

## ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT (this “APA”) is entered into as of \_\_\_\_\_, 2021 (“**Effective Date**”), and is by and among \_\_\_\_\_, a \_\_\_\_\_ (“**Seller**”), \_\_\_\_\_, the owner of the Seller (“**Principal**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Buyer**”). Buyer, Seller and Principal are sometimes referred to herein as the “**Parties**”.

WHEREAS, Seller is the owner of the business known as \_\_\_\_\_ (the “**Business**”), and the goodwill, Intellectual Property and other assets related thereto as listed on Exhibit A (collectively, the “**Purchased Assets**”).

WHEREAS, upon the terms, covenants, and conditions set forth herein, Buyer desires to purchase and acquire the Purchased Assets from Seller, and Seller desires to sell and assign same to Buyer.

WHEREAS, Principal owns  all  % of the issued and outstanding equity interests of Seller, and, therefore, will derive a significant benefit from the consummation of the transactions contemplated by this APA.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Agreement of Purchase and Sale.**

a. At the Closing (as hereinafter defined), subject to the terms and conditions of this APA, Seller shall sell and assign to Buyer, and Buyer shall purchase and acquire from Seller, the Purchased Assets. Following the Closing, Buyer shall have the right to operate the business under the name \_\_\_\_\_ (or any name similar thereto) and upon the Closing, Seller shall cease using such business name in all respects. Within ten (10) days following the Closing, Seller shall take all steps as are necessary and appropriate to effectuate a legal name change so that its legal name no longer bears the name of the Business.

b. Notwithstanding anything herein to the contrary, the Purchased Assets shall not include, and Buyer shall not purchase the assets listed on Exhibit B hereto (collectively, the “**Excluded Assets**”).

2. **Purchase Price.**

a. Amount of Purchase Price. The purchase price to be paid for the Purchased Assets (the “**Purchase Price**”) shall be \$ \_\_\_\_\_. Upon mutual agreement, the Parties may use an independent third-party escrow agent (“**Escrow Agent**”) to facilitate the Closing. In such an event, the fees and expenses of the Escrow Agent shall be shared equally by the Parties.

b. Deposit.



Buyer shall deposit the sum of \$\_\_\_\_\_ with Seller (or with Escrow Agent, if mutually agreed by the Parties) as an earnest money deposit hereunder (the “**Deposit**”). The Deposit shall be applicable in full towards the Purchase Price.

There shall be no Deposit required. Rather, the Purchase Price shall be paid in full at Closing.

c. Cash and/or Seller Carry-Back Note.

The Purchase Price (or, the balance of the Purchase Price, in the event a Deposit was already provided by Buyer, as the case may be) shall be paid by Buyer in cash at Closing.

\$\_\_\_\_\_ of the Purchase Price shall be evidenced by a promissory note to be delivered by Buyer to Seller at Closing (the “**Note**”). Buyer and Seller shall agree upon the terms of the Note prior to the Closing, including without limitation the maturity date, amortization schedule, and interest rate thereunder. The balance of the Purchase Price shall be paid to Seller in cash at Closing.

3. **Termination Right.**

Upon written notice to Seller, Buyer shall have the right to terminate this APA on or prior to \_\_\_\_\_ (the “**Termination Deadline**”), with no liability of Buyer whatsoever except as otherwise expressly provided herein, for any reason or no reason, as determined by Buyer, in the event Buyer is unsatisfied with its due diligence with respect to the Business. If Buyer terminates this APA prior to the Termination Deadline, Buyer shall be entitled to a refund of the Deposit (if any).

Following mutual execution of this APA, neither party shall have the right to terminate this APA, unless the other party is in default hereunder. The Deposit (if any) shall be non-refundable to Buyer in all cases, except in the event this APA is terminated by Buyer due to a default by Seller hereunder.

