

ASSETS PURCHASE AGREEMENT

This Assets Purchase Agreement (the “Agreement”) is made and entered into on the _____ day of _____, 20__ by and among:

XYZ CORPORATION, a New York corporation (the “Seller”);

JOHN DOE (the “Shareholder”), the owner of all of the issued and outstanding shares of capital stock of the Seller; and

ABC CORPORATION, a New York corporation (the “Purchaser”).

RECITALS

A. Seller is engaged in the service business performing maintenance, service, repair, and other related activities on heating, ventilating and air conditioning systems, equipment and controls. Shareholder is the sole owner, of record and beneficially, of all of Seller’s issued and outstanding capital stock.

B. Purchaser desires to enter the service business performing maintenance, service, repair, and other related activities on heating, ventilating and air conditioning systems, equipment and controls, and desires to purchase the business operations of Seller. All of such business operations of Seller desired to be purchased by Purchaser are referred to as the “Business.”

C. Subject only to the limitations and exclusions contained in this Agreement and on the terms and conditions of this Agreement, Seller desires to sell to the Purchaser and the Shareholder desires that the Seller sell to the Purchaser, and the Purchaser desires to buy from the Seller, the Business and certain assets, properties and rights of the Seller described in this Agreement.

NOW, THEREFORE, in consideration of the recitals and of the representations, warranties, covenants and agreements contained, and intending to be legally bound, the parties agree as follows:

ARTICLE I—PURCHASE AND SALE

1.1 *Agreement to Sell.* At the Closing (as defined in Section 2.1) and except as otherwise specifically provided in this Section 1.1, the Seller will, and the Shareholder will cause the Seller to, validly and effectively grant, sell, convey, assign, transfer and deliver to the Purchaser, upon and subject to the terms and conditions of this Agreement, (a) all of the Seller’s right, title and interest in and to (i) the Business as a going concern, and (ii) certain of the Seller’s assets set forth in Section 1.1.1, properties and rights constituting the Business or used in the Business, which are described in this Agreement, free and clear of all liens, pledges, security interests, charges, claims, restrictions and encumbrances of any nature whatsoever, and (iii) all of the Seller’s rights, title and interest in the name “XYZ CORPORATION,” or any derivative thereof. The Business, name, and assets, properties and rights being sold are called the “Assets.”

1.1.1 *Included Assets.* The Assets referred to in Section 1.1(a)(ii) shall include, without limitation, the following assets, properties and rights of Seller used directly or indirectly in the conduct of, or generated by or constituting, the Business, except as otherwise expressly set forth in this Agreement:

(a) all machinery, equipment, tools, vehicles, furniture, furnishings, leasehold improvements, goods and any rights under lease to use such machinery, vehicles, furnishings and equipment and those items of personal property and other tangible personal property listed on Schedule 1.1.1(a).

(b) all office and other supplies set forth on Schedule 1.1.1(b);

(c) all inventory set forth on Schedule 1.1.1(c);

(d) all rights under any written or oral contract, agreement, plan, instrument, registration, license, certificate of occupancy, other permit, certification, authorization or approval of any nature, or other document, commitment, arrangement, undertaking, practice or authorization set forth on Schedule 1.1.1(d);

(e) all rights under any patent, trademark, service mark, trade name or copyright, whether registered or unregistered, and any applications therefor;

(f) all technologies, methods, formulations, data bases, trade secrets, knowhow, inventions and other intellectual property used in the Business or under development listed on Schedule 1.1.1(f);

(g) all rights or choses in action arising out of occurrences before or after the Closing, including without limitation all rights under express or implied warranties relating to the Assets, except relating to Excluded Assets in 1.1.2;

(h) all records, manuals and other documents (collectively, the "Records") relating to or used in connection with the Seller's quality assurance/quality control programs, if any, developed for the Business, records relating to personnel qualifications in connection with the quality assurance/quality control program and administration of any quality assurance program; provided, however, that after the Closing the Purchaser will promptly provide Seller with access to and copies of any original documents comprising the Records which Seller or the Shareholder requests;

(i) all information, files, records, data, plans, and contracts and recorded knowledge, including customer and supplier lists related to the foregoing that the Purchaser may request; provided, however, that after the Closing the Purchaser will promptly provide Seller and Shareholder with access to and copies of any original of the foregoing documents comprising the Records which Purchaser requests;

(j) the maintenance and service contracts ("Maintenance Contracts") set forth in Schedule 1.1.1(j), if any.

(k) all telephone numbers to its Business;

(l) all other assets of the Seller, except those excluded under 1.1.2.

1.1.2 *Excluded Assets.* The following assets of the Seller shall be specifically excluded from the sale:

(a) any cash or cash equivalents held by or on behalf of Seller;

(b) all securities;

(c) all accounts receivable invoiced by Seller relating to the Business that are set forth on Schedule 1.1.2(c);

(d) all work in process, meaning all claims for services performed or goods sold prior to the Closing and billed by the Seller as set forth on Schedule 1.1.2(d);

(e) all notes receivable owing to the Seller as set forth on Schedule 1.1.2(e);

(f) the corporate seals, certificates of incorporation, minute books, stock books, tax returns, books of account and/or other records having to do with corporate organization of Seller;

(g) all Maintenance Contracts, except those set forth on Schedule 1.1.1(j);

(h) all the rights that accrue or will accrue to Seller under this Agreement;

(i) all the rights to any of Seller's claims for any federal, state, local, or foreign tax refunds;

(j) the computer, computer lease and software, set forth on Schedule 1.1.2(j);

(k) the real property set forth on Schedule 1.1.2(k); and

(l) the vehicle set forth on Schedule 1.1.2(1).

1.2 *Agreement to Purchase.* At the Closing, Purchaser shall purchase the Assets from Seller, upon and subject to the terms and conditions of this Agreement and in reliance on the representations, warranties and covenants of Seller and Shareholder, in exchange for the Purchase Price (hereinafter defined in Section 1.2.1). Except as specifically provided in Section 1.3, Purchaser shall not assume or be responsible for any liabilities or obligations of the Business or Seller.

1.2.1 *The Purchase Price; Payment.*

(a) The purchase price shall be \$45,000 plus the sum of the liabilities set forth in Schedule 1.2.1(a), (the "Purchase Price"). The liabilities listed on Schedule 1.2.1(a) are set forth solely for the purpose of determining, in part, the *amount* of the Purchase Price.

(b) On the Closing Date, on account of the Purchase Price, Purchaser shall assume the liabilities set forth on Schedule 1.2.1(b) and shall deliver its certified check for the balance of the Purchase Price. The liabilities listed on Schedule 1.2.1(b) are set forth solely to identify the liabilities to be assumed and the manner in which the Purchase Price shall be paid in part by the Purchaser.

1.3 *No Assumption of Liabilities.*

(a) Purchaser agrees to accept the Maintenance Contracts set forth on Schedule 1.1.1(j).

(b) Except for and limited solely to the liabilities set forth on Schedule 1.2.1(b) and the contractual obligations under the Maintenance Contracts listed on Schedule 1.1.1(j), the Purchaser shall not assume, and shall not be liable for, any liabilities or obligations of the Seller of any nature whatsoever, express or implied, fixed or contingent, including, but not limited to any liability owing to the Shareholder or any claim, regardless of when made or asserted, which arises out of or is based upon negligence, strict liability or any express or implied representation, warranty, agreement or guarantee made by the Seller or the Shareholder, or alleged to have been made by the Seller or the Shareholder, or which is imposed or asserted to be imposed by operation of law, in connection with any product designed, manufactured, sold, shipped or installed by or on behalf of the Seller, of or for any service performed by or on behalf of the Seller, including without limitation any claim relating to the service, repair or replacement of any such product and any claim seeking recovery for property damage, consequential damage, lost revenue or income or personal injury. In addition to the foregoing, in no event shall the Purchaser assume any liability or incur any liability or obligation in respect of any federal, state or local income or other tax liability of Seller payable with respect to the Business, Assets, properties or operations of the Seller for any period through the Closing Date or incident to or arising as a consequence of the negotiation or consummation by the Seller of this Agreement and the transactions contemplated by this Agreement.

1.4 *Allocation of Purchase Price.* The Purchase Price shall be allocated among the Assets acquired in accordance with Schedule 1.4. This allocation was arrived at in arm's length negotiations between the parties. The parties covenant and agree with each other that none of them will take a position on any income tax or in any judicial proceeding that is in any way inconsistent with the allocation set forth on Schedule 1.4.

ARTICLE II—CLOSING, ITEMS TO BE DELIVERED, THIRD-PARTY CONSENTS, CHANGE IN NAME AND FURTHER ASSURANCES

2.1 *Closing.* The closing (the "Closing") of the sale and purchase of the Assets shall take place at the offices of the Purchaser, commencing at 10:00 A.M., local time, on August 5, 20__, or at such other place, date and time as shall be mutually satisfactory to the parties hereto. The date of the Closing is sometimes referred to as the "Closing Date."

