

Model Letter of Intent
(Prospective Buyer's First Draft)

_____, 200_

Prospective Seller A
[Address]

Prospective Seller B
[Address]

Re: Proposal to Purchase Stock of the Company

Dear Prospective Sellers:

The purpose of this letter (the "Letter") is to set forth certain nonbinding understandings and certain binding agreements between [name of fund], a Delaware limited liability company ("Prospective Buyer"), and [name of 1st prospective seller] ("A") and [name of 2nd prospective seller] ("B") (A and B are referred to collectively herein as "Prospective Sellers") with respect to the possible acquisition of all of the outstanding capital stock of [name of corporation], a [state of incorporation] corporation (the "Company"), which is owned beneficially and of record by Prospective Sellers, on the terms set forth below.

PART I

The numbered paragraphs contained in this Part I reflect our general understanding of the matters described herein, but each party acknowledges that except as set forth in Part II below, the provisions hereof are not intended to create or constitute any legally binding obligation between Prospective Buyer and Prospective Sellers, and neither Prospective Buyer nor Prospective Sellers shall have any liability to the other party with respect hereto until a fully integrated, definitive agreement (the "Definitive Agreement"), and other related documents, are prepared, authorized, executed and delivered by and between all parties. If the Definitive Agreement is not prepared, authorized, executed or delivered for any reason, no party to this Letter shall have any liability to any other party to this Letter based upon, arising from, or relating hereto, except those obligations set forth in Part II below.

1.1 Basic Transaction. Prospective Buyer would acquire all of the outstanding capital stock of the Company, being _____ shares of common stock, par value _____ per share (the "Shares"), all of which are owned beneficially and of record by Prospective Sellers. The parties intend that the closing of the proposed transaction (the "Closing Date") would occur on or before _____, 200_.

1.2 Proposed Purchase Price. Based on the information known to Prospective Buyer on the date hereof, the total consideration for the Shares would be \$_____ (the "Purchase Price"), of which:

a. \$_____ would be paid to Prospective Sellers in cash at the Closing;

b. \$_____ would be delivered to a mutually acceptable escrow agent to hold until _____, 200_ as security for undisclosed liabilities and any breaches of representations, warranties and covenants, as set forth in Paragraph 8 below; and

c. the balance of \$_____ would be paid to Prospective Sellers by the delivery of Prospective Buyer's unsecured, nonnegotiable, subordinated promissory notes (the "Promissory Notes"), payable in _____ - equal consecutive [annual] [quarterly] [monthly] installments commencing on _____, _____, and _____ of each [year] [quarter] [month] thereafter until paid in full. Interest on the unpaid principal balance of the Promissory Notes at an annual rate equal to ____% would be due and payable [annually] [quarterly] [monthly] together with each payment of principal.

The Purchase Price and each component thereof, would be divided between Prospective Sellers pro rata in accordance with their respective ownership of the Shares.

1.3 Purchase Price Adjustment. The Purchase Price would be adjusted (up or down) by any difference between \$_____ and the Company's working capital as of immediately prior to the Closing. For these purposes, "working capital" means (i) the cash and cash equivalents, inventory, accounts receivable, prepaid expenses and other current assets (excluding for this purpose all deferred tax assets and any excluded assets) of the Company (net of all applicable reserves), minus (ii) the accounts payable, accrued expenses, accrued compensation and all other current liabilities of the Company (excluding for this purpose all liabilities paid by or on behalf of the Company at the Closing and the excluded liabilities).

1.4 Due Diligence. Prospective Buyer has commenced, and intends to continue, its due diligence investigation of the prospects, business, assets, contracts, rights, liabilities and obligations of the Company, including financial, marketing, employee, intellectual property, legal, regulatory and environmental matters.

1.5 Proposed Form of Agreement. Prospective Buyer and Prospective Sellers intend promptly to begin negotiating to reach a written Definitive Agreement, subject to the

approval of Prospective Buyer's Management Board, containing comprehensive representations, warranties, indemnities, conditions and agreements by each Prospective Seller.

