

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Assignee Bill of Sale with Assest Purchase Agreement		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
David Abrams		04/21/2003	as assignee for the benefit of creditors of Aetna Bearing Company: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	ABC Acquisition Company		
<b>Street Address:</b>	1081 Sesame Street		
<b>City:</b>	Franklin Park		
<b>State/Country:</b>	ILLINOIS		
<b>Postal Code:</b>	60131		
<b>Entity Type:</b>	CORPORATION: ILLINOIS		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	0509322	AETNA	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(312)580-1189		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	312-580-1180		
<b>Email:</b>	docket@olsonip.com		
<b>Correspondent Name:</b>	OLSON & CEPURITIS, LTD.		
<b>Address Line 1:</b>	20 North Wacker Drive		
<b>Address Line 2:</b>	36th Floor		
<b>Address Line 4:</b>	Chicago, ILLINOIS 60606		
<b>ATTORNEY DOCKET NUMBER:</b>	GOLDSTINE/ABC ACQUISITION		
<b>NAME OF SUBMITTER:</b>	Deborah A. Melchi		
<b>Signature:</b>	/dam/		

CH \$40.00 0509322

Date:

10/27/2008

**Total Attachments: 21**

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ASSIGNEE BILL OF SALE

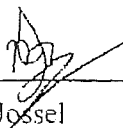
FOR VALUE RECEIVED, DAVID ABRAMS, not individually, but as assignee ("Assignee") for the benefit of creditors of AETNA BEARING COMPANY, a Delaware corporation ("Aetna"), hereby sells, transfers, conveys and assigns to ABC Acquisition Co., an Illinois corporation ("Buyer"), all of his right, title and interest to the extent such rights, title or interests, if any, exist, in and to the "Purchased Assets" of Aetna, pursuant to and as defined in that certain Asset Purchase Agreement, dated March 25, 2003 between Assignee and Buyer (the "Agreement"), which Agreement is expressly incorporated herein by reference.

This sale is subject to the following terms and conditions:

1. Defined terms in the Agreement shall have the same meaning herein.
2. Buyer hereby purchases the Purchased Assets on quitclaim basis, without recourse or liability of any kind or nature to Assignee, AS IS, WHERE IS and WITH ALL FAULTS.
3. This sale is free and clear of any and all liens, claims and encumbrances related to the Purchased Assets in favor of Bank One, N.A., as successor by merger with American National Bank and Trust Company of Chicago, but shall remain subject to any other liens, claims, or encumbrances against the Purchased Assets.
4. Except as expressly provided in the Agreement, Assignee make no express or implied warranties, representations, statements or conditions of any kind or nature whatsoever, arising out of, under or related to the Purchased Assets. Any and all additional disclaimers and/or acknowledgments of the Buyer contained in the Agreement are hereby incorporated and adopted herein by reference.
5. Assignee shall bear no responsibility or liability of any kind or nature for the loss or damage to the Purchased Assets or in connection with the use, sale and/or removal of the Purchased Assets from and after the Closing.

DATED: This 21 day of April 2003,  
Chicago, Illinois

DAVID ABRAMS, not individually, but as  
assignee for the benefit of creditors of Aetna  
Bearing Company

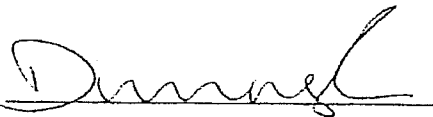
By:   
Name: Mark Jossel  
His: Authorized Agent

Buyer's Acceptance

The terms and conditions of this assignee's bill of sale are hereby accepted this 21<sup>st</sup> day of April 2003.

BUYER:

ABC Acquisition Co.,  
an Illinois corporation

By:   
Name: Devick Marsh  
Its: Vice President

**REDACTED**

**ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** made this 25th day of March, 2003, by and between David Abrams, not individually, but as assignee ("Seller") for the benefit of the creditors of Aetna Bearing Company, a Delaware corporation ("Aetna") and ABC Acquisition Co., an Illinois corporation, or its nominee ("Buyer") ("Agreement").

**RECITALS:**

**WHEREAS**, Aetna is a manufacturer of ball thrust bearings used in pumps, compressors and conveying equipment; clutch release bearings used in automobiles, trucks and agricultural equipment; and belt idler and chain sprocket idler bearings for agricultural and related applications (the "Business"); and

**WHEREAS**, Aetna holds legal title to, and operates the Business from, that certain real property commonly known as 4600 W. Schubert Avenue, Chicago, Illinois 60639-1890, and legally described on Exhibit A attached hereto and made a part hereof (collectively, the "Facility"); and

**WHEREAS**, due to operational and financial difficulties, Aetna made an assignment for the benefit of its creditors to David Abrams, not individually, but as assignee for the benefit of Aetna's creditors on March 25, 2003 (the "Assignment"); and

**WHEREAS**, the Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, all of his right, title and interest in and to substantially all of the assets of Aetna on the terms described below.

**NOW, THEREFORE**, the parties agree as follows:

1. **Purchase of Assets.** Subject to the provisions of this Agreement, Buyer agrees to purchase, and Seller agrees to sell by quitclaim all of his right, title and interest in and to the Purchased Assets as hereinafter defined. The purchase price for the Purchased Assets shall be **redacted** consisting of cash and the assumption of certain liabilities, and subject to the Adjustment, all as more fully described below (the "Purchase Price").

