

Asset Purchase Agreement or Bulk Sale Agreement

This Asset Purchase Agreement or Bulk Sales Agreement (the "Agreement") is made and effective on ____ (Date), by and between ("Seller") _____ (Name & Address) and ("Buyer") _____.

Seller operates a business ("Business") under the name: _____.

Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, certain assets of Seller used in the Business, subject to the terms of this Agreement.

Therefore the parties agree as follows:

1. Transfer of Assets.

At the Closing, subject to the terms of this Agreement, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of all liens, encumbrances, claims, charges, equities or imperfections of any nature, all contract rights, customer lists, leases, furniture, fixtures, equipment, trademarks, trade names, intellectual property, goodwill, materials, supplies, telephone numbers, business records, and other assets and properties owned or leased by Seller and used or useful in the Business and related operations, but excluding the following, if any: corporate stock records; any minute books or related corporate records; cash, accounts receivable and accounts payable; insurance policies; income tax refunds due; officer and shareholder loans due. The assets and properties to be transferred by Seller to Buyer shall include, without limitation:

- A. The furniture, fixtures and equipment listed in Exhibit A.
- B. Assignment of the lease or leases held by Seller, as lessee, regarding Seller's business location, a copy or copies of which is attached hereto as Exhibit B.
- C. The contracts, leases, licenses and other agreements identified on Exhibit C attached hereto.
- D. Such other of Seller's property and assets identified on Exhibit D attached hereto.
- E. Seller's inventory identified on Exhibit E attached hereto.

2. Transfer and Conveyance Documents.

Seller agrees to deliver to Buyer at the Closing such certificates, bills of sale, documents of title and other instruments of conveyance and transfer, in form and content satisfactory to Buyer, as shall be effective to vest in Buyer good and marketable title in and to any property to be sold, assigned, transferred, conveyed and delivered hereunder in this Agreement.

3. Payment.

Buyer shall pay Seller at the Closing the purchase price of \$ _____ in certified funds as described below, in full payment for everything purchased from Buyer as described in this document. Buyer shall pay an additional amount at Closing for Seller's inventory determined as follows: _____.

4. Allocation of Purchase Price.

The purchase price for the assets and properties referred to in Section 1 and for the covenant not to compete of Seller under Section 13, the assets shall be allocated as follows:

Assets referred to in Section 1. A. \$ _____.
Lease referred to in Section 1. B. \$ _____.
Items referred to in Section 1. C. \$ _____.
Goodwill \$ _____.
Items referred to in Section 1. D. \$ _____.
Covenant not to compete – Sect. 13. A. \$ _____.

This Agreement shall not be deemed or construed to be divisible by reason of allocating the purchase price with respect to separate categories of property. All of the terms, conditions and covenants in this Agreement shall be mutually interdependent.

5. No assumption of Liabilities.

Except as otherwise agreed expressly in writing, Buyer does not and shall not assume or agree to pay any of Seller's or, where applicable, any shareholder's, partner's, or member's, liabilities or obligations of any kind of nature. Seller and, where applicable, any shareholder, partner, or member, shall remain responsible and entirely liable for their respective debts and obligations.

6. Required Further Dealings between the Parties.

From time to time after the date of this Agreement, Seller shall give to Buyer, and to Buyer's representatives, auditors and counsel, full access to all of the properties, books, records, tax returns, contracts, licenses, franchises and all of the documents of Seller relating to the Business and shall furnish to Buyer all information with respect to the Business, as Buyer may from time to time reasonably request. Promptly following execution of this Agreement, Seller shall use Seller's best efforts to obtain all consents (if any, including, without limitation, consents of any government or governmental agency) necessary to effect the sale, assignment, transfer, conveyance and delivery contemplated by Section I hereof. From time to time after the Closing, at Buyer's request and without further consideration, Seller agrees to execute and deliver at Seller's expense such other instruments of conveyance and transfer and take such other action as Buyer reasonably may require more effectively to sell, assign, transfer, convey, deliver and vest in Buyer, and to put Buyer in possession of, any property to be sold, assigned, transferred, conveyed and delivered hereunder.

