened by any person to enjoin, restrict, or prohibit the purchase and sale of the Purchased Assets contemplated hereby; and
- (e) **Legal Matters.** All actions, proceedings, instruments, and documents required to implement this Agreement, or instrumental thereto, shall have been approved as to form and content by • counsel for the Seller, acting reasonably.

If any of the conditions contained in this section 8.2 shall not be performed or fulfilled at or prior to the Time of Closing to the satisfaction of the Seller acting reasonably, the Seller may, by notice to the Buyer, terminate this Agreement and the obligations of the Seller and the Buyer under this Agreement, other than the obligations contained in sections 11.10 and 11.11, provided that the Seller may also bring an action pursuant to Article 10 against the Buyer for damages suffered by it where the non-performance or non-fulfillment of the relevant condition is as a result of a breach of covenant, representation or warranty by the Buyer. Any such condition may be waived in whole or in part by the Seller without prejudice to any claims it may have for breach of covenant, representation. or warranty.

9.CLOSING DATE AND TRANSFER OF POSSESSION

- 9.1. **Transfer.** Subject to compliance with the terms and conditions hereof, the transfer of possession of the Purchased Assets shall be deemed to take effect as at the close of business on the Closing Date.
- 9.2. **Place of Closing.** The closing shall take place at the Time of Closing at the offices of •.
- 9.3. **Delivery of Seller's Closing Documentation.** The Seller shall execute and deliver or cause to be executed and delivered to the Buyer all necessary deeds, conveyances, bills of sale, assurances, transfers, assignments, and any other documentation necessary or reasonably required to transfer the Purchased Assets to the Buyer with a good and marketable title, free and clear of all Encumbrances whatsoever except for Permitted Encumbrances relevant to the closing of the transaction contemplated hereby as the Buyer, acting reasonably, may request.

- 9.4. **Delivery of Buyer's Closing Documentation.** The Buyer shall deliver to the Seller the Closing Balance and shall execute and deliver or cause to be executed and delivered to the Seller such documents relevant to the closing of the transaction contemplated hereby as the Seller, acting reasonably, may request.
- 9.5. **Further Assurances.** From time to time subsequent to the Closing Date, each party to this Agreement covenants and agrees that it will at all times after the Closing Date, at the expense of the requesting party, promptly execute and deliver all such documents, including, without limitation, all such additional conveyances, transfers, consents, and other assurances and do all such other acts and things as the other party, acting reasonably, may, from time to time request be executed or done in order to better evidence or perfect or effectuate any provision of this Agreement or of any agreement or other document executed pursuant to this Agreement or any of the respective obligations intended to be created hereby or thereby.
- 9.6. **Risk of Loss.** From the date hereof up to the Time of Closing, the Purchased Assets shall be and remain at the risk of the Seller. If, prior to the Time of Closing, all or any part of the Purchased Assets that are necessary to carry on the Purchased Business as currently conducted are destroyed or damaged by fire or any other casualty or shall be appropriated, expropriated or seized by governmental or other lawful authority, unless the Buyer terminates its obligations under this Agreement as contemplated by section 8.1, the Buyer shall complete the purchase without reduction of the Purchase Price, in which event all proceeds of insurance or compensation for expropriation or seizure shall be paid to the Buyer at the Time of Closing and all right and claim of the Seller to any such amounts not paid by the Closing Date shall be assigned at the Time of Closing to the Buyer.

10. INDEMNIFICATION

- 10.1. **Indemnification by the Seller.** The Seller agrees to indemnify and save harmless the Buyer from all Losses suffered or incurred by the Buyer as a result of or arising directly or indirectly out of or in connection with:
- (a) any breach by the Seller of or any inaccuracy of any representation or warranty of the Seller contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto (provided that the Seller shall not be required to indemnify or save harmless the Buyer in respect of any breach or inaccuracy of any representation or warranty unless the Buyer shall have provided notice to the Seller in accordance with section 10.3 on or prior to the expiration of the applicable time period related to such representation and warranty as set out, in section 6.1);
 - (b) any breach or non-performance by the Seller of any covenant to be performed by it that is contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto; and
 - (c) the operations of the Purchased Business up to the Time of Closing.

10.2. **Indemnification by the Buyer.** The Buyer agrees to indemnify and save harmless the Seller from all Losses suffered or incurred by the Seller as a result of or arising directly or indirectly out of or in connection with:

- (a) any breach by the Buyer of or any inaccuracy of any representation or warranty contained in this Agreement or in any agreement, instrument, certificate or other document delivered pursuant hereto (provided that the Buyer shall not be required to indemnify or save harmless the Seller in respect of any breach or inaccuracy of any representation or warranty unless the Seller shall have provided notice to the Buyer in accordance with section 10.3 on or prior to the expiration of the applicable time period related to such representation and warranty as set out, in section 6.2);
- (b) any breach or non-performance by the Buyer of any covenant to be performed by it that is contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto; and
- (c) the operations of the Purchased Business on and after the Time of Closing.

10.3. **Notice of Claim.** In the event that a party (the "Indemnified Party") shall become aware of any claim, proceeding, or other matter (a "Claim") in respect of which the other party (the "Indemnifying Party") agreed to indemnify the Indemnified Party pursuant to this Agreement, the Indemnified Party shall promptly give written notice thereof to the Indemnifying Party. Such notice shall specify whether the Claim arises as a result of a claim by a person against the Indemnified Party (a "Third Party Claim") or whether the Claim does not so arise (a "Direct Claim"), and shall also specify with reasonable particularity (to the extent that the information is available):

- (a) the factual basis for the Claim; and
- (b) the amount of the Claim, if known.

If, through the fault of the Indemnified Party, the Indemnifying Party does not receive notice of any Claim in time to effectively contest the determination of any liability susceptible of being contested, the Indemnifying Party shall be entitled to set off against the amount claimed by the Indemnified Party the amount of any Losses incurred by the Indemnifying Party resulting from the Indemnified Party's failure to give such notice on a timely basis.

10.4. **Direct Claims.** With respect to any Direct Claim, following receipt of notice from the Indemnified Party of the Claim, the Indemnifying Party shall have Sixty (60) days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate the Claim, together with all such other information as the Indemnifying Party may reasonably request. If both parties agree at or prior to the expiration of such Sixty (60)-day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Indemnifying Party shall immediately pay to the Indemnified Party the full agreed upon amount of the Claim, failing which the matter shall be referred to binding arbitration in such manner as the parties may agree or shall be determined by a court of competent jurisdiction.