"Purchased Assets" means collectively all of the following assets of Aetna:

- (a) All cash on hand or funds deposited with financial institutions as of 12:01 a.m. on the Closing Date;
- (b) All inventory, merchandise and stock-in-trade pertaining to the Business, including any and all supplier credits, and subject to the provisions for payment of

Unpaid Goods on Order set forth in paragraph 10(c) below, goods in transit to Seller on the Closing Date, and further including, but not limited to, those items described on an exhibit to be given by Seller to Buyer at Closing (collectively, the "Inventory");

(c) All furniture, fixtures, equipment, machinery, parts, signage, displays and display equipment, storage equipment and facilities, stationary, brochures, marketing materials, supplies and other operating supplies on hand on the Closing Date and pertaining to the Business, including, but not limited to, those items described on an exhibit to be given by Seller to Buyer at Closing (collectively, together with the Vehicles, the "Fixed Assets");

(d) All vehicles used in the operation of the Business, all as more fully described on Exhibit B attached hereto and made a part hereof (collectively, the "Vehicles");

(e) All accounts receivable of the Business, including, but not limited to, those receivables described on an exhibit to be given by Seller to Buyer at Closing (collectively, the "Receivables");

(f) All books and records relating to the Business, including, but not limited to, customer and supplier lists, files, computer software data and data bases owned by Aetna, customer sales records, supplier records, records of salesman commissions or other compensation (collectively, the "Books and Records"), but excluding incorporation documents, corporate minutes, financial records, income tax returns and any other documentation necessary for the Assignee to conclude the administration of the Assignment;

(g) All intangible assets or intellectual property, if any, including without limitation, patents, trademarks, trade names, service marks, service names, brand names, symbols, logos, slogans, designs, copyrights, technical know-how, processing formulae, causes of action, business opportunities, all of Seller's right, title and interest in and to the name "Aetna Bearing Company", and any variants or usage thereof, the rights to use the telephone number redacted, and fax number redacted currently in use at the Facility (collectively, the "Telephone Numbers"), the goodwill associated with the Business, the goodwill associated with the trademarks, trade names and service marks, and any and all other intangible or intellectual property pertaining to the Business and belonging to or registered in the name of Aetna;

(h) Subject to the provisions of paragraph 6 below, all of Seller's right, title, and interest in and to the Facility, and all heating, central cooling, ventilating, lighting, plumbing and electrical fixtures and systems affixed thereto;

(i) All of Seller's rights, title and interest in and to the Leases, as described on Exhibit C attached hereto and made a part hereof, and any and all security deposits maintained in connection therewith as of the Closing Date, if any;

(j) All contract rights for Unpaid Goods on Order, if any, subject to the provisions of paragraph 10(c) below:

(k) All causes of action, choses of adion, rights of action in favor of Seller as of the Closing Date, if any.

(l) All prepaid expenses, if any;

(m) All of Seller's right, title and interest in and to any and all computer software licenses, if any (collectively, the "Licenses");

(n) All of Seller's right, title and interest in and to any and all collective bargaining agreements with any unions (collectively, the "Collective Bargaining Agreement"); and

(o) All of Seller's right, title and interest in and to any and all federal and state income tax refunds, if any.

**2. Payment of Purchase Price; Adjustment; Allocation; and Deposit.**

(a) Concurrently with the execution of this Agreement, Buyer shall deliver to Seller by wire transfer or by certified or bank check, the sum of ~~redacted~~ (the "Deposit"). The Deposit shall be held by Seller in accordance with the terms and conditions of this Agreement. In the event that Buyer is the successful bidder at the Auction, as hereinafter defined, then subject to the provisions of subparagraphs (e) and (f) below, the Deposit will be delivered to Seller at the Closing to be applied toward the Purchase Price, and the Buyer shall pay to the Seller the balance of the Cash Portion, as defined below, of the Purchase Price, by certified or bank check or wire transfer in accordance with Seller's instructions. If Buyer is not the successful bidder at the Auction, then Seller shall cause the Deposit to be returned to Buyer promptly following the Closing.

(b) The Purchase Price consists of the total of the following consideration, subject to the Adjustment described in subparagraph (d) below:

(i) Cash in an amount equal to the all of the outstanding indebtedness of Aetna owing as of the Closing Date to Bank One, NA, as successor by merger to American National Bank and Trust Company of Chicago ("Bank") (the "Cash Portion"), subject to the Cash Portion Adjustment, as defined below. For purposes of this Agreement and the submission of bids at the Auction described below, the amount

owing the Bank as of the date hereof is approximately, and the Cash Portion shall be deemed to be in the amount of, *redacted*; and

(ii) Assumption of the Assumed Liabilities, as defined in, and subject to the provisions set forth in paragraph 10 below, which are generally described on Exhibit D attached hereto. For purposes of this Agreement and the submission of bids at the Auction, the amount of the Assumed Liabilities as of the date hereof shall be deemed to be in the amount of *redacted*

(c) For purposes of this Agreement, the Purchase Price shall be allocated among the Purchased Assets at or prior to Closing in the sole and absolute discretion of Buyer.

