

08-26-1999

Docket No.:



Tab settings →

*APR 3/15/99*

101108101

To the Honorable Commissioner of Patents and Trademarks Attached original documents or copy thereof.

1. Name of conveying party(ies):

Door Dynamics, Inc.

- Individual(s)
- General Partnership
- Corporation-State Washington
- Other \_\_\_\_\_

Additional names(s) of conveying party(ies)  Yes  No

2. Name and address of receiving party(ies):

Name: Industrial Product Development, Inc.

Internal Address: \_\_\_\_\_

Street Address: 2801 S.E. Bella Vista Loop

City: Vancouver State: WA ZIP: 98694

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State Washington
- Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other \_\_\_\_\_
- Merger
- Change of Name

Execution Date: 1/16/96

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,767,322

Additional numbers  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Robert L. Harrington

Internal Address: \_\_\_\_\_

Street Address: 421 High St., Suite 220

City: Oregon City State: OR ZIP: 97045

6. Total number of applications and registrations involved:.....

1

7. Total fee (37 CFR 3.41):.....\$ \$40.00

- Enclosed *fee ok*
- Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Robert L. Harrington

Name of Person Signing

*Robert L. Harrington*

Signature

3/11/99

Date

Total number of pages including cover sheet, attachments, and

19

**AGREEMENT FOR SALE AND PURCHASE  
OF BUSINESS ASSETS**

**DATE:** January 16, 1996

**PARTIES:** DOOR DYNAMICS, INC., ("Seller")  
a Washington corporation  
2501 SW Columbia Way  
Vancouver, WA 98661

JAMES W. BROWN  
9609 S.E. Evergreen Highway  
Vancouver, WA 98664,

and

ALLEN MASON  
1485 Via Mañana  
Palm Beach, FL 33480

(Collectively as the "Selling Shareholders")

INDUSTRIAL PRODUCT DEVELOPMENT, INC., ("Buyer")  
a Washington corporation  
2801 S.E. Bella Vista Loop  
Vancouver, WA 98694

WAYNE W. BOSTAD  
2801 SE Bella Vista Loop  
Vancouver, WA 98684

and

WILLIAM H. RIECKMANN  
7415 S.W. Minter Bridge Road  
Hillsboro, OR 97213

(Collectively as the "Guarantors")

**RECITALS:**

A. Seller operates a business primarily engaged in the manufacture of door opening products. Seller's principal place of business is in Bend, Oregon with additional facilities located at 2501 SW Columbia Way, Vancouver, WA 98661. Seller owns equipment, inventories, patents, contract rights, leasehold interests, and miscellaneous assets used in connection with the operation of its business.

B. Buyer desires to acquire substantially all the assets used or useful, or intended to be used, in the operation of Seller's business, and Seller desires to sell such assets to Buyer.

C. Selling Shareholders own all of the outstanding shares of stock in Seller and Guarantors own all of the outstanding shares of stock in Buyer.

NOW THEREFORE, in consideration of the recitals, which shall be deemed to be a substantive part of this Agreement, and the mutual covenants, promises, agreements, representations and warranties contained in this agreement, the parties agree as follows:

## SECTION 1. ASSETS PURCHASED; LIABILITIES ASSUMED

1.1 Assets Purchased. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, on the terms and conditions set forth in this Agreement, the following assets ("Assets"):

1.1.1 All the assets, tangible and intangible, owned or used by Seller in connection with Seller's business operations including Seller's name (and all goodwill incident thereto), 800 telephone numbers, FMI trade show deposit (\$1,572.00), all patent (and patent pending) rights of Seller, Seller's intellectual property, all sales records, customers lists, quotations, proposals, financial records, manufacturing records (including without limitation, all information regarding Seller's vendors, suppliers, manufacturing processes, assembly instructions, quality control procedures, warranties, etc.), all software files and programs (including product drawings and product electronics and mechanics), all fixed assets, leasehold interests, inventory, accounts receivable, general intangibles, and all other property of Seller of every kind and nature (not including cash on hand or in banks), including but not limited to those assets listed in Exhibit 1.1.1 together with any replacements or additions to the equipment, etc., made prior to the Closing Date and excluding any personal assets of James W. Brown located at the Vancouver shop.

1.1.2 All inventories of supplies and merchandise owned by Seller, together with any replacements or additions to the inventories made prior to the Closing Date, but excluding inventory disposed of in the ordinary course of Seller's business.

1.1.3 All equipment leases, real property leases, distributorship agreements, and other contracts listed on Exhibit 1.1.3.