- 10.5. **Third Party Claims.** With respect to any Third Party Claim, the Indemnifying Party shall have the right, at its expense, to participate in or assume control of the negotiation, settlement, or defence of the Claim and, in such event, the Indemnifying Party shall reimburse the Indemnified Party for all the Indemnified Party's out-of-pocket expenses as a result of such participation or assumption. If the Indemnifying Party elects to assume such control, the Indemnified Party shall have the right to participate in the negotiation, settlement, or defence of such Third Party Claim and to retain counsel to act on its behalf, provided that the fees and disbursements of such counsel shall be paid by the Indemnified Party unless the Indemnifying Party consents to the retention of such counsel or unless the named parties to any action or proceeding include both the Indemnifying Party and the Indemnified Party and a representation of both the Indemnifying Party and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences). If the Indemnifying Party, having elected to assume such control, thereafter fails to defend the Third Party Claim within a reasonable time, the Indemnified Party shall be entitled to assume such control and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim. If any Third Party Claim is of a nature such that the Indemnified Party is required by applicable law to make a payment to any person (a "Third Party") with respect to the Third Party Claim before the completion of settlement negotiations or related legal proceedings, the Indemnified Party may make such payment and the Indemnifying Party shall, forthwith after demand by the Indemnified Party, reimburse the Indemnified Party for such payment. If the amount of any liability of the Indemnified Party under the Third Party Claim in respect of which such a payment was made, as finally determined, is less than the amount that was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party shall, forthwith after receipt of the difference from the Third Party, pay the amount of such difference to the Indemnifying Party.
- 10.6. **Settlement of Third Party Claims.** If the Indemnifying Party fails to assume control of the defence of any Third Party Claim, the Indemnified Party shall have the exclusive right to contest, settle or pay the amount claimed. Whether or not the Indemnifying Party assumes control of the negotiation, settlement, or defence of any Third Party Claim, the Indemnifying Party shall not settle any Third Party Claim without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed; provided, however, that the liability of the Indemnifying Party shall be limited to the proposed settlement amount if any such consent is not obtained for any reason.
- 10.7. **Cooperation.** The Indemnified Party and the Indemnifying Party shall cooperate fully with each other with respect to Third Party Claims, and shall keep each other fully advised with respect thereto (including supplying copies of all relevant documentation promptly as it becomes available).
- 10.8. **Exclusivity.** The provisions of this Article 10 shall apply to any Claim for breach of any covenant, representation, warranty or other provision of this Agreement or any agreement, certificate or other document delivered pursuant to this Agreement (other than a claim for specific performance or injunctive relief) with the intent that all such Claims shall be subject to the limitations and other provisions contained in this Article 10.

11.MISCELLANEOUS

- 11.1. **Sections and Headings.** The division of this Agreement into Articles, sections, and subsections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to an Article, section, subsection, or Schedule refers to the specified Article, section, or subsection of or Schedule to this Agreement.
- 11.2. **Number, Gender and Persons.** In this Agreement, words importing the singular number only shall include the plural and vice versa, words importing gender shall include all genders and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies, and other legal or business entities of any kind whatsoever.
- 11.3. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties, or other provisions, express or implied, collateral, statutory, or otherwise, relating to the subject matter hereof except as herein provided.
- 11.4. **Time of Essence.** Time shall be of the essence of this Agreement.
- 11.5. **Applicable Law.** This Agreement shall be construed, interpreted, and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Manitoba and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.
- 11.6. **Successors and Assigns.** This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and, where the context so permits, their respective heirs, personal representatives, successors, and permitted assigns. Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party.
- 11.7. **Amendments and Waivers.** No amendment or waiver of any provision of this Agreement shall be binding on either party unless consented to in writing by such party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise provided.
- 11.8. **Schedules.** The following Schedules are attached to and form part of this Agreement:
- | | | |
|------------|---|---------------------------------------|
| Schedule 1 | - | Owned Real Property |
| Schedule 2 | - | Leased Real Property |
| Schedule 3 | - | Machinery and Equipment |
| Schedule 4 | - | Vehicles |
| Schedule 5 | - | Material Contracts & Employee Matters |
| Schedule 6 | - | Licences and Permits |

Schedule 7	-	Intellectual Property
Schedule 8	-	Allocation of Purchase Price
Schedule 9	-	Location of Assets
Schedule 10	-	Permitted Encumbrances
Schedule 11	-	Insurance Policies
Schedule 12	-	Regulatory Consents
Schedule 13	-	Third Party Consents
Schedule 14	-	Legal and Regulatory Proceedings
Schedule 15	-	Major Customers
Schedule 16	-	Product Warranties
Schedule 17	-	Financial Statements
Glossary of Terms		

11.9. **Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by telecopy or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:

(i) if to the Seller:

-
- Attention: •
- Facsimile No.: •

(ii) if to the Buyer:

-
- Attention:•
- Facsimile No.:

Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day) or, if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid. Either party may at any time change its address for service from time to time by giving notice to the other party in accordance with this section.

11.10. **Disclosure.** Prior to any public announcement of the transaction contemplated hereby pursuant to section 11.11, neither party shall disclose this Agreement or any aspect of such transaction except to its board of directors, its senior management, its legal, accounting,

financial, or other professional advisors, any financial institution contacted by it with respect to any financing required in connection with such transaction and counsel to such institution, or as may be required by any applicable Law or any regulatory authority or stock exchange having jurisdiction.

- 11.11. **Public Announcements.** No public announcement or press release not required by Law or by applicable stock exchange rule concerning the purchase and sale of the Purchased Assets shall be made by the Seller, the Corporation, or the Buyer without the consent and joint approval of the Seller and the Buyer.
- 11.12. **Assignment by Buyer.** The Buyer may assign its rights under this Agreement in whole or in part to any other person; provided, however, that any such assignment shall not relieve the Buyer from any of its obligations hereunder.
- 11.13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF this Agreement has been executed by the parties.

[INSERT NAME OF SELLER]

Per:

[INSERT NAME OF BUYER]

Per:

GLOSSARY OF TERMS

For the purposes of this Agreement, unless the context otherwise requires, the following *terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings*:

"Act" means *The Corporations Act* (Manitoba) as in effect on the date hereof;

"Affiliate" has the meaning given to that term in the Act;

"Associate" has the meaning given to that term in the Act;

"Assumed Liabilities" has the meaning set out in section 3.1;

"Business Day" means any day, other than a Saturday or a Sunday, on which the main branch of the Royal Bank of Canada in Winnipeg, Manitoba is open for business;

"Claim" has the meaning set out in section 10.3;

"Closing Date" means • or such other date as the Seller and the Buyer may mutually determine;

"Contract" means any agreement, indenture, contract, lease, deed of trust, license, option, instrument, or other commitment, whether written or oral;

"Employees" means those employees of the Seller who are employed in the Purchased Business immediately prior to the Time of Closing;

"Encumbrance" means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, right of occupation, any matter capable of registration against title, option, right of pre-emption, privilege, or any Contract to create any of the foregoing;

"Environmental Laws" has the meaning set out in subsection 4.26(a);

"Environmental Permits" has the meaning set out in subsection 4.26(b);

"ETA" means Part IX of the *Excise Tax Act* (Canada), as amended from time to time;

"Excluded Assets" has the meaning set out in section 1.2;