7. Closing.

- A. The payment of amounts due, delivery of documents and completion of other items related to the transfer of the Business and the assets purchased by Buyer ("Closing") shall be held on _____ (Date) at _____ (Time) at _____ (Location), or on such other date, and at such other time and place, as mutually agreed upon by the parties in writing.
- B. At the Closing:
 - (i) Seller shall execute and deliver to Buyer the instruments of conveyance and transfer called for in Section 2 hereof,
 - (ii) Buyer shall deliver to Seller \$ _____ by certified or cashier's check.
- C. In the event that the Closing hereunder shall not be consummated on the date and time specified in this Section for any reason other than some act, omission or material breach by Buyer, this Agreement shall, at the sole option of Buyer, terminate. Any deposit previously paid by Buyer shall be promptly returned to Buyer and neither party hereto shall have any further obligation or liability to the other party hereto.

8. Representations and Warranties of Seller.

Seller represents and warrants to and covenants with Buyer, and Buyer's successors and assigns (which representations, warranties and covenants shall survive the Closing), as follows:

A. Seller is a _____ duly organized, validly existing and in good standing under the laws of the State of _____ and is qualified as a foreign entity and in good standing in every state where required by the Business.

B. Seller has full power and authority to execute and deliver the Agreement and to consummate the transactions contemplated hereby. The execution, delivery and consummation of this Agreement have been duly authorized and approved by such officers, directors, shareholders, partners and/or members of the Board as required by, and in accordance with, applicable laws and the instruments, agreements and documents controlling Buyer's governance.

C. Seller has delivered to Buyer a list dated _____ of Seller's officers, directors, members, partners and/or shareholders, as appropriate, and Seller shall promptly notify Buyer of any change in its officers, shareholders, or directors on or before the Closing.

D. The balance sheet ("Balance Sheet") of Seller prepared as of _____ and the income statement ("Income Statement") of Seller dated _____ are attached as Exhibit E. The Balance Sheet and Income Statement have been prepared _____ as of _____. The Balance Sheet fairly presents the financial condition of Seller and reflects all assets, properties, debts and liabilities of Seller, fixed or contingent (including adequate provision for all taxes); and the Income Statement fairly presents the results of operations of Seller for the period which it covers. Seller has no liability as of the date of the Balance Sheet of any nature, whether accrued, absolute, contingent or otherwise, not disclosed, fully reflected or reserved against in the Balance Sheet.

E. Except as otherwise disclosed by Seller in writing, as of the date of this Agreement, the assets and properties of Seller are not, and as of the Closing they will not be, subject to any liens, encumbrances, claims, clouds, charges, equities or imperfections of any nature.

F. Neither the execution or delivery by Seller of this Agreement or the transactions contemplated hereby will: (i) result in the creation of any lien, security interest, or encumbrance upon any of the assets of Seller; (ii) violate any order, writ, injunction, decree, judgment, law, rule, regulation or ruling of any court or governmental authority applicable to Seller or any of its properties; or (iii) require any consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority.

G. Seller, and where applicable any shareholder, officer, director, member or partner, are in violation of, or under investigation with respect to, or have been charged with or given notice of, any violation of any applicable law, statute, order, rule, regulation, policy or guideline promulgated or judgment entered, by any federal, state or local court or governmental authority relating to or affecting the Business, Seller or any of Seller's assets.

H. Since the date of the Balance Sheet there has not been, and between the date hereof and the Closing Date there will not be, any materially adverse change in the financial condition, assets, liabilities, business or property of Seller, or with respect to its employees or customers, and Seller has no knowledge of any fact or contemplated event which may, in the future, cause any such materially adverse change. Since the date of the Balance Sheet, and pending the Closing, the business of the Seller has been, and will be, conducted only in the ordinary course.

