

SHARE PURCHASE AGREEMENT (SAMPLE)

This sample agreement was reviewed by Robert Millar of McDougall Ready Law Firm, Regina, Saskatchewan.

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SHARE PURCHASE AGREEMENT

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SHARE PURCHASE AGREEMENT

THIS AGREEMENT made as of the _____ day of _____
19____

BETWEEN:

[name of purchaser corporation], a corporation
incorporated under the laws of the Province of
Saskatchewan,
(the "Purchaser")

OF THE FIRST PART

AND:

[name of vendor corporation], a corporation
incorporated under the laws of Saskatchewan,
(the "Vendor")

OF THE SECOND PART

AND:

[name of third party, if any], of the City of
., in the Province of Saskatchewan,
(the "Shareholder")

OF THE THIRD PART

WHEREAS:

1. The Vendor is the registered and beneficial owner of [number or all the] issued and outstanding shares in the capital of [name of corporation being sold] (the "Corporation");
2. The Purchaser wishes to purchase, and the Vendor wishes to sell, [number or all the] issued and outstanding shares in the capital of the Corporation on the terms and conditions herein contained;
3. The Shareholder controls the Vendor.

[A] THE PARTIES AGREE AS FOLLOWS:

OR

[B] NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained and the sum of One (\$1.00) Dollar of lawful money of Canada and other good and valuable consideration paid by each of the parties hereto to each of the other parties hereto (the receipt and sufficiency of which payments are hereby acknowledged), it is agreed between the parties hereto as follows:

OR

[C] NOW THEREFORE in consideration of the premises and the mutual agreements and covenants herein contained, the parties hereto hereby covenant and agree as follows:

ARTICLE 1

INTERPRETATION

1.1 DEFINED TERMS:

In this Agreement and in the schedules hereto, unless there *is* something in the subject matter or context inconsistent therewith, the following terms and expressions will have the following meanings:

- [A] (a) "Affiliate" of any person means any corporation which, directly or indirectly, is controlled by, controls or is under direct or indirect common control with such person;

OR

- [E] (a) "Affiliate" means affiliates as defined in The Business Corporations Act, R.S.S. or [appropriate statute];

- (b) "arm's length" will have the meaning ascribed to such term under the Income Tax Act, S.C. 1970-71-72, c. 63 (Canada);

- [A] (c) "[Audited] Financial Statements" means the [audited] consolidated financial statements of the Corporation as at and for the fiscal year ended 19-, consisting of a balance sheet, an income statement, a statement of changes in financial position and [name of any other statement, (i.e.) statement of retained earnings and deficit] together with the notes thereto [and the opinion of the Corporation's auditors thereon], a copy of which is attached hereto as Schedule "A", all prepared in accordance with generally accepted accounting principles, consistently applied;

OR

- [E] (c) "[Audited] Financial Statements" means the [audited] consolidated financial statements of the Corporation as at and for the fiscal years ended on [date] in each of the years from - to -, inclusive, including the balance sheets, income statements, statements of changes in

financial position, and [name of any other statement, e.g., statement of retained earnings and deficit] together with the notes to such financial statements [and the opinion of the Corporation's auditors on such financial statements], copies of which are attached hereto as Schedule "A", all prepared in accordance with generally accepted accounting principles, consistently applied;

(d) "[Audited] Statements Date" means [date of [Audited] Financial Statements];

(e) "Business" means the business carried on by the Corporation which primarily involves [description];

[A] (f) "Business Day" means any day other than a day which is a Saturday, a Sunday or a statutory holiday in [city], [province];

OR

[B] (f) "Business Day" means any day on which the Main Branch of the [name] Bank in [city], Saskatchewan is open for business;

(g) "Closing Date" means [date], or such other date as the Vendor and Purchaser may agree upon;

(h) "Closing Time" means [time] in [city] on the Closing Date or such other time on the Closing Date as the parties hereto may agree upon;

(i) "Condition" of the Corporation means the condition of the assets, liabilities, operations, activities, earnings, prospects, affairs or financial position of the Corporation;

(j) "Control" means, with respect to any corporation, the ownership of more than fifty (50%) percent of the voting shares of that corporation, including any shares which are voting only upon the occurrence of a contingency where such contingency has occurred and is continuing;

(k) "Corporation" means [name of corporation the shares of which are being sold];

(l) "Encumbrances" means mortgages, charges, pledges, security interests, liens, encumbrances, actions, claims, demands and equities of any nature whatsoever or howsoever arising and any rights or privileges capable of becoming any of the foregoing;

)

- (m) "generally accepted accounting principles" means the accounting principles so described and promulgated by the Canadian Institute of Chartered Accountants which are applicable as at the date on which any calculation made hereunder is to be effective or as at the date of any financial statements referred to herein, as the case may be;
- (n) "Interim Financial Statements" means the unaudited consolidated financial statements of the Corporation as at and for the [number] month period ended [date] consisting of a balance sheet, an income statement and a statement of changes in financial position together with the notes thereto, a copy of which is attached hereto as Schedule "B";
- (o) "Interim Period" means the period from and including the date of this Agreement to and including the Closing Date;
- (p) "Leased Premises" means all premises leased by the Corporation under the Leases;
- (q) "Leases" means the leases and the agreements to lease under which the Corporation leases any real property, as listed in Schedule "C" attached hereto;
- (r) "Licences" means all of the licences, registrations and qualifications to do business held by the Corporation;
- (s) "person" means and includes any individual, corporation, partnership, firm, joint venture, syndicate, association, trust, government, governmental agency or board or commission or authority, and any other form of entity or organization;
- (t) "Purchase Price" means the sum of \$., which is the amount payable by the Purchaser to the Vendor for all of the Purchased Shares, as provided herein;
- (u) "Purchased Shares" means the [number] issued and outstanding [class] shares in the capital of the Corporation being sold by the Vendor and purchased by the Purchaser hereunder;
- (v) "Real Properties" means the real properties owned by the Corporation, which are described in Schedule "0" attached hereto; and
- (w) "Warranty Claim" means a claim made by either the Purchaser or the Vendor based on or with respect to the inaccuracy or non-performance or non-fulfilment or breach of any representation or warranty made by the other party

contained in this Agreement or contained in any document or certificate given in order to carry out the transactions contemplated hereby.

1.2 BEST OF KNOWLEDGE:

Any reference herein to "the best of the knowledge" of the Vendor and the Shareholder will be deemed to mean the actual knowledge of the Vendor and the Shareholder and the knowledge which they would have had if they had conducted a diligent inquiry into the relevant subject matter.

1.3 SCHEDULES:

The schedules [listed in the Table of Contents to this Agreement and] which are attached to this Agreement are incorporated into this Agreement by reference and are deemed to be part hereof.

1.4 CURRENCY:

Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful money of Canada.

1.5 CHOICE OF LAW AND ATTORNMENT:

This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein.

[A] The parties agree that the courts of the Province of Saskatchewan will have non-exclusive jurisdiction to determine all disputes and claims arising between the parties.

OR

[B] The parties agree that the courts of the Province of Saskatchewan will have exclusive jurisdiction to determine all disputes and claims arising between the parties.

1.6 INTERPRETATION NOT AFFECTED BY HEADINGS OR PARTY DRAFTING:

The division of this Agreement into articles, sections, paragraphs, subsections and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein", "hereunder" and similar expressions refer to this Agreement and the schedules hereto and not to any particular article, section, paragraph, clause or other portion hereof and include any agreement or instrument supplementary or ancillary hereto. The parties hereto acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement, and the parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

1.7 NUMBER AND GENDER:

In this Agreement, unless there *is* something in the subject matter or context inconsistent therewith:

- (a) words in the singular number include the plural and such words shall be construed as if the plural had been used;
- (b) words in the plural include the singular and such words shall be construed as if the singular had been used; and
- (c) words importing the use of any gender shall include all genders where the context or party referred to so requires, and the rest of the sentence shall be construed as if the necessary grammatical and terminological changes had been made.

1.8 TIME OF ESSENCE:

Time shall be of the essence hereof.

1.9 JOINT AND SEVERAL OBLIGATIONS:

If the Vendor is constituted by more than one person, their obligations hereunder as the Vendor are joint and several.

ARTICLE 2

PURCHASE AND SALE2.1 PURCHASED SHARES:

On the terms and subject to the fulfilment of the conditions hereof, the Vendor will sell, assign and transfer to the Purchaser, and the Purchaser will purchase and accept from the Vendor, the Purchased Shares.

2.2 PURCHASE PRICE:

- [A] The price payable by the Purchaser to the Vendor for the Purchased Shares will be the sum of \$-.

OR

- [B] (a) The Purchase Price payable by the Purchaser to the Vendor for the Purchased Shares will be the aggregate of:

(i) \$-;

(ii) plus an amount equal to the Shareholders' Equity (if any) of the Corporation as of [date];

(iii) minus an amount equal to the Shareholders' Deficit (if any) of the Corporation as of [date].

In addition, the Purchaser will pay to the Vendor on the Closing Date interest on the aggregate of the amount referred to in clause (i) of this subsection plus the amount referred to in clause (ii) of this subsection minus the amount referred to in clause (iii) of this subsection, calculated and accrued from [date] to the Closing Date at the rate of - (-%) percent per annum.

- (b) For purposes of this Agreement, the "Shareholders' Equity" and "Shareholders' Deficit" of the Corporation as of [date] means the aggregate shareholders' equity or shareholders' deficit, as the case may be, shown in the balance sheet of the Corporation as at [date] prepared in accordance with paragraph (c) of this section, and comprising (for greater certainty) the aggregate of the amounts shown in such balance sheet as stated capital in respect of the issued and outstanding shares of the Corporation, contributed surplus and retained earnings or deficit, as the case may be, of the Corporation as of [date].

- (c) [The parties] will cause audited consolidated financial statements of the Corporation as of and for the [number] month period ending [date] to be prepared as soon as possible and, in any event, no later than [date] days prior to the Closing Date. Such financial statements will include a balance sheet, an income statement, a statement of changes in financial position and notes and will be audited

[A] [by the Corporation's accounting firm]

OR

- [B] [by [name], which is an independent accounting firm jointly selected by the Vendor and the Purchaser]

OR

- [C] [jointly by an accounting firm designated by the Vendor and an accounting firm designated by the Purchaser].

Such financial statements will be prepared in accordance with generally accepted accounting principles applied on a basis consistent with the Audited Financial Statements, except that [exceptions]. The fees and expenses of such accounting firm(s) in auditing such financial statements will be paid by [name of party or parties responsible for audit expenses].

2.3 PAYMENT OF PURCHASE PRICE:

The Purchase Price will be paid as follows:

- (1) Concurrently with the execution of this Agreement, the Purchaser will pay to [name of deposit holder, often Vendor's counsel] in trust, by certified cheque or bank draft, the sum of \$[amount] (the "Deposit") as a deposit. The Deposit will be deposited by [name of deposit holder] in an interest-bearing account of a Canadian chartered bank or trust company in [city] in the name of [name of deposit holder] and will be dealt with in accordance with the following provisions:
 - (a) If the purchase and sale of the Purchased Shares is completed at the Closing Time, the Deposit plus all interest earned thereon will be released from trust and applied toward satisfaction of the Purchase Price.
 - (b) If the purchase and sale of the Purchased Shares is not completed for any reason other than the failure of the Purchaser to satisfy any of the conditions set out in

section 6.3 hereof which is within the reasonable control of the Purchaser, the Deposit plus all interest earned thereon will be released from trust and returned to the Purchaser.