(d) For purposes hereof, the "Adjustment" to the Purchase Price shall consist of both of the following, if applicable:

(i) The "Cash Portion Adjustment", which shall be an increase or decrease, as the case may be, in the amount of the Cash Portion payable at Closing in a sum equal to the difference between (A) the Purchase Price (the Cash Portion plus the amount of Assumed Liabilities) set forth in the Accepted Bid, and (B) the sum of *redacted*; and

(ii) The "Assumed Liability Adjustment", which shall be an increase or decrease to the Purchase Price, as the case may be, equal to the difference between (A) the actual amounts owing for the Assumed Liabilities to be determined and assumed as of the Closing Date in accordance with paragraph 10 below, and (B) the sum of *redacted*

(e) If at anytime prior to the Closing, Seller is unable for any reason to obtain sufficient funding from the Bank to operate the Business in the ordinary course of its affairs, then Seller shall have the right to use all or any portion of the Deposit to the extent necessary pending the Closing to maintain the operation of the Business generally in accordance with the Budget attached hereto as Exhibit E and made a part hereof (the "Budget"). If all or any portion of the Deposit is so used by Seller and Buyer is not the successful bidder at the Auction, then Seller shall cause Buyer to be reimbursed at the Closing for that amount of the Deposit used by Seller pursuant hereto.

(f) Buyer acknowledges and agrees that for a period not to exceed 180 days from and after the Closing ("Reserve Holding Period"), Seller shall be entitled to retain the sum of *redacted* as a reserve for the payment of any and all unpaid expenses incurred by the Seller as of the Closing Date relating to the Business or the Assignment (the "Reserve"). The Reserve shall be funded by the party submitting the Accepted Bid, and shall be provided at Closing from the Deposit unless Seller has consumed all or a portion of the Deposit pursuant to subparagraph (e) above, in which case, the party



submitting the Accepted Bid shall cause the necessary funds to be remitted to Seller at Closing in order to fully fund the Reserve. Seller shall be entitled to use all or any portion of the Reserve for any liabilities of Seller relating to the Business or the Assignment presently unknown and not contemplated anywhere else in this Agreement or presently unliquidated. As soon after the expiration of the Reserve Holding Period as is practicable, but no later than 30 days thereafter, Seller shall promptly return any unused portion of the Reserve to the party funding the Reserve.

3. **Seller's Auction.**

(a) Buyer acknowledges that either before or after execution of this Agreement. Seller shall advertise to the public in such manner as Seller, in his sole discretion, deems appropriate, that the Purchased Assets are for sale in bulk and: (i) will be sold to the highest and best bidder at a publicly advertised auction to be conducted by Seller on or before Thursday, April 10, 2003 at 10:00 a.m. (the "Auction"); and (ii) if after the execution of this Agreement, are subject to the terms of this Agreement such that any competing offers must provide cash consideration at the Closing in excess of ~~redacted~~ over the Purchase Price and be upon terms substantially similar to those set forth in this Agreement, including, without limitation, the assumption of the Assumed Liabilities. In connection therewith, the Purchased Assets and copies of this Agreement shall be available for examination by other prospective purchasers or interested parties prior to the Auction at such time or times as Seller, in his sole discretion, deems appropriate.

(b) Seller shall have the right to provide any third party with any information which that third party reasonably requests concerning the Business and/or the Purchased Assets so as to allow that third party to have the information on which to base a bid for the Purchased Assets; provided however, that Seller must first obtain the execution and delivery of a confidentiality agreement from said third party(s) substantially in the form attached hereto as Exhibit F and made a part hereof, and further provided that Seller's rights under such confidentiality agreement(s) shall inure to the benefit of the ultimate buyer of the Purchased Assets at the Auction.

4. **Method of Sale.**

(a) The Purchased Assets shall be sold at the Auction which shall be conducted by Seller at the offices of his counsel, Adelman, Gettleman, Merens, Berish & Carter, Ltd., 53 West Jackson Blvd., Suite 1050, Chicago, Illinois 60604 at 10:00 a.m. on Thursday, April 10, 2003. In the event that this Agreement has not been terminated in accordance with paragraph 16 below by that time, Buyer's bid for the Purchased Assets as set forth in this Agreement shall be the opening bid. Seller and Buyer acknowledge and agree that the Purchase Price is subject to increase as a result of competitive bidding at the Auction. Subject to the terms and conditions of this Agreement, the Seller shall sell the Purchased Assets to the party submitting the

highest and best bid for the Purchase Assets, as determined by the Seller in his sole and absolute discretion (the "Accepted Bid").

(b) Seller shall be authorized to receive and consider competing bids from third parties at the Auction to purchase the Purchased Assets (individually, a "Qualifying Bid") provided that at or prior to the Auction, Seller has received from such third party(s) a written offer(s) to purchase the Purchased Assets which: (i) proposes a purchase price equal to or exceeding the sum of *redacted*, subject to the Adjustment to be computed as of the Closing pursuant to paragraph 2(d) above; (ii) is on terms substantially similar to those set forth in this Agreement, including, but not limited to a closing of the transactions contemplated herein on or before April 14, 2003; and (iii) is accompanied by a cashiers' or certified check payable to Seller in the amount of *redacted*

(c) In the event that a Qualifying Bid(s) is received, Seller will continue at the Auction to seek higher bids, in an auction-like format, in minimum increased increments of \$25,000 until no further bids are made, at which time, the Seller shall announce the Accepted Bid. In the event that there is no Qualifying Bid, and in the event that this Agreement has not been terminated pursuant to paragraph 16 below, Buyer's bid as set forth in this Agreement shall be the Accepted Bid.

(d) Buyer shall be entitled to submit further bids at the Auction in the event that a Qualifying Bid(s) is received by the Seller. In the event that the highest and best offer, as determined by Seller, in his sole and absolute discretion, is submitted at the Auction by a purchaser other than Buyer, then Seller shall be entitled to accept such other Qualifying Bid as the Accepted Bid, and this Agreement shall be considered null and void and of no legal effect whatsoever upon Seller's return of the Deposit and the Break-up Fee, as more fully set forth in paragraph 19 below, to Buyer, and each party hereto shall suffer their own losses, costs, expenses or damages arising out of, under or related to this Agreement.

