

and Acquirer, shall constitute the parties' agreements with respect to the procedures for negotiation and preparation of the Definitive Agreements.

PART ONE: NONBINDING STATEMENT OF UNDERSTANDING

1. ACQUISITION OF THE STOCK. Subject to (1) the satisfactory results of a due diligence inspection by Acquirer (as provided in paragraph 5) and the making of any agreed upon adjustments to the acquisition price reflecting the assets, liabilities (both known and contingent), finances and business operations of Target, and (2) the ability of Acquirer to secure adequate debt financing to acquire the capital stock for the purchase price (as defined below) and adequately capitalize the business to operate Target's business, and (3) also subject to the conditions, agreements and undertakings referred to below in this Letter, Acquirer will purchase all of the issued and outstanding capital stock of Target.

Acquirer will purchase the capital stock for a purchase price of \$_____ ("Purchase Price") subject to the provisions of this Letter. \$_____ of the Purchase Price will be paid in cash on the date of acquisition ("closing"). Acquirer will pay the remaining \$_____ portion of the Purchase Price over a 5-year period under a subordinated note secured by a pledge of Target stock with the following terms and other terms that may be agreed to by the parties and subject to senior lender approval: (1) the annual rate of interest on the unpaid portion shall be ____%; (2) payments shall be made quarterly with the first payment being an interest only payment in the amount of \$_____; (3) payments 2 through ___ shall be interest and principal payments each in the amount of \$_____; (4) Acquirer may prepay the note at any time without penalty; and (5) in the event of default, *[list names of shareholders]* may take actions necessary to protect their interest.

2. CONSULTING AGREEMENT; NON-COMPETE; BOARD SEAT. At closing, *[list names of shareholders]* will each enter into a ___-month consulting agreement providing for compensation of \$_____/day and reimbursement of out of pocket expenses when their services are requested by Acquirer. In a separate agreement, and except for providing services to benefit Acquirer, *[list names of shareholders]* will also each agree not to be involved in any way with the *[list type of business that shareholders cannot engage in]* until the earlier of Acquirer discontinuing operations or ___ years from the date of closing.

[List names of shareholders] will also be entitled to appoint one director to the Board of Acquirer until the Purchase Price is paid in full. If *[list names of shareholders]* wish to appoint someone other than one of them, that appointment must be mutually agreed to by all parties. This right extends into any entity that Acquirer merges into or otherwise assigns its rights in this Letter.

3. PREPARATION OF DEFINITIVE AGREEMENTS. The parties will negotiate the terms and begin preparation of the Definitive Agreements that will govern the Acquirer's proposed acquisition of the capital stock. To the extent appropriate for transactions of this type and size, the Definitive Agreements will contain customary representations, warranties, covenants, indemnities and other agreements of the parties, including but not limited to: (1) representations and warranties related to each party's power and authority to enter into the Definitive Agreements and perform its obligations thereunder; (2) representation and warranty by *[list names of shareholders]* that the accounts receivable plus cash, less accounts payable, of Target will be equal to or greater than \$_____ on the day prior to closing; (3) ownership and title to the capital stock of Target (and that such interest will be conveyed free and clear of all encumbrances); (4) various representations and warranties concerning Target and

Acquirer such as due organization, good standing, the absence of violation of other agreements and laws, the accuracy of financial information being relied upon, and other matters customary for transactions of this sort; (5) indemnities from [list names of shareholders] in favor of Acquirer against all claims and liabilities with respect to breach of such representations and warranties concerning their ownership interest in the capital stock of Target in favor of Acquirer against all claims and liabilities with respect to breach of such representations and warranties; (6) indemnities from *[list names of shareholders]* in favor of Acquirer for environmental liability caused prior to the date of closing and an indemnity from Acquirer in favor of *[list names of shareholders]* for environmental liability caused after the date of closing; and (7) indemnities from Acquirer in favor of [list names of shareholders] against all claims and liabilities with respect to breach of Acquirer's representations and warranties

The Definitive Agreements are expected to include, without limitation: (1) a purchase and sale agreement to govern Acquirer's acquisition of the capital stock; (2) a promissory note; (3) a consulting agreement; (4) a non-compete agreement, and (5) any other agreements necessary or desirable in connection with any of the foregoing arrangements or any transaction contemplated herein.