I. Copies of all leases, instruments, agreements and other documents which have been delivered or may be delivered to Buyer by Seller pursuant to or in connection with this Agreement are and will be complete and correct as of the date hereof and as of the Closing. Exhibits B and C, attached hereto and made a part hereof, are lists of all contracts, leases, licenses and other agreements relating to the Business. Seller is not in default and has not received any notice of default under any such contract, lease, license or other agreement or under any other obligation relating to the Business.

J. As of the date hereof there is, and on the Closing Date there will be, no litigation at law or in equity, no proceeding before any commission or other administrative or regulatory authority, and no dispute, claim or controversy (including, without limitation, labor union strikes, elections, arbitrations, grievances, complaints, or administrative actions) pending, or to the knowledge of Seller threatened, against or affecting the business or property of Seller or its right to carry on its business and enter into and consummate the transactions contemplated by this Agreement.

K. Seller has previously delivered to Buyer copies of all plans, contracts, agreements, programs, and policies relating to, and all information referred to in, the following, if any: (i) all employment, bonus, profit sharing, percentage compensation, deferred compensation, pension, employee benefit, welfare and retirement plans, contracts and agreements, consulting agreements, and labor union and collective bargaining agreements to which Seller is a party or is subject, (ii) the wage rates for nonsalary and nonexecutive employees of Seller; (iii) all group insurance programs in effect for employees of Seller; and (iv) any increase in the compensation payable or to become payable by Seller, or any bonus, percentage compensation, service award or other similar benefit granted, made or accrued to the credit of any salaried employee, agent or consultant of Seller.

L. There is no unfair labor practice complaint against Seller pending before the National Labor Relations Board. There is no strike dispute, slowdown or work stoppage, or any union organizing campaign, pending, or to the best of the knowledge of Seller, threatened against or involving Seller. No labor agreements have been filed with Seller which has had, or may have, a materially adverse effect on Seller's business. No collective bargaining agreement is currently being negotiated with Seller.

M. Seller has not employed any broker or finder or incurred any liability for any brokerage fees, commissions, finder fees or similar fees or expenses, and no broker or finder has acted directly or indirectly for Seller in connection with this Agreement or the transactions contemplated hereby, except:

N. On the date hereof Seller has, and on the Closing Seller shall have, duly prepared and timely filed all local, state and federal tax returns (including, without limitation, those which relate to FICA, withholding and other payroll taxes) required to be filed by such dates, and paid all taxes, penalties and interest with respect thereto. To the extent that any tax liabilities have accrued but not become payable, the full amounts thereof have been reflected as liabilities or reserved against on the Balance Sheet. After the Closing, Seller shall duly prepare and timely file any and all local, state and federal tax returns which pertain, in whole or in part, to the period on or before the Closing, and pay all taxes, penalties and interest with respect thereto.

O. On the date hereof, the properties and assets to be transferred under this Agreement are, and on the Closing they will be, in good condition and repair.

P. Seller shall permit Buyer and its representatives at all reasonable times during business hours and without interfering with the normal conduct of the business of Seller, to examine and have full access to all of the properties, books and records of Seller and to copy such books and records (at Buyer's expense).

9. Representations and Warranties of Buyer.

Buyer represents and warrants to and covenants with Seller (which representations and warranties shall survive the Closing) as follows:

A. Buyer is a _____ duly organized, validly existing and in good standing under the laws of the State of _____.

B. Buyer has full power and authority to execute and deliver the Agreement and to consummate the transactions contemplated herein. The execution, delivery and consummation of this Agreement have been duly authorized and approved by such officers, directors, shareholders, partners and/or members of Buyer as required by, and in

accordance with, applicable laws and the instruments, agreements and documents controlling Buyer's governance.

C. As of the date hereof there is, and as of the Closing there will not be litigation at law or in equity, no proceeding before any commission or other administrative or regulatory authority, and no dispute, claim or controversy pending, or to the knowledge of Buyer threatened, against or affecting the right of Buyer to enter into and consummate the transactions contemplated by this Agreement.