(e) Nothing contained herein shall prevent a Qualifying Bid from providing as part of the Purchase Price therein the inclusion of any other liabilities of Aetna in addition to the Assumed Liabilities.

## 5. Closing.

(a) Closing Date. Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated herein (the "Closing") shall be held at 2:00 p.m. on Friday, April 11, 2003 (the "Closing Date") at the offices of Seller's counsel or such other date and place as Buyer and Seller may agree, but in no event later than April 14, 2003.

(b) Seller's Deliveries at Closing. At the Closing, Seller shall execute and deliver or cause to be executed and delivered to Buyer the following:

- (i) with respect to the Facility, an Assignee's Deed;
  - (ii) with respect to all of the other Purchased Assets, an Assignee's Bill of Sale;
  - (iii) Certificates of Title for each of the Vehicles, subject to any liens which may appear thereon;
  - (iv) a Release and Satisfaction of Mortgage regarding the Facility in recordable form and executed by the appropriate officer(s) of the Bank;
  - (v) UCC-3 termination statements as to all of the other Purchased Assets in recordable form and executed by the appropriate officer(s) of the Bank; and
  - (vi) Such other instruments and documents as Buyer shall reasonably request to consummate the transactions contemplated in this Agreement.
- (c) Buyer's Deliveries at Closing. At the Closing, Buyer shall execute and deliver or cause to be executed and delivered to Seller the following:
- (i) Acceptances of the Assignee's Deed and Assignee's Bill of Sale;
  - (ii) The Cash Portion of the Purchase Price; and
  - (iii) Such other instruments and documents as Seller shall reasonably request to consummate the transactions contemplated in this Agreement.

6. Transfer of Real Property. For purposes of the sale of the Facility by Seller to Buyer:

(a) Seller, at his own expense, agrees to furnish Buyer a current plat of survey of the Facility made, and so certified by the surveyor as having been made, in compliance with the Illinois Land Survey Standards. Survey shall be an ALTA survey if so required by Buyer's lender;

(b) Seller shall deliver or cause to be delivered to Buyer or Buyer's agent, not less than five (5) days prior to the time of Closing, the plat of survey and a title commitment for an owner's title insurance policy(s) issued by the Chicago Title Insurance Company in the amount of the Purchase Price allocated to the Facility, covering title to the Facility on or after the date hereof, showing title in the intended grantor, subject only to (collectively, the "Permitted Exceptions");

- (i) the general exceptions contained in the policy;
- (ii) the following additional title exceptions: (a) covenants, conditions and restrictions of record of any kind or nature; (b) private, public and utility easements and roads and highways, if any, (c) party wall rights and agreements, if any; (d) special taxes or assessments for improvements not yet completed; (e) installments not due at the date hereof of any special tax or assessment for improvements heretofore completed; (f) mortgage or trust deed obtained by Buyer, if any; (g) all general real estate taxes heretofore, now or hereafter assessed against the Facility; (h) local, state and federal laws, ordinances or governmental regulations, including, without limitation, building or zoning laws heretofore, now or hereafter in effect with respect to the Facility; and (i) all other exceptions appearing in the title commitment; and
- (iii) title exceptions pertaining to liens or encumbrances, other than the lien of the Bank. The title commitment shall be conclusive evidence of good title as therein shown as to all matters insured by the policy, subject only to the Permitted Exceptions herein stated;

(c) All water and other utility charges, fuels, prepaid service contracts, general taxes, and other similar items shall be assumed by the Buyer at Closing and shall be part of the Assumed Liabilities. Buyer shall pay the amount of any stamp tax imposed against the Facility on the transfer of the title, whether under state, county, municipal law or otherwise, and shall furnish a completed Real Estate Transfer Declaration signed by Seller or Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois and shall furnish any declaration signed by Seller or Seller's agent or meet other requirements as established by any local ordinance with regard to a transfer or transaction tax; and

(d) With respect to the Facility, the provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Agreement.

#### **7. Delivery and Condition of the Purchased Assets.**

(a) Immediately upon completion of the Closing, the Seller shall be deemed to have fully and completely turned over to Buyer, or Buyer's nominee, the possession, custody and control of the Purchased Assets and all keys to the Facility which are in Seller's possession, custody or control. In connection therewith, Seller shall be deemed to have vacated the Facility concurrently upon the Closing. Seller shall tender to Buyer at Closing possession, custody or control of the Vehicles. Seller is not assuming and shall not be liable or responsible for any or all liabilities or obligations of any kind or nature whatsoever arising out of, under, or related to the operation of the Business from and after the Closing.

(b) Buyer agrees that it is purchasing and shall take possession of the Purchased Assets in their **AS IS, WHERE IS** condition and acknowledges that it has previously been given the opportunity to and has conducted such investigations and inspections of the Purchased Assets as Buyer has deemed necessary or appropriate for the purposes of this Agreement.