1.1.4 All of Seller's rights under sales orders and contracts of sale for merchandise inventory to which Seller is a party and all of Seller's rights under purchase orders and contracts for the purchase of merchandise to which Seller is a

party, including those entered into in the ordinary course of business prior to the Closing Date.

1.1.5 Seller's name and goodwill.

1.1.6 Without limiting the foregoing, all rights, title and interests in Seller's intellectual properties, including, without limitation, all patent applications, patents, priority rights, trademarks and service marks, together with the goodwill therein, and all applications to register same and any registrations thereof, copyrights and trade secrets. Seller shall execute, at closing, assignments of patent and copyright rights in the forms attached hereto as Exhibits 1.1.6-a, 1.1.6-b and 1.1.6-c, the terms of which are, by this reference, incorporated herein in their entirety. Seller also agrees that if any future documents need to be executed or recorded apart from this Agreement or those Assignments, such documents shall be promptly executed and forwarded to Buyer upon its request.

1.2 Liabilities Assumed.

1.2.1 Buyer shall accept the assignment and assume responsibility for all unfilled orders from customers of Seller assigned to Buyer pursuant to Section 1.1.4, shall assume responsibility of payment for purchase orders for inventory items that have been placed by Seller before the Closing Date but that will not be delivered until after the Closing Date.

1.2.2 Buyer shall assume and perform all of Seller's obligations under the leases, distributorship agreements, and other contracts listed on Exhibit 1.1.3.

1.2.3 Buyer shall assume the liability for the remaining 50% of the FMI trade show deposit of \$1,572.00, due and payable on January 2, 1996, in addition Buyer shall assume certain trade payables in the amount of \$16,006 (Exhibit 1.2.3).

1.2.4 Buyer shall assume all of the five (5) year customer warranty contracts, not to exceed \$6,500 per year for the cost of parts based on Seller's current warranty policy dated 11-09-92. Seller and or its assigns shall be responsible for warranty costs in excess of \$6,500.00 per year for a period of one year after closing, Buyer shall be responsible for all warranty costs thereafter.

1.2.5. Buyer shall pay 50% of the sales or transfer taxes charged by the State of Washington on the disposition of the corporate assets with the Seller paying the remaining 50% of the any sales or transfer taxes. The sales or transfer taxes shall be paid at closing. The sales tax obligation is in addition to assumed trade payable liability.

1.2.6 Buyer shall assume and obtain a total release of Seller and Shareholders from any liability thereunder, from that

certain ten-year no interest sale (including royalty payments) dated June 29, 1990 and that certain ten year noncompetition agreement of the same date, of Seller payable to Eleanor Speer in the combined original amount of \$400,000.00 (the "assumed debt") and a balance due as of January 16, 1996 of \$179,956.00.

1.2.7 Buyer shall assume and pay at closing, 50% of the legal fees incurred by Speer's legal counsel, Ronald Oberndorfer.

1.2.8 Buyer shall assume and pay as due the fourth quarter royalty payment to Speer's and commission payments to distributors, provided that such amounts shall be netted against the accounts receivable purchased by Buyer in Section 1.1 of this agreement.

1.2.9 Except as stated herein the Buyer shall not assume any liabilities and obligations of Seller. All liabilities of Seller not assumed by Buyer at closing shall be paid and satisfied by Seller at Closing.

## SECTION 2. EXCLUDED ASSETS

Excluded from this sale and purchase are Seller's cash on hand and in banks and the personal assets of James W. Brown located at the Vancouver, Washington shop.

## SECTION 3. PURCHASE PRICE FOR ASSETS

3.1 The purchase price for the Assets, excluding inventories, shall be \$275,000.00 plus (i) 115% of the book value as of the date of closing (the "Closing Date") of all of Seller's fixed assets (or such other value as mutually agreed upon), (ii) 100% of the book value (valued at cost) of Seller's inventory as of the Closing Date, and (iii) the book value as of the Closing Date of Seller's accounts receivable, plus the assumption by Buyer of that certain ten-year no interest sale (including royalty payments) dated June 29, 1990 and that certain ten year noncompetition agreement of the same date, of Seller payable to Eleanor Speer in the combined original amount of \$400,000.00 (the "assumed debt") and a balance due as of January 16, 1996 of \$179,956.00, plus the FMI trade show deposit (\$1,572.00), and plus the assumption of certain trade accounts payable in the amount of \$16,006 and any other liabilities assumed in paragraph 1.2 above.