"Financial Statements" means the audited financial statements of the Seller as at and for the financial years ended • and •, including the notes thereto and the report of the Seller's auditors thereon, a copy of which is annexed hereto as Schedule 17;

"GAAP" means generally accepted accounting principles as approved from time to time by the Canadian Institute of Chartered Accountants or any successor thereto;

"GST" means all taxes payable under the ETA or under any provincial legislation similar to the ETA, and any reference to a specific provision of the ETA or any such provincial legislation shall refer to any successor provision thereto of like or similar effect;

"Hazardous Substances" has the meaning set out in subsection 4.26(a);

"Improvements" means all buildings, structures, improvements and appurtenances situate or hereinafter situate on the Real Property, without limitation, all buildings, fences, plant, machinery, fixtures, erections, furnaces, boilers, electric light fixtures, window coverings, appliances, floor coverings, doors, air conditioning, plumbing, cooling and heating equipment placed on, installed or affixed on the Real Property, and all apparatus and equipment appurtenant thereto;

"Indemnified Party" has the meaning set out in section 10.3;

"Indemnifying Party" has the meaning set out in section 10.3;

"Intellectual Property" has the meaning set out in subsection 1.1(j);

"ITA" means the *Income Tax Act* (Canada), as amended from time to time;

"Leased Property" has the meaning set out in section 4.7;

"Leases" has the meaning set out in section 4.9;

"Laws" means all laws, by-laws, statutes, ordinances, regulations, rules, codes, judgments, decrees, directives, or orders applicable to the Purchased Business, the Seller or the property and assets of the Seller;

"Liability" means any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due), including any liability for Taxes;

"Licenses" has the meaning set out in section 4.16;

"Losses" means, in respect of any matter, all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, penalties, and amounts paid in settlement) arising directly or indirectly as a consequence of such matter;

"Permitted Encumbrances" means the Encumbrances described in Schedule 10;

"Purchase Price" has the meaning set out in section 2.1;

"Purchased Assets" has the meaning set out in section 1.1;

"Purchased Business" means the business carried on by the Seller consisting primarily of ;

"Real Property" has the meaning set out in section 4.7;

"Tax" or "Taxes" means:

- (i) any and all forms of taxation, whenever created or imposed, including but not limited to taxes, assessments, charges, duties, fees, levies, and other governmental charges, and whether of the country or Province of incorporation or elsewhere, and whether imposed by a local, municipal, governmental, provincial, federal, or foreign taxing authority and, without limiting the generality of the foregoing, shall include income, alternative, or add-on minimum, GST, excise, sales, use, ad valorem, value added, turnover, capital, gross receipts, franchise, transfer, recording, stamp duty, profits, license, lease, service, business, tangible, withholding, unemployment insurance, workers' compensation, payroll, school employment, health, excise, occupation, or property premium or tax, customs or similar duties, and retirement charges (both the employer's and employee's parts, if applicable); or similar charges of any kind whatsoever due to any governmental authority having jurisdiction for any period for which assessment or reassessment of Tax Liability is not yet barred by operation of Law;
- (ii) any interest, penalties, and additions to Taxes, or additional amounts imposed by any governmental authority responsible for the imposition of any amount described in (i);
- (iii) any Liability of the Seller for the payment of any amounts of the type described in (i) or (ii) as a result of being a member of any affiliated, consolidated, combined, or other group for any applicable period; and
- (iv) any Liability of the Seller for the payment of any amounts described in (i), (ii), or (iii) as a result of any known express or implied obligation to indemnify any other person or entity.

"Time of Closing" means 10:00 a.m. (Winnipeg time) on the Closing Date, or such other time on the Closing Date as the Seller and the Buyer may mutually determine.

5. Due Diligence Checklist

DUE DILIGENCE CHECKLIST

CORPORATION: _____

BUSINESS NAME: _____

BUYER: _____

SELLER: _____

CLOSING DATE: _____

FILE No.: _____

I. Preliminaries

1. Letter to client confirming terms of engagement
2. Letter to Seller's solicitor:
 - (a) confirming our involvement
 - (b) requesting execution of due diligence consent (see below)

II. Searches re: Corporation

1. Companies Office:
 - (a) last annual return
 - (b) constating documents, with all amendments thereto
 - (c) Business Name(s)
 - (d) Certificate of Status
2. Personal Property Registry (on-line search or certified search result) (Note that the registry will be undergoing changes which will make it a digital-first self-managed system in approximately the fall of 2025. Changes to the Regulations are also expected.)

**Date
Requested**

**Date
Received**

3. Bank of Canada re Section 427 registrations
4. Office of the Superintendent of Bankruptcy, Industry Canada
5. Court of King's Bench/Federal Court of Canada re claims, judgments, orders
6. Sheriff's Office re writs of execution
7. City of Winnipeg, Finance Department Business Tax Section
8. Manitoba Department of Finance-Taxation Division:
 - (a) *Corporation Capital Tax Act*
 - (b) *Health & Post Secondary Education Tax Act* levy (consent required)
9. Manitoba Employment Standards Branch re: claims (consent required)
10. Workers Compensation Board Letter of Confirmation or Clearance Certificate (consent required)
11. Retail Sales Tax Branch, Manitoba Department of Finance Letter of Confirmation or Clearance Certificate (consent required)
12. Canada Revenue Agency (CRA)
 - (a) Excise Tax Department
 - (b) Income Tax Department
 - (c) Unemployment Insurance, Income Tax & CPP (consent required)
13. Manitoba Department of Finance
 - (a) Tobacco Tax
 - (b) Gasoline and Motor Fuel Tax (consent required)

14. Manitoba Labour Board – *The Labour Relations Act*
(consent required)
15. Manitoba Human Rights Commission
The Human Rights Code
(consent required)
16. Manitoba Liquor and Lotteries Commission
(consent required)
17. Liquor, Gaming and Cannabis Authority of Manitoba
(consent required)
18. Pension Commission of Manitoba
The Pension Benefits Act
(consent required)

III. Searches re: Shareholder(s)

1. Personal Property Registry
2. Office of the Superintendent of Bankruptcy, Industry Canada
3. Court of King's Bench
re: claims, judgments, orders
4. Sheriff's Office re: writs of execution

IV. Searches re Property

1. City of Winnipeg Finance
Department, Realty Tax Section:
 - (a) on-line search
 - (b) tax certificate
2. Utilities:
 - (a) City of Winnipeg Water Utility
 - (b) Manitoba Hydro
 - (c) Centra Gas Manitoba Inc.
c/o Manitoba Hydro
 - (d) MTS Communications

3. Work Orders, Complaints and Claims:
 - (a) City of Winnipeg
Centralized Property Search
 - (i) Fire Departments
 - (ii) Health Inspections
 - (iii) Building Inspections
 - (iv) Zoning Inspections
 - (b) Manitoba Department of Labour Workplace Safety & Health
(consent required)
 - (c) Manitoba Department of Labour, Inspection and Technical Services
 - (d) Manitoba Conservation Service
File Search