- (c) If the purchase and sale of the Purchased Shares is not completed due to the failure of the Purchaser to satisfy any of the conditions set out in section 6.3 hereof which is within the reasonable control of the Purchaser, then the Deposit plus all interest thereon will be released from trust and forfeited and paid to the Vendor [in full satisfaction of all damages, losses, costs and expenses incurred by the Vendor, and the Vendor acknowledges that it will not have any other remedy or claim against the Purchaser as a result of the sale of the Purchased Shares not being completed.]
- [A] (d) At the Closing Time, the Purchaser will pay to [name], in trust, by certified cheque or bank draft, the sum of \$[amount], to be held on the terms and subject to the conditions of an Escrow Agreement in the form of the draft agreement attached hereto as Schedule "E".

OR

- [B] (d) At the Closing Time, the Purchaser will pay to the Vendor, by certified cheque or bank draft, the balance of the Purchase Price.

OR

- [C] (d) At the Closing Time, the Purchaser will pay to [name], in trust, by certified cheque or bank draft, the sum of \$-, to be held on the terms and subject to the conditions of an Escrow Agreement in [substantially] the form of the draft agreement annexed hereto as Schedule "E" and the Purchaser will deliver to the Vendor properly executed and countersigned share certificates representing [number] fully paid and non-assessable [class] shares in the capital stock of the Purchaser in full satisfaction of the balance of the Purchase Price.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES3.1 REPRESENTATIONS AND WARRANTIES BY THE VENDOR AND THE SHAREHOLDER:

The Vendor and the Shareholder hereby jointly and severally represent and warrant to the Purchaser as follows, and confirm that the Purchaser is relying upon the accuracy of each of such representations and warranties in connection with the purchase of the Purchased Shares and the completion of the other transactions hereunder:

(1) Corporate Authority and Binding Obligation:

The Vendor has good right, full corporate power and absolute authority to enter into this Agreement and to sell, assign and transfer the Purchased Shares to the Purchaser in the manner contemplated herein and to perform all of the Vendor's obligations under this Agreement. The Shareholder has good right, full power and authority to enter into this Agreement and to perform all of the Shareholder's obligations under this Agreement. Each of the Corporation and the Vendor and their respective shareholders and boards of directors have taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement and the sale and transfer of the Purchased Shares by the Vendor to the Purchaser. This Agreement is a legal, valid and binding obligation of the Vendor and the Shareholder, enforceable against each of them *in* accordance with its terms subject to:

- (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and
- (b) the fact that equitable remedies, including the remedies of specific performance and injunction, may only be granted *in* the discretion of a court.

(2) No Other Purchase Agreements:

No person has any agreement, option, understanding or commitment, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement, option or commitment, including convertible securities, warrants or convertible obligations of any nature, for:

- (a) the purchase, subscription, allotment or issuance of, or conversion into, any of the unissued shares in the capital of the Corporation or any securities of the Corporation;
- (b) the purchase from the Vendor of any of the Purchased Shares; or
- (c) the purchase or other acquisition from the Corporation of any its undertaking, property or assets, other than in the ordinary course of the Business.

(3) Contractual and Regulatory Approvals:

Except as specified in Schedule "F" attached hereto, neither the Corporation nor the Vendor *is* under any obligation, contractual or otherwise, to request or obtain the consent of any person, and no permits, licenses, certifications, authorizations or approvals of, or notifications to, any federal, provincial, municipal or local government or governmental agency, board, commission or authority are required to be obtained by the Corporation or the Vendor:

- (a) in connection with the execution, delivery or performance by the Vendor or the Corporation of this Agreement or the completion of any of the transactions contemplated herein;
- (b) to avoid the loss of any permit, licence, certification or other authorization; or
- (c) in order that the authority of the Corporation to carry on the Business in the ordinary course and in the same manner as presently conducted remains in good standing and in full force and effect as of and following the closing of the transactions contemplated hereunder.

Complete and correct copies of any agreements under which the Corporation or the Vendor is obligated to request or obtain any such consent have been provided to the Purchaser.

(4) Status, Constating Documents and Licences:

- (a) Each of the Corporation and the Vendor is a corporation duly incorporated and validly subsisting in all respects under the laws of their respective jurisdictions of incorporation. Each of the Corporation and the Vendor has all necessary corporate power to own its properties and to carryon its business as it is now being conducted.

- (b) The articles, by-laws and other constating documents of the Corporation, as amended to the date hereof, are listed in Schedule "G" attached hereto, and complete and correct copies of each of those documents have been delivered to the Purchaser.
- (c) The Corporation is duly licensed, registered and qualified as a corporation to do business, is up-to-date in the filing of all required corporate returns and other notices and filings and is otherwise in good standing in all respects, in each jurisdiction in which:
 - (i) it owns or leases property; or
 - (ii) the nature or conduct of its business or any part thereof, or the nature of the property of the Corporation or any part thereof, makes such qualification necessary or desirable to enable the Business to be carried on as now conducted or to enable the property and assets of the Corporation to be owned, leased and operated by it.

All of the Corporation's Licences are listed in Schedule "H" attached hereto and are valid and subsisting. Complete and correct copies of the Licences have been delivered to the Purchaser. The Corporation is in compliance with all terms and conditions of the Licences. There are no proceedings in progress, pending or, to the best of the knowledge of the Vendor and the Shareholder, threatened, which could result in the revocation, cancellation or suspension of any of the Licences.

(5) Compliance with Constating Documents, Agreements and Laws:

The execution, delivery and performance of this Agreement and each of the other agreements contemplated or referred to herein by the Vendor and the Corporation, and the completion of the transactions contemplated hereby, will not constitute or result in a violation or breach of or default under, or cause the acceleration of any obligations of the Corporation under:

- (a) any term or provision of any of the articles, by-laws or other constating documents of the Corporation;
- (b) subject to obtaining the contractual consents referred to in Schedule "F" hereof, the terms of any agreement (written or oral), indenture, instrument or understanding or other obligation or restriction to which the

Corporation or the Vendor is a party or by which either of them is bound; or

- (c) subject to obtaining the regulatory consents referred to in Schedule "F" hereof, any term or provision of any of the Licences or any order of any court, governmental authority or regulatory body or any law or regulation of any jurisdiction in which the Business *is* carried on.

(6) Corporate Records:

The corporate records and minute books of the Corporation, all of which have been provided to the Purchaser, contain complete and accurate minutes of all meetings of the directors and shareholders of the Corporation held since its incorporation, and original signed copies of all resolutions and by-laws duly passed or confirmed by the directors or shareholders of the Corporation other than at a meeting. All such meetings were duly called and held. The share certificate books, register of security holders, register of transfers and register of directors and any similar corporate records of the Corporation are complete and accurate. All exigible security transfer tax or similar tax payable in connection with the transfer of any securities of the Corporation has been duly paid.

(7) Authorized and Issued Capital:

The authorized capital of the Corporation consists of [class of shares], of which [number] shares have been duly issued and are outstanding as fully paid and non-assessable shares. No shares or other securities of the Corporation have been issued in violation of any laws, the articles of incorporation, by-laws or other constating documents of the Corporation or the terms of any shareholders' agreement or any agreement to which the Corporation *is* a party or by which *it is* bound. The Vendor owns all of the issued and outstanding shares of the Corporation as the shareholder of record and as the beneficial owner, with good and marketable title thereto, free and clear of any and all Encumbrances.

(8) Shareholders' Agreements, Etc.:

There are no shareholders' agreements, pooling agreements, voting trusts or other similar agreements with respect to the ownership or voting of any of the shares of the Corporation.

(9) Financial Statements:

- (a) The [Audited] Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a basis consistent with that of the previous fiscal year, are true, correct and complete in all material respects and present fairly the consolidated financial condition of the Corporation as of [date], including the consolidated assets and liabilities of the Corporation as of [date], and the consolidated revenues, expenses and results of the operations of the Corporation for the fiscal year ended on [date].
- (b) The Interim Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a basis consistent with the Audited Financial Statements, are true, correct and complete in all material respects and present fairly [in all material respects] the consolidated financial condition of the Corporation as of [date], including the consolidated assets and liabilities of the Corporation as of [date], and the consolidated revenues, expenses and results of the operations of the Corporation for the [number] month period ended on [date].
- (c) The financial condition of the Corporation is now at least as good as the financial condition reflected in the Interim Financial Statements.

(10) Financial Records:

All material financial transactions of the Corporation have been recorded in the financial books and records of the Corporation in accordance with good business practice, and such financial books and records:

- (a) accurately reflect [in all material respects] the basis for the financial condition and the revenues, expenses and results of operations of the Corporation shown in the Audited Financial Statements and the Interim Financial Statements; and
- (b) together with all disclosures made in this Agreement or in the Schedules hereto, present fairly [in all material respects] the financial condition and the revenues, expenses and results of the operations of the Corporation as of and to the date hereof.

No information, records or systems pertaining to the operation or administration of the Business are in the possession of,

recorded, stored, maintained by or otherwise dependent upon any other person.

(11) Liabilities of the Corporation:

There are no liabilities (contingent or otherwise) of the Corporation of any kind whatsoever, and [to the best of the knowledge of the Vendor and the Shareholder] there is no basis for assertion against the Corporation of any liabilities of any kind, other than:

- (a) liabilities disclosed or reflected in or provided for in the [Audited] Financial Statements or the Interim Financial Statements;
- (b) liabilities incurred since the [Audited] Statements Date which were incurred in the ordinary course of the routine daily affairs of the Business and, in the aggregate, are not materially adverse to the Business; and
- (c) other liabilities disclosed in this Agreement or in the schedules attached hereto.

(12) Indebtedness:

Except as disclosed in the [Audited] Financial Statements, the Corporation has no bonds, debentures, mortgages, promissory notes or other indebtedness maturing more than one year after the date of their original creation or issuance, and is not under any obligation to create or issue any bonds, debentures, mortgages, promissory notes or other indebtedness maturing more than one year after the date of their original creation or issuance.