The purchase price shall be allocated as follows:

Fixed Assets	\$ 16,361.00
Accounts Receivable	\$112,006.00
Inventory and Supplies	\$ 62,158.00

Patents	\$179,956.00
FMI Trade Show	\$ 1,572.00
Goodwill	\$286,006.00
Non-competition Agreement	<u>\$ 5,000.00</u>
TOTAL	\$663,059.00

3.2 In addition to the monetary value allocated to the Non-competition Agreement (Exhibit 3.2), the Noncompetition Agreement is also acknowledged to be an integral part of this agreement and a material inducement to Buyer to enter into this agreement.

3.3 Internal Revenue Service ("IRS") Form 8594 will be used to report the sale of the assets and the allocation of the purchase price. All price allocations shall be by mutual agreement of the parties. For consistent tax reporting, the Seller and Buyer shall execute IRS Form 8594 at closing. This form shall be an exhibit to the final agreement.

**SECTION 4. INVENTORIES AND ACCOUNTS RECEIVABLE**

4.1 Immediately before closing Seller will take a closing inventory of merchandise and supplies. Buyer shall have the right to observe and inspect the taking of the inventory. All inventory shall be of merchantable quality.

4.2 All accounts receivable not collected within 120 days of closing shall be presented for immediate repurchase by Seller.

**SECTION 5. PAYMENT OF PURCHASE PRICE**

The price for the Assets shall be paid as follows:

5.1 At closing, Buyer shall pay, by cashier's check or certified check, the entire purchase price as set forth in Section 3. of this agreement.

**SECTION 6. ADJUSTMENTS**

The operation of Seller's business and related income and expenses up to the close of business on the day before the Closing Date shall be for the account of Seller and thereafter for the account of Buyer. Expenses, including but not limited to utilities, personal property taxes, rents, real property taxes, shall be prorated between Seller and Buyer as of the close of business on the Closing Date, the proration to be made and paid,

insofar as reasonably possible, on the Closing Date, with settlement of any remaining items to be made within 10 days following the Closing Date.

## **SECTION 7. OTHER AGREEMENTS**

At closing, the parties shall execute the following additional agreements:

7.1 The assignment of lease between Buyer and Seller Shareholders, attached as Exhibit 1.1.3, pertaining to the manufacturing plant in Bend, Oregon. The facilities from which Seller operates its business in Vancouver, Washington has no lease, however, Buyer may use the premises rent free for a period of 30 days following closing, by and through the consent of James W. Brown, individually as the landlord.

7.2 The assignments of patent and copyright rights, attached as Exhibits 1.1.6-a, 1.1.6-b and 1.1.6-c.

7.3 The noncompetition agreement between Buyer and Selling Shareholders (Exhibit 3.2).

7.4 The individual consulting agreements between Buyer and James W. Brown and Allen Mason attached as Exhibit 7.3.

7.5 The Bill Of Sale, attached as Exhibit 7.4.

7.6 The personal guarantees of Wayne W. Bostad and William H. Rieckmann attached as Exhibit 7.5.

## **SECTION 8. CONTINGENCY**

This agreement is contingent upon the Buyer and/or Guarantors entering into an agreement to assume the debt owed to Eleanor Speer which shall release Seller and Selling Shareholders from all liability.

## **SECTION 9. SELLER'S AND SELLING SHAREHOLDERS' REPRESENTATIONS AND WARRANTIES**

Seller and Selling Shareholders each represent and warrant to Buyer to the best of their knowledge and belief as follows:

9.1 **Corporate Existence.** Seller is now and on the Closing Date will be a corporation duly organized and validly existing under the laws of the state of Washington and authorized to do business in the state of Oregon. Seller has all requisite corporate power and authority to own, operate, and/or lease the Assets, as the case may be, and to carry on its business as now being conducted.

**9.2 Authorization.** The execution, delivery, and performance of this Agreement have been duly authorized and approved by the board of directors and shareholders of Seller, and this Agreement constitutes a valid and binding Agreement of Seller in accordance with its terms.

**9.3 Financial Statements.** Seller has delivered to Buyer year-end financial statements for Seller's fiscal years ended December 31, 1993, and December 31, 1994, and will deliver to Buyer financial statements for all additional interim periods

through the third quarter of 1995. The financial statements that have been or will be delivered are in accordance with the books and records of Seller and are true, correct, and complete; fairly present the financial conditions of Seller at the dates of such financial statements and the results of its operations for the periods then ended; and were prepared in accordance with generally accepted accounting principles applied on a basis consistent with prior accounting periods. Except as described in this Agreement, since the close of Seller's last fiscal year and the date, there has been no material adverse change in the financial condition of Seller.

**9.4 Title to Assets.** Except as described in this Agreement, Seller holds good and marketable title to the Assets, free and clear of restrictions on or conditions to transfer or assignment, and free and clear of liens, pledges, charges, or encumbrances.