Re: compliance under:
 - (i) *The Orders-Clean Environment Commission*
 - (ii) *The Environment Act*
 - (iii) *The Dangerous Goods Handling and Transportation Act*
 - (iv) *The Waste Reduction and Prevention Act*
 - (v) *The Ozone Depleting Substances Act*
 - (vi) *The Contaminated Sites Remediation Act*
(consent required)
4. City of Winnipeg Ingress and Egress
re: private approaches
5. City of Winnipeg, Waste and Water Cross Connection Control Division
re: violation of By-law 504/73
6. Building Location Certificate and attached sketch
7. Zoning Memorandum (City of Winnipeg Zoning and Permits Branch)
8. Confirmation from City of Winnipeg
Zoning and Permits Branch that use complies with applicable zoning by-laws

9. City of Winnipeg Planning, Property and Development Services re: Occupancy Permit
10. Winnipeg Land Titles
 - (a) on-line title search
 - (b) certified status of title
 - (c) copies of caveats
11. City of Winnipeg local improvement
12. City of Winnipeg Water & Waste Search
 - By-law #7070/97
 - (consent required)
13. City of Winnipeg Waterways Section (if property within 350 feet of the Red, Assiniboine, Seine or La Salle Rivers or within 250 feet of the Sturgeon, Truro, Omand's or Bunn's Creek)
14. City of Winnipeg – Historic Buildings
15. Office of the Fire Commissioner – if property is located outside of the City of Winnipeg
16. Manitoba Health
The Public Health Act
(consent required)
17. Environmental Audit
(Phase I, Phase II or Phase III)
18. Residential Tenancies Branch – rent status report
The Residential Tenancies Act
(consent required)

6. Closing Agenda (Share Purchase)

CLOSING AGENDA
PURCHASE AND SALE OF ALL OF THE SHARES OF
[INSERT NAME OF TARGET CORPORATION]

CLOSING DATE: December 31, 20____

PARTIES:

<u>Party</u>	<u>Representative</u>	<u>Designation</u>
INSERT NAME OF SELLER		"Seller"
INSERT NAME OF BUYER		"Buyer"
INSERT NAME OF TARGET CORPORATION		"Corporation"
INSERT NAME OF SELLER'S LAWYER		"Seller's Lawyer"
INSERT NAME OF BUYER'S LAWYER		"Buyer's Lawyer"

The Buyer has entered into a share purchase agreement dated ●, with the Seller and the Corporation, pursuant to which the Buyer has agreed to purchase, and the Seller has agreed to sell, all of the shares of the Corporation (the "**Share Purchase Agreement**"). This closing agenda sets out the procedures for Closing.

DEFINITIONS: Capitalized terms defined in the Share Purchase Agreement and not otherwise defined in this closing agenda shall have the same meaning herein as in the Share Purchase Agreement. All references in this closing agenda to sections are references to sections in the Share Purchase Agreement.

I. <u>MATTERS TO BE COMPLETED PRIOR TO CLOSING</u>			
<i>Share Purchase Agreement</i>			
1. Share Purchase Agreement	Buyer / Seller / Corporation	All	
<i>Pre-Closing Matters</i>			
2. Completion of Due Diligence (prior to the Closing Date)	Buyer	N/A	
3. Obtain Third Party Consents: [LIST REQUIRED CONSENTS]	Buyer/ Seller	Buyer	
4. Buyer to obtain financing	Buyer	N/A	
II. <u>MATTERS TO BE COMPLETED AT CLOSING</u>			
<i>Corporate Matters</i>			
5. Certificate of Status for Corporation	Seller	Buyer	
6. Certificate of Status for Seller	Seller	Buyer	
7. Certificate of Status for Buyer	Buyer	Seller	
8. Certified Resolution of the Directors of the Seller authorizing the entering into of the Share Purchase Agreement	Seller	Buyer	

9. Certified Resolution of the Directors of Corporation authorizing the entering into of the Share Purchase Agreement and the transfer of shares	Corporation	Buyer	
10. Certified Resolution of the Directors of Buyer authorizing the entering into of the Share Purchase Agreement	Buyer	Seller	
11. Officer's Certificate for the Corporation	Seller	Buyer	
12. Officer's Certificate for the Seller	Corporation	Buyer	
13. Officer's Certificate for the Buyer	Buyer	Seller	
14. Opinion of Seller's Lawyer re Corporation and Seller	Seller's Lawyer	Buyer	
15. Opinion of Buyer's Lawyer re Buyer	Buyer's Lawyer	Seller	
<i>Reps, Warranties and Covenants</i>			
16. Bring Down Certificate of Buyer	Buyer	Seller	
17. Bring Down Certificate of the Seller	Seller	Buyer	
18. Statutory Declaration re Residency of Seller	Seller	Buyer	

<i>Transfer of Shares</i>			
19. Delivery of Original Share Certificates evidencing the issued and outstanding Shares held by Seller	Seller	Buyer	
20. Power of Attorney to Transfer Stock executed by Seller	Seller	Buyer	
21. New Share Certificate evidencing Buyer as the owner of all of the issued and outstanding shares of the Corporation	Seller	Buyer	
<i>Resignations and Releases</i>			
22. Resignation of • as a Director and Officer of the Corporation	Seller	Buyer	
23. Resolution of the Sole Shareholder of the Corporation accepting the resignation and electing new directors	Buyer	Seller	
24. Resolution of the new Directors of the Corporation accepting the resignations and appointing new officers	Buyer	Seller	
25. Release executed by Seller in favour of the Corporation	Seller	Corporation/ Buyer	

26. Release executed by Corporation in favour of Seller	Corporation/ Buyer	Seller	
27. Release executed by resigning directors and officers in favour of Corporation	Resigning directors and officers	Corporation/ Buyer	
28. Release executed by Corporation in favour of resigning directors and officers	Corporation/ Buyer	Resigning directors and officers	
Miscellaneous Agreements			
29. Non-Competition & Non-Solicitation Agreement	Seller / Buyer / Corporation	All	
Payments and Receipts			
30. Direction to Pay from Seller to the Buyer and Buyer's Lawyer directing payment of the Purchase Price to Seller's Lawyer	Seller	Buyer/ Buyer's Lawyer	
31. Order to Pay from Buyer to Buyer's Lawyer regarding payment of Purchase Price	Buyer	Buyer's Lawyer	
32. Payment of Purchase Price by bank draft or solicitor's trust cheque.	Buyer	Seller	
33. Receipt to Buyer from Seller	Seller	Buyer	