(13) Absence of Certain Changes or Events:

Since the [Audited] Statements Date, the Corporation has not:

- (a) incurred any obligation or liability (fixed or contingent), except normal trade or business obligations incurred in the ordinary course of the Business, none of which is materially adverse to the Corporation;
- (b) paid or satisfied any obligation or liability (fixed or contingent), except:
 - (i) current liabilities included in the [Audited] Financial Statements;

- (ii) current liabilities incurred since the [Audited] Statements Date in the ordinary course of the Business; and
 - (iii) scheduled payments pursuant to obligations under loan agreements or other contracts or commitments described in this Agreement or in the schedules hereto.
- (c) created any Encumbrance upon any of its properties or assets, except as described in this Agreement or in the schedules hereto;
- (d) sold, assigned, transferred, leased or otherwise disposed of any of its properties or assets, except in the ordinary course of the Business;
- (e) purchased, leased or otherwise acquired any properties or assets, except in the ordinary course of the Business;
- (f) waived, cancelled or written-off any rights, claims, accounts receivable or any amounts payable to the Corporation, except in the ordinary course of the Business;
- (g) entered into any transaction, contract, agreement or commitment, except in the ordinary course of the Business;
- (h) terminated, discontinued, closed or disposed of any plant, facility or business operation;
- (i) had any supplier terminate, or communicate to the Corporation the intention or threat to terminate its relationship with the Corporation, or the intention to substantially reduce the quantity of products or services it sells to the Corporation, except in the case of suppliers whose sales to the Corporation are not, in the aggregate, material to the Business or the Condition of the Corporation;
- (j) had any customer terminate, or communicate to the Corporation the intention or threat to terminate, its relationship with the Corporation, or the intention to substantially reduce the quantity of products or services it purchases from the Corporation, or its dissatisfaction with the products or services sold by the Corporation, except in the case of customers whose purchases from the Corporation are not, in the aggregate, material to the Business or the Condition of the Corporation;

- (k) made any material change in the method of billing customers or the credit terms made available by the Corporation to its customers;
- (l) made any material change with respect to any method of management, operation or accounting in respect of the Business;
- (m) suffered any damage, destruction or loss (whether or not covered by insurance) which has materially adversely affected or could materially adversely affect the Business or the Condition of the Corporation;
- (n) increased any form of compensation or other benefits payable or to become payable to any of the employees of the Corporation, except increases made in the ordinary course of the Business which do not exceed [number]%, in the aggregate, of the amount of the aggregate salary compensation payable to all of the Corporation's employees prior to such increase;
- (o) suffered any extraordinary loss relating to the Business;
- (p) made or incurred any material change in, or become aware of any event or condition which *is* likely to result in a material change in, the Business or the Condition of the Corporation or its relationships with its customers, suppliers or employees; or
- (q) authorized, agreed or otherwise become committed to do any of the foregoing.

(14) Commitments for Capital Expenditures:

The Corporation *is* not committed to make any capital expenditures, nor have any capital expenditures been authorized by the Corporation at any time since the [Audited] Statements Date, except for capital expenditures made in the ordinary course of the routine daily affairs of the Business which, in the aggregate, do not exceed \$-.

(15) Dividends and Distributions:

Since the [Audited] Statements Date, the Corporation has not declared or paid any dividend or made any other distribution on any of its shares of any class, or redeemed or purchased or otherwise acquired any of its shares of any class, or reduced its authorized capital or issued capital, or agreed to any of the foregoing.

(16) **Tax Matters:**

- (a) For purposes of this Agreement, the term "Governmental Charges" means and includes all taxes, customs duties, rates, levies, assessments, reassessments and other charges, together with all penalties, interest and fines with respect thereto, payable to any federal, provincial, municipal, local or other government or governmental agency, authority, board, bureau or commission, domestic or foreign.
- (b) The Corporation has duly and on a timely basis prepared and filed all tax returns and other documents required to be filed by it in respect of all Governmental Charges and such returns and documents are complete and correct. Complete and correct copies of all such returns and other documents filed in respect of the three fiscal years of the Corporation ending prior to the date hereof have been provided to the Purchaser.
- (c) The Corporation has paid all Governmental Charges which are due and payable by it on or before the date hereof. Adequate provision was made in the [Audited] Financial Statements and Interim Financial Statements for all Governmental Charges for the periods covered by the [Audited] Financial Statements and Interim Financial Statements, respectively. The Corporation has no liability for Governmental Charges other than those provided for in the [Audited] Financial Statements and those arising in the ordinary course of the operation of the Business since the [Audited] Statements Date.
- (d) Canadian federal and provincial income tax assessments have been issued to the Corporation covering all past periods up to and including the fiscal year ended [date]. There are no actions, suits, proceedings, investigations, enquiries or claims now pending or made or, to the best of the knowledge of the Vendor and the Shareholder, threatened against the Corporation in respect of Governmental Charges.
- (e) There are no agreements, waivers or other arrangements providing for any extension of time with respect to the filing of any tax return or other document or the payment of any Governmental Charges by the Corporation or the period for any assessment or reassessment of Governmental Charges. Only the fiscal years of the Corporation subsequent to [date] remain open for reassessment for additional taxes.
- (f) The Corporation has withheld from each amount paid or credited to any person the amount of Governmental Charges

)

) required to be withheld therefrom and has remitted such Governmental Charges to the proper tax or other receiving authorities within the time required under applicable legislation.

- (g) Schedule "I" attached hereto accurately sets out, for purposes of the Income Tax Act, S.C. 1970-71-72, c. 63 (Canada), the following:
- (i) the paid-up capital of all issued and outstanding shares in the capital of the Corporation;
 - (ii) all non-capital losses of the Corporation;
 - (iii) all net capital losses of the Corporation;
 - (iv) the amount of all investment tax credits available to the Corporation;
 - (v) the adjusted cost base of the Corporation's capital properties;
 - (vi) the cost of the Corporation's depreciable properties, the capital cost allowance taken in respect of each class of such properties and the undepreciated capital cost of each class of such properties;
 - (vii) the amount (*if* any) of the Corporation's capital dividend account;
 - (viii) the amount (*if* any) of the Corporation's cumulative eligible capital account; and
 - (ix) the amount (*if* any) of the Corporation's refundable dividend tax on hand.
- (h) The Corporation is a Canadian-controlled private corporation, as defined in the Income Tax Act, S.C. 1970-71-72, c. 63 (Canada), and has been one since [date].

(17) Litigation:

) Except for the matters referred to in Schedule "J" attached hereto, there are no actions, suits or proceedings, judicial or administrative (whether or not purportedly on behalf of the Corporation or the Vendor) pending or, to the best of the knowledge of the Vendor and the Shareholder, threatened, by or against or affecting the Corporation, at law or in equity, or before or by any court or any federal, provincial, municipal

or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign. Except for the matters referred to in Schedule "J", there are no grounds on which any such action, suit or proceeding might be commenced with any reasonable likelihood of success.

(18) Environmental Matters:

- (a) For the purposes of this Agreement, the following terms and expressions shall have the following meanings:
- (i) "Environmental Laws" means all applicable statutes, regulations, ordinances, by-laws, and codes and all international treaties and agreements, now or hereafter in existence in Canada (whether federal, provincial or municipal) and in the United States (whether federal, state or local) relating to the protection and preservation of the environment, occupational health and safety, product safety, product liability or hazardous substances, including, without limitation, The Environmental Management and Protection Act, R.S.S., c. E. 10.2, as amended from time to time (the "EMPA"), and the Canadian Environmental protection Act, R.S.C. 1985, c. 16 (4th Supp.), as amended from time to time (the "CEPA").
 - (ii) "Environmental Permits" includes all orders, permits, certificates, approvals, consents, registrations and licences issued by any authority of competent jurisdiction under Environmental Laws.
 - (iii) "Hazardous Substance" means, collectively, any hazardous substance (as defined in the EMPA), toxic substance (as defined in the CEPA), dangerous goods (as defined in the Transportation of Dangerous Goods Act, R.S.C. 1985, c. T-19 (Canada), as amended from time to time) or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health.
 - (iv) "Release" means any release, spill, leak, emission, discharge, leach, dumping, escape or other disposal which is or has been made in contravention of any Environmental Laws.
- (b) Except as disclosed in Schedule "K" attached hereto, the Corporation, the operation of the Business, the property

) and assets owned or used by the Corporation and the use, maintenance and operation thereof have been and are in compliance with all Environmental Laws. The Corporation has complied with all reporting and monitoring requirements under all Environmental Laws. The Corporation has not received any notice of any non-compliance with any Environmental Laws, and the Corporation has never been convicted of an offence for non-compliance with any Environmental Laws or been fined or otherwise sentenced or settled such prosecution short of conviction.

- (c) The Corporation has obtained all Environmental Permits necessary to conduct the Business and to own, use and operate the properties and assets of the Corporation. All such Environmental Permits are listed in Schedule "K" and complete and correct copies thereof have been provided to the Purchaser.
 - (d) Except as disclosed in Schedule "K", there are no Hazardous Substances located on or in any of the properties or assets owned or used by the Corporation, and no Release of any Hazardous Substances has occurred on or from the properties and assets of the Corporation or has resulted from the operation of the Business and the conduct of all other activities of the Corporation. Except as disclosed in Schedule "K", the Corporation has not used any of its properties or assets to produce, generate, store, handle, transport or dispose of any Hazardous Substances and none of the Real Properties or Leased Premises has been or is being used as a landfill or waste disposal site.
 - (e) Without limiting the generality of the foregoing, except as disclosed in Schedule "K", there are no underground or surface storage tanks or urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls (PCBs) or radioactive substances located on or in any of the properties or assets owned or used by the Corporation. The Corporation is not, and there is no basis upon which the Corporation could become, responsible for any clean-up or corrective action under any Environmental Laws. The Corporation has never conducted or caused to be conducted an environmental audit, assessment or study of any of the properties or assets of the Corporation.
 - (f) Except as disclosed in Schedule "K", there are no pending or proposed changes to Environmental Laws which would render illegal or restrict the manufacture or sale of any products manufactured or sold or services provided by the Corporation.
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(19) Title to Assets:

The Corporation is the owner of and has good and marketable title to all of its properties and assets, including, without limitation, all properties and assets reflected in the [Audited] Financial Statements and all properties and assets acquired by the Corporation after the [Audited] Statements Date, free and clear of all Encumbrances Whatsoever, except for:

- (a) the properties and assets disposed of, utilized or consumed by the Corporation since the [Audited] Statements Date in the ordinary course of the Business;
- (b) the Encumbrances disclosed or reflected in the [Audited] Financial Statements or the Interim Financial Statements;
- (c) liens for taxes not yet due and payable; and
- (d) the Encumbrances described in Schedule "L" attached hereto.

No other person owns any assets which are being used in the Business, except for the Leased *Premises* and personal property leased by the Corporation. There are no agreements or commitments to purchase property or assets by the Corporation, other than in the ordinary course of the Business.

(20) Deposit Accounts and Safe Deposit Boxes of the Corporations:

The name and address of each bank, trust company or similar institution with which the Corporation has one or more accounts or one or more safe deposit boxes, the number of each such account and safe deposit box and the names of all persons authorized to draw thereon or to have access thereto are as set forth in Schedule "M" attached hereto.

(21) Accounts Receivable:

The accounts receivable of the Corporation reflected in the Interim Financial Statements and all accounts receivable of the Corporation arising since the date of the Interim Financial Statements arose from bona fide transactions in the ordinary course of the Business and are valid, enforceable and fully collectible accounts (subject to a reasonable allowance, consistent with past practice, for doubtful accounts as reflected in the Interim Financial Statements or as previously disclosed in writing to the Purchaser)• Such accounts receivable are not subject to any set-off or counterclaim.

(22) Inventory:

The current inventory of the Corporation, subject to a reasonable allowance for obsolete inventory (consistent with the allowances reflected in the [Audited] Financial Statements and the Interim Financial Statements), is good and usable and is capable of being processed and sold in the ordinary course of the Business at normal profit margins.

(23) Real Properties:

- [A] (a) The Corporation does not own or have any right, title or interest in any real property, except for the Corporation's leasehold interest in the Leased Premises.