4. **The Closing.**

a. Closing. The closing of the transaction contemplated by this APA (the “**Closing**”) shall occur on \_\_\_\_\_, or on such other date as the parties mutually agree in writing (the “**Closing Date**”). The Closing shall take place at such time as the parties may mutually agree, and shall occur by exchange of documents by electronic mail and/or overnight courier, and by electronic transfer of funds. The Parties may use the escrow agent or Buyer’s or Seller’s attorney (if any) to facilitate the Closing process, as mutually determined. All Business revenue and expenses through and including the full day of the Closing shall belong to Seller; and all Business revenue and expenses commencing on the first day following the Closing shall belong to Buyer.



b. Closing Actions by Seller. At or prior to the Closing, as a condition to Buyer's obligations hereunder, Seller shall deliver to Buyer (or into escrow, if applicable) the following items, each duly executed and acknowledged as appropriate: (i) a Bill of Sale ("**Bill of Sale**"); (ii) an Assignment of Intellectual Property Rights and Agreements (the "**Assignment**"); and (iii) such other instruments and documents as are customary, reasonably necessary and appropriate to fulfill the covenants and obligations to be performed by Seller under this APA.

c. Action at the Closing by Buyer. At the Closing, as a condition to Seller's obligations hereunder, Buyer shall deliver to Seller (or into escrow, if applicable) the following items, each duly executed and acknowledged as appropriate: (i) the Bill of Sale; (ii) the Assignment; (iii) cash in the amount of \$ \_\_\_\_\_; (iv) the Note (if applicable); and (v) such other instruments and documents as are reasonably necessary or appropriate to fulfill the covenants and obligations to be performed by Buyer pursuant to this APA.

This APA, together with the Bill of Sale and the Assignment are collectively referred to herein as the "**Conveyance Documents.**" The form of Bill of Sale and Assignment shall be mutually agreed upon by Buyer and Seller prior to the Closing.

d. No Monetary Liens. Prior to or at Closing, Seller shall be obligated to remove and satisfy (regardless of whether Buyer has objected thereto) all liens, encumbrances, lienholders, UCC filings, leases, tax liens, judgments and other monetary liens or encumbrances on the Purchased Assets; it being the intent of the Parties that the Purchased Assets shall be conveyed to Buyer free and clear of all monetary liens and encumbrances whatsoever.

e. Withholding Tax. Buyer shall be entitled to deduct and withhold from any consideration otherwise payable pursuant to this APA (including, but not limited to, the Purchase Price) and remit directly to appropriate governmental authorities such amounts that Buyer may be required or permitted to deduct and withhold under any provision of applicable tax laws. All such withheld amounts shall be treated as delivered to Seller hereunder.

#### 5. Possession; Risk of Loss.

Promptly following the Closing, Seller shall deliver and ship any inventory and personal property assets to Buyer, at Seller's sole cost and expense.

Promptly following the Closing, Buyer shall pick up or arrange for shipment and delivery of any inventory and personal property assets from Seller's place of business, at Buyer's sole cost and expense.

Following the Closing, Seller shall provide electronic copies of customer agreements and customer files to Buyer. Title and risk of loss with respect to the Purchased Assets shall remain with Seller until the later of the Closing and delivery of such item(s) to Buyer. From and after such time, title and risk of loss shall automatically pass to Buyer. From the Effective Date through the Closing, Seller shall and does hereby agree to conduct Business operations in the ordinary course and substantially consistent with past practices.

#### 6. Seller's and Principal's Representations and Warranties.



Note: Strike out or remove from the document the Representations and Warranties, which are not applicable.

Seller and Principal represent and warrant to Buyer, on a joint and several basis, as of the date hereof as and of the Closing Date, that:

(a) Seller is a \_\_\_\_\_, duly organized, validly existing and in good standing under the laws of \_\_\_\_\_. The transactions contemplated by this APA and the execution and delivery of all documents required herein, and Seller's performance hereunder and thereunder, have been duly authorized by Seller. The execution and delivery of this APA and any other documents required herein, and the consummation of the transactions contemplated hereby and thereby, will not result in any violation of, or default under, any term or provision of any agreement, instrument, mortgage, loan, or similar documents to which Seller is a party or by which Seller is bound.