[1.6 Conditions to Proposed Transaction. The parties do not intend to be bound to consummate the sale and purchase of the Shares until the execution and delivery of the Definitive Agreement, which, if successfully negotiated, would provide that the proposed transaction would be subject to customary terms and conditions, including the following:

a. Receipt of all necessary consents and approvals of governmental bodies, lenders, lessors and other third parties including compliance by the parties with the Hart-Scott-Rodino Antitrust Improvements Act (the "H-S-R Act"), if necessary;

b. absence of any material adverse change in the Company's business, financial condition, prospects, assets or operations since _____, _____;

c. absence of pending or threatened litigation regarding the Definitive Agreement or the transactions to be contemplated thereby;

d. delivery of customary legal opinions, closing certificates and other documentation; and

e. [Prospective Buyer's obtaining financing for the acquisition of the Shares and operation of the Company's business after the Closing, satisfactory to Prospective Buyer in its sole discretion.]

1.7 Proposed Employment Agreement. At the Closing, the Company and [employee] would enter into a _____ year employment agreement, providing for him to be _____ of the Company, subject to the authority of its board of directors, at a salary of \$_____ per year, and containing other customary provisions (including noncompetition provisions to extend _____ years following separation from employment).

1.8 Proposed Noncompetition Agreement. At the closing, Prospective Buyer and each Prospective Seller would enter into a _____ year noncompetition agreement, pursuant to which each Prospective Seller would agree that he and his affiliates would not compete with the Company for _____ years after the Closing in _____, and containing confidentiality and other customary provisions. Prospective Buyer would pay \$_____ to A and \$_____ to B for their covenants contained in such agreement, payable as follows:

_____.

1.9 Proposed Escrow Agreement. At the Closing, Prospective Buyer and Prospective Sellers would enter into an escrow agreement which would contain provisions for an escrow of \$_____ of the Purchase Price to secure Prospective Buyer against undisclosed liabilities, misrepresentations and breaches of warranties, covenants and agreements by Prospective Sellers.

PART II

The following paragraphs of this Letter are intended to be the legally binding and legally enforceable agreements of the Prospective Buyer and the Prospective Sellers.

2.1 Access. Prospective Sellers shall cause the Company to provide to Prospective Buyer complete access to the Company's facilities, books and records and shall cause the directors, employees, accountants, and other agents and representatives (collectively, "Representatives") of the Company to cooperate fully with Prospective Buyer and Prospective Buyer's Representatives in connection with Prospective Buyer's due diligence investigation of the Company and the Company's assets, contracts, liabilities, operations, records and other aspects of its business (as described in Paragraph 4 herein). Prospective Buyer shall be under no obligation to continue with its due diligence investigation or negotiations regarding the Definitive Agreement if, at any time, the results of its due diligence investigation are not satisfactory to Prospective Buyer for any reason in its sole discretion.

2.2 Exclusive Dealing. In recognition of the time, expense and effort heretofore incurred and to be incurred with respect to the proposed transaction, Prospective Sellers shall not and shall cause the Company not to, directly or indirectly, through any Representative or otherwise, solicit or entertain offers from, negotiate with or in any manner encourage, discuss, accept or consider any proposal of any other person relating to the acquisition of the Shares or the Company, its assets or business, in whole or in part, whether through direct purchase, merger, consolidation or other business combination.

2.3 Break-up Fee. In the event that Prospective Sellers breach Paragraph 2.2 and, within twelve (12) months after such breach, either Prospective Seller or the Company close a transaction relating to the acquisition of a material portion of the Shares, or of the Company, its assets or business, in whole or in part, whether through direct purchase, merger, consolidation or other business combination, then, immediately upon such closing, Prospective Sellers shall pay, or cause the Company to pay, to Prospective Buyer the sum of \$_____.

[2.4 Conduct of Business. Until the Definitive Agreement has been fully executed and delivered by all of the parties or this Letter has been terminated pursuant to

Paragraph 2.9 below, Prospective Sellers shall cause the Company to conduct its business only in the ordinary course, and not to engage in any extraordinary transactions without Prospective Buyer's prior consent, including:

(i) not disposing of any assets of the Company, except in the ordinary course of business;

(ii) not materially increasing the annual level of compensation of any employee, and not increasing at all the annual level of compensation of any person whose compensation from the Company in the last preceding fiscal year exceeded \$_____, and not granting any unusual or extraordinary bonuses, benefits or other forms of direct or indirect compensation to any employee, officer, director or consultant, except in amounts in keeping with past practices by formulas or otherwise;

(iii) not increasing, terminating, amending or otherwise modifying any plan for the benefit of employees;

(iv) not issuing any equity securities or options, warrants, rights or convertible securities;

(v) not paying any dividends, redeeming any securities, or otherwise causing assets of the Company to be distributed to any of its shareholders except by way of compensation to employees who are also shareholders within the limitations set forth in sub-paragraph (ii) above; and

(vi) not borrowing any funds, under existing credit lines or otherwise, except as reasonably necessary for the ordinary operation of the Company's business in a manner, and in amounts, in keeping with historical practices.]