**9.5 Brokers and Finders.** Buyer has not entered into arrangements with any broker, finder, or investment banker that will result in payment of a fee in connection with this transaction. Seller and/or James W. Brown and Allen Mason have entered into an arrangement with a broker or finder; in the event that a commission is (or is determined to be) payable on account thereof, Messrs. Brown and Allen (and not Seller) shall pay the same, and shall defend, indemnify and hold harmless Messrs. Bostad, Rieckmann, Buyer and Seller from any demand, claim loss, liability or judgment relating to such commission or engagement

**9.6 Transfer Not Subject to Encumbrances or Third-Party Approval.** To the best of the knowledge and belief, the execution and delivery of this Agreement by Seller and Selling Shareholders, and the consummation of the contemplated transactions, will not result in the creation or imposition of any valid lien, charge, or encumbrance on any of the Assets, and will not require the authorization, consent, or approval of any third party, including any governmental subdivision or regulatory agency.

**9.7 Labor Agreements and Disputes.** Seller is neither a party to, nor otherwise subject to, any collective bargaining or other agreement governing the wages, hours, and terms of employment of Seller's employees. Neither Seller nor Selling



Shareholders is aware of any labor dispute or labor trouble involving employees of Seller, nor has there been any such dispute or trouble during the three years preceding the date of this Agreement.

**9.8 Noncancellable Contracts.** At the time of closing, there will be no material leases, employment contracts, contracts for services or maintenance, or other similar contracts existing or relating to or connected with the operation of Seller's

business not cancelable within 60 days, except those Agreements listed on Exhibit 1.1.3.

**9.9 Compliance with Codes and Regulations.** Seller and Selling Shareholders have no knowledge that leasehold improvements violate any provisions of any applicable building codes, fire regulations, building restrictions, or other ordinances, orders, or regulations.

**9.10 Litigation.** Seller and Selling Shareholders have no knowledge of any claim, litigation, proceeding, or investigation pending or threatened against Seller that might result in any material adverse change in the business or condition of the Assets being conveyed under this Agreement.

**9.11 Accuracy of Representations and Warranties.** None of the representations or warranties of Seller or Selling Shareholders contain or will contain any untrue statement of a material fact or omit or will omit or misstate a material fact necessary in order to make statements in this Agreement not misleading. Seller and Selling Shareholders know of no fact that has resulted, or that in the reasonable judgment of Selling Shareholders will result, in a material change in the business, operations, or assets of Seller that has not been set forth in this Agreement or otherwise disclosed to Buyer.

**9.12 Product Warranties.** Seller and Selling Shareholders are not aware on anything that may prompt a product replacement or recall on any products sold prior to closing.

## **SECTION 10. REPRESENTATIONS OF BUYER AND GUARANTORS**

Buyer and Guarantors represent and warrant to Seller to the best of their knowledge and belief as follows:

**10.1 Corporate Existence.** Buyer is a corporation duly organized and validly existing under the laws of the state of Washington and authorized to do business in the State of Oregon. Buyer has all requisite corporate power and authority to enter into this Agreement and perform its obligations hereunder.

**10.2 Authorization.** The execution, delivery, and performance of this Agreement have been duly authorized and

approved by the board of directors and shareholders of Buyer, and this Agreement constitutes a valid and binding Agreement of Buyer in accordance with its terms.

**10.3 Brokers and Finders.** Buyer has not employed any broker or finder in connection with the transactions contemplated by this Agreement and has taken no action that would give rise to a valid claim against any party for a brokerage commission, finder's fee, or other like payment.

**10.4 Accuracy of Representations and Warranties.** None of the representations or warranties of Buyer or Guarantors contain or will contain any untrue statement of a material fact or omit or will omit or misstate a material fact necessary in order to make the statements contained herein not misleading.

## **SECTION 11. COVENANTS OF SELLER AND SELLING SHAREHOLDERS**

**11.1 Seller's Operation of Business Prior to Closing.** Seller and Selling Shareholders agree that between the date of this Agreement and the Closing Date, Seller will:

**11.1.1** Continue to operate the business that is the subject of this Agreement in the usual and ordinary course and in substantial conformity with all applicable laws, ordinances, regulations, rules, or orders, and will use its best efforts to preserve its business organization and preserve the continued operation of its business with its customers, suppliers, and others having business relations with Seller.

**11.1.2** Not assign, sell, lease, or otherwise transfer or dispose of any of the assets used in the performance of its business, whether now owned or hereafter acquired, except in the normal and ordinary course of business and in connection with its normal operation.