(b) There is no litigation, investigation or proceeding pending or, to the knowledge of Seller or Principal, threatened against Seller, the Business or the Purchased Assets which would impair or adversely affect Seller's ability to perform its obligations under this APA or the other Conveyance Documents. Neither Seller, Principal nor the Business is in bankruptcy proceedings or is contemplating filing bankruptcy proceedings.

(c) Seller has good and marketable title to the Purchased Assets, free and clear of all claims, liens, and encumbrances. No party has any purchase option or right of first refusal with respect to the Purchased Assets. The Purchased Assets constitute all of the assets necessary for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing. None of the Excluded Assets are material to the Business. The Purchased Assets do not include any real property.

(d) The execution, delivery and performance by Seller and Principals of this APA and the other transaction documents to which Seller or Principal is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Articles of Incorporation, By-Laws, or other organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any law or governmental order applicable to Seller, Principal, the Business or the Purchased Assets; (c) require the consent, notice or other action by any person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any contract or permit to which Seller is a party or by which Seller or the Business is bound or to which any of the Purchased Assets are subject (including any Assigned Contract); or (d) result in the creation or imposition of any encumbrance on the Purchased Assets. No consent, approval, permit, governmental order, declaration or filing with, or notice to, any governmental authority is required by or with respect to Seller or Principal in connection with the execution and delivery of this APA or any of the other transaction documents and the consummation of the transactions contemplated hereby and thereby.



(e) Seller is the sole and exclusive legal, beneficial, and record, owner of all right, title, and interest in and to the Intellectual Property, and has the valid right to use all other intellectual property used in or necessary for the conduct of the Business as currently conducted, in each case, free and clear of encumbrances. Without limiting the generality of the foregoing, each employee and independent contractor of the Business who has contributed to the creation of any Intellectual Property has (i) assigned to Seller any ownership interest and right they may have in such Intellectual Property; and (ii) acknowledged Seller's exclusive ownership of all Intellectual Property. Seller's rights in the Intellectual Property are valid and enforceable. Seller has taken all reasonable steps to maintain the Intellectual Property and to protect and preserve the confidentiality of all trade secrets included in the Intellectual Property, including requiring all persons having access thereto to execute written non-disclosure agreements. The Intellectual Property does not infringe upon any design, patents, copyright, trade secrets, or other intellectual property rights of any third party, and Seller has not received and is not aware of any demand, claim, cease and desist letter, or other similar claim or threat alleging actual or potential infringement relating to such intellectual property.

(f) Seller has provided Buyer with (a) true and complete copies of the balance sheets and related statements of operations and cash flows of Seller for the fiscal years ended \_\_\_\_\_, and (b) true and complete copies of the balance sheet and related statements of operations and cash flows of Seller for the three-month period ending on March 31, 2021 (collectively, the "**Financial Statements**"). The Financial Statements are based on the books and records of the Business and fairly present the financial condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated. Since the date of the most recent Financial Statement, there has not been a material adverse effect on the Business or results of operations, whether individually or in the aggregate.

(g) There are no liabilities with respect to the Business, except (a) those which are adequately reflected or reserved against in the most recent balance sheet included in the Financial Statements, (b) those which have been incurred in the ordinary course of business consistent with the past practice since the most recent balance sheet date included in the Financial Statements and which are not, individually or in the aggregate, material in amount. Seller does not have any indebtedness of any type (whether accrued, absolute, contingent, matured, unmatured, or other and whether or not required to be reflected in the Financial Statements) ("**Seller Indebtedness**"). As of the Closing Date, Seller will have repaid all Seller Indebtedness.

(h) Seller is now, and has been for the past five years, in compliance with all laws applicable to the conduct of the Business as currently conducted and the ownership and use of the Purchased Assets. All permits required for Seller to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Seller and are valid and in full force and effect. All fees and charges with respect to such permits as of the date hereof have been paid in full. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse, or limitation of any permit used in conjunction with the Business.