OR

- [B] (a) Schedule "0" attached hereto lists all real property owned by the Corporation and sets forth the legal description thereof. There are no agreements, options, contracts or commitments to sell, transfer or otherwise dispose of the Real Properties or which would restrict the ability of the Corporation to transfer the Real Properties.
- (b) The Corporation is the absolute beneficial owner of, and has good and marketable title in fee simple to, the Real Properties, free and clear of any and all Encumbrances, except for:
- (i) the Encumbrances described in Schedule "L" attached hereto;
 - (ii) liens for current taxes not yet due; and
 - (iii) rights of parties in possession, zoning restrictions, easements, encroachments, rights-of-way, reservations and restrictions that run with the land and minor title defects (if any) which do not, in the aggregate, materially adversely affect the validity of title to or the value or marketability of the Real Properties or materially adversely affect the use of the Real Properties as they are presently used by the Corporation in connection with the Business.

Complete and correct copies of *all* documents creating the Encumbrances described in Schedule "L" attached hereto have been provided to the Purchaser.

- (c) The Real Properties described in Schedule "0" and all buildings and structures located thereon and the conduct of the Business as presently conducted do not violate, and the use thereof in the manner in which presently used is not adversely affected by, any zoning or building laws, ordinances, regulations, covenants or official plans. The Corporation has not received any notification alleging any such violation. Such buildings and structures do not encroach upon any lands not owned by the Corporation. There are no expropriation, condemnation or similar proceedings pending or, to the best of the knowledge of the Vendor and the Shareholder, threatened, with respect to any of the Real Properties or any part thereof.

(24) Leased Premises:

Schedule "e" attached hereto describes all leases or agreements to lease under which the Corporation leases any real property. Complete and correct copies of the Leases have been provided to the Purchaser. The Corporation is exclusively entitled to all rights and benefits as lessee under the Leases and the Corporation has not sublet, assigned, licensed or otherwise conveyed any rights in the Leased Premises or in the Leases to any other person. The names of the other parties to the Leases, the description of the Leased Premises, the term, rent and other amounts payable under the Leases and all renewal options available under the Leases are accurately described in Schedule "C". All rental and other payments and other obligations required to be paid and performed by the Corporation pursuant to the Leases have been duly paid and performed. The Corporation is not in default of any of its obligations under the Leases and, to the best of the knowledge of the Vendor and the Shareholder, none of the landlords or other parties to the Leases are in default of any of their obligations under the Leases. The terms and conditions of the Leases will not be affected by, nor will any of the Leases be in default as a result of, the completion of the transactions contemplated hereunder. The use by the Corporation of the Leased Premises is not in breach of any building, zoning or other statute, by-law, ordinance, regulation, covenant, restriction or official plan. The Corporation has adequate rights of ingress to and egress from the Leased Premises for the operation of the Business in the ordinary course.

(25) Work Orders and Deficiencies:

There are no outstanding work orders, non-compliance orders, deficiency notices or other such notices relative to the Real

Properties, the Leased Premises, the other properties and assets of the Corporation or the Business which have been issued by any regulatory authority, police or fire department, sanitation, environment, labour, health or other governmental authorities or agencies. There are no matters under discussion with any such department or authority relating to work orders, non-compliance orders, deficiency notices or other such notices. The Business is not being carried on, and none of the Real Properties, the Leased Premises or the other properties or assets of the Corporation are being operated in a manner which is in contravention of any statute, regulation, rule, code, standard or policy. No amounts are owing by the Corporation in respect of the Real Properties or the Leased Premises to any governmental authority or public utility, other than current accounts which are not in arrears.

(26) Condition of Properties and Equipment:

The buildings and structures comprising the Real Properties and, to the best of the knowledge of the Vendor and the Shareholder, those comprising the Leased Premises, are free of any structural defect. The heating, ventilating, plumbing, drainage, electrical and air conditioning systems and all other systems used in the Real Properties and the Leased Premises and all machinery, equipment, tools, furniture, furnishings and materials used in the Business are in good working order, fully operational and free of any defect, except for normal wear and tear.

(27) Leases of Personal Property:

Except as set out in Schedule "N" attached hereto, the Corporation *is* not the lessee under any lease of personal property in respect of which the annual financial obligation exceeds \$.. Complete and correct copies of each of the leases referred to in Schedule "N" have been provided to the Purchaser.

(28) Intellectual Property:

(a) Schedule "0" attached hereto lists and contains a description of:

- (i) all patents, patent applications and registrations, trade marks, trade mark applications and registrations, copyrights, copyright applications and registrations, trade names and industrial designs, domestic or foreign, owned or used by the

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Corporation or relating to the operation of the Business;

- (ii) all trade secrets, know-how, inventions and other intellectual property owned or used by the Corporation or relating to the Business; and
- (iii) all computer systems and application software, including without limitation all documentation relating thereto and the latest revisions of all related object and source codes therefor, owned or used by the Corporation or relating to the Business,

(all of the foregoing being hereinafter collectively called the "Intellectual Property").

- (b) The Corporation has good and valid title to all of the Intellectual Property, free and clear of any and all Encumbrances, except in the case of any Intellectual Property licensed to the Corporation as disclosed in Schedule "0". Complete and correct copies of all agreements whereby any rights in any of the Intellectual Property have been granted or licensed to the Corporation have been provided to the Purchaser. No royalty or other fee is required to be paid by the Corporation to any other person in respect of the use of any of the Intellectual Property except as provided in such agreements delivered to the Purchaser. The Corporation has protected *its* rights *in* the Intellectual Property *in* the manner and to the extent described *in* Schedule "0". Except as indicated *in* Schedule "0", the Corporation has the exclusive right to use all of the Intellectual Property and has not granted any *licence* or other rights to any other person *in* respect of the Intellectual Property. Complete and correct copies of *all* agreements whereby any rights in any of the Intellectual Property have been granted or *licensed* by the Corporation to any other person have been provided to the Purchaser.
- (c) Except as disclosed in Schedule "0", there are no restrictions on the *ability* of the Corporation or any successor to or *assignee* from the Corporation to use and exploit all rights *in* the Intellectual Property. All statements contained *in* all applications for registration of the Intellectual Property were true and correct as of the date of such applications. Each of the trade marks and trade names included in the Intellectual Property is in use. None of the rights of the Corporation in the Intellectual Property will be impaired or affected *in* any way by the transactions contemplated by this Agreement.

- (d) The conduct of the Business and the use of the Intellectual Property does not infringe, and the Corporation has not received any notice, complaint, threat or claim alleging infringement of, any patent, trade mark, trade name, copyright, industrial design, trade secret or other Intellectual Property or propriety right of any other person, and the conduct of the Business does not include any activity which may constitute passing off.
- (e) The computer systems, including hardware and software, are free from viruses and the Vendor has taken, and will continue to take, all steps and implement all procedures necessary to ensure, so far as reasonably possible, that such systems are free from viruses and will remain so until the Closing Time.

(29) Subsidiaries and Other Interests:

The Corporation has no subsidiaries and does not own any securities issued by, or any equity or ownership interest in, any other person. The Corporation *is* not subject to any obligation to make any investment in or to provide funds by way of loan, capital contribution or otherwise to any person.

(30) Partnerships or Joint Ventures:

The Corporation is not a partner or participant in any partnership, joint venture, profit-sharing arrangement or other association of any kind and is not party to any agreement under which the Corporation agrees to carry on any part of the Business or any other activity in such manner or by which the Corporation agrees to share any revenue or profit with any other person.

(31) Customers:

The Vendor has previously delivered to the Purchaser a true and complete list of all customers of the Business as of the date hereof. The Corporation is the sole and exclusive owner of, and has the unrestricted right to use, such customer *list*. Neither the customer list nor any information relating to the customers of the Business have, within three years prior to the date of this Agreement, been made available to any person other than the Purchaser. Neither the Vendor nor the Shareholder has any knowledge of any facts which could reasonably be expected to result in the loss of any customers or sources of revenue of the Business which, in the aggregate, would be material to the Business or the Condition of the Corporation.

(32) Restrictions on Doing Business:

The Corporation *is* not a party to or bound by any agreement which would restrict or limit its right to carry on any business or activity or to solicit business from any person or in any geographical area or otherwise to conduct the Business as the Corporation may determine. The Corporation is not subject to any legislation or any judgment, order or requirement of any court or governmental authority which is not of general application to persons carrying on a business similar to the Business. To the best of the knowledge of the Vendor and the Shareholder, there are no facts or circumstances which could materially adversely affect the ability of the Corporation to continue to operate the Business as presently conducted following the completion of the transactions contemplated by this Agreement.

(33) Guarantees, warranties and Discounts:

Except as described in Schedule "P" attached hereto:

- (a) the Corporation is not a party to or bound by any agreement of guarantee, indemnification, assumption or endorsement or any other like commitment of the obligations, liabilities (contingent or otherwise) or indebtedness of any person;
- (b) the Corporation has not given any guarantee or warranty in respect of any of the products sold or the services provided by it, except warranties made in the ordinary course of the Business and in the form of the Corporation's standard written warranty, a copy of which has been provided to the Purchaser, and except for warranties implied by law;
- (c) during each of the three fiscal years of the Corporation ended immediately preceding the date hereof, no claims have been made against the Corporation for breach of warranty or contract requirement or negligence or for a price adjustment or other concession in respect of any defect in or failure to perform or deliver any products, services or work which had, in any such year, an aggregate cost exceeding \$-;
- (d) there are no repair contracts or maintenance obligations of the Corporation in favour of the customers or users of products of the Business, except obligations incurred in the ordinary course of the Business and in accordance with the Corporation's standard terms, a copy of which has been provided to the Purchaser;

- (e) the Corporation is not now subject to any agreement or commitment, and the Corporation has not, within three years prior to the date hereof, entered into any agreement with or made any commitment to any customer of the Business which would require the Corporation to repurchase any products sold to such customers or to adjust any price or grant any refund, discount or other concession to such customer; and
- (f) the Corporation is not required to provide any letters of credit, bonds or other financial security arrangements in connection with any transactions with its suppliers or customers.

(34) Licences, Agency and Distribution Agreements:

Schedule "Oil attached hereto lists all agreements to which the Corporation is a party or by which it is bound under which the right to manufacture, use or market any product, service, technology, information, data, computer hardware or software or other property has been granted, licensed or otherwise provided to the Corporation or by the Corporation to any other person, or under which the Corporation has been appointed or any person has been appointed by the Corporation as an agent, distributor, licensee or franchisee for any of the foregoing. Complete and correct copies of all of the agreements listed in Schedule "0" have been provided to the Purchaser. None of the agreements listed in Schedule "0" grant to any person any authority to incur any liability or obligation or to enter into any agreement on behalf of the Corporation.

(35) Outstanding Agreements:

The Corporation is not a party to or bound by any outstanding or executory agreement, contract or commitment, whether written or oral, except for:

- (a) any contract, lease or agreement described or referred to in this Agreement or in the schedules hereto;
- (b) any contract, lease or agreement made in the ordinary course of the routine daily affairs of the Business under which the Corporation has a financial obligation of less than \$[amount] per annum and which can be terminated by the Corporation without payment of any damages, penalty or other amount by giving not more than [number] days' notice; and
- (c) the contracts, leases and agreements described in Schedule "R" attached hereto.