[This type of provision is often not included in the Letter of Intent, particularly in such detail; it is more typically included in Definitive Agreement only.]

2.5 Disclosure. Except as and to the extent required by law, without the prior written consent of the other party, neither Prospective Buyer nor either Prospective Seller shall, and each shall direct its Representatives not to, directly or indirectly, make any public comment, statement or communication with respect to, or otherwise disclose or permit the disclosure of the existence of discussions regarding, a possible transaction between the parties or any of the terms, conditions or other aspects of the transaction proposed in this Letter.

2.6 Confidentiality. Except as and to the extent required by law, Prospective

Buyer shall not disclose or use, and it shall cause its Representatives not to disclose or use, any Confidential Information (as defined below) with respect to the Company furnished, or to be furnished, by either Prospective Seller or its Representatives in connection herewith at any time or in any manner other than in connection with its evaluation of the transaction proposed in this Letter. For purposes of this Paragraph, "Confidential Information" means any information about the Company stamped "confidential" or identified in writing as such to Prospective Buyer by Prospective Sellers, and shall include without limitation non-public samples, demonstration models or materials and other embodiments of products or prospective products; provided that it does not include information which Prospective Buyer can demonstrate (i) is generally available to or known by the public other than as a result of improper disclosure by Prospective Buyer or (ii) is obtained by Prospective Buyer from a source other than Prospective Sellers or the Company, provided that such source was not bound by a duty of confidentiality to the Company or the Prospective Sellers. If this Letter is terminated pursuant to Paragraph 2.9 below, Prospective Buyer shall promptly return to Prospective Sellers or the Company any Confidential Information in its possession.

2.7 Expenses. Prospective Buyer and each Prospective Seller shall be responsible for and bear all of its own costs and expenses, including any broker's or finder's fees and expenses of its Representatives, incurred at any time in connection with pursuing or consummating the proposed transaction, and the Company shall not be responsible for any such costs and expenses.

2.8 Consents. Prospective Buyer and each Prospective Seller shall cooperate with each other and proceed, as promptly as is reasonably practicable, to prepare and file the notifications required by the H-S-R Act, to seek to obtain all necessary consents and approvals from lenders, landlords and other third parties, and to endeavor to comply with all other legal or contractual requirements for or preconditions to the execution and consummation of the Definitive Agreement.

2.9 Termination. This Letter may be terminated:

(i) by mutual written consent of Prospective Buyer and Prospective Sellers; or

(ii) upon written notice by any party to the other party if the Definitive Agreement has not been executed by _____, 200__;

provided, however, that the termination hereof shall not affect the liability of a party for breach of any of the binding provisions set forth in this Part II prior to the termination. Upon termination hereof, the parties shall have no further obligations hereunder, except as stated in

Paragraphs 2.3, 2.5, 2.6 and 2.7, which shall survive any such termination.

2.10 Governing Law. The provisions of this Letter are to be governed by and construed under the laws of the State of Delaware, without regard to conflicts of laws principles.

2.11 Consent to Jurisdiction. The parties agree and acknowledge that the proposal set forth in this Letter was substantially negotiated and executed in the State of Delaware. The parties each hereby consent to the jurisdiction of the state and federal courts sitting in the State of Delaware over their respective persons and the subject matter hereof. The parties further agree that any action brought to enforce their rights hereunder or under the Definitive Agreement shall be brought and adjudicated, or arbitrated, as the case may be, in the State of Delaware.

2.12 Amendment. The terms and provisions of this Letter may be amended or extended only upon agreement of all parties hereto, as evidenced in a writing, executed by all parties.

2.13 Counterparts. This Letter may be executed in one or more counterparts, all of which when duly executed, taken together shall constitute one document.

If this Letter correctly sets forth your understanding, please sign and date the enclosed copy of this Letter in the space provided below and return the executed copy to the undersigned on or before 12:00 p.m. Eastern Standard Time on _____, 200_ (“Expiration Time”). If an executed copy of this Letter is not returned to Prospective Buyer by the Expiration Time, this Letter shall expire.

Very truly yours,

PROSPECTIVE BUYER

By: _____

Name: _____

Title: _____

Seller A
Seller B
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Acknowledged and agreed:

PROSPECTIVE SELLERS

_____ Date: _____

_____ Date: _____