(i) Other than Seller's standard terms and conditions of sale, Seller provides no additional warranties to its customers. For the five years prior to the date of this APA, Seller has not received notice or information as to any legal action or proceeding involving



personal injury, death, or property or economic damages, any action involving punitive or exemplary damages, any action involving contribution or indemnification, or any action involving injunctive relief in connection with any services provided or products manufactured, sold, distributed or otherwise put in commerce by or in connection with any service provided by Seller, the Business or their employees, independent contractors or other agent.

(j) All tax returns required to be filed by Seller and/or Principal under applicable law (including, but not limited to, all tax returns relating to the Purchased Assets, the Business, and the employees of the Business) have been, or will be, timely filed (taking into account permitted extensions, if any). Each such tax return is, or will be, true, complete and correct in all respects. Seller and Principal have timely paid all taxes due and owing (whether or not shown or required to be shown on any tax return). Seller is not a party to any action, audit, examination, administrative proceeding, or judicial proceeding by any governmental authority. There are no in-progress, pending, or threatened action, audit, examination, administrative proceeding, or judicial proceeding by any governmental authority. No claim has ever been made by a governmental authority in a jurisdiction in which Seller does not file tax returns or pay taxes that Seller is or may be required to file tax returns in that jurisdiction or subject to tax in that jurisdiction.

(k) All of the inventory constituting Purchased Assets is usable or saleable in the ordinary course of business without discount from the stated value. None of such inventory is obsolete, damaged, or defective. All inventory is owned by Seller free and clear of all encumbrances, and no inventory is held on a consignment basis.

7. **Buyer's Representations and Warranties. Representations and Warranties of Buyer.** Buyer represents and warrants to Seller as of the date hereof as and of the Closing Date, that:

a. **Due Organization, Etc.** Buyer is duly organized, validly existing, and is in good standing under the laws of the State of \_\_\_\_\_. The transactions contemplated by this APA and the execution and delivery of all documents required herein, and Buyer's performance hereunder, have been duly authorized by Buyer. The execution and delivery of this APA and any other document required herein (including without limitation the Note and the Security Agreement), and the consummation of the transactions contemplated hereby and thereby will not result in any violation of, or default under, any term or provision of any organizational document, agreement, instrument, mortgage, loan, or similar documents to which Buyer is a party or by which Buyer is bound.

8. **Transfer Taxes.** All transfer, documentary, sales, use, duty, stamp, registration, value added, ad valorem, GST, and/or other similar taxes and fees (including any penalties and interest) incurred in connection with this APA and the other transaction documents shall be borne and paid by Seller when due. Seller shall, at its own expense, timely file any tax return or other document with respect to such taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

9. **Non-Competition.**

Seller and Principal each hereby agree that for a period \_\_\_\_\_ months following the Closing, they will not begin a business or work for a business (whether as



an employee or independent contractor) which offers for sale \_\_\_\_\_, whether in the eCommerce space or through a physical location within the United States. Seller and Principal each acknowledge that the foregoing non-competition covenant is reasonable and necessary to protect the legitimate business interests of Buyer, and that breach thereof may cause Buyer to suffer irreparable harm. Accordingly, Seller and Principal agree that if either of them breaches this Section 9, Buyer shall be entitled to seek a temporary restraining order and preliminary and permanent injunctive relief from any court of competent jurisdiction to restrain any violations of this non-competition covenant. This Section 9 shall survive the Closing.

There is no non-competition covenant as part of this transaction.

10. **Confidentiality.** Buyer and Seller agree that this APA and all other documents and instruments contemplated by this APA and all terms and provisions herein and therein (collectively, the “**Confidential Information**”), are confidential and proprietary to each party, respectively, and both parties agree to hold the Confidential Information in confidence and not discuss, communicate or transmit to others, or make any unauthorized copy of or use the Confidential Information in any capacity, position or business, except to their advisors and employees as it directly relates to their respective performance under this APA and the other documents and instruments contemplated hereby. The foregoing confidentiality obligation does not apply to (i) information that by means other than a party’s deliberate or inadvertent disclosure becomes well known to the public; or (ii) disclosure compelled by judicial or administrative proceedings after the disclosing party diligently tries to avoid disclosure and affords the other party hereto the opportunity to obtain assurance that compelled disclosures will receive confidential treatment.