34. Delivery to Buyer of minute books and books and record on the Corporation	Seller	Buyer	
35. Delivery of original leases and contracts	Seller	Buyer	
III. <u>MATTERS TO BE COMPLETED POST-CLOSING</u>			
36. Seller to discharge any required security (i.e. personal property security act registrations, mortgages, bank act registrations, etc.) [LIST REGISTRATIONS TO BE DISCHARGED]	Seller	Buyer	
37. Completion of Closing Financial Statements	Seller	Buyer	
38. Filing of tax return for the Corporation for the fiscal year ended the Closing Date and payment of all taxes owed	Seller	Buyer	
39. Filing of Notice of Change of Directors	Buyer's Lawyer	Buyer	
40. Filing of Notice of Change of Registered Office	Buyer's Lawyer	Buyer	

7. Closing Agenda (Asset Purchase)

CLOSING AGENDA
Purchase by [INSERT NAME OF BUYER]
of substantially all of the assets of
[INSERT NAME OF SELLER]

CLOSING DATE:

December 31, 20__

<u>Party</u>	<u>Representative</u>	<u>Designation</u>
INSERT NAME OF SELLER		"Seller"
INSERT NAME OF BUYER		"Buyer"
INSERT NAME OF PRINCIPAL		"Principal"
INSERT NAME OF SELLER'S LAWYER		"Seller's Lawyer"
INSERT NAME OF BUYER'S LAWYER		"Buyer's Lawyer"

The Buyer has entered into an asset purchase agreement dated ●, with the Seller and the Principal, pursuant to which the Buyer has agreed to purchase, and the Seller has agreed to sell, substantially all of its assets (the "**Asset Purchase Agreement**"). This closing agenda sets out the procedures for Closing.

DEFINITIONS

Capitalized terms defined in the Asset Purchase Agreement and not otherwise defined in this closing agenda shall have the same meaning herein as in the Asset Purchase Agreement. All references in this closing agenda to sections are references to sections in the Asset Purchase Agreement.

I. <u>MATTERS TO BE COMPLETED PRIOR TO CLOSING</u>			
<i>Asset Purchase Agreement</i>			
1. Asset Purchase Agreement	Buyer / Seller / Principal	All	
<i>Pre-Closing Matters</i>			
2. Completion of Due Diligence (prior to the Closing Date)	Buyer	N/A	
3. Obtain Third Party Consents: [LIST REQUIRED CONSENTS]	Buyer/ Seller	Buyer	
4. Buyer to obtain financing	Buyer	N/A	
5. Buyer and Seller to complete inventory count (at end of day prior to the Closing Date)	Buyer/Seller	N/A	
6. Seller to provide notices of termination to employees of the Business	Seller	N/A	
7. Buyer to provide offers of employment to employees of the Business	Buyer	N/A	
II. <u>MATTERS TO BE COMPLETED AT CLOSING</u>			
<i>Corporate and Other Documents</i>			
8. Certificate of Status for Seller	Seller	Buyer	
9. Certificate of Status for Buyer	Buyer	Seller	

10. Certified Resolution of the Directors of the Seller authorizing the entering into of the Asset Purchase Agreement	Seller	Buyer	
11. Certified Resolution of the Shareholders of Seller authorizing the sale of substantially all of the assets of the Seller	Seller	Buyer	
12. Certified Resolution of the Directors of Buyer authorizing the entering into of the Asset Purchase Agreement	Buyer	Seller	
13. Officer's Certificate for the Seller	Seller	Buyer	
14. Officer's Certificate for the Buyer	Buyer	Seller	
15. Opinion of Seller's Lawyer re Seller	Seller's Lawyer	Buyer	
16. Opinion of Buyer's Lawyer re Buyer	Buyer's Lawyer	Seller	
<i>Reps, Warranties and Covenants</i>			
17. Bring Down Certificate of Buyer	Buyer	Seller	
18. Bring Down Certificate of the Seller	Seller	Buyer	
19. Statutory Declaration re Residency of Seller	Seller	Buyer	
<i>Transfer of Assets</i>			

20. Bill of Sale for Purchased Assets	Seller	Buyer	
21. Assignment and Assumption of Contracts	Seller	Buyer	
22. Delivery of books and records relating to the Business	Seller	Buyer	
23. Undertaking and Consent for any business names to be transferred to the Buyer	Seller	Buyer	
Miscellaneous Agreements			
24. Non-Competition & Non-Solicitation Agreement	Seller / Buyer / Principal	All	
Payments and Receipts			
25. Statement of Adjustments	Seller	Buyer	
26. Mutual Undertaking to Readjust	Seller/Buyer	Seller/Buyer	
27. Direction to Pay from Seller to the Buyer and Buyer's Lawyer directing payment of the Purchase Price to Seller's Lawyer	Seller	Buyer/Buyer's Lawyer	
28. Order to Pay from Buyer to Buyer's Lawyer regarding payment of Purchase Price	Buyer	Buyer's Lawyer	
29. Payment of Purchase Price by bank draft or solicitor's trust cheque.	Buyer	Seller	

30. Receipt to Buyer from Seller	Seller	Buyer	
31. GST Joint Election	Seller/Buyer	Seller/Buyer	
III. <u>MATTERS TO BE COMPLETED POST-CLOSING</u>			
32. Seller to discharge any required security (i.e. personal property security act registrations, mortgages, bank act registrations, etc.) [LIST REGISTRATIONS TO BE DISCHARGED]	Seller	Buyer	
33. Filing of Casual Purchaser's Return by the Buyer	Buyer	N/A	
34. Filing of GST Joint Election	Buyer	N/A	
35. Clearance Certificate issued pursuant to <i>The Tax Administration and Miscellaneous Taxes Act</i>	Buyer	Seller	
36. Clearance Certificate issued pursuant to <i>The Worker's Compensation Act</i>	Buyer	Seller	
37. <i>Business Names Registration Act</i> Registrations	Buyer	N/A	

8. Statement of Adjustments

STATEMENT OF ADJUSTMENTS

Seller:

Buyer:

Transaction:

Date of Adjustments:

	Credit Buyer	Credit Seller

PURCHASE PRICE:

\$

DEPOSIT:

\$

REALTY TAXES:

PREPAID EXPENSES:

ASSUMED LIABILITIES

BALANCE DUE ON CLOSING:

	\$	\$

E. & O.E.
Prepared by:
CPLED LLP

9. Bill of Sale

BILL OF SALE

THIS BILL OF SALE is made the ____ day of _____, 20____

BY:

[INSERT NAME OF SELLER]
(the "**Seller**"),

IN FAVOUR OF:

[INSERT NAME OF BUYER]
(the "**Buyer**").