D. Buyer has not employed any broker or finder or incurred any liability for any brokerage fees, commissions, finder fees or similar fees or expenses in connection with the transactions contemplated by this Agreement, and no broker or finder has acted on Buyer's behalf except:

10. Indemnification.

A. Seller indemnifies and holds harmless Buyer against any loss, damage or expense (including, without limitation, taxes, penalties, interest and reasonable attorney's fees) asserted against or suffered by Buyer arising out of or resulting from (i) any breach of this Agreement by Seller; (ii) any inaccuracy in the representations, warranties, and covenants made by Seller in this Agreement, or in any certificate, schedule, exhibit or written instrument delivered or to be delivered under this Agreement; and (iii) any liability, obligation, demand, claim, action, or judgment, known or unknown, which may already have arisen or which may hereafter arise, by reason of or in connection with the operation of Seller's business prior to the Closing.

B. Furthermore,

(i) Buyer shall promptly notify Seller of any claim or demand, which Buyer determines, has given or could give rise to a right of indemnification under this Agreement. Unless Seller give Buyer written notice that either contests Buyer's right to indemnification for a claim or demand within thirty (30) days of the date Buyer notifies them of such a claim or demand, Seller shall be deemed to have acknowledged Buyer's right to indemnification for such claim or demand pursuant to the provisions of this Agreement.

(ii) If any claim or demand relates to a claim or demand asserted by a third party against Buyer, Seller shall have the duty, at Seller's expense, to defend any such claim or demand. Buyer shall make available to Seller and Seller's representatives all records and other materials reasonably required by them for their use in contesting any such claim or demand. Buyer shall have the right, but not the obligation, to employ separate counsel, and to participate with Seller in the defense of any such claim or demand, but Buyer shall pay the fees and expenses of such separate counsel. In not event shall Buyer be obligated to defend any such claim or demand.

11. Conditions Precedent to the Obligations of Buyer.

The obligations of Buyer under this Agreement are subject to the following conditions precedent:

A. The representations, warranties and covenants made by Seller herein to Buyer shall be true and correct in all material respects on and as of the Closing Date with the same effect as if such representations, warranties and covenants had been made on and as of date of the Closing, and Seller shall have performed and complied with all agreements, covenants and conditions on their part required to be performed and complied with on or prior to the Closing.

B. Buyer shall have obtained all local, state and federal licenses, permits and other authorizations necessary for Buyer to conduct the Business in the State of _____.

C. The assets to be purchased by Buyer and the Business shall not have been adversely affected in any material way (whether or not covered by insurance) as a result of any fire, casualty, act of God or any labor dispute or disturbances.

D. If Seller is incorporated, Seller shall have delivered to Buyer on or before the Closing a

certificate executed by its secretary setting forth the resolutions adopted by the directors and shareholders of Seller to authorize the execution and delivery of the Agreement and the consummation of the transactions contemplated hereby.

E. Seller shall have fully performed all covenants of Seller in this Agreement which must be performed by Seller on or before the Closing.

F. Buyer may at any time and from time to time waive any one or more of the foregoing conditions, but any such waiver must be in writing executed by Buyer to be effective.

12. Conditions Precedent to the Obligations of Seller.

The obligations of Seller shall be subject to the condition precedent that all warranties, representations, and covenants made by Buyer to Seller in this Agreement shall be true and correct in all material respects on and as of the Closing with the same effect as if such warranties, representations, and covenants had been made on and as of the date of the Closing, and Buyer shall have performed or complied with all agreements, covenants and conditions on its part required to be perfected or complied with on or prior to the Closing.