2.2 *Items to be Delivered at Closing.* At the Closing and subject to the terms and conditions contained in this Agreement:

(a) The Seller will, and the Shareholder will cause the Seller to, deliver to the Purchaser the following:

(i) such bills of sale with covenants of warranty, assignments, endorsements, and other good and sufficient instruments and documents of conveyance and transfer, in form and substance satisfactory to the Purchaser and its counsel, as shall be necessary and effective to convey, transfer and assign to, and vest in, the Purchaser all of the Seller's right, title and interest in and to the Assets to be sold under this Agreement, including, without limitation, (A) good, valid and marketable title in and to all of the Assets owned by the Seller, (B) good and valid leasehold interests in and to all of

the Assets leased by the Seller, and (C) all of the Seller's rights under all agreements, contracts, commitments, leases, plans, bids, quotations, proposals, licenses, permits, authorizations, instruments and other documents to which the Seller is a party or by which it has rights on the Closing Date and which are to be sold under this Agreement; and

(ii) all agreements, contracts, commitments, leases, plans, bids, quotations, proposals, licenses, permits, authorizations, instruments, manuals and guidebooks, price books and price lists, customer and subscriber lists, supplier lists, sales records, files, correspondence, and other documents, books, records, papers, files and data belonging to the Seller which are part of the Assets or relate to the Business of the Seller; and simultaneously with such delivery, all such steps will be taken as may be required to put the Purchaser in actual possession and operating control of the Assets.

(iii) a New York State Sales Tax Return for its sales tax liability for the taxable portion of the Assets and shall file it with its check for the sales tax disclosed upon the return with the New York State Sales Tax Department.

(b) the Purchaser shall:

(i) pay the Purchase Price, as provided in section 1.2.1, by: (A) bank wire transfer of immediately available funds to the account(s) specified by Seller (subject to confirmation of receipt); or (B) in certified funds or the official check drawn upon or issued by any bank, savings bank, trust company or savings and loan association which is a member of the New York Clearing House Association and having a banking office in the State of New York, representing United States currency, unendorsed and payable directly to the order of Seller (or his assignee); and

(ii) deliver its check for the sales tax portion of the Assets.

2.3 Third-Party Consents. To the extent that the Seller's rights under any agreement, contract, commitment, lease, license, permit, authorization or other Asset to be assigned to the Purchaser may not be assigned without the consent of another person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach or be unlawful, and the Seller shall use its best efforts to obtain any such required consent(s) promptly. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair the Purchaser's rights under the instrument in question so that the Purchaser would not in effect acquire the benefit of all such rights, the Seller, to the maximum extent permitted by law and the instrument, shall act as the Purchaser's agent in order to obtain for it the benefits and shall cooperate, to the maximum extent permitted by law and the instrument, with the Purchaser in any other reasonable arrangement designed to provide such benefits to the Purchaser.

If any contract shall be assigned, the Purchaser shall agree to be bound by and assume all of its terms and conditions.

2.4 Change in and Use of Name. The Seller and the Shareholder shall take all such actions not later than the Closing Date as may be required to change the Seller's name on that date to one distinctly different in sound and appearance from its present name, including but not limited to filing a name change amendment with the Secretary of State of the State of New York and filing an appropriate name change notice in the appropriate office in each state where the Seller is qualified to

do business. After the Closing, neither the Seller nor the Shareholder nor any direct or indirect subsidiary of the Seller will use the name XYZ Corporation, or any similar variant thereof. The Purchaser shall have the right to use the name XYZ Corporation, or any similar variant thereof after the Closing Date, and the Seller and the Shareholder will take all necessary steps to permit the Purchaser to use this name.

2.5 Further Assurances. The Seller from time to time after the Closing, at the Purchaser's request, will execute, acknowledge and deliver to the Purchaser such other instruments of conveyance and transfer and will take such other actions and execute and deliver such other documents, certifications and further assurances as the Purchaser may reasonably request in order to vest more effectively in the Purchaser, or to put the Purchaser more fully in possession of, any of the Assets, or the Business.

ARTICLE III—REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Seller and the Shareholder. The Seller and the Shareholder jointly and severally represent and warrant to the Purchaser as of the date of this Agreement and the Closing Date as follows:

3.1.1 Corporate Existence; Certificate of Incorporation and ByLaws.

(a) The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York. The Seller has all requisite power and authority and all necessary licenses, permits and authorizations to carry on its business as it has been and is being conducted and to own, lease and operate the assets and properties used in connection therewith. A list of the Seller's licenses, permits and authorizations is attached as part of Schedule 3.1.1(a). The Seller is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the character of the properties owned or leased by it or the nature of the business transacted by it requires it to be so qualified, all of which jurisdictions are listed on Schedule 3.1.1(a).

(b) A copy of the Seller's Certificate of Incorporation and all amendments effected prior to the date of this Agreement and of the Seller's By-Laws as amended to the date of this Agreement have been delivered to the Purchaser and are correct and complete.

3.1.2 Corporate Power; Authorization: Enforceable Obligations. The Seller has the corporate power, authority and legal right to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by the Seller have been duly authorized by all necessary corporate and shareholder action. This Agreement has been, and the instruments of transfer, assignment and conveyance referred to in Section 2.2(a)(i) will be, duly executed and delivered by a duly authorized officer of the Seller, and this Agreement constitutes, and such instruments when executed and delivered will constitute, legal, valid and binding obligations of the Seller enforceable against the Seller in accordance with their respective terms.

3.1.3 The Shareholder. The Shareholder is the lawful owner of record and beneficially of all of the issued and outstanding shares of capital stock of the Seller. The Shareholder has the power, authority and legal right to execute, deliver and perform this Agreement. This Agreement has been duly executed and delivered by the Shareholder and constitutes the legal, valid and binding obligation of the Shareholder enforceable against the Shareholder in accordance with its terms.

3.1.4 *No Other Business.* Neither the Seller nor the Shareholder owns any shares of any corporation and has no ownership or other investment interest, either of record, beneficially or equitable, in any association, partnership, joint venture or other legal entity, except as set forth in Schedule 3.1.4.

3.1.5 *Financial Statements.* The Seller has delivered to the Purchaser the balance sheets of the Seller as of December 31, 20__ and April 30, 20__ and the related statements of income and retained earnings and notes thereto. These financial statements have been examined by a public accountant. The balance sheet and the related statements of income and retained earnings, are correct and complete, copies of which have been delivered to the Purchaser, and they present the complete and correct financial position and assets and liabilities of the Seller as of each respective period and the results of its operations in conformity with generally accepted accounting principles applied on a consistent basis.

The Seller shall deliver its balance sheet as of June 30, 20__ and the related statements of income and retained earnings and notes thereto (the “June 30, 20__ Financial Statement”). These statements will be prepared by a certified public accountant and will be complete and correct and will present the complete and correct financial position and assets and liabilities of the Seller as of June 30, 20__ and the results of its operations for the six-month period then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

All references in this Agreement to the “Financial Statements” shall be deemed to refer to these financial statements.

3.1.6 *Accounts Receivable.* All accounts receivable reflected on the Financial Statements, a correct and complete list of which is attached as Schedule 3.1.6, and all accounts receivable acquired by the Seller or arising subsequent to the last Financial Statement date, have been acquired or have arisen only in the ordinary course of business, consistent with past practice, and are not subject to defenses, set-offs or counterclaims. All of such accounts receivable are generally due within 30 days after being accrued on the books of the Seller and have been collected, or will be collected within 90 days after billing, in the full aggregate recorded amounts thereof, less the amount of the allowance for doubtful accounts shown on the Financial Statement. The allowance for such doubtful accounts has been determined in accordance with generally accepted accounting principles consistent with past practice.

3.1.7 *Absence of Undisclosed Liabilities.* The Seller has no liabilities or obligations, either accrued, absolute, contingent or, to the best of knowledge of the Seller and the Shareholder, after a due, proper and complete investigation, otherwise, except those liabilities and obligations set forth on the Financial Statements and not heretofore paid or discharged.

For purposes of this Agreement, the term “liabilities” shall include, without limitation, any direct or indirect indebtedness, guaranty, endorsement, claim, loss, damage, deficiency, cost, expense, obligation or responsibility, whether known or unknown, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured.