(c) EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, SELLER DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS, STATEMENTS, WARRANTIES, OR CONDITIONS OF ANY KIND OR NATURE WHATSOEVER CONCERNING ANY OR ALL OF THE PURCHASED ASSETS OR THE BUSINESS, INCLUDING WITHOUT LIMITATION OF THE GENERALITY OF THE FOREGOING: THE PAST, PRESENT OR FUTURE PHYSICAL CONDITION, WORKING ORDER, QUANTITY AND/OR QUALITY OF ANY OR ALL OF THE PURCHASED ASSETS; THE PRIOR OR FUTURE INCOME, EXPENSES, PROFITABILITY OR OPERATION OF THE BUSINESS; THE ACTUAL AMOUNTS OWING, NATURE, ENFORCEABILITY OR VALIDITY OF ANY OR ALL OF THE ASSUMED LIABILITIES; THE FACILITY'S ENVIRONMENTAL, STRUCTURAL OR OPERATING CONDITION; THE FACILITY'S ROOF, HEATING, CENTRAL COOLING, VENTILATING, LIGHTING, PLUMBING AND ELECTRICAL FIXTURES AND SYSTEMS, BASEMENT FLOODING, LEAKS, SEEPAGE, INSECT INFESTATION; ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; THE ASSIGNABILITY OF THE LEASES AND/OR LICENSES AND/OR THE VALIDITY, EXTENT OR ENFORCEABILITY OF THE ASSIGNMENT AND TRANSFER HEREUNDER OF THE LEASES OR LICENSES; THE ASSIGNABILITY, NATURE, EXTENT OR VALIDITY OF THE COLLECTIVE BARGAINING AGREEMENT; OR ANY OTHER MATTER AFFECTING OR RELATING TO THE BUSINESS, THE FACILITY OR ANY OF THE OTHER PURCHASED ASSETS.

8. Risk of Loss. Seller shall assume all risk of loss to a material portion of the tangible personal property contained in the Purchased Assets (~~redacted~~), or more of the aggregate replacement cost of the tangible personal property items and/or ~~redacted~~ or more of the usable floor area with respect to the Facility) whether due to labor disputes, hazardous materials liability, fire, condemnation, environmental contamination or other casualty ("Extraordinary Occurrence") from the date of this Agreement through the Closing. In the event of any such Extraordinary Occurrence prior to or on the Closing Date such that the Business is materially interrupted or curtailed for more than ninety six (96) consecutive hours, then and in that event, Buyer at its sole option, may (i) terminate this Agreement, in which case, Buyer shall receive back the Deposit as its sole remedy, or (ii) elect to retain the insurance proceeds relating thereto as its sole remedy, and shall be required to close the transactions as otherwise herein contemplated.

9. Covenants. Between the date hereof and the Closing, Seller and Buyer hereby covenant and agree, as the case may be, as follows:

(a) Seller shall not sell, lease, transfer, convey, assign or dispose of in any manner whatsoever, any of the Purchased Assets except in the ordinary course of the Business consistent, to the best of his knowledge, information and belief, with the past practices of Aetna, provided however, that the Seller may sell Fixed Assets outside of the ordinary course of Aetna's Business that are no longer necessary for the operation of the Business;

(b) Seller agrees to use his best efforts to maintain and preserve the Purchased Assets prior to the Closing in their present state and condition in all material respects, subject only to use and/or sale in the ordinary course of business and ordinary wear and tear;

(c) Seller agrees to maintain the Books and Records related to the operation of the Business in a complete and accurate manner from and after the date of the Assignment;

(d) Seller agrees to use all reasonable diligence to pay all payroll taxes and operating expenses, of any kind and nature incurred during the Assignment and prior to Closing, as and when due, which may in any way affect or relate to the Business, provided however, that Buyer agrees to assume and be solely liable for any and all unpaid expenses incurred by the Seller from the date of this Agreement to the Closing Date relating to the Business or the Assignment, including all items generally described on the Budget in the actual amounts ultimately incurred by Seller (collectively, the "Post-Assignment Liabilities");

(e) Seller agrees to use his best efforts to operate the Business in the ordinary course between the date hereof and Closing in a manner which, to the best of his knowledge, information and belief, is consistent with the past practices of Aetna, subject to Seller's ability to obtain continued funding from the Bank and inventory deliveries from major suppliers, provided however, that as set forth in paragraph 2(e) above, if at anytime prior to the Closing, Seller is unable to obtain sufficient funding from the Bank to operate the Business in the ordinary course of its affairs, Seller shall have the right to use all or any portion of the Deposit to the extent necessary pending the Closing to maintain the operation of the Business as generally described in the Budget;

(f) Seller agrees to cooperate in the transfer to Buyer at Closing of the rights to use the Telephone Numbers;

(g) Each party agrees not to knowingly take, or fail to take, any action which by reason of taking or such failure to take would make any representations or warranties of each party herein materially untrue, inaccurate or otherwise misleading; and

(h) Each party agrees to take all corporate and other action necessary to consummate and carry out the transactions contemplated herein.

**10. Liabilities Assumed/Not Assumed; Indemnification.**

\_\_\_\_\_(a) Effective upon Closing, Buyer shall assume and be solely liable and responsible for the timely and full payment of the Post-Assignment Liabilities. Unpaid Goods on Order, and all claims, demands, liabilities, obligations or debts of Aetna relating to those specific categories of debts reflected on Exhibit D attached hereto incurred and owing prior to Closing (collectively, the "Assumed Liabilities").

(b) Except as is expressly provided herein concerning the Assumed Liabilities, Buyer is not assuming, nor shall it in any way be liable or responsible for, any other liabilities, obligations or debts of Seller or Aetna relating to the Business, the Purchased Assets or otherwise or the operation of the Business prior to Closing, whenever arising and whether known or unknown, primary or secondary, direct or indirect, absolute or contingent, contractual, tortious or otherwise.

