

AGREEMENT
(Purchase and Sale of a Business)

AGREEMENT made this ____ day of _____, ____ by and between _____, hereinafter referred to as the "**SELLER**" and _____, hereinafter referred to as "**PURCHASER**".

WHEREAS, Seller is the owner and operator of a _____ business called _____ and located at _____; and

WHEREAS, the Purchaser desires to purchase the assets of the Seller, including the equipment, inventory on hand, furniture, goodwill, and customer list as more fully set forth in the Agreement; and

WHEREAS, the Parties are desirous of effectuating a smooth and efficient transfer of the business being sold and acknowledge that their mutual goodwill and cooperation are essential to this end.

NOW THEREFORE, the Parties hereto, in consideration of the mutual covenants and agreements herein contained, do hereby, agree as follows:

1. SALE OF ASSETS.

A. The Seller agrees to sell and transfer and the Purchaser agrees to buy the following described _____ business, owned by _____, now located at _____, including the use of the name " _____ ", client list, mailing list, stock in trade, good-will, merchandise, furniture, fixtures, equipment, computer with custom software, forms, and Seller 's rights under or to all contracts and deposits made by the Seller in connection with such business, free and clear of any and all liabilities, debts, mortgages, security; interests or other liens or encumbrances, except as herein stated, all more specifically set forth in Schedule "A" attached hereto and made a part hereof.

(Optional, to be used if leased equipment is being transferred)

B. The Seller hereby transfers and assigns to the Purchaser, to the extent of Seller's interest, if any, as of the date of closing, all business equipment leased by the Seller, as set forth in Schedule "A", providing that the Purchaser assumes sole responsibility, as of the date of closing, for all costs, damages and return of any such items and holds the Seller indemnified, free and harmless from same.

2. PURCHASE PRICE.

The purchase price shall be _____ and ____ /100 (\$ _____) DOLLARS to be paid as follows: _____ and ____ /100 (\$ _____) DOLLARS (the "Down payment"), on execution of this Agreement, to be held in escrow by Seller's attorney until closing, and

_____ and ___/100 (\$ _____)
DOLLARS by certified bank check at closing.

3. CLOSING. The closing shall take place on or about _____ at the offices of _____, or such other mutually agreeable location.

4. DELIVERIES AT CLOSING.

A. The Purchaser shall pay to the order of the Seller the sum of _____ and ___/100 (\$ _____) by certified or bank check.

B. The Seller shall deliver to the Purchaser a Bill of Sale, transferring title to all of the assets of the Seller as per Schedule "A" attached hereto.

C. The Parties agree that there will be no adjustments for rent, taxes, or utilities due or paid on the date of closing.

5. TELEPHONE NUMBERS.

A. The Seller hereby transfers and assigns to the Purchaser, as of the date of closing, the Seller's right to the business telephone number (_____) and fax telephone number (_____).

B. The Purchaser will be solely responsible, as of the date of closing, for all costs of the use of said telephone services and the costs of all directory and yellow page listings and/or advertisements in connection therewith and will hold the SELLER indemnified, free and harmless from same.

C. After the date of closing, the Purchaser, its agents and employees, will advise any callers for the Seller that the Seller has transferred its business to the Purchaser. No information about this transaction shall be given to any such callers without the Seller's express permission and authorization.

6. REPRESENTATIONS. The Seller warrants and represents the following:

A. It is the owner of and has good and marketable title to all the assets specifically enumerated in the attached schedule of assets (Schedule "A"), free from all debts, security interests, liens, and encumbrances.

B. It has entered into no contracts relating to its business.

C. There are no judgments, liens, actions, or proceedings pending or threatened against it anywhere.

D. There are no violations of any kind pending or threatened against the business and will comply with all notices of violations of law, ordinances, or rules and regulations affecting the business as of the date of closing.

E. It has not used any other business name or address within three years of the date of this Agreement.

F. The property to be transferred is now and at the time of closing will be located at the Seller's place of business and will not be removed therefrom without the written consent of the Purchaser.