4. CONDITIONS PRECEDENT TO THE CLOSING OF PROPOSED ACQUISITION. The Definitive Agreements shall include customary conditions precedent generally applicable to an acquisition of the nature and size of the transactions contemplated by this Letter, each of which must be satisfied prior to the consummation of the transactions contemplated thereby. In general, the closing of the proposed acquisition and the obligations of each party under the Definitive Agreements will be subject to the satisfaction of the conditions precedent, which shall include but not be limited to:

(a) **Satisfactory Results of Due Diligence.** The satisfactory completion of due diligence investigation and acquisition audit by Acquirer (as provided in paragraph 5) showing that the assets of Target and any actual or contingent liabilities against those assets, and the prospective business operations by Acquirer of Target's business are substantially the same as currently understood by Acquirer as of the date of this Letter (determined without regard to any documents which Target or any party may have previously delivered to Acquirer).

(b) **Compliance.** Satisfactory determination that the acquisition and prospective business operations by Acquirer of Target's business will comply with all applicable laws and regulations, including antitrust and competition laws.

(c) **Consents and Approvals.** The approval and consent of the Definitive Agreements by the respective Boards of Target and Acquirer and the receipt of the consents and approvals from all governmental entities, utility providers, railways, material vendors, lenders, landlords, customers, and other parties which are necessary or appropriate to the acquisition of the capital stock and for the prospective business operation by Acquirer, and the receipt of all necessary governmental approvals including the expiration or termination of all required waiting periods.

(d) **Absence of Material Litigation or Adverse Change.** There must be no pending or threatened material claims or litigation involving Target, and no material adverse change in the business prospects of Acquirer operating Target's business.

(e) **Delivery of Legal Opinions.** Customary legal opinions must be delivered, the content

of which shall be mutually agreed upon.

(f) **Successful Financing.** Acquirer must secure the debt and equity financing necessary to acquire the capital stock of Target.

(g) **Environmental.** An environmental inspection by a licensed environmental inspection firm contracted by Acquirer must show the assets of Target to be free from significant environmental liabilities. Acquirer shall be given access to the property of Target and documents as necessary for Acquirer and its agents to conduct the inspection and prepare the reports at the Acquirer's cost. *[List names of shareholders]*, and Target shall represent and warrant as a condition of closing that to the best of their knowledge there are no material adverse environmental liabilities associated with Target or the property it owns.

PART TWO: AGREEMENTS OF THE PARTIES REGARDING THE PROCEDURES FOR NEGOTIATION AND PREPARATION OF THE DEFINITIVE AGREEMENTS.

In consideration of the costs to be borne by each party in pursuing the acquisition and sale contemplated by this Letter and in consideration of the mutual undertakings by the parties as to the matters described in this Letter, upon execution of counterparts of this Letter by each party, the following paragraphs 5 through 10 will constitute legally binding and enforceable agreements of the parties regarding the procedures for the negotiation and preparation of the Definitive Agreements.

5. DUE DILIGENCE. From the date of acceptance by the parties of the terms of this Letter, until the negotiations are terminated as provided in paragraph 9 of this Letter, Target will give Acquirer and Acquirer's management personnel, legal counsel, accountants, and technical and financial advisors, full access and opportunity to inspect, investigate and audit the books, records, contracts, and other documents of Target as it relates to Target's business and all of Target's assets and liabilities (actual or contingent), including, without limitation, inspecting Target's property and conducting additional environmental inspections of property and reviewing financial records, contracts, operating plans, and other business records, for the purposes of evaluating issues related to the operation of Target's business. Target further agrees to provide Acquirer with such additional information as may be reasonably requested pertaining to Target's business and assets to the extent reasonably necessary to complete the Definitive Agreements.