3.1.8 *Existing Condition.* Except as disclosed on Schedule 3.1.8, since April 30, 20__ the date of the last Financial Statement, the Seller has not:

(a) declared, set aside or paid any dividend or made or agreed to make any other distribution or payment in respect of or agreed to make any other distribution or payment in respect of its capital shares or redeemed, purchased or otherwise acquired or agreed to redeem, purchase or acquire any of its capital shares;

(b) incurred any liabilities, or discharged or satisfied any lien or encumbrance, or paid any liabilities, other than in the ordinary course of its business consistent with past practice, or failed to pay or discharge when due any liabilities of which the failure to pay or discharge has caused or will cause any material damage or risk of material loss to it or any of its assets or properties;

(c) sold, assigned or transferred any of its assets or properties, other than in the ordinary course of its business;

(d) created, incurred, assumed or guaranteed any indebtedness for money borrowed, or mortgaged, pledged or subjected to any lien, pledge, security interest, conditional sales contract or other encumbrance of any nature whatsoever against any of its assets or properties;

(e) made or suffered any amendment or termination of any agreement, contract, commitment, lease or plan to which it is a party or by which it is bound, or canceled, modified or waived any debts or claims held by it, or waived any rights of substantial value;

(f) suffered any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting its business, operations, assets, properties, prospects or condition (financial or otherwise);

(g) suffered any change in its financial condition or in the nature of its business or operations which has had or might have a material adverse effect on its business, operations, assets, properties, prospects or condition (financial or otherwise);

(h) made any capital expenditure or capital addition or betterment except such as may be involved in the ordinary repair, maintenance and replacement of its assets;

(i) increased the salaries or other compensation of, or made any advance (excluding advances for ordinary and necessary business expenses) or loan to, any of its directors, officers or employees or the Shareholder, or made any increase in, or any addition to, other benefits to which any of its directors, officers or employees or the Shareholder may be entitled;

(j) made any payment to the Shareholder with respect to any indebtedness owed by the Seller to the Shareholder; or

(k) entered into any transaction other than in the ordinary course of its business consistent with past practice.

3.1.9 *Title to Properties; Leasehold Interests.* The Seller has good, valid and marketable title to the Assets to be sold, including all of the properties and assets reflected on the April 30, 20__ Financial Statements and those acquired since that date, free and clear of all liens, pledges, security

interests, charges, claims, restrictions and other encumbrances and defects of title of any nature whatsoever.

To the best of knowledge of the Seller and the Shareholder, after a due, proper and complete investigation, all leases, licenses, permits and authorizations in any manner related to the assets, properties or business of the Seller and all other instruments, documents and agreements pursuant to which the Seller has obtained the right to use any real or personal property are in good standing, valid and effective in accordance with their respective terms, and there is not under any of such leases, licenses, permits, authorizations, instruments, documents or agreements any existing default or event which with notice or lapse of time, or both, would constitute a default and in respect of which the Seller has not taken adequate steps to prevent a default from occurring. The Seller has the unrestricted right to sell the Assets as herein provided. The Seller does not own any real property, except as set forth on Schedule 1.1.2(k).

3.1.10 *Condition of Tangible Assets.* All facilities, vehicles, machinery, equipment and other items of tangible personal property owned or used by the Seller and to be transferred to the Purchaser (a) are in good operating condition and repair, subject to normal wear and maintenance; (b) to the best knowledge of the Seller and the Shareholder, after due, proper and complete investigation, are in conformity with all applicable laws, regulations and ordinances, including the Uniform Commercial Code and customary trade standards of marketability; and (c) are usable and salable in the regular and ordinary course of business of the Seller.

The inventory conforms and at the Closing will conform to all applicable laws, regulations and ordinances, including the Uniform Commercial Code and customary trade standards of marketability and are usable and salable in the regular and ordinary course of Seller's business. As of the Closing, the inventory will consist of current, readily salable goods and merchandise and will not include obsolete items or items below standard quality, or in disrepair, nonsalable, or slow turnover merchandise or products. At the Closing the inventory shall have a value of not less than \$6,000, determined at the lower of cost or market, exclusive of freight.

No person other than the Seller owns any vehicles, equipment or other tangible assets or properties situated on the premises which the Seller leases, or necessary to the operation of its business.

All tangible assets are now and at the time of Closing Date will be located at the Warehouse Center, New York, New York and will not be removed without Purchaser's consent.

All tangible assets to be transferred under this Agreement will be transferred to Purchaser together with an assignment by Seller to Purchaser of all of Seller's right, title and interest in all manufacturer warranties, if any.

3.1.11 *Books of Account.* The books of accounts of the Seller reflect all of its items of income and expense, and all of its assets, liabilities and accruals required to be reflected therein in accordance with generally accepted accounting principles.

3.1.12 *Tax and Other Returns and Reports.* All federal, state and local tax returns, reports and statements (including all income, unemployment compensation, social security, payroll, sales and

use, excise, privilege, property, *ad valorem*, franchise, license, school and any other tax under the laws of the United States or any state or municipal or political subdivision thereof) required to be filed by the Seller have been filed with the appropriate governmental agencies in all jurisdictions in which such returns, reports and statements are required to be filed, and all such returns, reports and statements properly reflect the taxes of the Seller for the periods covered thereby. There are no tax liens (other than any lien for current taxes not yet due and payable) on any of the assets or properties of the Seller. The Seller has made all deposits required by law to be made with respect to employees' withholding taxes.

3.1.13 *Litigation.* Except as set forth on Schedule 3.1.19(j), there is no litigation, arbitration, investigation or other proceeding of or before any court, arbitrator or governmental or regulatory official, body or authority pending or threatened against the Seller, any of its assets, properties or business, any of its officers or employees, or the transactions contemplated by this Agreement, nor does the Seller or the Shareholder know or have reasonable grounds to know of any basis for any such litigation, arbitration, investigation or proceeding. The Seller is not a party to or subject to the provisions of any judgment, order, writ, injunction, decree or award of any court, arbitrator or governmental or regulatory official, body or authority.

3.1.14 *Compliance with Law.* To the best of knowledge of the Seller and the Shareholder, after a due, proper and complete investigation, the Seller has complied with each, and is not in violation of any law, rule or regulation to which it or its business, operations, assets or properties is subject and has not failed to obtain or to adhere to the requirements of any license, permit or authorization necessary to the ownership of its assets and properties or to the conduct of its business, which noncompliance, violation or failure to obtain or adhere might adversely affect its business, operations, assets, properties, prospects or condition (financial or otherwise). Neither the Seller nor the Shareholder nor any officer, employee or agent of, nor any consultant to, the Seller or the Shareholder has unlawfully offered, paid or agreed to pay, directly or indirectly, any money or anything of value to, or for the benefit of, any individual who is or was a candidate for public office (other than lawful campaign contributions), or an official or employee of any governmental or regulatory body or authority or an officer or employee of any client, customer or supplier of the Seller. The Seller has not engaged in any transaction, maintained any bank account or used any corporate funds except for transactions, bank accounts and funds which have been and are reflected in its normally maintained books and records.

3.1.15 *Validity of Contemplated Transactions, etc.* The execution, delivery and performance of this Agreement by the Seller and the Shareholder will not contravene or violate (a) any law, rule or regulation to which the Seller or the Shareholder is subject, (b) any judgment, order, writ, injunction, decree or award of any court, arbitrator or governmental or regulatory official, body or authority which is applicable to the Seller or the Shareholder, or (c) the certificate of incorporation or By-Laws of the Seller or any securities issued by the Seller; nor will such execution, delivery or performance violate, be in conflict with or result in the breach (with or without the giving of notice or lapse of time, or both) of any term, condition or provision of, or require the consent of any other party to, any indenture, agreement, contract, commitment, lease, plan, license, permit, authorization or other instrument, document or understanding, oral or written, to which either the Seller or the Shareholder is a party, by which the Seller may have rights or by which any of the assets or properties of the Seller may be bound or affected, or give any party with rights thereunder the right

to terminate, modify, accelerate or otherwise change the existing rights or obligations of the Seller thereunder. No authorization, approval or consent, and no registration or filing with, any governmental or regulatory official, body or authority is required in connection with the execution, delivery and performance of this Agreement by the Seller or the Shareholder.

3.1.16 *Conditions Affecting the Seller.* To the best of knowledge of the Seller and the Shareholder, after a due, proper and complete investigation, there are no conditions existing with respect to the Seller's markets, products, services, clients, customers, facilities, personnel or suppliers which are known to the Seller or the Shareholder or which should be known to the prudent businessman in charge of the operations of the Seller which would adversely affect the business, operations or prospects of the Seller, other than such conditions as may affect as a whole the industry in which the Seller operates.

3.1.17 *Insurance.* The assets, properties and business of the Seller are insured under various policies of general liability, products liability and other forms of insurance, as set forth on Schedule 3.1.17. The Seller has not failed to give any notice or present any claim under any such policy in a timely fashion or in the manner or detail required by the policy, and all existing notices and claims are listed on Schedule 3.1.17. No notice of cancellation or nonrenewal with respect to, or disallowance of any claim under, any such policy has been received by the Seller or the Shareholder. There are no outstanding unpaid premiums or claims, and there are no provisions for retroactive or retrospective premium adjustments. Neither the Seller nor the Shareholder has knowledge of any state of facts or the occurrence of any event which reasonably might form the basis of any claim against the Seller or which might materially increase the insurance premiums payable under any such policy. Schedule 3.1.17 also contains a true and complete description of all outstanding bonds and other surety arrangements issued or entered into in connection with the business and operations of the Seller.