WHEREAS:

- (a) Pursuant to an asset purchase agreement dated ●, entered into by and among the Seller, ●, as principal, and the Buyer (the "**Purchase Agreement**"), the Buyer agreed to purchase substantially all of the assets of the Seller;
- (b) The Seller is executing this Bill of Sale pursuant to and subject to the terms and conditions of the Purchase Agreement;

NOW THEREFORE IN CONSIDERATION of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. **Conveyance.** The Seller hereby sells, transfers, conveys, assigns and sets over unto the Buyer, all of the Seller's right, title, benefit and interest in and to the following assets:

- (a) Contracts;
- (b) Inventory;
- (c) Licenses and Permits;
- (d) Machinery, Equipment and Fixtures; and
- (e) Prepaid Expenses;

(but excluding, for greater certainty, the Excluded Property, as hereinafter defined), all free and clear of all liens, charges, mortgages, security interests, and encumbrances of whatsoever nature and kind,

except as provided for in the Purchase Agreement and except as may otherwise be accepted by the Buyer.

2. **Excluded Property.** For greater certainty, the following assets of the Seller are not being sold or transferred to the Buyer, and shall be retained by the Seller (collectively, the “**Excluded Property**”):

- (a) Receivables;
- (b) any cash on hand or in banks or other depositories as of the close of business on the day immediately prior to the Closing Dates; AND
- (c) damaged or obsolete inventory.

3. **Subject to Purchase Agreement.** This Bill of Sale is made pursuant to the Purchase Agreement and the Seller hereby reaffirms the representations and warranties made by it therein.

4. **Definitions.** All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Purchase Agreement.

5. **Enurement.** This Bill of Sale shall enure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns, as applicable.

6. **Governing Law.** This Indenture shall be interpreted in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

IN WITNESS WHEREOF this Bill of Sale has been executed by the Seller on the day and year first above written.

[INSERT NAME OF SELLER]

Per: _____

Name:

Title:

10. Assignment and Assumption of Contracts

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

THIS AGREEMENT is made on this ____ day of _____, 20____

BETWEEN:

[INSERT NAME OF SELLER]

(the "**Assignor**"),

- and -

-

[INSERT NAME OF BUYER]

(the "**Assignee**").

WHEREAS the Assignor wishes to assign to the Assignee all of the leases and contracts listed on Schedule "A" attached hereto (collectively, the "**Contracts**") and the Assignee wishes to have the Contracts assigned to it;

NOW THEREFORE IN CONSIDERATION of the premises, the mutual covenants, and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. **Assignment**. The Assignor does hereby assign, transfer, and set over unto the Assignee the Contracts, and all of its rights, benefits, powers, and remedies thereunder, express or implied, with the intent that the Assignee shall be entitled to enjoy all rights, benefits, and powers thereunder, and be competent to enforce all remedies thereunder to the same extent as the Assignor.
2. **Assumption of Obligations**. The Assignee shall perform and fulfill all obligations and liabilities arising under the Contracts from and after the date hereof.
3. **Indemnity by the Assignor**. The Assignor shall indemnify and save harmless the Assignee from and against any and all claims, suits, demands, liabilities, losses, costs, expenses, and damages (including legal fees and disbursements) which are brought against the Assignee, or which the Assignee may suffer or incur in connection with any non-observance by the Assignor of any of the provisions of this assignment and assumption, or in connection with liabilities or obligations of the Assignor which arise under or out of the Contracts prior to the date hereof.
4. **Indemnity by the Assignee**. The Assignee shall indemnify and save harmless the Assignor from and against any and all claims, suits, demands, liabilities, losses, costs, expenses, and damages (including legal fees and disbursements) which are brought against the Assignor, or which the Assignor may suffer or incur in connection with any non-observance by the Assignee of any of the

provisions of this assignment and assumption, or in connection with liabilities or obligations of the Assignee which arise under or out of the Contracts on or after the date hereof.

5. **Co-operation by the Assignor.** If, by operation of law or otherwise, it becomes necessary or desirable for the Assignee, in order to effectively pursue any remedy to secure the enjoyment of, or to enforce the benefit of, the Contracts, to pursue such remedy in the name, or with the concurrence, of the Assignor, the Assignor shall cooperate with the Assignee and shall facilitate the pursuit of such remedy by joining in such proceeding or by giving its concurrence, as the Assignee may require in the circumstances.
6. **Further Assurances.** Each of the parties hereto shall promptly do, make, execute, or deliver, or cause to be done, made, executed, or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this assignment and assumption and shall use its best efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this assignment and assumption.
7. **Enurement.** This assignment and assumption shall enure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns, as applicable.
8. **Governing Law.** This assignment and assumption shall be interpreted in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.
9. **Counterparts.** This Agreement may be executed by facsimile or electronically scanned signature, and/or in counterparts, each of which counterparts, when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF this Assignment and Assumption has been executed by the parties on the day and year first above written.

[INSERT NAME OF SELLER]

Per:

Name:

Title:

[INSERT NAME OF BUYER]

Per:

Name:

Title:

Schedule "A"
Contracts

[INSERT LIST OF CONTRACTS]

11. Statutory Declaration

RESIDENCY DECLARATION

CANADA) IN THE MATTER of the purchase by [INSERT NAME
) OF BUYER] of all or substantially all of the assets of
PROVINCE OF MANITOBA) [INSERT NAME OF SELLER] pursuant to an asset
) purchase agreement dated • [MODIFY AS
TO WIT:) REQUIRED FOR A SHARE PURCHASE]

I, _____, as President of [INSERT NAME OF SELLER] (the “**Corporation**”), of the City of Winnipeg, in the Province of Manitoba **DO SOLEMNLY DECLARE THAT**

1. I am a duly authorized officer of the Corporation and, as such, have personal knowledge of the statements made herein; and
2. the Corporation is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if it were made under oath and by virtue of the *Canada Evidence Act*.

SWORN BEFORE me at the City of)

Winnipeg in the Province of Manitoba,)

this ___ day of _____, 20___.)

)

A Notary Public in and for the Province of
Manitoba

12. Authorizing Resolutions of Directors (Buyer of Shares)

RESOLUTION OF THE BOARD OF DIRECTORS

OF [INSERT NAME OF BUYER] (the "Corporation")

WHEREAS the Corporation wishes to enter into a share purchase agreement with [INSERT NAME OF SELLER] pursuant to which the Corporation will agree to purchase all of the shares in the capital of [INSERT NAME OF TARGET CORPORATION] for the purchase price of \$● (the "**Share Purchase Agreement**")

NOW THEREFORE BE IT RESOLVED that:

1. The execution and delivery by the Corporation of the Share Purchase Agreement in the form presented to the directors is hereby authorized and approved.
2. Any director or officer of the Corporation is hereby authorized and directed to execute and deliver the Share Purchase Agreement, subject to such amendments or variations as the person executing the Share Purchase Agreement may approve, whose execution of the Share Purchase Agreement in its final form shall be conclusive evidence of such approval.
3. Any officer or director of the Corporation is authorized and directed to execute and deliver all such certificates, instruments, agreements, conveyances, transfers, notices, affidavits, or any other documents as may be necessary or desirable in connection with the transactions contemplated by the Share Purchase Agreement or to give effect to the foregoing provisions of these resolutions and the transactions contemplated by the Share Purchase Agreement.
4. All actions hereinbefore taken by any officer or director of the Corporation in connection with the transactions contemplated by the Share Purchase Agreement or the matters authorized by this Resolution are hereby ratified, sanctioned, adopted, and confirmed.