13. Covenants of Seller.

Seller covenants with Buyer as follows:

A. During the period from and after the Closing, within _____ (time), Seller shall not directly or indirectly, or as a partner, shareholder, employee, manager or otherwise, own, manage, operate, control, be employed by, participate in, or otherwise be connected with any other business the same as or similar to the Business. In the event any of the provisions of this Section shall be determined to be invalid by reason of their scope or duration, this Section shall be deemed modified to such extent as required to cure the invalidity. In the event of a breach, or a threatened breach, of this covenant, Buyer shall be entitled to obtain an injunction restraining the commencement or continuance of the breach, as well as to any other legal or equitable remedies permitted by law.

B. If Seller is a corporation, limited liability company or limited partnership or Seller has filed a fictitious name registration, on or before the Closing, Seller shall file with the appropriate state office the documents appropriate to change its name to a name which is not the same as or similar to its current name or any trade or business name used in connection with the Business and/or to reflect that it no longer uses the fictitious name used in the Business.

14. Employee Benefit Plans.

Seller is not a party to nor a provider of any executive or employees' compensation plan or agreement or compensatory plan or agreement with any independent contractor or employee of Seller (an "Employee Benefit Plan") including, without limitation, any bonus, stock purchase, stock option, profit sharing, pension, savings, retirement or similar qualified or unqualified plan, group life insurance, group health insurance or group disability coverage, except as follows:

If Seller is a party to or provider of any Employee Benefit Plan, Buyer shall not be obligated to continue to provide such plan or any other benefit to any person.

15. Consulting Agreement.

At the Closing, Buyer and Seller (or a principal of Seller) may enter into a Consulting Agreement in the form and with the content of the Consulting Agreement attach as Exhibit H.

16. Notices.

Any notice under this Agreement shall be effectively given by fax or by a recognized over night delivery service such as FedEx, and addressed as follows (or at such change of address given by one party to the other in writing after the date hereof):

If to Buyer: _____.

If to Seller: _____.

17. No Waiver.

The waiver or failure of either party to exercise in any respect any right provided in this agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.

18. Entirety of Agreement.

The terms and conditions set forth herein constitute the entire agreement between the parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein. No change can be made to this Agreement other than in writing and signed by both parties.

19. Governing Law.

This Agreement shall be construed and enforced according to the laws of the State of _____ and any dispute under this Agreement must be brought in this venue and no other.

20. Headings in this Agreement

The headings in this Agreement are for convenience only, confirm no rights or obligations in either party, and do not alter any terms of this Agreement.

21. Severability.

If a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, holds any term of this Agreement including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

In Witness whereof, the parties have executed this Agreement as of the date first written above.

Buyer

Seller

Date

EXHIBIT A
Seller's Furniture, Fixtures and Equipment

EXHIBIT B
Seller's Lease or Leases

EXHIBIT C
Seller's Contracts and Licenses

EXHIBIT D
Seller's Other Assets

EXHIBIT E
Seller's Inventory

EXHIBIT F
Seller's Financial Statements

EXHIBIT G
Seller's Existing Liens

Page 16 of 17

EXHIBIT H
Consulting Agreement (If any)

Asset Purchase Agreement Or Bulk Transfer Agreement Review List

This review list is provided to inform you about the document in question and assist you in its preparation. Because of the complexity of this type of agreement, we have included an additional checklist applicable to buying businesses. Since this is a major purchase, you need to have an attorney review the paperwork for various issues that may arise.

1. This agreement should be used only when the assets of an ongoing business will be purchased. In other words, it should not be used for a direct stock purchase. The purpose of this kind of agreement, as opposed to a stock purchase, is to avoid responsibility for the ongoing responsibilities associated with the seller's corporation such as lawsuits, unknown liabilities or potential liabilities, accounts receivable, and other possible negative issues. A bulk transfer or asset purchase never can fully isolate you from these issues. But, they can provide substantial help to avoid these unforeseen liabilities.
2. The Asset Purchase Agreement form contemplates that the buyer will purchase all of the assets used in the seller's business, but will not acquire things like cash and accounts receivable. The form provides that the buyer will acquire the seller's trade names and telephone numbers. However, cash and accounts receivable can be included and often are. This is a discretionary item of the parties.
3. After signing the agreement, both buyer and seller must do significant work to prepare for closing. Buyer make sure the funds for the purchase are in place and must use "due diligence" to investigate seller's business and make sure that the assets are appropriate for purchase. Seller must accommodate buyer's investigation and make sure that clear title to assets can be conveyed. Review the agreement carefully and also see the Buying a Business Checklist.
4. Print multiple copies of the agreement so all of the related parties can have a copy as required. The buyer will certainly need a few for future business dealings.