3.1.18 *Contracts and Commitments.* Each of the agreements, contracts, commitments, leases and other instruments, documents and undertakings listed on Schedules of this Agreement or to be assigned to Purchaser is (a) valid, to the best of knowledge of the Seller and the Shareholder, after a due, proper and complete investigation; (b) enforceable in accordance with its terms; (c) the parties thereto are in compliance with the provisions thereof; (d) no party is in default in the performance, observance or fulfillment of any material obligation, covenant or condition contained therein; and (e) no event has occurred which with or without the giving of notice or lapse of time, or both, would constitute a default thereunder; furthermore, no such agreement, contract, commitment, lease or other instrument, document or undertaking, in the reasonable opinion of the Seller or the Shareholder, contains any contractual requirement with which there is a reasonable likelihood any party thereto will be unable to comply. The failure of the Seller or the Shareholder to obtain the consent or approval of any party to any agreement, contract, commitment, lease or other instrument, document or undertaking listed on the Schedules of this Agreement or to be assigned to Purchaser, prior to the execution of this Agreement or the consummation of the transactions contemplated hereby will not result in a default, termination, breach, renegotiation or acceleration of any thereof.

3.1.19 *Additional Information.* Schedule 3.1.19 contains, to the extent not described in some other Schedule, (A) complete, correct and detailed Schedules, in form and substance reasonably acceptable to Purchaser, as of the date of this Agreement, specifying with respect to the business,

properties, assets and obligations of the Seller each and every item in the following categories referred to below, and (B) true and complete copies of the documents and other materials that underlie such Schedules:

(a) *Schedule 3.1.19(a)* presently outstanding contracts, agreements, commitments and bids (other than those included on Schedule 3.1.19(d)); written and oral leases (other than leases disclosed on Schedule 3.1.19(h)); security deposits under leases; licenses; franchises; dealership, service, agency and other agreements. With respect to each item in each category referred to above, a specification as to whether the consent of any third person or agency is required for the effective assignment thereof;

(b) *Schedule 3.1.19(b)* machinery, equipment, tools, dies, furniture, furnishings, leasehold improvements, vehicles, buildings and other tangible physical assets and fixtures and the location of such;

(c) *Schedule 3.1.19(c)* (A) the policies of insurance presently in force in Schedule 3.1.17, and, without restricting the generality of the foregoing, those covering Seller's public and product liability and its personnel, properties, buildings, machinery, equipment, furniture, fixtures and operations, specifying with respect to each such policy, the name of the insurer, type of coverage, term of policy, limits of liability and annual premium, (B) Seller's premiums and losses, by year, by type of coverage, for the past three years based on information received from Seller's insurance carrier(s), (C) all outstanding insurance claims by or against Seller for damage to or loss of its property or income which have been referred to insurers or which Seller believes to be covered by commercial insurance, (D) general comprehensive liability policies carried by Seller for the past five years, including excess liability policies, and (E) any agreements, arrangements or commitments under which Seller indemnifies any other person;

(d) *Schedule 3.1.19(d)* Names, current annual compensation rates (including bonuses and commissions), accrued bonus, accrued sick leave and accrued severance pay of all present salaried employees of Seller; aggregate accrued vacation pay, the current base salary rate of each of such individuals; employment, managerial, advisory or consulting agreements and confidentiality or other agreements protecting proprietary processes, formulae or information; copies of all pension, profitsharing, thrift, or other retirement plans, employee stock ownership plans, deferred compensation, stock ownership, stock purchase, performance share, individual or group bonus or other deferred or incentive plans, severance plans, hospitalization, insurance, vacation, death benefit, collective bargaining, union or other employee association agreements, or other similar plans in each case covering employees of Seller and as amended to date, and all amendments thereto prior to the Closing Date, agreements, arrangements, commitments or understandings providing for any employee benefit, the latest annual report (on Form 5500, if applicable) for each plan, the most recent actuarial valuations with respect to all defined benefit plans, copies of all Internal Revenue Service determination letters regarding such plans, all such reports, actuarial valuations and determination letters as may be made, received or issued prior to the Closing Date, the annual cost of each such plan or arrangement and a summary description with respect to the funding of each such welfare benefit plan or arrangement; all other contracts and relationships with or with respect to, and all other obligations or liabilities with any employee (or other individual with whom Seller has a business relationship) of Seller;

(e) *Schedule 3.1.19(e)* individual refundable deposits, prepaid expenses, deferred charges and “other assets”;

(f) *Schedule 3.1.19(f)* all loans or advances made by Seller to any person;

(g) *Schedule 3.1.19(g)* liens, encumbrances, charges, restrictions, claims and security interests with respect to the business, assets and property to be transferred hereunder which do not constitute real property;

(h) *Schedule 3.1.19(h)* each and every parcel of real property or interest therein owned in whole or in part by Seller or held for the benefit of Seller under a titleholding agreement or held under a lease; and complete and correct copies of each and every of the following, if any, in the possession of Seller will be made available for review by Buyer: (A) title reports, title binders, survey documents and data affording information or opinions with respect to, certifying to, or evidencing the extent, current title, title history, title marketability, use, possession, restriction or regulation, if any (governmental or otherwise), and compliance with applicable laws, of (x) the real property or (y) any estate or interest in (or in the nature of) real property or in a land or building lease or chattel real; (B) deed or titleholding or trust agreements, if any, under which any of the parcels may have been conveyed to Seller or under which the same may be held for the benefit of Seller; and (C) leases; except as noted in such Schedule, all such buildings, structures, leasehold improvements and the equipment therein currently are used by or useful to Seller in the ordinary course of business and, except as so noted and except for normal wear and tear, there are no material defects with respect thereto which would impair the daytoday use by Purchaser of any such buildings, structures, leasehold improvements or equipment which would subject Purchaser to material liability under applicable law;

(i) *Schedule 3.1.19(i)* trademark registrations and applications and notices of infringement therefor, service mark registrations (which list shall include but not be limited to indications of length of use of each trade and service mark as well as identification of product(s) on which each trade and service mark is used, and registration numbers, registration and renewal dates, affidavit of use filings), patents and patent applications, copyrights, and applications therefor (including information as to expiration date of all the foregoing where applicable) presently owned, in whole or in part, by Seller and used or useful in Seller’s business; and all trademark licenses, service mark licenses, copyright licenses, royalty agreements, patent licenses, assignments, grants and contracts with employees or others relating in whole or in part to disclosure, assignment, registering or patenting of any trademarks, service marks, copyrights, inventions, discoveries, improvements, processes, formulae, trade secrets or other knowhow and used or useful in Seller’s business. Seller represents (i) the foregoing trademarks, service marks, copyrights, licenses, assignments, grants, agreements and contracts are valid; (ii) the foregoing trademark registrations, service mark registrations, copyright registrations and patents have been duly issued and have not been canceled, abandoned or otherwise terminated; (iii) the foregoing trademark applications, service mark applications, copyright applications and patent applications have been duly filed; (iv) Seller is not in default under any of the foregoing licenses or agreements other than defaults, if any, which will not result in any material loss or liability; and (v) all such licenses and agreements are binding in accordance with their terms;

(j) *Schedule 3.1.19(j)* all litigation, governmental or regulatory proceedings, investigations or labor disputes pending, or threatened against Seller, the officers or directors of Seller as such officers or directors, or any of the business assets or properties of Seller to be transferred pursuant hereto or to which Seller or its officers or directors as such officers or directors, is a party, as plaintiff, defendant or otherwise;

(k) *Schedule 3.1.19(k)* all federal, state, local and foreign governmental licenses and permits necessary in the conduct of Seller's business; each jurisdiction in which the nature of the business of Seller requires Seller to qualify to do business as a foreign corporation; all federal, state, local and foreign governmental or judicial consents, orders, decrees and other compliance agreements under which Seller is operating or bound; all reports of inspection of Seller's businesses and properties from January 1, 1996 to the date hereof under all applicable federal, state and local health and safety laws and regulations; and copies of all of the foregoing and correspondence relating thereto.