Complete and correct copies of each of the contracts, leases and agreements described in Schedule "R" have been provided to the Purchaser.

(36) Good Standing of Agreements:

The Corporation is not in default or breach of any of its obligations under anyone or more contracts, agreements (written or oral), commitments, indentures or other instruments to which it is a party or 8' which it is bound and there exists no state of facts which, after notice or lapse of time or both, would constitute such a default or breach. All such contracts, agreements, commitments, indentures and other instruments are now in good standing and in full force and effect without amendment thereto, the Corporation is entitled to all benefits thereunder and, to the best of the knowledge of the Vendor and the Shareholder, the other parties to such contracts, agreements, commitments, indentures and other instruments are not in default or breach of any of their obligations thereunder. There are no contracts, agreements, commitments, indentures or other instruments under which the Corporation's rights or the performance of its obligations are dependent upon or supported by the guarantee of or any security provided by any other person.

(37) Employees:

Schedule "S" attached hereto sets forth the name, job title, duration of employment, vacation entitlement, employee benefit entitlement and rate of remuneration (including bonus and commission entitlement) of each employee of the Corporation. Schedule "S" also sets forth the names of all employees of the Corporation who are now on disability, maternity or other authorized leave or who are receiving workers' compensation or short-term or long-term disability benefits.

(38) Employment Agreements:

The Corporation is not a party to any written or oral employment, service or consulting agreement relating to any one or more persons, except for oral employment agreements which are of indefinite term and without any special arrangements or commitments with respect to the continuation of employment or payment of any particular amount upon termination of employment. The Corporation does not have any employee who cannot be dismissed upon such period of notice as is required by law in respect of a contract of hire for an indefinite term.

(39) Labour Matters and Employment Standards:

- (a) The Corporation *is* not subject to any agreement with any labour union or employee association and has not made any commitment to or conducted negotiations with any labour union or employee association with respect to any future agreement and, to the best of the knowledge of the Vendor and the Shareholder, during the period of five years preceding the date of this agreement there has been no attempt to organize, certify or establish any labour union or employee association in relation to any of the employees of the Corporation.
- (b) There are no existing or, to the best of the knowledge of the Vendor and the Shareholder, threatened, labour strikes or labour disputes, grievances, controversies or other labour troubles affecting the Corporation or the Business.
- (c) The Corporation has complied with all laws, rules, regulations and orders applicable to it relating to employment, including those relating to wages, hours, collective bargaining, occupational health and safety, workers' hazardous materials, employment standards, pay equity and workers' compensation. There are no outstanding charges or complaints against the Corporation relating to unfair labour practices or discrimination or under any legislation relating to employees. The Corporation has paid in full all amounts owing under The Workers' Compensation Act, R.S.S. or comparable provincial legislation, and the workers' compensation claims experience of the Corporation would not permit a penalty reassessment under such legislation.

(40) Employee Benefit and Pension Plans:

- (a) Except as listed in Schedule "T" attached hereto, the Corporation does not have, and *is* not subject to any present or future obligation or liability under, any pension plan, deferred compensation plan, retirement income plan, stock option or stock purchase plan, profit sharing plan, bonus plan or policy, employee group insurance plan, hospitalization plan, disability plan or other employee benefit plan, program, policy or practice, formal or informal, with respect to any of its employees, other than the Canada Pension Plan, R.S.C. 1985, c. C-8, and other similar health plans established pursuant to statute. Schedule "T" also lists the general policies, procedures and work-related rules in effect with respect to employees of the Corporation, whether written or oral, including but not limited to policies regarding holidays,

sick leave, vacation, disability and death benefits, termination and severance pay, automobile allowances and rights to company-provided automobiles and expense reimbursements. (The plans, programs, policies, practices and procedures listed in Schedule "T" are hereinafter collectively called the "Benefit Plans"). Complete and correct copies of all documentation establishing or relating to the Benefit Plans listed in Schedule "T" or, where such Benefit Plans are oral commitments, written summaries of the terms thereof, and the most recent financial statements and actuarial reports related thereto and all reports and returns in respect thereof filed with any regulatory agency within three years prior to the date hereof have been provided to the Purchaser.

- (b) The pension plans included in the Benefit Plans are registered under and are in compliance with all applicable federal and provincial legislation and all reports, returns and filings required to be made thereunder have been made. Such pension plans have been administered in accordance with their terms and the provisions of applicable law. Each pension plan has been funded in accordance with the requirements of such plans and based on actuarial assumptions which are appropriate to the employees of the Corporation and the Business. Based on such assumptions, there is no unfunded liability under any such pension plan. No changes have occurred since the date of the most recent actuarial report provided to the Purchaser in respect of such pension plans which makes such report misleading in any material respect and, since the date of such report, the Corporation has not made or granted or committed to make or grant any benefit improvements to which members of the pension plans are or may become entitled which are not reflected in such actuarial report. No funds have been withdrawn by the Corporation from any such pension plan or other Benefit Plans.
- (c) There are no pending claims by any employee covered under the Benefit Plans or by any other person which allege a breach of fiduciary duties or violation of governing law or which may result in liability to the Corporation and, to the best of the knowledge of the Vendor and the Shareholder, there is no basis for such a claim. There are no employees or former employees of the Corporation who are receiving from the Corporation any pension or retirement payments, or who are entitled to receive any such payments, not covered by a pension plan to which the Corporation is a party.

(41) Insurance:

Schedule "U" attached hereto contains a true and complete list of all insurance policies maintained by the Corporation or under which the Corporation is covered in respect of its properties, assets, business or personnel as of the date hereof. Complete and correct copies of all such insurance policies have been provided to the Purchaser. Such insurance policies are in full force and effect and the Corporation is not in default with respect to the payment of any premium or compliance with any of the provisions contained in any such insurance policy. To the best of the knowledge of the Vendor and the Shareholder, there are no circumstances under which the Corporation would be required to or, in order to maintain its coverage, should give any notice to the insurers under any such insurance policies which has not been given. The Corporation has not received notice from any of the insurers regarding cancellation of such insurance policies. The Corporation has not failed to present any claim under any such insurance policy in due and timely fashion. The Corporation has not received notice from any of the insurers denying any claims.

(42) Non-Arm's Length Matters:

The Corporation is not a party to or bound by any agreement with, is not indebted to, and no amount is owing to the Corporation by, the Vendor or any of the Vendor's Affiliates or any officers, former officers, directors, former directors, shareholders, former shareholders, employees (except for oral employment agreements with employees) or former employees of the Corporation or any person not dealing at arm's length with any of the foregoing. Since the [Audited] Statements Date, the Corporation has not made or authorized any payments to the Vendor or any of the Vendor's Affiliates or any officers, former officers, directors, former directors, shareholders, former shareholders, employees or former employees of the Corporation or to any person not dealing at arm's length with any of the foregoing, except for salaries and other employment compensation payable to employees of the Corporation in the ordinary course of the routine daily affairs of the Business and at the regular rates payable to them.

(43) Government Assistance:

Schedule "V" attached hereto describes all agreements, loans, other funding arrangements and assistance programs (collectively called "Government Assistance Programs") which are outstanding in favour of the Corporation from any federal, provincial, municipal or other government or governmental

agency, board, commission or authority, domestic or foreign (collectively called "Government Agencies"). Complete and correct copies of all documents relating to the Government Assistance Programs have been delivered to the Purchaser. The Corporation has performed all of its obligations under the Government Assistance Programs, and no basis exists for any Government Agencies to seek payment or repayment by the Corporation of any amount or benefit received by it under any Government Assistance Programs.

(44) Compliance with Laws:

The Corporation is not in violation of any federal, provincial, municipal or other law, regulation or order of any government or governmental or regulatory authority, domestic or foreign, including, without limitation, any law, regulation or order relating to [specific area of regulation applicable to the Corporation].

(45) Vendor's Residency:

The Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act*, S.C. 1970-71-72, c. 63 (Canada).

(46) Copies of Documents:

Complete and correct copies (including all amendments) of all contracts, leases and other documents referred to in this Agreement or any schedule hereto or required to be disclosed hereby have been delivered to the Purchaser.

(47) Disclosure:

No representation or warranty contained in this section 3.01, and no statement contained in any schedule, certificate, list, summary or other disclosure document provided or to be provided to the Purchaser pursuant hereto or in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact which is necessary in order to make the statements contained therein not misleading.

3.2 REPRESENTATIONS AND WARRANTIES BY THE PURCHASER:

The Purchaser hereby represents and warrants to the Vendor and the Shareholder as follows, and confirms that the Vendor and the Shareholder are relying upon the accuracy of each of such

) representations and warranties in connection with the sale of the Purchased Shares and the completion of the other transactions hereunder:

(1) Corporate Authority and Binding Obligation:

The Purchaser is a corporation duly incorporated and validly subsisting in all respects under the laws of its jurisdiction of incorporation. The Purchaser has good right, full corporate power and absolute authority to enter into this Agreement and to purchase the Purchased Shares from the Vendor in the manner contemplated herein and to perform all of the Purchaser's obligations under this Agreement. The Purchaser and its shareholders and board of directors have taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, this Agreement and the purchase of the Purchased Shares by the Purchaser from the Vendor. This Agreement is a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms subject to:

- (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and
- (b) the fact that equitable remedies, including the remedies of specific performance and injunction, may only be granted in the discretion of a court.

(2) Contractual and Regulatory Approvals:

Except as specified in Schedule "W" attached hereto, the Purchaser is not under any obligation, contractual or otherwise, to request or obtain the consent of any person, and no permits, licences, certifications, authorizations or approvals of, or notifications to, any federal, provincial, municipal or local government or governmental agency, board, commission or authority are required to be obtained by the Purchaser in connection with the execution, delivery or performance by the Purchaser of this Agreement or the completion of any of the transactions contemplated herein. Complete and correct copies of any agreements under which the Purchaser is obligated to request or obtain any such consent have been provided to the Vendor.

(3) Compliance with Constating Documents« Agreements and Laws:

The execution, delivery and performance of this Agreement and each of the other agreements contemplated or referred to herein by the Purchaser, and the completion of the transactions contemplated hereby, will not constitute or result in a violation or breach of or default under:

- (a) any term or provision of any of the articles, by-laws or other constating documents of the Purchaser;
- (b) subject to obtaining the contractual consents referred to in Schedule "W" hereof, the terms of any indenture, agreement (written or oral), instrument or understanding or other obligation or restriction to which the Purchaser is a party or by which it is bound; or
- (c) subject to obtaining the regulatory consents referred to in Schedule "W" hereof, any term or provision of any licenses, registrations or qualification of the Purchaser or any order of any court, governmental authority or regulatory body or any applicable law or regulation of any jurisdiction.

(4) Investment Canada Act:

The Purchaser is not a "non-Canadian" for purposes of and within the meaning of the Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.).