11. **Notices.** All notices or other communications required or permitted to be sent by either party shall be in writing and shall be sent (i) by United States Postal Service, postage prepaid, certified, return receipt requested; (ii) by any nationally known overnight delivery service; (iii) by courier (iv) in person; or (v) by electronic mail. All notices shall be deemed to have been given forty-eight (48) hours following deposit in the United States Postal Service or upon personal delivery if sent by personal delivery, overnight delivery service or courier, and upon acknowledgement of receipt if sent by electronic mail. All notices shall be addressed to the party at the address below:

If to Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Email: \_\_\_\_\_



If to Buyer: \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Email: \_\_\_\_\_

Any contact information specified above may be changed by notice given to the addressee by the other party in accordance with this paragraph.

12. **Modification of Agreement.** No modification of this APA shall be deemed effective unless in writing and signed by the parties hereto, and any waiver granted shall not be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing and executed by the party against whom enforcement of the waiver is sought.

13. **Indemnification.**

a. **Indemnification by Seller and Principal.** Seller and Principal shall, jointly and severally, indemnify and defend each of Buyer and Buyer’s affiliates and their respective representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of: (i) any inaccuracy in or breach of any of the representations or warranties of Seller or Principal contained in this APA; (ii) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller or Principal pursuant to this APA; (iii) any Seller tax obligations; (iv) any liability or third party claim based upon, resulting from or arising out of the Business, operations, properties, assets or obligations of Seller or Principal or any of their respective affiliates conducted, existing or arising on or prior to the Closing Date; and/or (v) any action or notice alleging any interference with, or any infringement, misappropriation or violation of, any patent, trademark, service mark, domain name, copyright, trade secret or other Intellectual Property right of a person at any time.

b. **Indemnification by Buyer.** Buyer shall indemnify and defend Seller, Principal and their affiliates and their respective representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of: (i) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this APA; (ii) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this APA; and/or (iii) any liability or third party claim based upon, resulting from or arising out of the Business, operations, properties, assets or obligations of Buyer or any of its affiliates conducted, existing or arising after the Closing Date.

14. **Further Instruments.** Each party, promptly upon the request of the other, shall execute and have acknowledged and delivered to the other, any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this APA and which are consistent with the provisions hereof. Following the Closing, the parties shall cooperate





with one another and work together to settle and adjust any Shopify, Amazon, and other eCommerce and other business activities of the Business.

15. **Entire Contract.** This APA (including the Exhibits hereto), along with the Conveyance Documents, constitutes the entire contract between the parties regarding the Purchased Assets, and supersedes any other prior or contemporaneous discussions, understandings, and agreements regarding the Purchased Assets, the Business, and the subject matter hereof.

16. **Survival of Representations and Warranties.** The representations and warranties of the parties under this APA shall survive the Closing and shall remain in full force and effect until the date that is twenty-four (24) months from the Closing Date.

17. **Inurement.** This APA shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, successors, and assigns, if any.

18. **Applicable Law; Arbitration.** This APA shall be governed by, and construed in accordance with, the laws of the State of \_\_\_\_\_. Any dispute hereunder, if not otherwise resolved through discussion and negotiations, shall be resolved through binding arbitration between the parties, in accordance with the Commercial Arbitration rules of the American Arbitration Association. Such arbitration shall take place virtually (if available) or in \_\_\_\_\_ County, \_\_\_\_\_.

19. **Commissions.** Each party warrants and represents to the other that other than \_\_\_\_\_ (“**Broker**”), no brokers or selling agents were involved in this transaction or are entitled to a commission. The fee due Broker shall be paid out of the cash proceeds to be paid to Seller hereunder.