(l) *Schedule 3.1.19(l)* all licenses, permits, authorizations, tariffs, schedules of charges and orders issued by or filed with any governmental or regulatory official, body or authority, in any manner related or applicable to the Assets;

3.1.20 *Pension and Other Benefit Plans.* Neither the Seller nor any Affiliated Company (as defined in this Section 3.1.20) has incurred or will incur by reason of any relationship presently or heretofore maintained, or any act or omission occurring or existing prior to the Closing Date, any liability (a) to the Pension Benefit Guaranty Corporation pursuant to the provisions of Title IV of ERISA, (b) to any multiemployer plan, as that term is defined in Section 4001(a)(3) of ERISA or (c) to any taxing authority by reason of the operation of existence of any employee benefit plan. Neither the Seller nor any Affiliated Company has at any time prior to the Closing Date participated in any transaction involving the assets of any employee benefit plan (regardless of by whom sponsored) which has given rise or will give rise to a liability which could be asserted against the Seller pursuant to either Section 501(i) of ERISA or Sections 4975(a) and (b) of the Internal Revenue Code of 1986, as amended (the "Code"). There is set forth or identified on Schedule 3.1.20 hereto all of the plans, funds, policies, programs, arrangements or understandings sponsored or maintained by the Seller pursuant to which any employee of the Seller (or any dependent or beneficiary of any such employee) might be or become entitled to (1) retirement benefits; (2) severance or separation from service benefits; (3) incentive, performance, stock, share appreciation or bonus awards; (4) health care benefits; (5) disability income or wage continuation benefits; (6) supplemental unemployment benefits; (7) life insurance, death or survivor's benefits; (8) accrued sick pay or vacation pay; (9) any type of benefit offered under any arrangement subject to characterization as an "employee welfare benefit plan" within the meaning of section 3(3) of ERISA; or (10) benefits of any other type offered through any arrangement that could be characterized as providing for additional compensation or fringe benefits. As to any plan, fund, policy, program, arrangement or understanding identified on Schedule 3.1.20, all of the following are true: (1) all amounts due as contributions, insurance premiums and benefits to the date hereof have been fully funded and paid by the Seller; (2) all applicable requirements of law have been observed with respect to the operation thereof, and all material reporting and disclosure requirements have been timely satisfied; and (3) neither the Seller nor the Shareholder is aware, after a due, proper and complete investigation, of any claim or demand by any employee (or beneficiary or dependent of any employee) for benefits, or by any taxing authority for taxes or penalties, which has not been satisfied in full or which may be or become

subject to litigation or arbitration. For purposes of this Section 3.1.20, “Affiliated Company” shall mean any member (whether or not incorporated) of a group which is under common control (within the meaning of the regulations promulgated under Section 414 of the Internal Revenue Code) and of which the Seller is a member.

3.1.21 *No Third-Party Options.* There are no existing agreements, options, commitments or rights with, to or in any person to acquire any of the Seller’s assets, properties or rights or any interest therein, except for those contracts entered into in the ordinary course of business consistent with past practice for the sale of the Seller’s products and services.

3.1.22 *No Patent Violations, etc.* Except as disclosed on Schedule 3.1.19(i), the business of the Seller as formerly and presently operated did not and does not utilize any patent, trademark, trade name, service mark, copyright or trade secret, and did not and to the best of knowledge of the Seller and the Shareholder, after a due, proper and complete investigation, does not conflict with, or infringe upon, any patent, trademark, trade name, service mark, copyright or trade secret owned or claimed by another. No person owns or has any proprietary, financial or other interest, direct or indirect, in any unpatented design or device which the Seller is using or the use of which is necessary in the operation of the Seller’s business as now or heretofore conducted.

3.1.23 *Transactions with Affiliates.* Neither the Shareholder nor any director or officer of the Seller owns or during the past two-and-onehalf years has owned, directly or indirectly, or has, or within the past two-and-onehalf years has had, an interest, either of record, beneficially or equitably, in any business, corporate or otherwise, which (a) has or had, or which is or was a party to or in any asset or property which is or was the subject of any contract, agreement, business arrangement, relationship or course of dealing with the Seller, or (b) conducts the same business as, or a similar business to, that conducted by the Seller.

3.1.24 *No Other Agreement.* Except as otherwise disclosed in this Agreement, Seller is not a party to any (a) contract with any guild or labor union, (b) pension, profitsharing, retirement, bonus, insurance or similar plan in effect with respect to its employees or others, or (c) other contract, agreement or understanding affecting or relating to the Business or Assets of Seller.

3.1.25 *Maintenance Contracts.* The Seller has not billed or received any payment for services to be performed or materials to be provided after the Closing under any Maintenance Contract. The Seller has complied with all obligations imposed by the Maintenance Contracts and is not in default under any of them.

3.1.26 *Completeness of Disclosure.* Neither this Agreement nor any certificate, schedule, statement, document or instrument furnished or to be furnished to the Purchaser pursuant hereto, or in connection with the negotiation, execution or performance of this Agreement, contains or will contain any untrue statement of a fact or omits or will omit to state a fact required to be stated herein or therein or necessary to make any statement herein or therein not misleading. There is no fact, development or threatened development (excluding general economic factors affecting business in general) which the Seller has not disclosed to the Purchaser in writing which adversely affects or, so far as the Seller or the Shareholder can now foresee, may adversely affect, the business, operations, assets, properties, prospects or condition (financial or otherwise) of the Seller.

3.2 *Representations and Warranties of the Purchaser.* The Purchaser represents and warrants to the Seller and the Shareholder as of the date of this Agreement and the Closing Date as follows:

3.2.1 *Corporate Existence.* The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of New York.

3.2.2 *Corporate Power and Authorization.* The Purchaser has the corporate power, authority and legal right to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by the Purchaser have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by the Purchaser and constitutes the legal, valid and binding obligation of the Purchaser enforceable against it in accordance with its terms.

3.2.3 *Validity of Contemplated Transactions, etc.* The execution, delivery and performance of this Agreement by the Purchaser will not contravene or violate (a) any existing law, rule or regulation to which the Purchaser is subject, (b) any judgment, order, writ, injunction, decree or award of any court, arbitrator or governmental or regulatory official, body or authority which is applicable to the Purchaser, or (c) the Certificate of Incorporation or ByLaws of the Purchaser or any securities issued by it; or will such execution, delivery or performance violate, be in conflict with or result in the breach (with or without the giving of notice or lapse of time, or both) of any term, condition or provision of, or require the consent of any other party to, any mortgage, indenture, agreement, contract, commitment, lease, plan or other instrument, document or understanding, oral or written, to which the Purchaser is a party or by which the Purchaser is otherwise bound. No authorization, approval or consent, and no registration or filing with, any governmental or regulatory official, body or authority is required in connection with the execution, delivery and performance of this Agreement by the Purchaser.

3.3 *Survival of Representations and Warranties.* All representations, warranties, covenants and agreements made by the parties in this Agreement or in any certificate, schedule, statement, document or instrument furnished hereunder or in connection with the negotiation, execution and performance of this Agreement shall survive the Closing. Notwithstanding any investigation or audit conducted before or after the Closing Date or the decision of any party to complete the Closing, each party shall be entitled to rely upon the representations, warranties, covenants and agreements set forth in this Agreement.

ARTICLE IV—COVENANTS PRIOR TO CLOSING

4.1 *Conduct of Business.* Until the Closing, the Seller shall:

- (a) conduct the Business in the normal, useful and regular manner;
- (b) not enter into any contract, including but not limited to, contracts for the performance of services without the Purchaser's approval;
- (c) not advertise or conduct inventory reduction sales or reduce the prices of any items of inventory without Purchaser's approval;

(d) not increase the compensation of any employee or change the personnel without Purchaser's approval;

(e) use its best efforts to preserve the Business; to keep available to Purchaser the services of the present employees; to preserve the goodwill of Seller's suppliers, customers and others having business relations with Seller;

(f) permit Purchaser's representatives to remain on the business premises during normal business hours and to observe the operation of the business wherever conducted; provided Purchaser's representatives do not interfere with Seller's business operations.

4.2 *No Shop.* Neither the Shareholder, the Seller, nor any agent, employee, officer, director, trustee or any representative of any of the foregoing will, during the period commencing on the date of this Agreement and ending with the earlier to occur of the Closing Date or the termination of this Agreement in accordance with its terms, directly or indirectly, solicit or initiate the submission of proposals or offers from any person or entity for, participate in any discussions pertaining to, or furnish any information to any person or entity other than the Purchaser or the Purchaser's authorized agent, relating to any acquisition or purchase of all or a material amount of the assets of, or any equity interest in, the Seller or any merger, consolidation or business combination of or involving the Seller.

ARTICLE V—CONDITIONS PRECEDENT TO THE CLOSING

5.1 *Conditions Precedent to the Purchaser's Obligations.* All obligations of the Purchaser under this Agreement are subject to the fulfillment or satisfaction, prior to or at the Closing, of each of the following conditions precedent, any of which may be waived by the Purchaser in its sole and absolute discretion:

5.1.1 *Representations.* All representations and warranties of the Seller and the Shareholder being true, complete and correct at the Closing.

5.1.2 *Performance by the Seller and the Shareholder.* The Seller and the Shareholder shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by each of them prior to or at the Closing; and the Purchaser shall have been furnished with a certificate or certificates of the Seller and the Shareholder, dated the Closing Date, signed by the President of the Seller and the Shareholder, certifying, in such detail as the Purchaser may reasonably request, to the fulfillment of the foregoing condition.

5.1.3 *Employment Agreement.* John Doe shall have entered into an employment agreement with the Purchaser, dated the Closing Date, in substantially the form of Exhibit A, simultaneously with the closing of this Agreement.