WITNESS the signatures of the Board of Directors of the Corporation, the first having signed this ___ day of _____, 20___, which shall be the effective date of this Resolution.

13. Authorizing Resolutions of Directors (Seller of Shares)

RESOLUTION OF THE BOARD OF DIRECTORS OF [INSERT NAME OF SELLER] (the "Corporation")

WHEREAS the Corporation wishes to enter into a share purchase agreement with [INSERT NAME OF PURCHASER] pursuant to which the Corporation will agree to sell all of the shares in the capital of [INSERT NAME OF TARGET CORPORATION] for the purchase price of \$● (the "**Share Purchase Agreement**")

NOW THEREFORE BE IT RESOLVED that:

1. The execution and delivery by the Corporation of the Share Purchase Agreement in the form presented to the directors is hereby authorized and approved.
2. Any director or officer of the Corporation is hereby authorized and directed to execute and deliver the Share Purchase Agreement, subject to such amendments or variations as the person executing the Share Purchase Agreement may approve, whose execution of the Share Purchase Agreement in its final form shall be conclusive evidence of such approval.
3. Any officer or director of the Corporation is authorized and directed to execute and deliver all such certificates, instruments, agreements, conveyances, transfers, notices, affidavits, or any other documents as may be necessary or desirable in connection with the transactions contemplated by the Share Purchase Agreement or to give effect to the foregoing provisions of these resolutions and the transactions contemplated by the Share Purchase Agreement.
4. All actions hereinbefore taken by any officer or director of the Corporation in connection with the transactions contemplated by the Share Purchase Agreement or the matters authorized by this Resolution are hereby ratified, sanctioned, adopted and confirmed.

WITNESS the signatures of the Board of Directors of the Corporation, the first having signed this ___ day of _____, 20___, which shall be the effective date of this Resolution.

14. Authorizing Resolutions of Directors and Shareholders (Seller of Assets)

RESOLUTION OF THE BOARD OF DIRECTORS OF [INSERT NAME OF SELLER] (the "Corporation")

WHEREAS the Corporation wishes to enter into an asset purchase agreement with [INSERT NAME OF BUYER AND PRINCIPAL] pursuant to which the Corporation will agree to sell substantially all of its assets for the purchase price of \$● (the "**Asset Purchase Agreement**")

NOW THEREFORE BE IT RESOLVED that:

1. The execution and delivery by the Corporation of the Asset Purchase Agreement in the form presented to the directors is hereby authorized and approved.
2. Any director or officer of the Corporation is hereby authorized and directed to execute and deliver the Asset Purchase Agreement, subject to such amendments or variations as the person executing the Asset Purchase Agreement may approve, whose execution of the Asset Purchase Agreement in its final form shall be conclusive evidence of such approval.
3. Any officer or director of the Corporation is authorized and directed to execute and deliver all such certificates, instruments, agreements, conveyances, transfers, notices, affidavits, or any other documents as may be necessary or desirable in connection with the transactions contemplated by the Asset Purchase Agreement or to give effect to the foregoing provisions of these resolutions and the transactions contemplated by the Asset Purchase Agreement.
4. All actions hereinbefore taken by any officer or director of the Corporation in connection with the transactions contemplated by the Asset Purchase Agreement or the matters authorized by this Resolution are hereby ratified, sanctioned, adopted, and confirmed.

WITNESS the signatures of the Board of Directors of the Corporation, the first having signed this ___ day of _____, 20___, which shall be the effective date of this Resolution.

**RESOLUTION OF THE SHAREHOLDERS
OF [INSERT NAME OF SELLER]
(the "Corporation")**

WHEREAS the Corporation wishes to enter into an asset purchase agreement with [INSERT NAME OF BUYER AND PRINCIPAL] pursuant to which the Corporation will agree to sell substantially all of its assets for the purchase price of \$● (the "**Asset Purchase Agreement**")

NOW THEREFORE BE IT RESOLVED AS A SPECIAL RESOLUTION that:

1. In accordance with section 183 of *The Corporations Act* (Manitoba), the Corporation be and it is hereby authorized to sell all or substantially all of the assets of the Corporation, pursuant to the terms and conditions contained in the Asset Purchase Agreement, in the form of the specimen copy submitted to the directors with such alterations, additions, amendments, and deletions as the directors (or such person or persons as may be designated by the directors) may approve.
2. All actions hereinbefore taken by any officer or director of the Corporation in connection with the transactions contemplated by the Asset Purchase Agreement or the matters authorized by this resolution are hereby ratified, sanctioned, adopted and confirmed.

THE UNDERSIGNED being all of the shareholders of the Corporation hereby consent to the foregoing resolutions pursuant to *The Corporations Act* (Manitoba) as evidenced by their signatures hereto affixed this ____ day of _____, 20__, which shall be the effective date of this Resolution.

15. Authorizing Resolutions of Directors (Buyer of Assets)

RESOLUTION OF THE BOARD OF DIRECTORS OF [INSERT NAME OF BUYER] (the "Corporation")

WHEREAS the Corporation wishes to enter into an asset purchase agreement with [INSERT NAME OF SELLER AND PRINCIPAL] pursuant to which the Corporation will agree to purchase substantially all of the assets of [INSERT NAME OF SELLER] for the purchase price of \$● (the "**Asset Purchase Agreement**")

NOW THEREFORE BE IT RESOLVED that:

1. The execution and delivery by the Corporation of the Asset Purchase Agreement in the form presented to the directors is hereby authorized and approved.
2. Any director or officer of the Corporation is hereby authorized and directed to execute and deliver the Asset Purchase Agreement, subject to such amendments or variations as the person executing the Asset Purchase Agreement may approve, whose execution of the Asset Purchase Agreement in its final form shall be conclusive evidence of such approval.
3. Any officer or director of the Corporation is authorized and directed to execute and deliver all such certificates, instruments, agreements, conveyances, transfers, notices, affidavits or any other documents as may be necessary or desirable in connection with the transactions contemplated by the Asset Purchase Agreement or to give effect to the foregoing provisions of these resolutions and the transactions contemplated by the Asset Purchase Agreement.
4. All actions hereinbefore taken by any officer or director of the Corporation in connection with the transactions contemplated by the Asset Purchase Agreement or the matters authorized by this Resolution are hereby ratified, sanctioned, adopted and confirmed.

WITNESS the signatures of the Board of Directors of the Corporation, the first having signed this ___ day of _____, 20___, which shall be the effective date of this Resolution.

16. Mutual Undertaking to Readjust

MUTUAL UNDERTAKING TO READJUST

THIS AGREEMENT is made on this ____ DAY OF _____, 20____.

BETWEEN:

[INSERT NAME OF SELLER],
(the "Seller"),

- and -

-

[INSERT NAME OF BUYER],
(the "Buyer").