**11.1.3** Maintain all its assets other than inventories in their present condition, reasonable wear and tear and ordinary usage excepted, and maintain the inventories at levels normally maintained.

**11.2 Access to Premises and Information.** At reasonable times before the Closing Date, Seller will provide Buyer and its representatives with reasonable access during business hours to the assets, titles, contracts, and records of Seller and furnish such additional information concerning Seller's business as Buyer from time to time may reasonably request.

**11.3 Post-closing Cooperation.** As part of the obligations set forth in the Consulting Agreements to be given at the closing, the Selling Shareholders shall furnish and deliver to Buyer all customer, vendor and business files and information of or relating to Seller or its business.

## 11.4 Employee Matters

11.4.1 Buyers have no obligation to hire employees of Seller, however, Buyers may in their sole discretion and without any obligation, employ some or all of Seller's employees.

11.4.2 Before closing, Seller will deliver to Buyer a list of the names of all persons on the payroll of Seller, together with a statement of amounts paid to each during Seller's most recent fiscal year and amounts paid for services from the beginning of the current fiscal year to the Closing Date. Seller will also provide Buyer with a schedule of all employee bonus arrangements and a schedule of other material compensation or personnel benefits or policies in effect (Exhibit 11.3.2)

11.4.3 As of the Closing Date, Seller will terminate all of its employees and will pay each employee all wages, commissions, and accrued vacation pay earned up to the time of termination, including overtime pay.

11.5 Change of Name. On or before the Closing Date, Seller will take all action necessary or appropriate to permit Buyer to legally commence use of Seller's name on the Closing Date. Seller shall provide buyer with the Name Change Amendment and Cancellation of Corporation in the State of Oregon (Exhibit 11.4).

11.6 Conditions and Best Efforts. Seller and Selling Shareholders will use their best efforts to effectuate the transactions contemplated by this Agreement and to fulfill all the conditions of the obligations of Seller and Selling Shareholders under this Agreement, and will do all acts and things as may be required to carry out their respective obligations under this Agreement and to consummate and complete this Agreement.

## SECTION 12. COVENANTS OF BUYER

12.1 Conditions and Best Efforts. Buyer will use its best efforts to effectuate the transactions contemplated by this Agreement and to fulfill all the conditions of Buyer's obligations under this Agreement, and shall do all acts and things as may be required to carry out Buyer's obligations and to consummate this Agreement.

12.2 Confidential Information. If for any reason the sale of Assets is not closed, Buyer will not disclose to third parties any confidential information received from Seller or Selling Shareholders in the course of investigating, negotiating, and performing the transactions contemplated by this Agreement.

**SECTION 13. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS**

The obligation of Buyer to purchase the Assets is subject to the fulfillment, before or at the Closing Date, of each of the following conditions, any one or portion of which may be waived in writing by Buyer:

**13.1 Representations, Warranties, and Covenants of Seller and Selling Shareholders.** All representations and warranties made in this Agreement by Seller and Selling Shareholders shall be true as of the Closing Date as fully as though such representations and warranties had been made on and as of the Closing Date, and, as of the Closing Date, neither Seller nor Selling Shareholders shall have violated or shall have failed to perform in accordance with any covenant contained in this Agreement.

**13.2 Licenses and Permits.** Buyer shall have obtained all licenses and permits from public authorities necessary to authorize the ownership and operation of the business of Seller.

**13.3 Conditions of the Business.** There shall have been no material adverse change in the manner of operation of Seller's business before the Closing Date.

**13.4 Opinion of Counsel for Seller.** Seller shall have furnished Buyer with an opinion of counsel for Seller in form and substance reasonably satisfactory to Buyer's counsel to the effect that (1) the representations and warranties contained in Sections 9.1 and 9.2 are true to his actual knowledge; and (2) the instruments of conveyance and transfer to be delivered to Buyer at closing are effective to vest in Buyer all of Seller's right, title, and interest in and to the Assets.

**13.5 No Suits or Actions.** At the Closing Date no suit, action, or other proceeding shall have been threatened or instituted to restrain, enjoin, or otherwise prevent the consummation of this Agreement or the contemplated transactions.

**SECTION 14. CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER AND SELLING SHAREHOLDERS**

The obligations of Seller and Selling Shareholders to consummate the transactions contemplated by this Agreement are subject to the fulfillment, before or at the Closing Date, of each of the following conditions, any one or a portion of which may be waived in writing by Seller:

**14.1 Representation, Warranties, and Covenants of Buyer.** All representations and warranties made in this Agreement by Buyer shall be true as of the Closing Date as fully as though such representations and warranties had been made on and as of

the Closing Date, and Buyer shall not have violated or shall not have failed to perform in accordance with any covenant contained in this Agreement.