5.1.4 *Restrictive Covenant.* John Doe and the Seller shall have entered into a restrictive agreement with the Purchaser, dated the Closing Date, in substantially the form of Exhibit B, simultaneously with the closing of this Agreement.

5.1.5 *Litigation Affecting Closing.* On the Closing Date, no proceeding shall be pending or threatened before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.

5.1.6 *Corporate Matters.* The Seller shall have furnished the Purchaser with certified copies of all such corporate documents of good-standing certificates for the Seller, and of all proceedings of the Seller authorizing the transactions hereby contemplated as the Purchaser reasonably shall require.

5.1.7 *Approvals.* The holders of any indebtedness of the Seller or Shareholder, the lessors of any real or personal property or assets leased by the Seller, the parties (other than the Seller) to any agreement, contract or commitment to which the Seller is a party, any governmental agency or body or any other person, firm or corporation which owns or has authority to grant any franchise, license, permit, right or other authorization necessary for the business or operations of the Seller, to the extent that their consent or approval is required, necessary or, in the opinion of the Purchaser, desirable under the pertinent debt, lease, agreement, contract or commitment or other document or instrument or under applicable laws, rules or regulations for the consummation of the transactions contemplated hereby in the manner herein provided, shall have granted such consent or approval without resulting in the modification, cancellation or termination of any such lease, agreement, contract or commitment or of any such franchise, license, permit, right or other authorization or the subjection of the Purchaser to any law, rule, regulation or condition which, in the judgment of the Purchaser, shall be unduly burdensome. The holders of any indebtedness of the Seller or Shareholder shall release any real property, personal property and assets leased by the Seller and other assets which are part of the Assets from any lien or other security interests pertaining to such assets.

5.1.8 *Liens and Encumbrances.* On or before the Closing, the Purchaser shall have obtained a release and discharge of any and all liens, security interests, restrictions, defects and encumbrances which affect the Business or Assets to be transferred.

5.1.9 *Material Damage.* The business, operations, Assets, properties, prospects or condition (financial or otherwise) of the Seller shall not be, or be threatened to be, adversely affected by fire, explosion, earthquake, disaster, accident, cessation or interruption of utility or other services, flood, drought, contamination of water supply, embargo, riot, civil disturbance, uprising, activity of armed forces or act of God or public enemy, or any other event or occurrence.

5.1.10 *Tax Obligations.* Prior to the Closing the Purchaser shall notify the State of New York of the proposed sale of assets under this Agreement. Purchaser shall hold the Purchase Price and other consideration under this Agreement in an interest-bearing account for Seller's benefit and in accordance with any notice from the State of New York and applicable provisions of law.

5.1.11 _____, 20__ *Financial Statement.* The Seller shall furnish Purchaser with the _____, 20__ Financial Statement, which shall disclose a financial position, assets and liabilities of Seller and results of Seller's operations, which are satisfactory to Purchaser, in its sole and absolute discretion.

5.2 Conditions Precedent to the Seller's and the Shareholder's Obligations. All obligations of the Seller and Shareholder under this Agreement are subject to the fulfillment or satisfaction, prior to or at the Closing, of each of the following conditions precedent, any of which may be waived by the Seller and the Shareholder, in their sole and absolute discretion:

5.2.1 Representations. All representations and warranties of the Purchaser being true, complete and correct at the Closing.

5.2.2 Performance by the Purchaser. The Purchaser shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and the Seller and the Shareholder shall have been furnished with a certificate or certificates, dated the Closing Date, signed by the President of the Purchaser, certifying, in such detail as the Seller and the Shareholder may reasonably request, to the fulfillment of the foregoing condition.

5.2.3 Employment Agreement. The Purchaser shall have entered into the employment agreement referred to in Section 5.1.3.

5.2.4 Litigation Affecting Closing. On the closing Date, no proceeding shall be pending or threatened before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.

5.2.5 Corporate Matters. The Purchaser shall have furnished the Seller and the Shareholder with certified copies of all such corporate documents of, and good-standing certificates for, the Purchaser, and of all such proceedings of the Purchaser authorizing the transactions hereby contemplated, as the Seller and the Shareholder reasonably shall require.

5.3 Termination. In the event any of the conditions contained in Sections 5.1 and 5.2 are not satisfied and the conditions shall not have been waived, this Agreement shall terminate upon notice by one party to the other and neither party shall have any liability or obligation of any kind or nature to the other.

ARTICLE VI—INDEMNIFICATION

6.1 Indemnification by the Seller and the Shareholder. From and after the Closing, the Seller and the Shareholder will jointly and severally reimburse, indemnify and hold harmless the Purchaser and each of its affiliates (each such person and its successors and assigns is referred to herein as a "Seller Indemnified Party") against and in respect of:

(a) any and all liabilities and obligations of any nature whatsoever relating to the Shareholder or the Seller, the Seller's business or the Assets prior to the Closing;

(b) any and all actions, suits, claims, or legal, administrative, arbitration, governmental or other proceedings or investigations against any Seller Indemnified Party that relate to the Shareholder or

the Seller, the Seller's business or the Assets and which result from or arise out of any event, occurrence, action, inaction or transaction occurring prior to the Closing Date;

(c) any and all damages, losses, deficiencies, liabilities, costs and expenses incurred or suffered by any Seller Indemnified Party that result from, relate to or arise out of:

(i) any material misrepresentation, breach of material warranty or nonfulfillment of any material agreement or covenant on the part of the Seller or the Shareholder under this Agreement or from any misrepresentation in or omission from any certificate, schedule, statement, document or instrument furnished to the Purchaser pursuant hereto or in connection with the negotiation, execution or performance of this Agreement;

(ii) any claim by any former officer or employee of the Seller; and

(iii) any of the matters referred to in subparagraphs (a) and (b) above; and

(d) any and all actions, suits, claims, proceedings, investigations, demands, assessments, audits, fines, judgments, costs and other expenses (including, without limitation, reasonable legal fees and expenses) incident to any of the foregoing or to the enforcement of this Section 6.1.

6.2 Indemnification by the Purchaser. From and after the Closing, the Purchaser will reimburse, indemnify and hold harmless the Seller and the Shareholder (each such person and its successors and assigns is referred to herein as a "Purchaser Indemnified Party") against and in respect of:

(a) any and all liabilities and obligations of any nature whatsoever relating to the Purchaser or the Purchaser's business, prior to the Closing;

(b) any and all actions, suits, claims, or legal, administrative, arbitration, governmental or other proceedings or investigations against any Purchaser Indemnified Party that relate to the Purchaser, the Purchaser's business or its Assets and which result from or arise out of any event, occurrence, action, inaction or transaction occurring after the Closing Date;

(c) any and all damages, losses, deficiencies, liabilities, costs and expenses incurred or suffered by any Purchaser Indemnified Party that result from, relate to or arise out of:

(i) any misrepresentation, breach of warranty or nonfulfillment of any agreement or covenant on the part of the Purchaser under this Agreement or from any misrepresentation in or omission from any certificate, schedule, statement, document or instrument furnished to the Seller or Shareholder pursuant hereto or in connection with the negotiation, execution or performance of this Agreement;

(ii) any claim by any former employee of Seller, other than the Shareholder, which results from or arises out of any event, occurrence, action, inaction or transaction occurring after the Closing Date;

(iii) any of the matters referred to in subparagraph (a) and (b) above; and

(d) any and all actions, suits, claims, proceedings, investigations, demands, assessments, audits, fines, judgments, costs and other expenses (including, without limitation, reasonable legal fees and expenses) incident to any of the foregoing or to the enforcement of this Section 6.2.

6.3 *Procedure.* Notice must be given within a reasonable time after discovery of any fact or circumstance on which a party could claim indemnification (“Claim” or “Claims”). The notice shall describe the nature of the Claim, if the Claim is determinable, the amount of the Claim, or if not determinable, an estimate of the amount of the Claim. Each party agrees to use its best efforts to minimize the amount of the loss or injury for which it is entitled to indemnification. If the party, in order to fulfill its obligations to the other party must take legal action or if the party is involved in legal action, the outcome of which could give rise to its seeking indemnification, one party shall consult with the other party with respect to such legal action and allow it to participate therein.

No Claim for which indemnification is asserted shall be settled or compromised without the written consent of the Seller and the Purchaser; provided, however, if a party does not consent to a bona fide settlement proposed by the other, the other party shall be liable for indemnification only to the lesser of the final judgment or the amount to be paid in settlement.

Subject to the provisions of the Section, neither party shall have recourse for indemnification until the Claims are fully and finally resolved. For a period of thirty (30) days following the giving of the notice of such Claim, the Purchaser and the Seller shall attempt to resolve any differences they may have with respect to such Claim. If a resolution is not reached within the thirty (30) day period (unless the parties agree to extend the period), the matter may be submitted to a court of competent jurisdiction.

A Claim shall be deemed finally resolved in the event a matter is submitted to a court, upon the entry of judgment by a court of final authority.