Buying a Business Checklist

This checklist is provided to help you complete the transaction.

1. No signatures are required; this is for your internal use.
2. Print the checklist and keep it with your other important documents related to your transaction.
3. Take the Buying a Business Checklist with you to closing in case you need to refer to it as needed.
4. Finding and Evaluating an Acquisition Candidate
 - A. Research. If you have not identified a business to purchase, this is the most important part of the process. The following are possible sources of information about businesses that may be for sale:
 - Classified advertisements. Check out business publications and trade publications in industries of interest.
 - Bankers, lawyers and accountants. These and other professional advisors will have clients or

customers who are interested in selling their business.

- Industry sources. If you have identified an industry in which you would like to purchase, check with trade associations and other groups where members of the industry come together.
- Business Brokers. There are many reputable business brokers. Investigate the reputation of a broker before you make contact. Remember that these entities usually work on a commission paid by the seller from the proceeds of the sale. Consequently, some brokers are primarily motivated to complete a sale at the highest possible price, regardless of whether the transaction makes sense for the buyer.
- Internet. Many sites are available with information about businesses for sale. Many are run by brokers promoting their inventory of businesses or listing services that accept a fee from the seller for the listing.
- Vendors and Suppliers. Many companies in the business of selling goods and services to other businesses hear about companies that are for sale. Develop contacts with those that supply to the industry in which you are interested.

B. Evaluation. Once you have identified a suitable candidate, contact the owner or broker representing the owner, to make an initial inquiry. The request for a non-disclosure agreement at this point is a reasonable request. We have such a form in our Legal Guide. Owners usually are concerned about their employees' reaction to a sale. So do not discuss the purpose for your contacts with the owner until authorized to do so. Consider asking for financial records, including tax returns, market and sale plans, projections and important contracts. Involve your professional advisors as needed to review these items. The owner may not agree to share some or all of these until satisfied that you are a legitimate prospect to purchase and negotiations have progressed. It is important for both parties to be realistic about valuing the business. Consider assistance from an appraiser, accountant, banker or other knowledgeable advisor. Don't make the mistake many buyers do: Appraising the value should be based on assets or earnings, but not both. Buying the assets enables you to acquire the "engine" for the future earnings. Don't "double-count" through a valuation that includes both assets *and* earnings components.

5. Offer and Contract Negotiations.

A. Offer

- Your offer may be a final one or an informal one. "Informal", means the price and other terms are generally agreed to, subject to completing a final, binding purchase agreement. If this is your choice, be sure that any offer letter (often called a "letter of intent") includes language that makes clear the offer is not binding until a final contract is signed, for example: "This letter expresses the intent to complete a transaction as outlined herein, but no binding commitment shall be made by either party until a final, written agreement is signed by both parties. " Ask the seller to confirm his or her intent to sell according to your proposal in writing by signing an acknowledgement on the both of your letter of intent. If financing is necessary, the seller may make the deal contingent on specifying necessary financing. Consider obtaining some financing through the seller; this is usually possible and the terms are the most favorable in this instance. Will seller or any of its principals be asked to stay on as a consultant to help in the transition? If so, that needs to be written up in the exhibit so identified in the agreement.

