

# **SAMPLE LETTER OF INTENT**

June XX, 20XX

Dear ABC Company Owner,

We are pleased to present this Letter of Intent (LOI), which outlines the principal terms and conditions of the acquisition of substantially all of the assets of ABC Company, a New York corporation (including their respective real estate properties and/or parcels) and their respective subsidiaries (collectively, the “Company” or “Seller”) by Acquisition Corp or one of its affiliates (“Acquisition Corp” or “Buyer”). Notwithstanding the foregoing, cash and personal use vehicles (2020 BMW 740i and 2023 BMW 540i) (the “Excluded Assets”) shall be excluded from the transaction. Except as specifically set forth herein, the terms of this Letter are not binding upon the Buyer and Company.

## **1. Consideration**

We have based our valuation of the Company on the information provided to-date, including stand-alone financial performance. On this basis, and subject to the satisfactory completion of confirmatory due diligence, Acquisition Corp intends to purchase all of the assets of the Company used or held for use in its businesses (but excluding the Excluded Assets) (the “Purchased Assets”) on a debt-free, cash-free basis for total consideration of \$23.8 million (the “Purchase Price”). The Purchase Price shall be adjusted up or down by the amount by which the net working capital included in the transaction (e.g. inventory, plus A/R, minus Company payables assumed by the Buyer) at closing exceeds or is below the net working capital peg. The net working capital peg shall be an amount equal to the average net working capital balance over the 12 months preceding the close. The Purchase Price would be paid as follows:

\$3 million note payable as defined below and  
\$20.8 million in the form of cash consideration paid at closing.

## **2. Note**

The Seller would receive a total of \$3 million in the form of a promissory note (“Note”) at the time of Closing. The Note would have a 5-year maturity, carry a cash interest rate of 10.0% paid quarterly in arrears, and would be prepayable at any time without penalty. The Note will provide five straight-line amortization payments of principal (in addition to the quarterly payments of accrued interest) on the first, second, third, and fourth anniversaries of the Note and at maturity. The Note would be secured by a security interest in the assets of the Company and subject to subordination to a senior secured commercial lender for that portion of the purchase price financed by the Buyer at closing. Principals of Acquisition Corp will personally guarantee the Buyer’s obligations under the Note.

## **3. Closing**

Acquisition Corp intends to conduct confirmatory due diligence while the parties finalize the Purchase Agreement (defined below) and anticipates completing the proposed transaction no later than ninety (90) days from the execution of this Letter.

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### **4. Ordinary Course of Operations**

From the date of execution of this Letter through the date of execution of the Purchase Agreement, the Company shall provide written notice to the Buyer of the operation of the Company's business other than in the ordinary course.

### **5. Purchase Agreement**

The Transaction would be subject to negotiation and execution of a definitive purchase agreement (the "Purchase Agreement"). The Purchase Agreement would contain customary (i) representations and warranties by the Company and the Buyer, (ii) indemnities by the Company and the Buyer, (iii) offset rights with respect to indemnity claims by the Buyer under the Purchase Agreement against amounts payable under the Note for the respective duration of the Note, and (iv) non-compete and non-solicitation restrictions.

The obligations of the parties to close under the Purchase Agreement would be subject to usual and customary conditions including, but not limited to, the receipt and/or transfer of any and all licenses and permits necessary to own and operate the business, the consent of any necessary third parties to the transaction (including, for example, consents under any material contracts), and the absence of any material adverse change in the financial or other condition of the Business since the date of its most recent financial statements as well as the absence of any pending or threatened litigation regarding the Purchase Agreement or the business.

Excluding claims for fraud, breach of a covenant, or a breach of a fundamental representation or warranty by Seller (which will be limited to customary fundamental representations for transactions like this, including organization, good standing, authority and non-contravention, title to assets, sufficiency of assets, and brokerage fees) (collectively, "Excluded Indemnities"), the Seller's liability for indemnification shall expire on the twelve (12) month anniversary of the closing of the transactions contemplated by the Purchase Agreement, and in the case of any Excluded Indemnities, upon the expiration of the applicable statute of limitations.

The Purchase Agreement will include a \$25,000 deductible for damages before Acquisition Corp will have recourse for indemnification claims (other than for claims made in connection with any Excluded Indemnities) against the Seller or by setting off against the Note. Excluding any claims based on any Excluded Indemnities or a breach of the Company's representation and warranty regarding the accuracy of its historical financial statements in all material respects (the "Financial Statement Rep"), Acquisition Corp' recourse against the Seller (including any offset against the Seller Note) for indemnification shall be limited to 10% of the Purchase Price. With respect to a breach of the Financial Statement Rep, Acquisition Corp' recourse against the Seller (including any offset against the Seller Note) for indemnification shall be limited to 30% of the Purchase Price. Buyer's first recourse for any claim for indemnification shall be to offset against the Seller Note. Acquisition Corp would prepare the initial draft of the Purchase Agreement.