G. It has not established or participated in any pension or retirement plan or program for the benefit of any present or former employees of the business to be transferred to the Purchaser.

H. It is not insolvent, and will be able to meet business and personal obligations as they become due.

(Optional)

7. **TRANSITION.** The Seller covenants with the Purchaser as follows:

A. The Seller represents that for a period of _____ days after the closing, Seller will teach and instruct the Purchaser, subject to Seller's availability, and without financial compensation from the Purchaser, regarding any and all matters pertaining to the business being sold in this Agreement.

B. If the Seller, at Purchaser's request, provides any services for the business, other than instructional advice, after the date of closing, Seller shall be compensated at a rate to be mutually agreed upon prior to the rendering of any such services.

C. Within a reasonable time after the closing, the Purchaser shall send, at its expense, notices to the Seller's clients, vendors, suppliers and any other appropriate persons or entities that it has acquired the Seller's business herein.

D. The Purchaser will be solely responsible for the operation of the business; and for all billing and collection of same, after the date of closing.

E. Nothing herein shall operate to make the Seller, or its principals and agents, an employee or partner of the Purchaser, but at all times they shall remain independent contractors. The foregoing provisions being temporary and adopted merely to effect a transition from the Seller to the Purchaser.

F. The Seller and Purchaser shall cooperate with each other to make the transition as easy as possible for the clients (customers) of the business.

8. **COVENANTS OF SELLER.** The Seller covenants with the Purchaser as follows:

A. The Bill of Sale to be delivered at the closing will transfer all the assets enumerated in the attached schedule free of all encumbrances, and will contain the usual warranties and affidavit of title.

B. The business will be conducted up to the date of closing in substantially the same manner as it has been conducted in the past, in accordance with all applicable laws and regulations, and no contracts will be entered into with respect to the business without the prior written consent of the Purchaser.

C. No judgments, liens, or security interests will be outstanding at the time of the closing against the Seller or against its business or any assets thereof, except those to be paid and discharged out of the purchase price at closing and approved by the Purchaser's attorney.

D. Debts and other obligations of the business will continue to be paid in the ordinary operation of the business, including, but not limited to, amounts normally and periodically paid to trade creditors, suppliers, state and federal tax authorities for employee withholding, sales tax, and similar items, employee wages and salaries, and transportation charges.

E. Seller will hold Purchaser free and harmless from bills, claims, demands, indebtedness, liability and taxes and any other claims of any nature incurred or arising out of and by reason of the conduct or operation of the business prior to the date of closing by Seller. Purchaser will hold Seller free and harmless from bills, claims, demands, indebtedness, liability and taxes and any other claims of any nature incurred or arising out of and by reason of the conduct or operation of the business after the date of closing by Purchaser.

F. Seller has filed and will file at the date of closing all Federal, State and local

tax returns which are required by it to be filed with payment of all taxes due thereon and such returns hereto filed are true, correct and there are no deficiencies, or assessment claims. In the event that an audit should take place subsequent to the closing of this Agreement for any period prior to the date of closing, the Seller's liability for same is 100 per cent of the taxing authority's demand for said period including all interest and penalties thereon and , further, will pay in full all withholding, social security, and unemployment insurance taxes, applicable.

G. The Seller will pay all wages due the employees up to and including the date of transfer of title.

9. **"AS IS"**. All the personal property sold hereunder shall be sold "as is". Seller makes no express or implied warranties as to its condition, safety, suitability or fitness for any particular purpose.

(Optional)

10. **COVENANT NOT TO COMPETE.** If this transaction closes, Seller, its principals and agents, agree that for three (3) years from date of closing, they will not, directly or indirectly, own, manage, operate, join, control, participate in, engage in any way, as employee, partner, officer, director, shareholder, or otherwise, or through any other person, firm or corporation, in any business similar to or in competition with the Purchaser.