20. **Construction.** The parties agree that each party and its counsel, if applicable, have had the opportunity to review, negotiate and revise this APA pursuant to their mutual agreement. In the event, any claim is made by a party relating to any conflict, omission, or ambiguity in this APA or burden of proof or persuasion shall be implied by virtue of the fact that this APA was prepared by or at the request of a particular party or such party’s counsel.

21. **Counterparts; Pdf Signature.** This APA may be executed simultaneously or in counterparts, each of which counterpart shall be deemed an original, but all of which together shall constitute one and the same APA. Pdf or other electronic signatures and/or electronically transmitted pdf files of this APA are valid and carry the same effect as an original signature.

22. **Transition Services.**

For a period of \_\_\_\_\_ weeks following the Closing, Principal shall offer and perform transition services with respect to the Business for Buyer’s benefit, as may reasonably be requested by Buyer. No salary or other fee or remuneration shall be due or payable to Principal or Seller on account of such transition services.



hereunder.  There shall be no transition services required of Principal or Seller

services:  Buyer, Seller and Principal agree to the following transition

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23. **Miscellaneous.** The captions and paragraph headings used herein are for convenience of reference only and are not intended to define, limit or describe the scope or intent of any provision of this APA. If any relevant date hereunder (such as the date of the Closing) falls on a weekend or national or state holiday for the state in which Closing will take place, the next following business day shall be the relevant date. Except as otherwise expressly provided herein, this transaction is on an as-is/where-is basis, with no representations or warranties, including no implied warranties of habitability or fitness for a particular purpose.

24. **Further Assurances.** Both before and after the Closing, the parties shall cooperate with one another in good faith and provide each other with such further assurances as may be reasonable or appropriate under the circumstances, and hereby agree to negotiate in good faith and commercial reasonableness such amendments to this APA as may be appropriate and mutually agreed. After the Closing, Buyer shall forward any mail which is personal to Seller or Seller's principals; and Seller shall forward any Business mail to Buyer.



IN WITNESS WHEREOF, the Parties have executed this Asset Purchase Agreement to be effective as of the Effective Date.

**SELLER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BUYER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PRINCIPAL:**

\_\_\_\_\_



**EXHIBIT A  
PURCHASED ASSETS**

**The Purchased Assets includes** all of Seller’s right, title, and interest in, to and under all of the assets, properties, and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired (other than the Excluded Assets), which relate to, or are used or held for use in connection with, the Business (collectively, the “**Purchased Assets**”), including, without limitation, the following:

[Note: Include or strike out the items below, as applicable]

all accounts or notes receivable relating to the Business, and any security, claim, remedy, or other right related to any of the foregoing, including, without limitation, the receivables set forth below (“**Accounts Receivable**”);

all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts, and other inventories of the Business (“**Inventory**”);

the following described contracts (the “**Assigned Contracts**”):

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the following described intellectual Property (the “**Intellectual Property**”):

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all furniture, fixtures, equipment, vehicles, office equipment, supplies, computers, telephones, and other tangible personal property;

to the extent transferable, all permits which are held by Seller and required for the conduct of the Business as currently conducted or for the ownership and use of the Purchased Assets;



all rights to any actions of any nature available to or being pursued by the Seller to the extent related to the Business or the Purchased Assets;

all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums, and fees;

all of Seller's rights under warranties, indemnities, and all similar rights against third parties to the extent related to any Purchased Assets;

all insurance benefits, including rights and proceeds, arising from or relating to the Business, the Purchased Assets;

originals, or where not available, copies, of all books and records, including, but not limited to, human resources records to the extent transferable under applicable law, books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories and correspondence, price lists, distribution lists, supplier lists and correspondence, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any governmental authority), sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and files relating to the Intellectual Property ("**Books and Records**"); and

all goodwill and the going concern value of the Business.



**EXHIBIT B  
EXCLUDED ASSETS**

The following constitute Excluded Assets and shall not be conveyed to Buyer pursuant to this transaction: \_\_\_\_\_

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\_\_\_\_\_  
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