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## **6. Management and Employees**

Acquisition Corp views the management team and employees of any organization as a vital component of the organization's ability to compete and succeed in the marketplace. For that reason, we strive to retain key personnel through competitive packages and company participation plans, which will be discussed at the appropriate time with the individuals concerned.

## **7. Fees and Expenses**

Each party would be responsible for its own fees and expenses related to the transaction.

## **8. Due Diligence**

The Company would provide Acquisition Corp reasonable access to the Company's facilities, books, and records to allow Acquisition Corp to perform its due diligence review of the Company and its business. In addition, the Company would instruct its directors, officers, equity holders, members, managers, attorneys, accountants, brokers, and other advisors, agents, and representatives (collectively, "Representatives") to cooperate with Acquisition Corp. Acquisition Corp is available and ready to commence due diligence immediately. Acquisition Corp acknowledges and agrees that access to certain employees, customers, and sensitive business information may be restricted until such time as Buyer is committed to closing.

Buyer has based this proposal upon our review of the Company to date, however, prior to becoming bound to the Purchase Agreement, Buyer would seek to complete further due diligence including (but not limited to):

- a) Commercial and operational due diligence, including but not limited to calls with certain current or past customers, suppliers, and employees that are approved by the Company in advance;
- b) Financial diligence, including but not limited to a Quality of Earnings Report;
- c) 3rd party environmental risk and permits assessment;
- d) Legal due diligence;
- e) A property inspection and property due diligence;
- f) Workforce status assessment (including with respect to immigration and naturalization issues); and
- g) Other reasonable information as required.

## **9. Exclusivity**

In consideration for the resources that Acquisition Corp will commit to the pursuit of this opportunity, and as a prerequisite to commencing due diligence and negotiations, the Company agrees that, for a period of thirty (30) days following the full execution and delivery to Buyer of this Letter (the "Exclusivity Period"), it shall not, and it shall cause its Representatives not to, directly or indirectly: (i) solicit or encourage (including by way of furnishing any non-public information or otherwise), or initiate, participate in, enter into or continue discussions or negotiations with, or enter into any agreement with, any person or entity (other than Acquisition Corp and its representatives) in respect of any sale of the real property of the Company, any sale of any material assets of the Company outside of the ordinary course of business,

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any sale of any equity in the Company, or any similar transaction or business combination involving the Company or its businesses or assets, or (ii) furnish any information with respect to or facilitate in any other manner any effort or attempt by any person or entity to do any of the foregoing. The Company will (and will cause its Representatives to) terminate all discussions with all third parties regarding any of the foregoing. Acquisition Corp will provide the Company with a draft asset purchase agreement that is consistent with the terms and conditions contained herein within 30-days following the date of this Letter, and provided that Acquisition Corp satisfies this obligation, the Exclusivity Period will automatically be extended for an additional 30-days to enable the parties to negotiate and enter into the Purchase Agreement, which will contain an additional Exclusivity Period for up to 60-days to permit the parties to close.

### **10. Confidentiality**

Without the prior written approval of the other party, neither party will disclose or discuss the existence of this Letter or any of its terms and conditions to or with any persons other than its Representatives to the extent required to know the same in implementing the provisions of this Agreement.

### **11. Expiration**

This Letter, if not signed, will expire in ten (10) business days following the date hereof.

### **12. Governing Law**

This Letter shall be governed by the laws of the State of Delaware.

### **13. Non-Binding Commitment**

Other than the provisions entitled "Fees and Expenses," "Exclusivity," "Confidentiality", "Governing Law" and "Non-Binding Commitment," each of which is intended to, and shall, be legally binding, nothing herein is intended to, or shall, create any rights in favor of either party and nothing herein is intended to, or shall, be legally binding. A legally binding obligation regarding the purchase will arise only upon the execution of a Purchase Agreement, if one is executed. Neither the expenditure of funds nor the undertaking of actions consistent with this Letter shall be regarded as the partial performance of a binding agreement or (except as otherwise contemplated above) entitle the party expending funds or taking action to assert claims for reimbursement or damages against the other party relating to such expenditure of funds or actions.

### **14. Entire Agreement; Counterparts**

This Letter of Intent supersedes any prior written or oral agreements or understandings with respect to the subject matter hereof and constitutes the entire understanding of the parties hereto with regard to the subject matter hereof. This Letter may be executed in two or more counterparts, each of which is an original and all of which together constitute one and the same instrument. A facsimile or email copy will be deemed an original.

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We are pleased to submit this Letter of Intent and are prepared to commit to all necessary resources to pursue this transaction aggressively. We are excited to partner with the Company and look forward to discussing this proposal at your earliest convenience.

Please confirm your agreement with the foregoing by signing and returning one copy of this LOI to us.

Very truly yours,

Acquisition Corp LLC

By:

Name:

Title: President

APPROVED AND ACCEPTED

On June XX, 20XX

ABC Corporation

By:

Name:

Title: President