6.4 *Payment of Indemnification Obligation.* The Seller and the Shareholder agree to pay promptly to any Seller Indemnified Party, and the Purchaser agrees to pay promptly to any Purchaser Indemnified Party, the amount of all damages, losses, deficiencies, liabilities, costs, expenses, claims and other obligations to which the foregoing indemnities relate.

6.5 *Other Rights and Remedies Not Affected.* The indemnification rights of the parties under this Article VI are independent of and in addition to such rights and remedies as the parties may have at law or in equity or otherwise for any misrepresentation, breach of warranty or failure to fulfill any agreement or covenant hereunder, including without limitation the right to seek specific performance, rescission or restitution, none of which rights or remedies shall be affected or diminished hereby.

ARTICLE VII—POST-CLOSING MATTERS

7.1 *No Solicitation or Hiring.* The Seller and the Shareholder agree that neither they nor any affiliate of either of them will solicit, employ or in any other fashion hire persons who are employees of the Seller on the date hereof for a period of one year after the Closing, unless such persons have been discharged by the Purchaser.

7.2 *Escrow*. On and after the Closing, Purchaser shall hold in escrow the Purchase Price and other consideration under this Agreement in accordance with the terms of any notice from the New York State Tax Commission.

ARTICLE VIII—MISCELLANEOUS

8.1 *Brokers' and Finders' Fees*. The Seller and the Shareholder jointly and severally represent and warrant to the Purchaser, and the Purchaser represents and warrants to the Seller or Shareholder that all negotiations relative to this Agreement have been carried on by the parties directly without the intervention of any person who may be entitled to any brokerage or finder's fee or other commission in respect of this Agreement or the consummation of the transactions contemplated hereby, and the Seller and the Shareholder jointly and severally agree to indemnify and hold harmless the Purchaser, and the Purchaser agrees to indemnify and hold harmless the Seller and Shareholder, as the case may be, against any and all claims, losses, liabilities and expenses which may be asserted against or incurred by them as a result of either party's dealings, arrangements or agreements with any such person.

8.2 *Sales, Transfer and Documentary Taxes, etc.* Neither the Seller nor the Purchaser shall be responsible for the other's sales, transfer or documentary taxes, if any, due as a result of the transfer of the Assets to the Purchaser, or all other fees directly relating to the transfer of the Assets.

8.3 *Expenses*. The parties shall pay their own expenses incidental to the preparation of this Agreement, the carrying out of the provisions of this Agreement and the consummation of the transactions contemplated hereby.

8.4 *Remedy*. The Seller and the Shareholder acknowledge that the Assets are unique and not otherwise available and agree that, in addition to any other remedy available to the Purchaser, the Purchaser may invoke any equitable remedy to enforce performance hereunder, including, without limitation, the remedy of specific performance.

8.5 *Contents of Agreement; Parties in Interest; etc.* This Agreement sets forth the entire understanding of the parties with respect to the transactions contemplated hereby. It shall not be amended or modified except by written instrument duly executed by each of the parties hereto. Any and all previous agreements and understanding between or among the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

8.6 *Assignment and Binding Effect*. Neither the Seller nor the Purchaser shall assign this Agreement nor any part of it, nor delegate any obligation imposed by this Agreement without the prior written consent of the other. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of the Seller, Shareholders and Purchaser.

8.7 *Waiver*. Any term or provision of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof by a written instrument duly executed by such party or parties.

8.8 *Notices*. Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given only if

delivered personally or sent by telegram or by fax or by registered or certified mail, postage prepaid, as follows:

If to the Purchaser to:

ABC Corporation
123 America Street
New York, New York 12345

With a required copy to:

Attorney James White
456 State Street
New York, New York 12345

If to the Seller and/or the Shareholder, to:

John Doe
890 James Street
Chicago, Illinois 56789

With a required copy to:

Attorney Thomas Greene
567 Eighth Street
New York, New York 12345

or to such other address as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered, telegraphed, faxed or mailed.

8.9 *New York Law to Govern.* This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of New York.

8.10 *No Benefit to Others.* The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto and, in the case of Article VI hereof, the other indemnified parties, and their heirs, administrators, legal representatives, successors and assigns, and they shall not be construed as conferring any rights on any other persons.

8.11 *Headings, Gender and "Person."* All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. Any reference to a "person" herein shall include an individual, firm, corporation, partnership, trust, governmental authority or body, association, unincorporated organization or any other entity.

8.12 *Schedules and Exhibits.* All Schedules and Exhibits referred to herein are intended to be and hereby are specifically made a part of this Agreement.

8.13 *Tax Consequences.* No party to this Agreement, nor any of their officers, employees or agents has made any representation or agreement, express or implied, as to the tax consequences of the transactions contemplated by this Agreement or the tax consequences of any action pursuant to or arising out of this Agreement.

8.14 *Severability.* Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.15 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind each Party.

8.16 *Guarantee.* Shareholder unconditionally guarantees to Purchaser and its affiliates the full and timely performance of all of the obligations and agreements of Seller. The foregoing guarantee shall include the guarantee of the payment of all damages, costs and expenses which might become recoverable as a result of the nonperformance of any of the obligations or agreements so guaranteed or as a result of the nonperformance of this guarantee. Any guaranteed person may, at its option, proceed against Shareholder for the performance of any such obligation or agreement, or for damages for default in the performance thereof, without first proceeding against any other party or against any of its properties. Shareholder further agrees that his guarantee shall be an irrevocable guarantee and shall continue in effect notwithstanding any extension or modification of any guaranteed obligation, any assumption of any such guaranteed obligation by any other party, or any other act or thing which might otherwise operate as a legal or equitable discharge of a guarantor and the Shareholder waives all special suretyship defenses and notice requirements.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written.

(Corporate Seal)

XYZ CORPORATION

Attest:

By: _____
As its Secretary

By: _____
As its President

John Doe (Shareholder)

(Corporate Seal)

ABC CORPORATION

Attest:

By: _____

By: _____

[assetpur.nys]

Sample

RESTRICTIVE AGREEMENT

This Restrictive Agreement (the "Agreement") is made and entered into on the _____ day of _____, 20__ by and among:

XYZ CORPORATION, a New York corporation ("XYZ");

JOHN DOE ("DOE"); and

ABC CORPORATION, a New York corporation ("ABC").

RECITALS

Whereas, XYZ and Doe have had extensive and valuable experience in the service business performing maintenance, service, repair, and other related activities on heating, ventilating and air conditioning systems, equipment and controls. All of such business operations are referred to as the "Business"; and

Whereas, ABC desires to enter into a restrictive agreement with XYZ and Doe so that ABC may engage in business without competition from them;

NOW, THEREFORE, in consideration of the recitals and of the representations, warranties, covenants and agreements contained, and intending to be legally bound, the parties agree as follows:

ARTICLE I

RESTRICTIVE COVENANT

1.1 *Restrictive Covenant.* XYZ and Doe agree that, for a period of three years from and after the date of this Agreement, they will not, directly or indirectly, own, manage, operate, finance, join, control or participate in the ownership, management, operation, financing or control of, or be connected as a shareholder, director, officer, partner, principal, agent, representative, consultant or otherwise with, or use or permit their names to be used in connection with, the Business or enterprise engaged in the service business performing maintenance, service, repair, and other related activities on heating, ventilating and air conditioning systems, equipment and controls, within 50 miles of Franklin, New York. XYZ shall liquidate and dissolve, under applicable laws, not later than 18 months from January _____, 20__. In the event that the provisions of this Section 1.1 should ever be deemed to exceed the time, geographic, product or other limitations permitted by applicable law in any jurisdiction, then such provisions shall be deemed reformed in such jurisdiction to the maximum time, geographic, product or other limitations permitted by applicable law. XYZ and Doe specifically acknowledge and agree that the foregoing restrictions are reasonable and necessary to protect the legitimate interests of ABC, that ABC would not have entered into an Agreement among them dated January _____, 20__, for the purchase of certain assets of XYZ in the absence of such restrictions, that any violation of such restrictions will result in irreparable injury to ABC, that the remedy at law for any breach of the foregoing restrictions will be inadequate, and that, in the event of any such breach, ABC, in addition to any other relief available to it, shall be entitled to temporary and permanent injunctive relief without the necessity of proving actual damages. XYZ and Doe

further specifically acknowledge and agree that ABC shall be entitled to an equitable accounting of all earnings, profits and other benefits arising from any such breach, and further agree to pay the reasonable legal fees and expenses incurred by ABC or any successor assignee thereof in enforcing the restrictions contained in this Section 1.1.

Notwithstanding the foregoing, the parties agree that the following shall not violate this restrictive covenant:

- (a) the performance of Doe's duties as an employee of ABC; and
- (b) the administrative function of collecting XYZ's unpaid accounts receivable.