**14.2 Removal of Contingency.** Buyer shall have furnished Seller with assignment of Speer's contract or novation agreement satisfactory to Buyer thereby removing the contingency in Section 8 (Exhibit 14.2).

**14.3 Opinion of Counsel for Buyer.** Buyer shall have furnished Seller with an opinion of counsel in form and substance reasonably satisfactory to Seller's counsel to the effect that the representations and warranties contained in Sections 10.1 and 10.2 are true to his actual knowledge.

**14.4 Opinion of Counsel for Guarantors.** Buyer shall have furnished Seller with an opinion of counsel for Guarantors in form and substance reasonably satisfactory to Seller's counsel to the effect that this Agreement constitutes a valid and binding agreement of Guarantors in accordance with its terms.

## **SECTION 15. BUYER'S ACCEPTANCE**

Buyer represents and acknowledges that it has entered into this Agreement on the basis of its own examination, personal knowledge, and opinion of the value of the business. Buyer has not relied on any representations made by Seller other than those specified in this Agreement. Buyer further acknowledges that Seller has made no agreement or promise to repair or improve any of the leasehold improvements, equipment, or other personal property being sold to Buyer under this Agreement, and that Buyer takes all such property in the condition existing on the date of this Agreement, except as otherwise provided in this Agreement.

## **SECTION 16. RISK OF LOSS**

The risk of loss, damage, or destruction to any of the equipment, inventory, or other personal property to be conveyed to Buyer under this Agreement shall be borne by Seller to the time of closing. In the event of such loss, damage, or destruction, Seller, to the extent reasonable, shall replace the lost property or repair or cause to repair the damaged property to its condition before the damage. If replacement, repairs, or restorations are not completed before closing, then the purchase price shall be adjusted by an amount agreed upon by Buyer and Seller that will be required to complete the replacement, repair, or restoration following closing. If Buyer and Seller are unable to agree, then Buyer, at its sole option and notwithstanding any other provision of this Agreement, upon notice to Seller, may rescind this Agreement and declare it to be of no further force and effect, in which event there shall be no closing of this Agreement and all the terms and provisions of this Agreement

shall be deemed null and void. If, before closing, any of the real properties that are the subject of the leases mentioned in Sections 7.1 and 7.3 are damaged or destroyed, then Buyer may rescind this Agreement in the manner provided above unless arrangements for repair satisfactory to all parties involved are made prior to closing.

## **SECTION 17. INDEMNIFICATION AND SURVIVAL**

**17.1 Survival of Representations and Warranties.** All representations and warranties made in this Agreement shall survive the closing of this Agreement, except that any party to whom a representation or warranty has been made in this Agreement shall be deemed to have waived any misrepresentation or breach of representation or warranty of which such party had knowledge before closing. Any party learning of a misrepresentation or breach of representation or warranty under this Agreement shall immediately give written notice thereof to all other parties to this Agreement. The representations and warranties in this Agreement shall terminate five (5) years from the Closing Date, and such representations or warranties shall thereafter be without force or effect, except any claim with respect to which notice has been given to the party to be charged prior to such expiration date, except as specifically otherwise provided herein.

### **17.2 Seller's and Selling Shareholders' Indemnification**

**17.2.1** Seller and Selling Shareholders each hereby agree to indemnify and hold Buyer, its successors, and assigns harmless from and against:

(1) Any and all claims, liabilities, and obligations of every kind and description, contingent or otherwise, arising out of or related to the operation of Seller's business prior to the close of business on the day before the Closing Date, except for claims, liabilities, and obligations of Seller expressly assumed by Buyer under this Agreement or paid by insurance maintained by Seller, Selling Shareholders, or Buyer.

(2) Any and all damage or deficiency resulting from any material misrepresentation, breach of warranty or covenant, or nonfulfillment of any agreement on the part of Seller and Selling Shareholders under this Agreement.

**17.2.2** Seller's and Selling Shareholders' indemnity obligations under Section 17.2.1 shall be subject to the following:

(1) If any claim is asserted against Buyer that would give rise to a claim by Buyer against Seller and Selling Shareholders for indemnification under the provisions of this paragraph, then

Buyer shall promptly give written notice to Selling Shareholders concerning such claim and Selling Shareholders shall, at no expense to Buyer, defend the claim.

(2) Selling Shareholders shall not be required to indemnify Buyer for an amount that exceeds the total purchase price paid by Buyer under Section 3 of this Agreement.