ARTICLE 4

SURVIVAL AND LIMITATIONS OF REPRESENTATIONS AND WARRANTIES

4.1 SURVIVAL OF WARRANTIES BY THE VENDOR AND SHAREHOLDER:

The representations and warranties made by the Vendor and the Shareholder and contained in this Agreement, or contained in any document or certificate given in order to carry out the transactions contemplated hereby, will survive the closing of the purchase of the Purchased Shares provided for herein and, notwithstanding such closing or any investigation made by or on behalf of the Purchaser or any other person or any knowledge of the Purchaser or any other person, shall continue in full force and effect for the benefit of the Purchaser, subject to the following provisions of this section.

- (a) Except as provided in (b) and (c) of this section, no Warranty Claim may be made or brought by the Purchaser after the date which is [number] years following the Closing Date.
- (b) Any Warranty Claim which is based upon or relates to the tax liability of the Corporation for a particular taxation year may be made or brought by the Purchaser at any time prior to the expiration of the period (if any) during which an assessment, reassessment or other form of recognized document assessing liability for tax, interest or penalties in respect of such taxation year under applicable tax legislation could be issued, assuming that the Corporation does not file any waiver or similar document extending such period as otherwise determined.
- (c) Any Warranty Claim which is based upon or relates to the title to the Purchased Shares or which is based upon intentional misrepresentation or fraud by the Vendor or the Shareholder may be made or brought by the Purchaser at any time.

After the expiration of the period of time referred to in (a) of this section, the Vendor and the Shareholder will be released from all obligations and liabilities in respect of the representations and warranties made by the Vendor and the Shareholder and contained in this Agreement or in any document or certificate given in order to carry out the transactions contemplated hereby, except with respect to any Warranty Claims made by the Purchaser in writing prior to the expiration of such period and subject to the rights of the Purchaser to make any claim permitted by (b) and or (c) of this section.

4.2 SURVIVAL OF WARRANTIES BY PURCHASER:

The representations and warranties made by the Purchaser and contained in this Agreement or contained in any document or certificate given in order to carry out the transactions contemplated hereby will survive the closing of the purchase and sale of the Purchased Shares provided for herein and, notwithstanding such closing or any investigation made by or on behalf of the Vendor or the Shareholder or any other person or any knowledge of the Vendor or the Shareholder or any other person, shall continue in full force and effect for the benefit of the Vendor and the Shareholder; provided that no Warranty Claim may be made or brought by the Vendor after the date which is [number] years following the Closing Date.

4.3 LIMITATIONS ON WARRANTY CLAIMS:

- (a) The Purchaser shall not be entitled to make a Warranty Claim if the Purchaser has been advised in writing or otherwise has actual knowledge prior to the Closing Time of the inaccuracy, non-performance, non-fulfilment or breach which is the basis for such Warranty Claim and the Purchaser completes the transactions hereunder notwithstanding such inaccuracy, non-performance, non-fulfilment or breach.
- (b) The amount of any damages which may be claimed by the Purchaser pursuant to a Warranty Claim shall be calculated to be the cost or loss to the Purchaser after giving effect to:
 - (i) any insurance proceeds available to the Corporation in relation to the matter which is the subject of the Warranty Claim; and
 - (ii) the value of any related, determinable tax benefits realized, or which will (with reasonable certainty) be realized within a [number] year period following the date of incurring such cost or loss, by the Corporation or the Purchaser in relation to the matter which is the subject of the Warranty Claim.
- (c) The Purchaser shall not be entitled to make any Warranty Claim until the aggregate amount of all damages, losses, liabilities and expenses incurred by the Purchaser as a result of all misrepresentations and breaches of warranties contained in this Agreement or contained in any document or certificate given in order to carry out the transactions contemplated hereby, after taking into account (b) of this section, is equal to \$-. After the aggregate amount of such damages, losses, liabilities and expenses incurred by the Purchaser exceeds \$[amount], the Purchaser shall only be entitled to make Warranty Claims to the extent that such aggregate amount, after taking into account the provisions of paragraph (b) of this section, exceeds \$-.
- (d) Notwithstanding any other provisions of this Agreement or of any agreement, certificate or other document made in order to carry out the transactions contemplated hereby, the maximum aggregate liability of the Vendor and the Shareholder together in respect of all Warranty Claims by the Purchaser will be limited to \$-.

ARTICLE 5

COVENANTS

5.1 COVENANTS BY THE VENDOR AND THE SHAREHOLDER:

The Vendor and the Shareholder jointly and severally covenant to the Purchaser that they will do or cause to be done the following:

(1) Investigation of Business and Examination of Documents:

During the Interim Period, the Vendor and the Shareholder will provide and will cause the Corporation to provide access to, and will permit the Purchaser, through *its* representatives, to make such investigation of, the operations, properties, assets and records of the Corporation and of *its* financial and legal condition as the Purchaser deems necessary or advisable to familiarize itself with such operations, properties, assets, records and other matters. Without limiting the generality of the foregoing, during the Interim Period the Vendor and the Shareholder will permit the Purchaser and *its* representatives to have access to the premises used in connection with the Business [at such reasonable times as may be designated by the Vendor so as not to disrupt the routine daily affairs of the Business], and will produce for inspection and provide copies to the Purchaser of:

- (a) all agreements and other documents referred to in section 3.1 hereof or in any of the schedules attached hereto and all other contracts, leases, licenses, title documents, title opinions, insurance policies, pension plans, information relating to employees of the Corporation, customer lists, information relating to customers and suppliers of the Corporation, documents relating to all indebtedness and credit facilities of the Corporation, documents relating to legal or administrative proceedings and all other documents of or in the possession of the Corporation or relating to the Business;
- (b) all minute books, share certificate books, registers of security holders, registers of transfers of securities, registers of directors and other corporate documents of the Corporation;
- (c) all books, records, accounts, tax returns and financial statements of the Corporation; and
- (d) all other information which, in the reasonable opinion of the Purchaser's representatives, *is* required in order to make an examination of the Corporation and the Business.

[Subject to section 4.3 hereof,] such investigations and inspections shall not mitigate or affect the representations and warranties of the Vendor and the Shareholder hereunder, which shall continue in full force and effect.

(2) Conduct of Business:

Except as contemplated by this agreement or with the prior written consent of the Purchaser, during the Interim Period the Vendor and the Shareholder will, and will cause the Corporation to:

- (a) operate the Business only in the ordinary course thereof, consistent with past practices;
- (b) take all actions within their control to ensure that the representations and warranties in section 3.1 hereof remain true and correct at the Closing Time, with the same force and effect as if such representations and warranties were made at and as of the Closing Time, and to satisfy or cause to be satisfied the conditions in section 6.1 hereof;
- (c) promptly advise the Purchaser of any facts that come to their attention which would cause any of the Vendor's and the Shareholder's representations and warranties herein contained to be untrue in any respect;
- (d) take all action to preserve the Business and the goodwill of the Corporation and its relationships with customers, suppliers and others having business dealings with it, to keep available the services of its present officers and employees and to maintain in full force and effect all agreements to which the Corporation is a party, and take all other action reasonably requested by the Purchaser in order that the Business and the Condition of the Corporation will not be impaired during the Interim Period;
- (e) promptly advise the Purchaser in writing of any material adverse change in the Business or the Condition of the Corporation during the Interim Period;
- (f) maintain all of the Corporation's tangible properties and assets in the same condition as they now exist, ordinary wear and tear excepted;
- (g) maintain the books, records and accounts of the Corporation in the ordinary course and record all transactions on a basis consistent with past practice;

- (h) ensure that the Corporation does not create, incur or assume any long-term debt (including obligations in respect of leases) or create any Encumbrance upon any of its properties or assets or guarantee or otherwise become liable for the obligations of any other person or make any loans or advances to any person;
- (i) ensure that the Corporation does not sell or otherwise dispose of any of its properties or assets except in the ordinary course of the Business;
- (j) ensure that the Corporation does not terminate or waive any right of substantial value of the Business;
- (k) ensure that the Corporation does not make any capital expenditure in excess of \$- in respect of any particular item or in excess of \$- in the aggregate;
- (l) maintain the inventories of the Business in accordance with past practice;
- (m) keep in full force all of the Corporation's current insurance policies;
- (n) take all actions within their control to ensure that the Corporation performs all of its obligations falling due during the Interim Period under *all* agreements to which the Corporation *is* a party or by which *it* is bound;
- (o) ensure that the Corporation does not enter into any agreement other than agreements made in the ordinary course of the Business consistent with past practice and which involve obligations of less than \$-;
- (p) not take any action to amend the articles of incorporation or by-laws of the Corporation;
- (q) ensure that the Corporation does not declare or pay any dividends, redeem or repurchase any shares in the capital of the Corporation or make any other distributions in respect of the shares of the Corporation; and
- (r) ensure that the Corporation does not increase, in any manner, the compensation or employee benefits of any of its directors, officers or employees, or pay or agree to pay to any of its directors, officers or employees any pension, severance or termination amount or other employee benefit not required by any of the employee benefit plans and programs referred to in the schedules attached hereto.

(3) Transfer of Purchased Shares:

At or before the Closing Time, the Vendor and the Shareholder will cause *all* necessary steps and corporate proceedings to be taken in order to permit the Purchased Shares to be duly and regularly transferred to the Purchaser.

(4) Resignation of Officers and Directors:

At or before the Closing Time, the Vendor and the Shareholder will cause each person who is a director or officer of the Corporation, other than such persons as may be designated in writing by the Purchaser, to submit his or her written resignation as a director or officer to the Corporation which will be effective at the Closing Time.

(5) Releases by the Vendor and the Shareholder:

At the Closing Time, the Vendor and the Shareholder will execute and deliver to the Corporation a release in the form of the draft release attached hereto as Schedule "X".

(6) Non-Competition Agreement:

At the Closing Time, the Vendor and the Shareholder will execute and deliver to the Corporation and the Purchaser a non-competition agreement in the form of the draft agreement attached hereto as Schedule "Y".

5.2 COVENANTS BY THE PURCHASER:

The Purchaser covenants to the Vendor and the Shareholder that it will do or cause to be done the following:

(1) Confidentiality:

Prior to the Closing Time and, if the transaction contemplated hereby is not completed, at all times after the Closing Time, the Purchaser will keep confidential *all* information obtained by it relating to the Corporation and the Business, except such information which:

- (a) prior to the date hereof was already in the possession of the Purchaser, as demonstrated by written records;
- (b) is generally available to the public, other than as a result of a disclosure by the Purchaser; or

- (c) is made available to the Purchaser on a non-confidential basis from a source other than the Vendor, the Shareholder or their representatives.

The Purchaser further agrees that such information will be disclosed only to those of its employees and representatives of its advisors who need to know such information for the purposes of evaluating and implementing the transaction contemplated hereby. Notwithstanding the foregoing provisions of this paragraph, the obligation to maintain the confidentiality of such information will not apply to the extent that disclosure of such information is required in connection with governmental or other applicable filings relating to the transactions hereunder, provided that, in such case, unless the Vendor otherwise agrees, the Purchaser will, if possible, request confidentiality in respect of such governmental or other filings. If the transactions contemplated hereby are not consummated for any reason, the Purchaser will return forthwith, without retaining any copies thereof, all information and documents obtained from the Vendor, the Shareholder and the Corporation.