11. **BROKER.** The Parties warrant and represent that no broker was involved in negotiating the purchase of the with in assets. The Parties agree to hold each other harmless and indemnify each other against any all claims for brokers' fees from any broker, arising out of any acts of a Party

12. **RISK OF LOSS.**

A. All risk of loss to the purchased assets up to the time of the closing will be assumed and borne by the Seller. If any loss or damage exceeds \$ _____ Purchaser will have the right to cancel this Agreement by written notice to the Seller and shall be entitled to a return of its "Down Payment". If such loss or damage shall not exceed \$ _____, Seller will bear the loss by an appropriate deduction from the purchase price, or replacement of the damaged assets.

B. As of the date of closing, all risk of loss or damage to the purchased assets will be assumed and borne by the Purchaser.

13. **MISCELLANEOUS.**

A. The Parties agree that the values assigned to the items included in this purchase as set forth herein are fair and reasonable and have been bargained for separately and at arms length after consultation with their accountants, attorneys and other advisors as may be applicable. It is agreed that the purchase price herein of _____ and ___/100 (\$ _____) shall be allocated as follows: Equipment \$ _____; Supplies \$ _____; Goodwill \$ _____; and Restrictive Covenant \$ _____; for a Total of \$ _____.

B. All collections on accounts receivable for work completed prior to the date of closing are the property of the Seller. The Purchaser, to the extent any such accounts receivable are received and/or collected by Purchaser, shall immediately pay over same to the Seller, without any deductions or off-sets of any kind or for any reason.

C. All pre-paid accounts for work to be performed after the date of closing shall be the property of the Purchaser and a final adjustment of any such accounts shall be made at the closing.

D. The Purchaser, its principals and employees, acknowledge that this business as with any business involves financial risks and that the Seller has not made any promises, guarantees, warranties or representations as to the profitability and/or future success of this business and the Purchaser, its principals and employees, have agreed to purchase this business at their own risk.

E. The Parties hereto agree to execute such additional documents and papers and to perform and do such additional acts and things as may, from time to time, be reasonably necessary and proper to effectuate and carry out the transaction contemplated by this Agreement.

F. The Purchaser hereby warrants and represents that it has had ample opportunity to review and investigate the specifics of Seller's business. That it has had the opportunity to make a full and independent investigation of all financial and professional matters. That it is fully satisfied that all relevant information has been disclosed to it.

G. All notices under this Agreement shall be in writing and may be served by personal service or by mail. Notice by mail shall be addressed to each Party at its last known residence or office address.

(Optional)

H. The Parties agree that any dispute, claim or controversy arising under, out of, or in relation to this Agreement shall be submitted for adjudication and/or settlement by arbitration proceedings in accordance with the Rules of the American Arbitration Association, and any determination thereon shall be binding upon the Parties hereto with the same force and effect as if rendered by a court of competent jurisdiction, and judgment thereon may be entered by any Party.

I. Purchaser agrees to waive compliance with the requirements of applicable laws, if any relating to bulk sales and Seller agrees to hold harmless and indemnify Purchaser from and against any and all liabilities that may be asserted against it arising out of such non-compliance.

14. SURVIVAL OF REPRESENTATIONS. All representations, warranties and agreements contained herein shall not be discharged or dissolved upon closing, but shall survive same.

15. ENTIRE AGREEMENT. The Parties represent that this is the entire agreement and understanding among the Parties, and that there are no representations, warranties, terms, covenants or conditions made by any other party except as herein expressly contained. This Agreement shall not be altered, waived, modified or canceled in any respect except in writing, duly executed by all of the Parties hereto, and no oral agreement or course of conduct to the contrary, shall be deemed an alteration, amendment, modification or cancellation.

16. LAW. The construction, performance and enforcement of this Agreement shall be governed by the State of _____.

17. SUCCESSOR AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their legal representatives, successors and assigns forever.

IN WITNESS HEREOF, the Parties have executed this Agreement the day and year first above written.

(Name of corporate Seller)

(Name of corporate Purchaser)

BY _____
(Name), (Title)

BY _____
(Name), (Title)

OR

OR

(Name of Seller)

(Name of Purchaser)