**17.3 Buyer's Indemnification.** Buyer agrees to defend, indemnify, and hold harmless Seller and Selling Shareholders from and against:

**17.3.1** Any and all claims, liabilities, and obligations of every kind and description (i) arising out of or related to the operation of the business following closing, or (ii) arising out of Buyer's failure to perform obligations of Seller assumed by Buyer pursuant to this Agreement, or (iii) arising out of Buyer's failure to pay the assumed debt or otherwise to perform Buyer's obligations under the Novation and Release Agreement (Exhibit 14.2) described in Section 14.2.

**17.3.2** Any and all damage or deficiency resulting from any material misrepresentation, breach of warranty or covenant, or nonfulfillment of any agreement on the part of Buyer under this Agreement.

**17.3.3** Buyer's and Guarantors' indemnity obligations under Section 17.3.1 shall be subject to the following:

(1) If any claim is asserted against Seller or Selling Shareholders that would give rise to a claim by Seller against Buyer or Guarantors' for indemnification under the provisions of this paragraph, then Seller or the Selling Shareholders shall promptly give written notice to Buyer and Guarantors concerning such claim and Buyer and Guarantors shall, at no expense to Seller, defend the claim.

## **SECTION 18. CLOSING**

**18.1 Time and Place.** This Agreement shall be closed at the offices of Brownstein, Rask, Aarenz, Sweeney, Kerr & Grim at 1200 S.W. Main Building, Portland, OR 97205, on the 16th day of January, 1996, or at such other time as the parties may agree in writing. If closing has not occurred on or before January 15, 1995, then either party may elect to terminate this Agreement. If, however, the closing has not occurred because of a breach of contract by one or more parties, the breaching party or parties shall remain liable for breach of contract.

**18.2 Obligations of Seller and Selling Shareholders at the Closing.** At the closing and coincidentally with the performance by Buyer of its obligations described in Section 18.3, Seller and Selling Shareholders shall deliver to Buyer the following:

18.2.1 Bills of sale (Exhibit 18.2.1), assignments, properly endorsed certificates of title, and other instruments of transfer, in form and substance reasonably satisfactory to counsel for Buyer, necessary to transfer and convey all of the Assets to Buyer.

18.2.2 The assignments of patents and copyrights (Exhibit 1.1.6-a, 1.1.6-b and 1.1.6-c).

18.2.3 The lease agreements described in Section 7.1.

18.2.4 The noncompetition agreement described in Section 7.2.

18.2.5 The opinion of Seller's counsel described in Section 13.4.

18.2.6 A cashier's check or a certified check for prorated items owing to Buyer under Section 6.

18.2.7 Possession of the business facilities to be conveyed pursuant to this Agreement.

18.2.8 Such other certificates and documents as may be called for by the provisions of this Agreement.

18.2.8 A cashiers check or certified check for 50% of the Speer's legal fees, payable to Ronald Oberndorfer.

18.2.9 Consulting Agreements with James W. Brown and Allen Mason.

18.2.9 Assignment of Patents.

18.3 Obligations of Buyer at the Closing. At the closing and coincidentally with the performance by Seller and Selling Shareholders of their obligations described in Section 18.2, Buyer shall deliver to Seller the following:

18.3.1 A cashier's check or a certified check in the amount specified in Section 5.

18.3.2 The opinion of Buyer's counsel described by Section 14.3.

18.3.3 The opinion of counsel for Guarantors described in Section 14.4.

18.3.4 A cashier's check or a certified check for prorated items owed to Seller, if any.

18.3.5 A copy of the Speer's assignment or novation agreement and such other certificates and documents as may be called for by the provisions of this Agreement.



18.3.6 A cashiers check or certified check for 50% of the Speer's legal fees, payable to Ronald Oberndorfer.

18.3.7 Personal Guaranty of Rieckmann and Bostad attached as Exhibit 18.3.7.

## SECTION 19. RIGHTS AND OBLIGATIONS SUBSEQUENT TO CLOSING

19.1 Books and Records. This sale does not include the books of account and records of Seller's business. However,

possession and custody of such books and records, except for Seller's general ledger, may be retained by Buyer at the place of business Buyer is acquiring from Seller under this Agreement for a period of three months. During this period, Seller or its agents shall have access to such books and records and may make copies thereof. Buyer will exercise reasonable care in the safe-keeping of such records. Seller shall retain its general ledger but shall make it available for inspection by Buyer from time to time upon reasonable request.

## SECTION 20. DEFAULT

20.1 Remedies. If Buyer fails to perform any of the terms, covenants, conditions, or obligations of this Agreement, time of payment and performance being of the essence, then Seller, subject to the requirements of the notice provided in Section 20.2, may have the right to exercise any remedy available at law.