ARTICLE 6

CONDITIONS

6.1 CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER:

Notwithstanding anything herein contained, the obligation of the Purchaser to complete the transactions provided for herein will be subject to the fulfilment of the following conditions at or prior to the Closing Time, and the Vendor and the Shareholder jointly and severally covenant to use their best efforts to ensure that such conditions are fulfilled.

- (1) Accuracy of Representations and warranties and Performance of Covenants:

The representations and warranties of the Vendor and the Shareholder contained in this Agreement or in any documents delivered in order to carry out the transactions contemplated hereby shall be true and accurate on the date hereof and at the Closing Time with the same force and effect as though such representations and warranties had been made as of the Closing Time (regardless of the date as of which the information in this Agreement or in any schedule or other document made pursuant hereto is given). In addition, the Vendor and the Shareholder shall have complied with all covenants and

agreements herein agreed to be performed or caused to be performed by them at or prior to the Closing Time. In addition, the Vendor and the Shareholder shall have delivered to the Purchaser a certificate in the form of Schedule "Z" attached hereto confirming that the facts with respect to each of such representations and warranties by the Vendor and the Shareholder are as set out herein at the Closing Time and that the Vendor and the Shareholder have performed all covenants required to be performed by them hereunder.

(2) Material Adverse Changes:

During the Interim Period there will have been no change in the Business or the Condition of the Corporation, howsoever arising, except changes which have occurred in the ordinary course of the Business and which, individually or in the aggregate, have not affected and may not affect the Business or the Condition of the Corporation in any material adverse respect. Without limiting the generality of the foregoing, during the Interim Period:

- (a) no damage to or destruction of any material part of the property or assets of the Corporation shall have occurred, whether or not covered by insurance;
- (b) none of the employees of the Corporation shall have resigned or have indicated their intention to resign from employment with the Corporation; and
- (c) none of the [number] largest customers of the Business will have ceased, or advised the Corporation or the Purchaser of their intention to cease, purchasing from or doing business with the Corporation.

(3) No Restraining Proceedings:

No order, decision or ruling of any court, tribunal or regulatory authority having jurisdiction shall have been made, and no action or proceeding shall be pending or threatened which, in the opinion of counsel to the Purchaser, is likely to result in an order, decision or ruling:

- (a) to disallow, enjoin, prohibit or impose any limitations or conditions on the purchase and sale of the Purchased Shares contemplated hereby or the right of the Purchaser to own the Purchased Shares; or
- (b) to impose any limitations or conditions which may have a [material] adverse effect on the Business or the Condition of the Corporation.

(4) Consents:

All consents required to be obtained in order to carry out the transactions contemplated hereby in compliance with all laws and agreements binding upon the parties hereto shall have been obtained, including the consents referred to in Schedules "F" and "W" attached hereto.

(5) Estoppel Certificates:

Prior to the Closing Time, the Purchaser shall have received from the landlords of the Leased Premises executed copies of estoppel certificates in the form of the draft certificate attached hereto as Schedule "M".

(6) Releases by Directors and Officers:

At the Closing Time, each person who is a director or officer of the Corporation and who is resigning as such shall have executed and delivered to the Corporation and the Purchaser a release in the form of the draft release attached hereto as Schedule "BB".

(7) Opinion of Vendor's Counsel:

At the Closing Time, the Purchaser shall have received an opinion of legal counsel for the Vendor and the Shareholder in the form of the draft opinion attached hereto as Schedule "CC" which opinion may rely on certificates of one or more senior officers of the Vendor, the Shareholder and the Corporation as to factual matters and may rely upon opinions of local counsel with respect to matters governed by laws other than the laws of the Province of Saskatchewan and the federal laws of Canada applicable in the Province of Saskatchewan.

6.2 WAIVER OR TERMINATION BY PURCHASER:

The conditions contained in section 6.1 hereof are inserted for the exclusive benefit of the Purchaser and may be waived in whole or in part by the Purchaser at any time. The Vendor and the Shareholder acknowledge that the waiver by the Purchaser of any condition or any part of any condition shall constitute a waiver only of such condition or such part of such condition, as the case may be, and shall not constitute a waiver of any covenant, agreement, representation or warranty made by the Vendor or the Shareholder herein that corresponds or is related to such condition or such part of such condition, as the case may be. If any of the

conditions contained in section 6.1 hereof are not fulfilled or complied with as herein provided, the Purchaser may, at or prior to the Closing Time at its option, rescind this Agreement by notice in writing to the Vendor and the Shareholder and in such event the Purchaser shall be released from all obligations hereunder and, unless the condition or conditions which have not been fulfilled are reasonably capable of being fulfilled or caused to be fulfilled by the Vendor, the Shareholder or the Corporation, then the Vendor and the Shareholder shall also be released from all obligations hereunder.

6.3 CONDITIONS TO THE OBLIGATIONS OF THE VENDOR:

Notwithstanding anything herein contained, the obligations of the Vendor and the Shareholder to complete the transactions provided for herein will be subject to the fulfilment of the following conditions at or prior to the Closing Time, and the Purchaser will use its best efforts to ensure that such conditions are fulfilled.

(1) Accuracy of Representations and warranties and Performance of Covenants:

The representations and warranties of the Purchaser contained in this Agreement or in any documents delivered in order to carry out the transactions contemplated hereby will be true and accurate on the date hereof and at the Closing Time with the same force and effect as though such representations and warranties had been made as of the Closing Time (regardless of the date as of which the information in this Agreement or any such schedule or other document made pursuant hereto is given). In addition, the Purchaser shall have complied with all covenants and agreements herein agreed to be performed or caused to be performed by it at or prior to the Closing Time. In addition, the Purchaser shall have delivered to the Vendor a certificate in the form of Schedule "DD" attached hereto confirming that the facts with respect to each of the representations and warranties of the Purchaser are as set out herein at the Closing Time and that the Purchaser has performed each of the covenants required to be performed by it hereunder.

(2) No Restraining Proceedings:

No order, decision or ruling of any court, tribunal or regulatory authority having jurisdiction shall have been made, and no action or proceeding shall be pending or threatened Which, in the opinion of counsel to the Vendor or the Shareholder, is likely to result in an order, decision or

ruling, to disallow, enjoin or prohibit the purchase and sale of the Purchased Shares contemplated hereby.

(3) Consents:

All consents required to be obtained in order to carry out the transactions contemplated hereby in compliance with all laws and agreements binding upon the parties hereto shall have been obtained, including the consents referred to in Schedules "F" and "W" attached hereto.

(4) [Releases From Guarantees, Etc.:

The Vendor and the Shareholder and their Affiliates will have received releases from all necessary parties, in a form acceptable to the Vendor's and Shareholder's counsel, whereby the Vendor and the Shareholder and their Affiliates are unconditionally released from all guarantees, covenants and other arrangements providing financial assistance or support to or on behalf of the Corporation.]

(5) [Release by the Corporation:

The Vendor and the Shareholder will have received a release from the Corporation in the form of the draft release attached hereto as Schedule "EE" releasing the Vendor and the Shareholder from all claims, demands, covenants and obligations whatsoever based on any matter or thing arising prior to the Closing Time, except for the performance of the Vendor's or the Shareholder's obligations under this Agreement.]

(6) Opinion of Purchaser's Counsel:

At the Closing Time, the Vendor and the Shareholder shall have received an opinion of the Purchaser's counsel in the form of the draft opinion attached hereto as Schedule "FF" which opinion may rely on certificates of senior officers of the Purchaser as to factual matters and may rely upon opinions of local counsel with respect to matters governed by laws other than the laws of the Province of Saskatchewan and the federal laws of Canada applicable in the Province of Saskatchewan.

6.4 WAIVER OR TERMINATION BY VENDOR AND SHAREHOLDER:

The conditions contained in section 6.3 hereof are inserted for the exclusive benefit of the Vendor and the Shareholder and may be

waived in whole or in part by the Vendor and the Shareholder at any time. The Purchaser acknowledges that the waiver by the Vendor and the Shareholder of any condition or any part of any condition shall constitute a waiver only of such condition or such part of such condition, as the case may be, and shall not constitute a waiver of any covenant, agreement, representation or warranty made by the Purchaser herein that corresponds or is related to such condition or such part of such condition, as the case may be. If any of the conditions contained in section 6.3 hereof are not fulfilled or complied with as herein provided, the Vendor and the Shareholder may, at or prior to the Closing Time at their option, rescind this Agreement by notice in writing to the Purchaser and in such event the Vendor and the Shareholder shall each be released from all obligations hereunder and, unless the condition or conditions which have not been fulfilled are reasonably capable of being fulfilled or caused to be fulfilled by the Purchaser, then the Purchaser shall also be released from all obligations hereunder.

ARTICLE 7

CLOSING

7.1 CLOSING ARRANGEMENTS:

Subject to the terms and conditions hereof, the transactions contemplated herein shall be closed at the Closing Time at the offices of [name, often a law firm representing Vendor or Purchaser] at [address] or at such other place or places as may be mutually agreed upon by the Vendor and the Purchaser.

7.2 DOCUMENTS TO BE DELIVERED:

At or before the Closing Time, the Vendor and the Shareholder shall execute, or cause to be executed, and shall deliver, or cause to be delivered, to the Purchaser all documents, instruments and things which are to be delivered by the Vendor and the Shareholder pursuant to the provisions of *this* Agreement, and the Purchaser shall execute, or cause to be executed, and shall deliver, or cause to be delivered, to the Vendor and the Shareholder all cheques or bank drafts and all documents, instruments and things which the Purchaser is to deliver or to cause to be delivered pursuant to the provisions of this Agreement.

ARTICLE 8

INDEMNIFICATION AND SET-OFF

8.1 INDEMNITY BY THE VENDOR AND THE SHAREHOLDER:

- (1) The Vendor and the Shareholder hereby jointly and severally agree to indemnify and save the Purchaser harmless from and against any claims, demands, actions, causes of action, damage, loss, deficiency, cost, liability and expense which may be made or brought against the Purchaser or which the Purchaser may suffer or incur as a result of, in respect of or arising out of:
 - (a) any non-performance or non-fulfilment of any covenant or agreement on the part of the Vendor or the Shareholder contained in this Agreement or in any document given in order to carry out the transactions contemplated hereby:
 - (b) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Vendor or the Shareholder contained in this Agreement or contained in any document or certificate given in order to carry out the transactions contemplated hereby: and
 - (c) all costs and expenses including, without limitation, legal fees on a solicitor-and-client basis, incidental to or in respect of the foregoing.
- (2) The obligations of indemnification by the Vendor and the Shareholder pursuant to paragraph (1) of this section will be:
 - (a) subject to the limitations referred to in section 4.1 hereof with respect to the survival of the representations and warranties by the Vendor and the Shareholder;
 - (b) [subject to the limitations referred to in section 4.3 hereof, and]
 - (c) subject to the provisions of section 8.2 hereof.

8.2 PROVISIONS RELATING TO INDEMNITY CLAIMS:

The following provisions will apply to any claim by the Purchaser for indemnification by the Vendor and the Shareholder pursuant to

section 8.1 hereof (hereinafter, in this section, called an "Indemnity Claim").