B. Negotiation

- When the binding or nonbinding informal offer is accepted, it is customary (though not universal) for the buyer to prepare a draft agreement such as this one. Make sure your attorney reviews any agreement before you send it to the other party for negotiation. Allocation of the purchase price among the items to be purchased is a matter of negotiation. The IRS will normally accept an allocation made in arms length dealings, but retain records to support the final allocation. Buyer is often most concerned about allocation to maximize tax

deductions for expenses and depreciation through asset purchase. Tax consequences are usually an important consideration in any sale or purchase for both parties. These are a few areas to investigate:

Internal Revenue Section 453 allows "non-dealer" sellers to use this deferral method to spread out tax payments due on gains from the sale. It cannot be used for sales of inventory. At least one payment must be received after the close of the taxable year in which the disposition occurs. If buyer will not operate as sole proprietor, buyer must determine what kind of entity may need to be created to own the business: Partnership, Corporation (including "S -- Corporation"), or Limited Liability Company.

Seller should also consider tax strategies. For example, for corporate sellers, the tax code provides that shareholders may get some tax relief through a complete liquidation following a sale of assets. See Internal Revenue Code sections 331 and 337. If a corporate seller has significant operating losses, a buyer may prefer a stock purchase. This enables the new owner to take over the existing corporation and, when profitable, shelter income with the old losses. Determine if carry back or carry forward credits are available. Discuss this with an accountant or lawyer.

6. After Contract Signed.

After the contract is signed, the buyer must complete his or her due diligence to ensure that the purchase can be completed as planned and that there will be no problems after ownership changes hands.

Buyers should carefully check the condition of the assets to be purchased. Consider building and termite inspections, and equipment tests and other review of physical assets. Also, talk to vendors, service personnel and others to verify any seller claims, as well as to customers and potential customers.

Buyers should carefully review and review financial statements and tax returns with their accountants. If audited statements are available, obtain them. Determine if items in the tax return look suspect, which might give rise to penalties for fraud or negligence. Ascertain if seller has been under audit or if seller currently is under going one. Pinpoint any substantial changes occurring between the date of execution of the purchase contract and closing, or since the date of the latest financial statements.

Address any concerns about seller's creditors. This means the buyer must get a list of creditors of seller and make sure all will be paid before closing. If they will not be paid, buyer must make sure there will be no liability to seller's creditors after closing. Buyer should consult an attorney for assistance here.

Seller should furnish buyer with a tax clearance report for state taxes. Be sure to consider all states where taxes should be collected and paid.

Buyer should obtain written approval from landlord, if possible, and if seller's lease of the business premises will be assigned. Determine if the lease or leases are in default and proper renewal options have been exercised. Consider transfer or other handling of security deposits, and account for them in the agreement.

Will seller's accounts receivable be assigned to buyer? If so, investigate these accounts. Are they collectible? Are any subject to dispute or set-offs? How old are they? And so on and so on. Usually a discount is given to insure fairness or a hold back is made by Buyer and a later settlement date is established.

Are customer lists current and accurate? Buyers should talk to customers, at least key ones. Determine whether the business is dependent on a few customers? Are they related to the seller? Can customers be expected to continue to do business with the buyer?

Is seller's relationship with suppliers good? Will they continue to extend credit on same terms to buyer? Ask them.

Make sure all necessary licenses, permits, and governmental approvals can be transferred. If

they can't be transferred, will new ones be granted?

Check and review miscellaneous contracts for terms and to ensure they are still in force. Can these be assigned without the other party's permission? Also review (if any) with your lawyer:

- Employment Contracts with key employees
- Pension/Profit-Sharing Plans
- Labor contracts
- Franchise agreements
- Stock purchase agreements
- Contracts with customers or suppliers

Are there any laws or regulations pertaining to the particular business? Will zoning be affected by the sale? Is property threatened by condemnation?

Check any copyrights, trademarks and patents that will be acquired for validity, infringing uses and expiration.

Did seller maintain adequate insurance to cover any potential claims? Buyer should be certain to have insurance in full force at closing.

The agreement should specify which liabilities (if any) are to be assumed by buyer, and which ones will remain seller's responsibility.

- Current Liabilities and Debts - Obtain verified information about each.
- Pending Claims/Contingent Liabilities - Obtain letter from seller's attorney verifying litigation and claims. Carefully review and account for these.