WHEREAS:

- (a) the Seller and the Buyer are parties to an asset purchase agreement dated the ____ day of _____, 20____ (the "**Purchase Agreement**") whereby the Buyer agreed to purchase substantially all of the assets of the Seller's business;
- (b) on the Closing Date, a true and full state of all accounts in respect of the transaction contemplated pursuant to the Purchase Agreement may not be ascertained or determined;

NOW THEREFORE IN CONSIDERATION of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt, and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. **Undertaking to Readjust**. The Seller and Buyer shall respectively readjust any errors, omissions, or changes in any statement of adjustments delivered on or before the Closing Date in order to complete the purchase and sale transactions occurring pursuant to the Purchase Agreement and shall promptly pay to the other party any monies that may become due and payable as a result of such adjustment.
2. **Information**. The Seller and Buyer shall provide each other as reasonably required by the other party all such information and copies of records and accounts so that a final adjustment of the Purchase Price as set forth in the Purchase Agreement may be made between the parties.

3. **Subject to Purchase Agreement.** This Agreement is made pursuant to and is subject to the same qualifications, exceptions, exclusions, conditions, and limitations set out in the Purchase Agreement.
4. **Definitions.** All terms used herein and not otherwise defined shall have the meaning ascribed to them in the Purchase Agreement.
5. **Enurement.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns, as applicable.
6. **Governing Law.** This Agreement shall be interpreted in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein.

IN WITNESS WHEREOF this Agreement has been executed by the parties on the day and year first above written.

[INSERT NAME OF SELLER]

Per:

Name:
Title:

[INSERT NAME OF BUYER]

Per:

Name:
Title:

17. GST Joint Election Form

GST/HST Election Concerning the Acquisition of a Business or Part of a Business

<https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/gst44.html>

18. Casual Purchaser's Return

MB RETAIL SALES TAX CASUAL PURCHASER'S RETURN FORM

<https://www.gov.mb.ca/finance/taxation/pubs/taxforms/rt8.pdf>

19. Reporting Letter of Buyer's Counsel (Purchase of Assets)

LETTERHEAD OF BUYER'S SOLICITORS

[INSERT BUYER NAME & ADDRESS]

Attention:

Dear Sir/Madam:

Re: Purchase of Assets from [INSERT NAME OF SELLER]
Closing Date:

We are pleased to report that all matters relating to the purchase of assets of the business known as [INSERT NAME OF BUSINESS] (the "**Purchased Business**") from [INSERT NAME OF SELLER] (the "**Seller**") have now been completed in accordance with the terms and conditions of an asset purchase agreement between the Seller and [INSERT BUYER'S NAME] (the "**Buyer**") dated • (the "**Purchase Agreement**").

While the specific documents should be referred to for all of the details, set out herein is a summary of the transactions which were completed. Capitalized terms used herein and not otherwise defined herein have the meanings ascribed to them in the Purchase Agreement. All of the relevant documents to this transaction have been bound in a Document Book which is enclosed.

Purchased Assets

Pursuant to the Purchase Agreement, the Buyer agreed to purchase, effective •, all of the property and assets used in connection the Purchased Business (other than the Excluded Assets), including the real property legally described as:

[INSERT LEGAL DESCRIPTION]

We confirm that title to the real property now stands in the name of the Buyer under Title No. • registered in the Winnipeg Land Titles Office. As at •, title to such property is free and clear of all registered caveats, liens and encumbrances, except for the following:

[INSERT EXCEPTIONS, IF ANY]

Purchase Price and Allocation

The purchase price for the Purchased Assets (excluding inventory) was the sum of \$●. The purchase price for the inventory was the sum of \$●. The purchase price was adjusted in accordance with the statement of adjustments and was paid as follows:

- (a) **Deposit.** A deposit of \$● was paid on ● to the Seller’s solicitor to be held in trust;
- (b) **Closing Balance.** On the Closing Date the sum of \$● was paid to the Seller's solicitors in trust, representing payment of the Closing Balance, all as adjusted in accordance with the statement of adjustments.

The parties agreed that the purchase price would be allocated and reported for all purposes in accordance with Schedule ● to the Purchase Agreement, which allocated the purchase price as follows:

ASSET CLASS	ALLOCATED AMOUNT
TOTAL	

Provincial Sales Tax

We confirm that we have forwarded to you a Casual Purchaser's Return to be filed with the Minister of Finance for the provincial sales tax due and owing in connection with this transaction.

Goods and Services Tax

Where a seller sells its business and transfers substantially all of its assets reasonably regarded as necessary for the buyer to be capable of carrying on business, the Excise Tax Act (Canada) permits the seller and buyer to jointly elect so that there is no GST payable on the transfer of such assets. We confirm that the Seller and the Buyer have executed the appropriate prescribed joint election form to complete such election and we are enclosing the original of this document. ***This form must be filed with the Buyer's next GST return during the period in which the transaction closed.***

Representations and Warranties

The Purchase Agreement contains representations and warranties given by the Seller, which are usual for a transaction of this nature. The representations and warranties survive closing for a period of • notwithstanding any investigation made by you or on your behalf.

Indemnification

The Seller agreed to indemnify and save harmless the Buyer against all losses suffered or incurred by the Buyer arising out of any breach or inaccuracy of any representation or warranty, any breach or non-performance of any covenant, and the operations of the Purchased Business up to the Closing Date.

Similarly, the Buyer agreed to indemnify and save harmless the Seller from all losses suffered or incurred by the Seller arising out of the operations of the Purchased Business from and after the Closing Date.

Non-Competition

On •, the Seller, [INSERT NAME OF PRINCIPAL] (the "**Principal**") and the Buyer entered into a non-competition, no solicitation, and nondisclosure agreement whereby the Seller and the Principal agreed for a term of • years to not carry on or be engaged in a competitive business in the Province of Manitoba, to not directly or indirectly solicit any past, present or future customer, to not solicit any employees, and to not directly or indirectly reveal any customer lists, or any other confidential information.

Due Diligence

In accordance with your instructions, we confirm that we have conducted certain due diligence searches on your behalf as set forth in the due diligence search report. The result of each search is shown adjacent to the search conducted. All searches have come back as being "clear", with the following exceptions:

[INSERT EXCEPTIONS]

Monies Received and Disbursed

The following is a statement of monies received and disbursed by our office on your behalf.

Received from Buyer	\$
---------------------	----

Disbursed to Seller's Solicitor regarding purchase of assets	\$
---	----

TOTAL

Concluding Comments

We enclose herewith the following:

1. Original GST Joint Election for filing with Canada Revenue Agency;
2. A Document Book in respect of this matter;
3. Our statement of account for services rendered and disbursements in connection with the matter.

We thank you for entrusting this matter to our care. Should you have any further questions please do not hesitate to contact the writer.

Yours truly,

CPLED LLP

Per:
Encls.