6. CONFIDENTIALITY. By their signature below, each party agrees to keep in strict confidence all information regarding the terms of the proposed acquisition of the capital stock, except to the extent Acquirer must disclose information to lenders and equity partners to obtain necessary debt and equity financing. If this proposal is terminated as provided in paragraph 9, each party upon request will promptly return to the other party all documents, contracts, records, or other information received by it that disclose or embody confidential information of the other party. Acquirer agrees to keep all material and information provided to it, under paragraph five above, confidential and to promptly return the same to Target upon termination of this Letter. The provisions of this paragraph shall survive termination of the agreements set forth in paragraphs 5 - 10.

7. PUBLIC DISCLOSURE. No party will make any public disclosure or issue any press releases pertaining to the existence of this Letter or to the proposed acquisition and sale between the parties without having first obtained the consent of the other parties, except for communications with em-

employees, customers, suppliers, governmental agencies, and other groups as may be legally required or necessary or appropriate (i.e., any securities filings or notices), and which are not inconsistent with the prompt consummation of the transactions contemplated in this Letter. The provisions of this paragraph shall survive termination of the agreements set forth in paragraphs 5-10.

8. DISCLAIMER OF LIABILITIES. Except for breach of any confidentiality provisions hereof, no party to this Letter shall have any liability to any other party for any liabilities, losses, damages (whether special, incidental or consequential), costs, or expenses incurred by the party in the event the negotiations among the parties are terminated as provided in paragraph 9. Except to the extent otherwise provided in any Definitive Agreement entered into by the parties, each party shall be solely responsible for its own expenses, legal fees and consulting fees related to the negotiations described in this Letter, whether or not any of the transactions contemplated in this Letter are consummated.

9. TERMINATION. Except for the provisions set forth in paragraphs 5 - 10 of Part Two, each party hereby reaffirms its intention that this Letter as a whole, and paragraphs 1 - 4 in particular, are not intended to constitute, and shall not constitute, a legal and binding obligation, contract or agreement between any of the parties, and are not intended to be relied upon by any party as constituting such. Accordingly, the parties agree that any party to this Letter may unilaterally withdraw from negotiation or dealing at any time for any or no reason at the withdrawing party's sole discretion by notifying the other party of the withdrawal in writing. If any party withdraws from dealing or negotiation prior to _____, or fails to negotiate in good faith, or if each party hereto has not entered into the Purchase Agreement by _____, then any obligation to negotiate and prepare the Definitive Agreements or otherwise deal with any other party to this Letter, and the agreements of the parties set forth in paragraphs 5 - 10 shall immediately terminate and Target(s) shall retain the deposit described in paragraph 10. It is agreed, however, that the terms of any Purchase Agreement or other Definitive Agreements entered into by the parties controls over the right to withdraw from dealing or negotiations in this paragraph.

10. ACQUIRER EXCLUSIVE OPPORTUNITY; DEPOSIT. *[List names of shareholders]* agree that neither of them nor any of their affiliates will pursue, solicit or discuss any opportunities for any party other than Acquirer to acquire or otherwise control the capital stock of Target until this Letter is terminated by Acquirer or mutually by Acquirer and *[list names of shareholders]* or any of the events in paragraph 9 do not occur by the dates stated and *[list names of shareholders]* notify Acquirer in writing that they are pursuing other buyers for the capital stock. In consideration for this exclusive opportunity, Acquirer will pay to *[list names of shareholders]*, collectively, a \$_____ deposit upon the execution by them of this Letter. The deposit is non-refundable but will be applied to the Purchase Price at closing.

If the terms of this Letter are agreeable to you, please sign a copy of this Letter and return a signed copy by facsimile to me at _____ by no later than noon on _____, followed by a mailed original signed copy. This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed an original, but all of which taken together shall constitute one and the same document. Upon acceptance of the binding provisions of this Letter (those provisions set forth in paragraphs 5 - 10) by each party, the parties will negotiate in good faith to prepare and enter into Definitive Agreements to govern the proposed acquisition and sale, subject to the termination provisions set forth in paragraph 9.

Should you have any questions, please contact me at the phone number listed above.
Sincerely,

"ACQUIRER"

By: _____

Its: _____

_____, Individually and on behalf of Target

_____, Individually and on behalf of Target

_____, Individually and on behalf of Target

_____, Individually and on behalf of Target