- (a) Promptly after becoming aware of any matter that may give rise to an Indemnity Claim, the Purchaser will provide to the Vendor and the Shareholder written notice of the Indemnity Claim specifying (to the extent that information is available) the factual basis for the Indemnity Claim and the amount of the Indemnity Claim or, if an amount is not then determinable, an estimate of the amount of the Indemnity Claim, if an estimate is feasible in the circumstances.
- (b) If an Indemnity Claim relates to an alleged liability of the Corporation to any other person (hereinafter, in this section, called a "Third Party Liability"), including without limitation any governmental or regulatory body or any taxing authority, which is of a nature such that the Corporation is required by applicable law to make a payment to a third party before the relevant procedure for challenging the existence or quantum of the alleged liability can be implemented or completed, then the Corporation or the Purchaser may, notwithstanding the provisions of paragraphs (c) and (d) of this section, make such payment or cause the Corporation to make such payment and forthwith demand reimbursement for such payment from the Vendor and the Shareholder *in* accordance with this Agreement; provided that, if the alleged liability to the third party as finally determined upon completion of settlement negotiations or related legal proceedings *is* less than the amount which *is* paid by the Vendor and the Shareholder in respect of the related Indemnity Claim, then the Corporation or the Purchaser, as the case may be, shall forthwith following the final determination pay to the Vendor and the Shareholder the amount by which the amount of the liability as finally determined is less than the amount which *is* so paid by the Vendor and the Shareholder.
- (c) The Purchaser shall not negotiate, settle, compromise or pay (except *in* the case of payment of a judgment) any Third Party Liability as to which it proposes to assert an Indemnity Claim, except with the prior consent of the Vendor and the Shareholder (which consent shall not be unreasonably withheld or delayed), unless there is a reasonable possibility that such Third Party Liability may materially and adversely affect the Business, the Condition of the Corporation or the Purchaser, in which case the Purchaser shall have the right, after notifying the Vendor and the Shareholder, to negotiate, settle, compromise or pay such Third Party Liability without prejudice to its rights of indemnification hereunder.

- (d) With respect to any Third Party Liability, provided the Vendor and the Shareholder first admit the Purchaser's right to indemnification for the amount of such Third Party Liability which may at any time be determined or settled, then in any legal, administrative or other proceedings in connection with the matters forming the basis of the Third Party Liability, the following procedures will apply:
- (i) except as contemplated by subparagraph *(iii)* of this paragraph, the Vendor and the Shareholder will have the right to assume carriage of the compromise or settlement of the Third Party Liability and the conduct of any related legal, administrative or other proceedings, but the Purchaser and the Corporation shall have the right and shall be given the opportunity to participate in the defence of the Third Party Liability, to consult with the Vendor and the Shareholder in the settlement of the Third Party Liability and the conduct of related legal, administrative and other proceedings (including consultation with counsel) and to disagree on reasonable grounds with the selection and retention of counsel, in which case counsel satisfactory to the Vendor, the Shareholder and the Purchaser shall be retained by the Vendor and the Shareholder;
 - (ii) the Vendor and the Shareholder will co-operate with the Purchaser in relation to the Third Party Liability, will keep it fully advised with respect thereto, will provide it with copies of all relevant documentation as it becomes available, will provide it with access to all records and files relating to the defence of the Third Party Liability and will meet with representatives of the Purchaser at all reasonable times to discuss the Third Party Liability; and
 - (iii) notwithstanding subparagraphs *(i)* and *(ii)* of this paragraph, the Vendor and the Shareholder will not settle the Third Party Liability or conduct any legal, administrative or other proceedings in any manner which could, in the reasonable opinion of the Purchaser, have a material adverse effect on the Business, the Condition of the Corporation or the Purchaser, except with the prior written consent of the Purchaser.
- (e) If, with respect to any Third Party Liability, the Vendor and the Shareholder do not admit the Purchaser's right to indemnification or decline to assume carriage of the

settlement or of any legal, administrative or other proceedings relating to the Third Party Liability, then the following provisions will apply:

- (i) the Purchaser, at its discretion, may assume carriage of the settlement or of any legal, administrative or other proceedings relating to the Third Party Liability and may defend or settle the Third Party Liability on such terms as the Purchaser, acting in good faith, considers advisable; and
- (ii) any cost, loss, damage or expense incurred or suffered by the Purchaser and the Corporation in the settlement of such Third Party Liability or the conduct of any legal, administrative or other proceedings shall be added to the amount of the Indemnity Claim.

8.3 RIGHT OF SET-OFF:

Each of the Purchaser and the Corporation shall have the right to satisfy any amount from time to time owing by it to the Vendor or the Shareholder by way of set-off against any amount from time to time owing by the Vendor or the Shareholder to the Purchaser or the Corporation, including any amount owing to the Purchaser pursuant to the Vendor's and Shareholder's indemnification pursuant to section 8.1 hereof.

ARTICLE 9

GENERAL PROVISIONS

9.1 FURTHER ASSURANCES:

Each of the Vendor, the Shareholder and the Purchaser hereby covenants and agrees that at any time and from time to time after the Closing Date it will, upon the request of the others, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances and assurances as may be required for the better carrying out and performance of all the terms of this Agreement.

9.2 REMEDIES CUMULATIVE:

The rights and remedies of the parties under this Agreement are cumulative and in addition to and not in substitution for any

) rights or remedies provided by law. Any single or partial exercise by any party hereto of any right or remedy for default or breach of any term, covenant or condition of this Agreement does not waive, alter, affect or prejudice any other right or remedy to which such party may be lawfully entitled for the same default or breach.

9.3 NOTICES:

(1) Any notice, designation, communication, request, demand or other document, required or permitted to be given or sent or delivered hereunder to any party hereto shall be in writing and shall be sufficiently given or sent or delivered if it is:

- (a) delivered personally to an officer or director of such party;
- (b) sent to the party entitled to receive it by registered mail, postage prepaid, mailed in Canada; or
- (c) sent by telecopy machine.

(2) Notices shall be sent to the following addresses or telecopy numbers:

(a) in the case of the Vendor:

[name of vendor corporation, address, postal code and telecopy number]
Attention: [name and office]

(b) in the case of the Shareholder:

[name, address, postal code and telecopy number]

(c) in the case of the Purchaser;

[name of purchaser corporation, address, postal code and telecopy number]
Attention: [name and office]

or to such other address or telecopier number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.

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- (3) Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall:
- (a) if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery;
 - (b) if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received (but not actually received) on the fourth Business Day following the date of mailing, unless at any time between the date of mailing and the fourth Business Day thereafter there is a discontinuance or interruption of regular postal service, whether due to strike or lockout or work slowdown, affecting postal service at the point of dispatch or delivery or any intermediate point, in which case the same shall be deemed to have been given, sent, delivered and received in the ordinary course of the mails, allowing for such discontinuance or interruption of regular postal service; and
 - (c) if sent by telecopy machine, be deemed to have been given, sent, delivered and received on the date the sender receives the telecopy answer back confirming receipt by the recipient.

9.4 COUNTERPARTS:

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

9.5 EXPENSES OF PARTIES:

Each of the parties hereto shall bear all expenses incurred by it in connection with this Agreement including, without limitation, the charges of their respective counsel, accountants, financial advisors and finders.

9.6 BROKERAGE AND FINDER'S FEES:

The Vendor and the Shareholder jointly and severally agree to indemnify the Purchaser and the Corporation and hold each of them harmless in respect of any claim for brokerage or other commissions relative to this Agreement or the transactions contemplated hereby which is caused by actions of the Vendor or the Shareholder or any

of their Affiliates. The Purchaser will indemnify the Vendor and the Shareholder and hold them harmless in respect of any claim for brokerage or other commissions relative to this Agreement or to the transactions contemplated hereby which is caused by actions of the Purchaser or any of its Affiliates.

9.7 ANNOUNCEMENTS:

No announcement with respect to this Agreement will be made by any party hereto without the prior approval of the other parties. The foregoing will not apply to any announcement by any party required in order to comply with laws pertaining to timely disclosure, provided that such party consults with the other parties before making any such announcement.

9.8 ASSIGNMENT:

The rights of the Vendor and the Shareholder hereunder shall not be assignable without the written consent of the Purchaser. The rights of the Purchaser hereunder shall not be assignable without the written consent of the Vendor and the Shareholder.

9.9 SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

9.10 ENTIRE AGREEMENT:

This Agreement and the schedules referred to herein constitute the entire agreement between the parties hereto and supersede all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. None of the parties hereto shall be bound or charged with any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings not specifically set forth in this Agreement or in the schedules, documents and instruments to be delivered on or before the Closing Date pursuant to this Agreement. The parties hereto further acknowledge and agree that, in entering into this Agreement and in delivering the schedules, documents and instruments to be delivered on or before the Closing Date, they have not in any way relied, and will not in any way rely, upon any oral or written agreements,

representations, warranties, statements, promises, information, arrangements or understandings, express or implied, not specifically set forth in this Agreement or in such schedules, documents or instruments.

9.11 WAIVER:

Any party hereto which is entitled to the benefits of this Agreement may, and has the right to, waive any term or condition hereof at any time on or prior to the Closing Time provided, however, that such waiver shall be evidenced by written instrument duly executed on behalf of such party.

9.12 AMENDMENTS:

No modification or amendment to this Agreement may be made unless agreed to by the parties hereto in writing.

IN WITNESS WHEREOF the parties hereto have duly executed this agreement under seal as of the day and year first written above.

[NAME OF PURCHASER CORPORATION]

Per: _____
Office: _____

(Seal)

Per: _____
Office: _____

[NAME OF VENDOR CORPORATION]

Per: _____
Office: _____

(Seal)

Per: _____
Office: _____

Wil:ness

[Name of Shareholder]

[Attach the following schedules]

)

- Schedule "A" - Audited Financial Statements
- Schedule "B" - Interim Financial Statements
- Schedule "C" - Leases
- Schedule "D" - Real Properties
- Schedule "E" - Escrow Agreement
- Schedule "F" - Vendor's Contractual and Regulatory Approvals
- Schedule "G" - Constatng Documents
- Schedule "H" - Licences
- Schedule "I" - Tax Matters
- Schedule "J" - Litigation
- Schedule "K" - Environmental Matters
- Schedule "L" - Encumbrances
- Schedule "M" - Bank Accounts
- Schedule "N" - Leases of Real Properties
- Schedule "O" - Intellectual Property
- Schedule "P" - Guarantees, Warranties and Discounts
- Schedule "Q" - Licences, Agency and Distribution Agreements
- Schedule "R" - Material Contracts
- Schedule "S" - Employees
- Schedule "T" - Employee Benefit and Pension Plans
- Schedule "U" - Insurance
- Schedule "V" - Government Assistance
- Schedule "W" - Purchaser's Contractual and Regulatory Approvals
- Schedule "X" - Release by Vendor and Shareholder
- Schedule "Y" - Non-Competition Agreement
- Schedule "Z" - Vendor's Confirming Certificate
- Schedule "AA" - Estoppel Certificate
- Schedule "BB" - Release by Directors and Officers
- Schedule "CC" - Opinion of Vendor's Counsel
- Schedule "DD" - Purchaser's Confirming Certificate
- Schedule "EE" - Release by the Corporation
- Schedule "FF" - Opinion of Purchaser's Counsel

Note that your circumstances will dictate the removal of certain of the foregoing schedules or the insertion of the other schedules or both.