20.2 Notice of Default. Buyer shall not be deemed in default for failure to perform the terms, covenants, and conditions of this Agreement until notice of the default has been given to Buyer and Buyer has failed to remedy the default within 30 days after the notice.

## SECTION 21. TERMINATION OF AGREEMENT

21.1 By Mutual Consent. This Agreement may be terminated by mutual written consent of Buyer and Seller.

21.2 Breach of Representations and Warranties; Failure of Conditions. Buyer may elect by notice to Seller, and Seller may elect by notice to Buyer, to terminate this Agreement if:

21.2.1 The terminating party shall have discovered a material error, misstatement, or omission in the representations and warranties made in this Agreement by the other party which shall not have been cured by such other party within 30 days after written notice to such other party specifying in detail such asserted error, misstatement, or omission, or by the Closing Date, whichever first occurs.

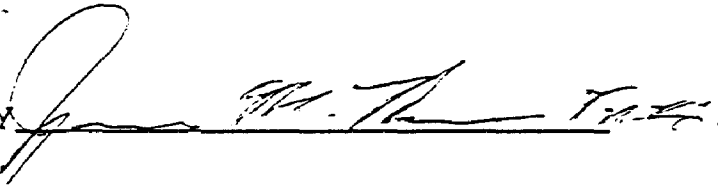
21.2.2 All of the conditions precedent of the terminating party's obligations under this Agreement as set forth in either Section 13 or 14, as the case may be, have not occurred and have not been waived by the terminating party on or prior to the Closing Date.

21.3 Closing Notwithstanding the Right to Terminate. The party with a right to terminate this Agreement pursuant to Section 21.2.1 or 21.2.2 shall not be bound to exercise such right, and its failure to exercise such right shall not constitute a waiver of any other right it may have under this Agreement, including but not limited to remedies for breach of a representation, warranty, or covenant.

Dated this 16<sup>th</sup> day of JANUARY, 1996.

SELLER:

DOOR DYNAMICS, INC.

By 


SELLING SHAREHOLDERS:

  
JAMES W. BROWN

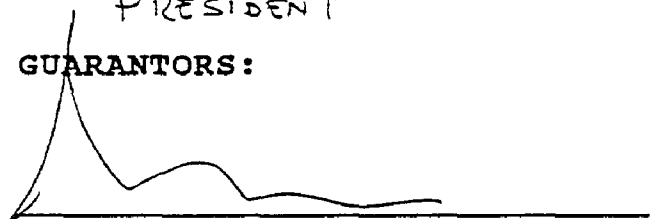
ALLEN MASON

BUYER:

INDUSTRIAL PRODUCT  
DEVELOPMENT, INC.

By   
PRESIDENT

GUARANTORS:

  
WAYNE W. BOSTAD

  
WILLIAM H. RIECKMANN

21.2.2 All of the conditions precedent of the terminating party's obligations under this Agreement as set forth in either Section 13 or 14, as the case may be, have not occurred and have not been waived by the terminating party on or prior to the Closing Date.

21.3 Closing Notwithstanding the Right to Terminate. The party with a right to terminate this Agreement pursuant to Section 21.2.1 or 21.2.2 shall not be bound to exercise such right, and its failure to exercise such right shall not constitute a waiver of any other right it may have under this Agreement, including but not limited to remedies for breach of a representation, warranty, or covenant.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**SELLER:**

DOOR DYNAMICS, INC.

By \_\_\_\_\_

**SELLING SHAREHOLDERS:**

\_\_\_\_\_  
JAMES W. BROWN

*Allen Mason*  
\_\_\_\_\_  
ALLEN MASON

**BUYER:**

INDUSTRIAL PRODUCT DEVELOPMENT, INC.

By \_\_\_\_\_

**GUARANTORS:**

\_\_\_\_\_  
WAYNE W. BOSTAD

\_\_\_\_\_  
WILLIAM H. RIECKMANN

Attached Exhibits:

- 1.1.1 -- Equipment List
- 1.1.3 -- Agreements
- 1.1.6-a -- Assignment of Patent
- 1.1.6-b -- Assignment of Patent
- 1.1.6-c -- Assignment of Copyright
- 1.2.3 -- Trade Payables
- 3.2 -- Non-competition Agreement
- 7.3 -- Consulting Agreement
- 7.4 -- Bill of Sale
- 7.5 -- Personal Guarantees
- 11.3.2 -- Payroll List
- 11.4 -- Change of Name
- 14.2 -- Novation and Release Agreement