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LETTER OF INTENT [FP 34]

[month, day, year]

[name and address of vendor]

Dear *[name of vendor]*:

I have spoken to you a number of times with respect to buying your company, *[name of company]* (the "Company"). You have indicated that you are interested in selling the Company for a price of \$ *[amount]* plus an earn-out. I have discussed the matter with my *[business associate]* after reviewing the Company's audited *[month, day, year]* year-end financial statements that you provided to us when we signed your confidentiality agreement regarding the possible sale of the Company, and we would like to purchase the Company from you.

To assist in concluding such a transaction, we are writing to indicate our willingness to purchase the Company on the following basic terms:

- (1) We will acquire all of the issued and outstanding shares in the capital of the Company from you for the total amount of \$ *[amount]* plus an earn-out to be discussed and agreed to.
- (2) The purchase price of \$ *[amount]* will be paid to you in cash at the closing of the purchase by us arranging suitable financing, hopefully with the Company's bank. Our offer is subject to us arranging suitable financing.
- (3) We will also cause the Company to continue to employ you for a period not exceeding 12 months and to pay you a salary and retiring allowance aggregating the total amount of \$ *[amount]*. Most of this amount will be paid as a retiring allowance and will be paid to you by *[month, day, year]*. *[Business associate]* and I will personally guarantee the payment.
- (4) You will not compete anywhere in British Columbia with the Company or the business now carried on by the Company for a period of five years from the date of closing of the purchase.
- (5) We may, in our discretion, assign this letter of intent and our rights under this letter of intent to a corporation that is controlled by the two of us, upon which that corporation will have the right to acquire the shares in the capital of the Company and to otherwise complete the agreement between us. However, any such assignment will not relieve us from our obligations for the transactions.
- (6) The closing of the purchase should be completed on *[month, day, year]*. At closing we will rely on interim financial statements of the Company as at *[month, day, year]*. The financial statements do not need to be audited but should be prepared on a basis consistent with the Company's previous annual statements. The cost of preparing the interim financial statements will be shared by you and the two of us in two equal shares.
- (7) We will have the opportunity before the closing date to review the books and records of the Company.
- (8) The purchase will require the negotiation and entering into of a formal purchase and sale agreement that appears appropriate to your lawyers and ours. The agreement will contain representations, warranties, covenants and other agreements customary for the purchase and sale of a company, including those as to the ownership and business of the Company. The agreement will also contain a number of conditions to be met at or before closing, such as:
 - (a) The shareholders' equity of the Company (retained earnings and share capital) shall be not less than \$ *[amount]*.
 - (b) There will have been no distributions of profits or other payments made to you or any member of your family by the Company since *[month, day, year]* other than salary at usual levels for the period.

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- (c) There will have been no adverse change in the financial position of the Company since *[month, day, year]*, and no event will have happened since *[month, day, year]* which adversely affects the business of the Company.
 - (d) You will have completed negotiations for the renewal of the Company's lease for a period of at least two years commencing *[month, day, year]* on terms that are acceptable to us, and the renewal lease will be signed by *[month, day, year]*.
 - (e) The accounts receivable of the Company will be good and collectible to a reserve not less than \$ *[amount]* as set out in the financial statements of the Company as at *[month, day, year]*.
 - (f) The Company will own at least as much inventory shown in the financial statements of the Company as at *[month, day, year]* determined on the basis of the value of the inventory calculated in the same manner as in the Company's *[month, day, year]* financial statements.
 - (g) There will be no existing, threatened, or pending lawsuits, tax reassessments or other liabilities against the Company that are not disclosed or reflected in the financial statements of the Company as at *[month, day, year]*.
 - (h) There will be no union or long term employment contracts affecting the Company or any employee of the Company.
 - (i) You will have agreed to stay on as an employee of the Company for a period of up to twelve months to assist us in learning the business, and you will have signed a written employment contract with the Company in a form acceptable to us.
 - (j) You will have signed a written non-competition agreement with us and the Company in a form acceptable to us containing specific provisions regarding your agreement not to compete anywhere in British Columbia with the Company or the business now carried on by the Company for a period of five years from the date of closing of the purchase.
 - (k) We will be satisfied with the results of our review of the books and records of the Company.
- (9) You may purchase your automobile from the Company at its value carried on the books of the Company.
- (10) Until closing, you will continue to manage the business of the Company in the usual way except as may be agreed between us.
- (11) While this is a non-binding letter of intent only and it does not create any binding legal obligations between us (save as set out below), it sets out the basic understandings reached between us to date. The actual documentation may well be the subject of further negotiation and contain matters not touched upon by this letter as we mutually pursue in good faith the completion of the transaction we both desire. Until a final share purchase agreement is executed by us, there will be no binding legal obligations between us, with the exception of paragraphs (12), (13 and (14) below.
- (12) The terms of this offer are to be kept strictly confidential. No public disclosure may be made by you or us, or by any of our advisors, either of the existence of this letter or of our interest concerning the Company without our prior written consent. Upon acceptance of this offer, we will jointly prepare and issue a public announcement or press release relating to this offer and you will not negotiate with any other party in regard to a possible sale of the Company.
- (13) If you agree to the above terms, please sign two copies of this letter signifying your approval and return them to us not later than *[month, day, year]*. As evidence of our good faith, we agree to deposit with our lawyer the sum of \$ *[amount]* as soon as you indicate your approval of these terms. If we are then able to negotiate and enter into a final share purchase agreement for this transaction, then upon signing the final share purchase agreement the deposit will be paid to your lawyers, in trust, to be held in an interest bearing trust account and dealt with as follows:
- (a) if the transaction closes, the deposit and any interest earned on the deposit will be paid to you as a portion of the purchase price; and

- (b) if the transaction does not close:
 - (i) as a result of one of our conditions as set out above not being met or as a result of a breach of contract by you then the deposit and any interest earned on the deposit will be returned to us; or
 - (ii) for any other reason, then the deposit and interest earned on the deposit will be paid to you.
- (14) If we are not able to negotiate and enter into a final share purchase agreement by *[month, day, year]*, then the deposit will be returned by our lawyer to us.

Yours truly,

[name of purchaser]

I, *[name of vendor]*, hereby agree to the above terms of this letter of intent.

DATED *[month, day, year]*.

[name of vendor]