1.2 *Consideration for the Restrictive Covenant.* ABC shall pay the following consideration to XYZ and Doe for the restrictive covenant:

- (a) the total sum of \$15,000 to XYZ (or its assigns) payable on the date of this Agreement; and
- (b) the total sum of \$90,000 to Doe payable (i) \$20,000 on the date of this Agreement, (ii) the balance of \$70,000 in equal monthly installments of \$1,944.44 over thirtysix (36) months, commencing one month from the date of this Agreement and continuing on the same date of each month thereafter until paid in full.

ARTICLE II

MISCELLANEOUS

2.1 *Contents of Agreement; Parties in Interest; etc.* This Agreement sets forth the entire understanding of the parties with respect to the transactions contemplated hereby. It shall not be amended or modified except by written instrument duly executed by each of the parties hereto. Any and all previous agreements and understanding between or among the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

2.2 *Assignment and Binding Effect.* Neither XYZ, Doe nor ABC shall assign this Agreement nor any part of it, nor delegate any obligation imposed by this Agreement without the prior written consent of the other. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of XYZ, Doe and ABC.

2.3 *Waiver.* Any term or provision of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof by a written instrument duly executed by such party or parties.

2.4 *Notices.* Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally or sent by telegram or by fax or by registered or certified mail, postage prepaid, as follows:

If to ABC to:

ABC Corporation
123 America Street
New York, New York 12345

With a required copy to:

Attorney James White
456 State Street
New York, New York 12345

If to XYZ or Doe, to:

John Doe
XYZ Corporation
890 James Street
New York, New York 12345

With a required copy to:

Attorney Thomas Greene
567 Eighth Street
New York, New York 12345

or to such other address as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered, telegraphed, faxed or mailed.

2.5 New York Law to Govern. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of New York.

2.6 No Benefit to Others. The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto and their heirs, administrators, legal representatives, successors and assigns, and they shall not be construed as conferring any rights on any other persons.

2.7 Headings, Gender and "Person." All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. Any reference to a "person" herein shall include an individual, firm, corporation, partnership, trust, governmental authority or body, association, unincorporated organization or any other entity.

2.8 Severability. Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

2.9 *Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any teletype or other facsimile transmission of any signature shall be deemed an original and shall bind each Party.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written.

(Corporate Seal)

XYZ CORPORATION

Attest:

By: _____
As its Secretary

By: _____
As its President

John Doe

(Corporate Seal)

ABC CORPORATION

Attest:

By: _____

By: _____

[restrict.nys]

Sample

ESCROW AGREEMENT

THIS AGREEMENT (the "Escrow Agreement") is made as of the ____ day of _____, 20__, by and among:

_____, having an office at _____, New York ("Seller"); and

_____, having an office at _____, New York ("Buyer"); and

Whereas, the Seller and the Buyer are parties to an Assets Purchase Agreement, dated _____, 20__ ("Purchase Agreement"); and

Whereas, the Purchase Agreement provides for the escrow of a portion of the purchase price; and

Whereas, the parties wish to establish and maintain this escrow in accordance with the terms and provisions of this Escrow Agreement;

NOW, THEREFORE, the parties agree:

1. *Purpose.* This Escrow Agreement provides for the escrow of \$ _____ under the Purchase Agreement, as a source for payment in the event of a claim by Buyer for indemnification under Section ____ of the Purchase Agreement. Subject to the terms of this Escrow Agreement, the parties establish this escrow to insure the Seller's compliance with the terms, provisions and conditions of their indemnification agreement under the terms of the Purchase Agreement.

2. *Establishment of Escrow Fund.* Seller has deposited with the Escrow Agent the sum of \$ _____, as set forth in Schedule A annexed, on the date of this Escrow Agreement. This shall constitute and be referred to as the Escrow Fund.

3. *Receipt.* The Escrow Agent shall issue appropriate written acknowledgments of the receipt of the Escrow Fund.

4. *Disposition of the Escrow Fund.*

a. *Release.* The Escrow Agent shall hold the Escrow Fund until _____, 20__ when the Escrow Agent shall release one-half of the Escrow Fund to the Seller. The balance of the Escrow Fund shall be released by the Escrow Agent to the Seller on _____, 20__.

b. *Default.* During the term of this Escrow Agreement, if the Seller defaults in the payment of a claim for indemnification, the Escrow Agent shall transfer and pay over to the Buyer from the Escrow Fund, up to the entire amount of the Escrow Fund, the total amount of the claim. The nature, extent and validity of Buyer's claim for indemnification shall be determined under and governed by the terms, conditions and provisions of the Purchase Agreement, which is incorporated in this Escrow Agreement by reference.

5. *Investment of Escrow Fund.* The Escrow Agent deposits the Escrow Fund in an interest bearing trust account, determined by the Seller. During the term of the escrow all interest and/or other increments to the Escrow Fund shall be credited to the Seller.

6. *Written instructions to Escrow Agent.* Notwithstanding anything herein to the contrary, the Escrow Agent may act upon any written instructions given by the parties jointly.

7. *Status of the Escrow Agent.*

a. The Escrow Agent is to be considered and regarded as a depository only, and shall not be responsible or liable (except for their failure to exercise due care) for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited as part of this Escrow Fund, nor as to the identity, authority, or rights of any person executing the same. The Escrow Agent's duties hereunder shall be limited to the safekeeping and investment of money, instruments, and securities received by it as Escrow Agent and for their disbursement in accordance with the terms, provisions and conditions of this Escrow Agreement.

b. The Escrow Agent shall not be responsible for the genuineness of any certificate or signature and may rely conclusively upon and shall be protected when acting upon any notice, affidavit, request, consent, instruction, check, or other instrument believed by the Escrow Agent in good faith to be genuine or to be signed or presented by the proper person, or duly authorized, or properly made. The Escrow Agent shall have no responsibility except for the performance of the Escrow Agent's express duties under this Escrow Agreement and no additional duties shall be inferred or implied.

c. The Escrow Agent shall not be responsible or liable for any act or omission in the performance of the duties of the Escrow Agent under this Escrow Agreement unless such act or omission constitutes bad faith, gross negligence or fraud.

d. The Escrow Agent shall not be required to institute or defend any action involving any matters referred to in this Escrow Agreement or which affect the Escrow Agent or the duties or liabilities of the Escrow Agent under this Escrow Agreement unless or until requested to do so by any party to this Escrow Agreement and then only upon receiving full indemnity, in character satisfactory to the Escrow Agent, against all claims, liabilities and expenses.

8. *Disputes.* In the event of any dispute among the parties with respect to the Escrow Agent or the duties of the Escrow Agent:

a. the Escrow Agent may act or refrain from acting in respect of any matter referred to in this Escrow Agreement in full reliance upon and by and with the advice of counsel and shall be fully protected in so acting or in refraining from acting upon advice of counsel; or

b. the Escrow Agent may refrain from acting until required to do so by the order of a court of final authority.

9. *Fee of Escrow Agent.* Buyer shall be liable for the fees of the Escrow Agent, which shall not be chargeable against the Escrow Fund.

10. *Non-waiver.* No delay or failure by any party to exercise any right hereunder, and no partial or single exercise of any such right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein.

11. *Time of essence.* Time is of essence of this Escrow Agreement.

12. *Notices.* All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed, postage prepaid, certified mail, return receipt requested or by overnight express mail (i.e. Federal Express):

(a) If to the Buyer, to:

with a copy to:

(b) If to the Seller, to:

with a copy to:

(c) if to the Escrow Agent, to:

The address may be changed by any party in a notice duly given as provided herein.

13. *Nonexclusive protection.* The provisions of this Escrow Agreement are cumulative and not exclusive of all other rights or remedies which Purchaser may have at law or equity, or under the Purchase Agreement or other instrument or document.

14. *Binding Effect.* This Escrow Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided that any permitted assignment of either party's obligations or liabilities shall not relieve that party of any of its liabilities or obligations under this Escrow Agreement.

15. *Titles.* The titles are for convenience or reference and shall not be deemed to modify or affect the interpretation of this Escrow Agreement. The term "herein" as used in this Escrow Agreement refers to this Escrow Agreement and any Exhibits to this Escrow Agreement.

16. *Modification.* Neither this Escrow Agreement nor any of its provisions shall be modified, changed, discharged, or terminated except by an instrument in writing signed by the party against whom the enforcement of any modification, change, discharge or termination is sought.

17. *Further Assurances.* In connection with the transactions contemplated by this Escrow Agreement, the parties agree to execute any additional documents and papers and to perform and do any additional acts and things as may be reasonably necessary and proper to effectuate and carry out the transactions contemplated by this Escrow Agreement.

18. *Delay.* No delay or omission on the part of any party in exercising any right shall operate as a waiver of that right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion.

19. *Governing Law.* This Escrow Agreement shall be governed by, construed and interpreted according to the laws of the state of New York and the Purchase Agreement.

20. *Counterparts.* This Escrow Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind each Party.

IN WITNESS, the parties have executed this Escrow Agreement.