(c) Buyer agrees to pay and be solely liable for all Unpaid Goods on Order as of the Closing. For purposes of this Agreement, "Unpaid Goods on Order" shall mean those items of inventory ordered by Seller, but neither delivered by the vendor(s) nor paid for by Seller prior to the Closing Date.

(d) Upon Closing, Buyer shall agree to indemnify and save harmless Seller, his heirs, legal representatives, successors and assigns, solely in their individual capacity, from and against any and all loss, cost, claim, liability, damage, and expense (including reasonable attorney's fees, legal and other expenses incurred by Seller, his heirs, legal representatives, successors and assigns, solely in their individual capacity, in connection therewith), arising from and after the Assignment, which Seller, his heirs, legal representatives, successors and assigns, solely in their individual capacity, may at any time suffer, sustain, incur, realize or become subject to by reason of the Buyer's failure or inability to timely and fully pay all of the Assumed Liabilities when and as the same come due, provided however, that the indemnification obligations hereunder shall not cover any matters for which Seller does not notify Buyer in accordance with paragraph 33 below, within 12 months from the date of the Closing.

(e) Buyer shall have the right, at its own cost and expense, to defend or otherwise contest any asserted claim, demand or liability within the scope of the foregoing indemnity provision, and as long as it shall do so in good faith, shall not be required to make any payment on account of any such claim, demand or liability until the "final adjudication" thereof. Final adjudication as used herein shall mean the decision of a trial court, but in the event of appeal, then the decision of the appellate court, after petition for rehearing has been denied or the time for filing the same (or for the filing of further appeal), has expired. Any party hereto, whether Seller or Buyer, first learning of any claim, demand or liability coming within the scope of said

indemnification provision, shall notify the other party hereto in writing within fourteen (14) days after learning thereof.

11. **Seller's Representations and Warranties.** Seller, as a material inducement to Buyer's execution of this Agreement and acknowledging that Buyer is expressly relying thereon, does represent and warrant to Buyer that:

(a) Seller pursuant to the Assignment has full rights, powers, and authority to execute this Agreement and consummate the transaction contemplated herein;

(b) To the best of Seller's knowledge, information and belief, the Assignment: (i) has been duly authorized by all necessary corporate actions on the part of Aetna and that such corporate actions have not been modified or rescinded; (ii) does not and will not violate the provisions of Aetna's charter or by-laws, or any applicable law, regulation, judgment, or order, or of any agreement, instrument or obligation by which Seller, Aetna or its properties are bound; and

(c) The representative executing and delivering this Agreement on behalf of the Seller is duly authorized and empowered to act.

12. **Buyer's Representations and Warranties.** Buyer, as a material inducement to Seller's execution of this Agreement and acknowledging that Seller is expressly relying thereon, does represent and warrant to Seller that:

(a) Buyer is a corporation duly authorized, existing and in good standing under the laws of the State of Illinois and has full rights, powers, and authority to execute this Agreement and consummate the transactions contemplated herein;

(b) The execution, delivery, and performance of this Agreement: (i) has been duly authorized by all necessary corporate actions on the part of Buyer and that such corporate actions have not been modified or rescinded; (ii) do not and will not violate the provisions of Buyer's charter or by-laws, or any applicable law, regulation, judgment, or order, or of any agreement, instrument or obligation by which Buyer or its properties are bound;

(c) The representative executing and delivering this Agreement on behalf of Buyer is duly authorized and empowered to act;

(d) Buyer acknowledges and agrees that it is purchasing and shall take possession of the Purchased Assets in their **AS IS, WHERE IS** condition and acknowledges that it has previously been given the opportunity to and has conducted such investigations and inspections of the Purchased Assets as Buyer has deemed necessary or appropriate for the purposes of this Agreement, and except as expressly provided in this Agreement, Seller has made no express or implied statements,



representations, warranties or covenants of any kind or nature whatsoever, all as more fully set forth in paragraph 7(c) above;

(e) Buyer agrees that as of the date hereof, it has or shall be deemed to have completed all of its due diligence efforts and/or have waived further due diligence or any other requirements regarding the Business, the Purchased Assets, the Assumed Liabilities and/or the Facility; and

(f) Upon Closing, Buyer shall retain, as Buyer's employees, all of Aetna's employees in the same capacities, and upon the same terms and conditions, as in effect between Aetna and each of its employees as of the Assignment.

\_\_\_\_\_ 13. **Survival.** The representations, warranties and covenants contained herein shall survive the execution and delivery of this Agreement, and shall continue until barred by any applicable statute of limitations period.

14. **Notification.** Prior to Closing, each party hereto agrees to promptly notify the other in writing in the event that any of the representations or warranties made by such party in this Agreement becomes inaccurate or is breached, or may become inaccurate or be breached, or such party is unable to perform any agreement, covenant or condition required of such party hereunder.

15. **Conditions Precedent to Obligations of Buyer.** The obligations of Buyer to proceed with the Closing under this Agreement and to consummate the transactions contemplated herein are subject to the fulfillment by the time indicated below, of each of the following conditions, any one or more of which may be waived by Buyer:

- (a) From the time that the Assignment was made on March 25, 2003 until the Closing Date, there shall not have been, nor has there been an event or occurrence which might reasonably have a material, adverse impact on the Business.
- (b) Prior to Closing, no action, suit or proceeding, including, a preliminary injunction or temporary restraining order, arbitration, or unfair labor practice charge (collectively, the "Proceeding"), shall have been instituted before any court or any governmental body or other authority pertaining to or affecting the consummation of the transactions contemplated herein, and no Proceeding which is materially adverse to the consummation of the transactions contemplated herein shall have been threatened (excluding any threatened commencement of an involuntary bankruptcy case).
- (d) All of Seller's representations, warranties and covenants contained herein shall be true and correct as of the Closing Date, with the same force and

effect as though such representations, warranties and covenants had been made on, as of and with reference to the Closing Date ( except that any representations, warranties, and covenants which speak as of a particular date shall continue to speak only as of such date).