Are there any outstanding unsatisfied judgments against seller? A significant number of judgments should make the buyer wary. Make provision for how claims and judgments will be handled.

Check for liens *on* seller's property with the Secretary of State and Recorder of Deeds in the county in which seller's property is located. Use form UCC-1 1 Request for Information. If real estate will be purchased, title insurance company will check for liens on real estate. Be certain to have liens released.

Check with Recorder of Deeds in seller's county for any income tax liens. Beware of an unrecorded lien for estate taxes if seller in an estate. If such is the case, obtain an estate tax closing letter, if possible.

Are bankruptcy proceedings pending against the business or its principals? If so, your concern is obvious and you should seriously question whether to enter into the agreement until those matters are finalized.

Buyer should obtain a variety of tax numbers and registrations: Federal ID (available in this CD), state sales tax number, withholding and unemployment taxes are primary concerns. If employees are involved, using a payroll service such as ADP is advised for accounting, tax payment, and general compliance purposes. The Seller may already have such a service. If not, get one.

7. At Closing.

Closing is the event where the business changes hands as provided for in the agreement. This means that seller and buyer must each be sure that each and every obligation of the other has been properly completed beforehand. If the Buyer receives a Non-Competition Agreement from one or more of seller's principals, it must be reasonable as to time and geographical location in order to be enforceable. Buyer will often want seller to be subject to such a covenant.

If a broker is involved, commission will be due. Be certain it is paid or addressed otherwise.

Review bill of sale to transfer personal property, and be certain that all items are included and clearly identified. Items transferred by bill of sale may include inventory, machinery, equipment, office furniture, supplies and goodwill.

A General Warranty Deed for real estate purchased should be executed and recorded to transfer realty. Obtain owner's title policy for buyer. Seller should consider obtaining mortgagee's policy if seller is financing any part of the real estate. If buyer will assume existing

lease, make sure all necessary consents are in place.

If motor vehicles are purchased, make sure titles are transferred to buyer. Corporate officers and spouses should guarantee all warranties, representations, and covenants in contract. This is not always possible to obtain but Seller should request it and consider a lower priced offer if not getting them.

If seller finances any part of the transaction, the buyer and spouse may be required to personally guarantee payment, especially if other security is not adequate.

Seller should be sure to perfect lien on property if seller financing is involved. This is done by filing a UCC form I Financing Statement with your local and state authorities.

Obtain necessary formal shareholder approval and director approval of corporation or approval of partners if partnership or joint venture is seller if substantially all assets are being sold. Seller should also obtain certified copies of proper resolutions of buyer.

Buyer should carefully review the corporate records, and pay particular attention to:

- Articles of Incorporation
 - Minutes
 - By-laws
 - Stock Certificates
- Both buyer and seller (if incorporated) should have certificate of good standing for the other party available. These should be requested from appropriate state office approximately one to two weeks prior to closing.
- If closing is in escrow, prepare detailed escrow agreement with clear instructions. Provide for payment of escrow fee.
- Seller may insist on cashier's or certified check for funds to be paid by buyer at closing. Buyer should try to have portion of price retained (or financed) to provide offset protection for possible claims. Buyer should consider withholding sufficient amount to cover sales taxes (and interest and penalties) which may be due from seller, until seller produces receipt for payment of Department of Revenue.
- Go through the *entire contract*, including Exhibits, and be certain that everything has been completed.

8. After Closing.

After the agreement is closed and ownership has officially changed hands, a few "clean-up" tasks remain for both parties. Corporate seller should change its corporate name and relinquish any fictitious name registrations if assets are purchased. Similarly, buyer should register its name with Secretary of State as a fictitious name, if necessary. Transfer gas, electric, telephones and other services. Obtain necessary keys and change all the locks as soon as practical. Seller may be required to file final tax returns. Seller must usually file final sales tax returns within a specified time limit following termination of business.