16. **Termination.** This Agreement and the transactions contemplated herein may be terminated at any time prior to the Closing by prompt notice given in accordance with notice provisions of this Agreement:

- (a) By the mutual written consent of Buyer and Seller;
- (b) Upon Seller's acceptance of a higher and better Qualifying Bid submitted at the Auction by a third party, and the closing of such transaction;
- (c) By either of the parties hereto if the Closing shall not have occurred at or before 6:00 p.m. on April 14, 2003; provided, however, that the right to terminate this Agreement under this paragraph 16(c) shall not be available to any party whose failure to fulfill any of its obligations under this Agreement has been the cause of or resulted in the failure of the Closing to occur on or prior to the aforesaid date;
- (d) By Buyer, in its sole discretion, upon the occurrence of any of the following events:
  - (i) for any reasons whatsoever Seller ceases to operate the Business for more than ninety six (96) consecutive hours;
  - (ii) Seller is unable to make any or all of the required deliveries at Closing set forth in paragraph 5(b) above, or otherwise materially defaults under this Agreement with no fault of Buyer;
  - (iii) Any of the conditions set forth in paragraph 15 above have not been satisfied or waived by Buyer as of Closing; or
  - (iv) The entry of an order for relief against the Aetna under the U.S. Bankruptcy Code.
- (e) By Seller, in his sole discretion, if Buyer is unable to pay the balance of Cash Portion of the Purchase Price at Closing, or otherwise materially defaults under this Agreement with no fault of Seller.

17. **Remedies.**

- (a) If Buyer is not in default hereunder and Seller fails to make the required deliveries at the Closing or materially defaults under this Agreement with no fault of Buyer, then Buyer shall have the right to: (i) terminate this Agreement and thereupon

this Agreement shall be null and void and of no legal effect whatsoever upon Seller's prompt return of the Deposit to Buyer; or (ii) pursue the remedy of specific performance of this Agreement in the courts of Cook County, Illinois, in which case, whether or not Buyer is successful, all parties shall suffer their own losses, costs, expenses or damages arising out of, or related to such litigation (including, without limitation, reasonable attorneys' fees and costs); or (iii) waive or agree to modify the occurrences causing Seller's inability to consummate the transactions contemplated herein, after which Buyer shall be required to consummate the transactions contemplated herein.

(b) If Buyer is not in default hereunder and the Agreement is terminated pursuant to paragraphs 16(a), (c) or (d), then this Agreement shall be null and void and of no legal effect whatsoever upon Seller's prompt return of the Deposit, and each party hereto shall suffer their own losses, costs, expenses or damages arising out of, or related to this Agreement.

(c) If Buyer is not in default hereunder and the Agreement is terminated pursuant to paragraph 16(b), then this Agreement shall be null and void and of no legal effect whatsoever upon Seller's prompt return of the Deposit and the Break-up Fee, and each party hereto shall otherwise suffer their own losses, costs, expenses or damages arising out of, or related to this Agreement.

(d) If the Seller is not in default hereunder, and Buyer in default hereunder fails to pay the balance of the Purchase Price at the Closing as set forth above, or refuses to close for any reason, then Seller, as its sole remedy, shall be entitled to retain the Deposit as liquidated damages for the Buyer's default.

18. **Brokers.** Buyer and Seller each warrant to the other that neither has engaged, consented to, or authorized any broker, investment banker, or other third party to act on its behalf, directly or indirectly, as a broker or finder in connection with the transactions contemplated by this Agreement and no such third party is entitled to any fee or compensation in connection with this Agreement or the transactions contemplated hereby by reason of any action of it.

19. **Breakup Fee.** If this Agreement is terminated due to the acceptance of a Qualifying Bid, and provided that Buyer is not in default hereunder, then the Buyer shall be entitled to a breakup fee in consideration of its costs incurred in conducting its due diligence and prosecuting this transaction in an amount not to exceed ~~redacted~~ subject to submission to Seller from Buyer of reasonable supporting documentation evidencing the actual payment by Buyer of such costs (the "Break-up Fee"). In the event that the holder of the accepted Qualifying Bid fails to consummate the sale of the Purchased Assets and the Buyer is given the opportunity to purchase the Purchased Assets in accordance with this Agreement, whether or not the Buyer chooses to purchase the Purchased Assets at that time, then no Break-up Fee shall be due or payable to the Buyer. If such third party does consummate the purchase of the Purchased Assets, then at the Closing, Seller shall hold that portion of the purchase price in an amount not

to exceed the sum of ~~redacted~~ pending the delivery by Buyer of reasonable supporting documentation. Upon Seller's receipt of reasonable supporting documentation from Buyer evidencing the amount of the Break-up Fee which is due and owing hereunder to Buyer, Seller agrees to remit such sums to Buyer forthwith.

20. **Bid Protection.** The Buyer shall receive bid protection in an amount equal to ~~redacted~~ such that Seller shall not accept at the Auction any competing offer unless such competing offer provides Seller with cash consideration at the Closing in excess of ~~redacted~~ over the Cash Portion of the Purchase Price and such competing bid is on terms and conditions substantially similar to those of Buyer contained herein.

21. **Post-Closing Obligations.**

(a) Buyer agrees to make the Books and Records available for inspection by Seller or by his duly accredited representatives, for reasonable business purposes at all reasonable times during normal business hours, for a seven (7) year period after the Closing, with respect to the operation of the Business occurring prior to and relating to the Closing, and the historical financial condition, assets, liabilities, operations, and cash flows of Aetna. As used in this section, the right of inspection includes the right to make extracts or copies. The representatives of Seller inspecting the Books and Records shall be reasonably satisfactory to Buyer, and Buyer can require such confidentiality agreements as are reasonable under the circumstances.

(b) For a period of one hundred and twenty (120) days after the Closing, Buyer shall afford reasonable access to its physical facilities to Seller, at no cost to Seller, to assist Seller in completing the administration of Aetna's estate in the Assignment.

22. **Amendment and Modification.** This Agreement may be amended, modified or supplemented only by written agreement of Buyer and Seller.

23. **Severability.** Any provision of this Agreement that shall be prohibited or unenforceable shall be deemed ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

24. **Entire Agreement.** This Agreement, including those documents identified herein or appended hereto as Exhibits constitutes the entire contract between the parties relating to the subject matter hereof and is the final and complete expression of their intent. No prior or contemporaneous negotiations, promises, agreements, covenants, or representations of any kind or nature, whether made orally or in writing, have been made by the parties, or any of them, in negotiations leading to this Agreement or relating to the subject matter hereof, which are not expressly contained herein, or which have not become merged and finally integrated into this Agreement; it being the intention of the parties hereto that in the event of any subsequent litigation, controversy, or dispute concerning the terms and provisions of this Agreement, no party

shall be permitted to offer to introduce oral or extrinsic evidence concerning the terms and conditions hereof that are not included or referred to herein and not reflected in writing. This Agreement can be changed, modified or amended only by a writing executed by the parties. No conditions of any kind or nature exist to the legal effectiveness of this Agreement which shall be in full force and effect immediately upon execution and delivery by the parties hereto.

25. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of Illinois.

26. **Counterparts.** This Agreement may be executed in one or more counterparts all of which taken together constitute one and the same instruments. A signed counterpart is as binding as an original.

27. **No Contract until Execution.** This Agreement shall become valid and binding only after it is executed and delivered by the parties. Until execution hereof, it is the intention of the parties that (a) no agreement, contract, offer of agreement or proposal arises and (b) no estoppel is created by the submission of any draft hereof or any other conduct of the parties.

28. **Expenses.** Except as otherwise expressly set forth herein, each party hereto shall bear all fees and expenses incurred by such party in connection with, relating to or arising out of the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including, without limitation, attorneys, accountants, and other professional fees and expenses.

29. **Non-Waiver.** The failure in any one or more instances of a party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred, or the waiver by said party of any breach of any of the terms, covenants or conditions of this Agreement, shall not be construed as a subsequent waiver of any such terms, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect if no such forbearance or waiver had occurred. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

30. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

31. **Future Deliveries.** The parties shall execute such further documents as may be reasonably necessary to transfer and convey the Purchased Assets to Buyer on the terms contained herein and to otherwise comply with the terms and conditions of this Agreement and consummate the transactions herein provided.

32. **Time.** Time is of the essence of the Agreement.

33. **Notices.** All notices required or permitted to be given hereunder shall be in writing and may be delivered by hand, by facsimile, by nationally recognized private courier, or by United States express mail. Notices shall be deemed given on the first business day following receipt; provided, however, that a notice delivered by facsimile shall only be effective if such notice is also delivered by hand. All notices shall be addressed as follows (or to such other address as any party shall have advised the others in writing):

If to Seller addressed to:

David Abrams  
Abrams & Jossel Consulting, Inc.  
39 S. LaSalle Street, Suite 1410  
Chicago, IL 60603  
Fax No. (312) 629-1295

With copies to:

Chad H. Gettleman, Esq.,  
Henry B. Merens, Esq.  
Adelman, Gettleman, Merens, Berish & Carter, Ltd.  
53 W. Jackson Blvd., Suite 1050  
Chicago, IL 60604  
Fax No. (312) 435-1059

If to Buyer addressed to:

ABC Acquisition Co.  
c/o GWB(USA), Inc.  
Five Concourse Parkway  
Suite 810  
Atlanta, GA 30328  
Attn: Derick Marsh, President  
Fax No. (770) 395-2975

With a copy to:

Timothy A. French, Esq.,  
Neal, Gerber & Eisenberg  
Two North LaSalle Street, Suite 2200  
Chicago, IL 60602  
Fax No. (312) 269-1747

and/or to such other respective addresses and/or addressees as may be designated by notice given in accordance with the provisions of this paragraph.

34. **Assignability.** This Agreement shall not be assignable by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that Buyer shall have the right in its sole discretion to assign any or all of its rights and obligations under the Agreement to any affiliated

entities, in which case that entity shall be thereafter deemed to be "Buyer" for purposes of this Agreement and all documents executed in connection herewith.

35. **Headings**. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

36. **Construction of Terms**. This Agreement has been drafted jointly by the parties in full consultation with their respective attorneys, and no ambiguity in this Agreement shall be interpreted or construed against any of the parties as the drafter hereof.

37. **Incorporation by Reference**. The recitals hereto and all schedules and exhibits attached hereto shall be deemed an integral part of this Agreement and shall be incorporated herein by reference.

*The rest of this page has intentionally been left blank.*