# LETTERS OF INTENT

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Cliff has more than 25 years of experience in corporate finance and investment banking. He joined GulfStar in 1995 and since that time has completed numerous corporate finance assignments for business owners. Most of his transactions have involved the sale or recapitalization of private companies. Cliff has a generalist investment banking background that includes significant recent experience representing upstream and downstream energy service companies and related manufacturing companies. Combining both his investment banking board and teaching experience, Cliff has served previously as an expert in litigation to address such issues as valuation, completion of M&A process, due diligence and negotiations, lost profits, corporate governance and other topics. Prior to joining GulfStar, he was Managing Director of McKenna & Company (1992 to 1995), the president of Emprise Consulting Group, Inc. (1990 to 1992), and an independent consultant (1978 to 1990). Cliff has served on the faculty of Rice University's Jesse H. Jones Graduate School of Administration since 1980 (full-time from 1980 - 1987). He was also an Adjunct Professor of Finance at the University of Houston from 1993 to 1997. Most of Cliff's clients are entrepreneur / family-owned businesses.

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Mr. Sarfatis has represented clients in a wide variety of industries and disciplines, including venture funds in their investments, technology related start up companies, midstream natural gas companies, oil and gas field service companies, manufacturing and construction companies and e-business companies. Mr. Sarfatis serves as outside general counsel for clients in a wide variety of industries, including midstream natural gas, oil field services, construction, marketing and retail.

Mr. Sarfatis graduated from Vanderbilt University Law School in 1992 and from the University of Oklahoma in 1989 with a BBA in Finance.

Mr. Sarfatis has been recognized: The Best Lawyers in America (2008 – 2012) in Corporate Law; as a Texas Super Lawyer (each year since 2009) in Mergers & Acquisitions, as a Texas Rising Star (2005) in Mergers & Acquisitions and as a The Best Lawyers Under 40 in Dallas, D Magazine (2006).

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Brad Whitlock is a partner with Scheef & Stone, L.L.P. His practice focuses on business transactions, including mergers and acquisitions (including stock and asset purchases and tender offers), securities matters (including representation of issuers, underwriters, venture capitalists, and private equity and hedge funds in connection with public and private offerings of debt and equity securities), and lending transactions (including the representation of lenders and borrowers in connection with loan documentation). He also has considerable experience representing companies in connection with their general legal needs, including labor and employment, contracts, and real estate. He was a partner in the corporate section of a large Dallas-based law firm for many years and has served as the general counsel for a large Dallas-based manufacturing company, where he was responsible for all of the legal aspects of the company.

Mr. Whitlock was named as one of the best lawyers in Dallas in the June 2011 issue of *D Magazine* and as a Texas Super Lawyer by *Texas Monthly* magazine from 2003-2011. He is also included in the 2005 and 2006 editions of *The Best Lawyers In America*.

## MEMBERSHIPS

In addition to his law practice, Mr. Whitlock is involved in many bar and professional activities. He is a past Chair of the Business Law Section of the State Bar of Texas. From 2002-2003 he served as Chair of the Corporation Laws Committee of the Business Law Section and he has helped draft sections of the Texas Business Organizations Code. Mr. Whitlock has served as chairman of the Securities Law Section of the Dallas Bar Association, as Chairman of the Texas Business Law Foundation, and on the Council of the Business Law Section.

Mr. Whitlock has served on the board of several civic organizations, including the Greater Dallas Youth Orchestra and the Arts District Friends. He is a 2001 graduate of the Leadership Dallas program sponsored by the Greater Dallas Chamber of Commerce and served as chair of the Chamber's Leadership Advisory Council.

## PUBLICATIONS/SPEAKING ENGAGEMENTS

Mr. Whitlock is the co-author of the four volume *Texas Practice Guide—Business Transactio*ns published by Thompson Reuters/West. This treatise analyzes a number of Texas contracts, including employment agreements, technology agreements and service agreements. Mr. Whitlock is also a frequent speaker on a variety of transactional topics.

## EDUCATION

Mr. Whitlock received his J.D. degree from the Southern Methodist University School of Law where he was a member of the *Journal of Air Law & Commerce* and a Hatton W. Sumners Scholar. He received his B. A. degree from Westminster College in Fulton, Missouri.

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## I. GENERAL DESCRIPTION

When selling a business, the buyer and seller will often wish to enter into a preliminary written agreement that sets forth the key terms of the transaction and serves as a guideline for future negotiations. This agreement can take many forms and is often called by many different names: term sheet, memorandum of understanding, memorandum of agreement, etc. However, the most common term for these agreements is probably letter of intent ("LOI"), and the most common structure is probably a letter from the buyer to the seller. The LOI can be binding, non-binding, or partially binding and partially non-binding as discussed below. Regardless, it is almost always anticipated that the LOI will be replaced by a binding definitive agreement between the parties. Nevertheless, it is important for an attorney to understand the legal and other ramifications of negotiating and drafting an LOI, and to counsel his or her clients on the impact of those ramifications on the transaction.

### A. Advantages of LOIs

There are many reasons to use an LOI as a starting point for a transaction. First, it helps focus the parties' attention on significant deal points and ensures agreement on those issues. The LOI sets forth the framework of the transaction and can help the deal team in drafting the definitive documentation. For example, the basic issue of the sale structure (asset sale, stock sale, merger, etc.) will be addressed in the LOI. Since this fundamental question will have such a large impact on the tax consequences to the parties, as well as the allocation of liabilities going forward, it is best to resolve this issue early before significant amounts of money are spent on document preparation and due diligence. It is also important to reach agreement not only on the purchase price, but also on all matters related to how that purchase price will be paid, particularly if there will be complex payment provisions, such as an earn-out, involved with the transaction. An LOI requires the parties to work out many of these details up front, rather than negotiating these issues later.

An LOI also can be used to set forth certain rights and obligations of the parties while negotiating a definitive agreement. For example, a buyer will often want a lock-up or "no shop" provision that will force the seller to negotiate exclusively with the buyer for a specified period of time. They buyer may also want the right to conduct due diligence with respect to the seller prior to execution of the agreement. Conversely, the seller will likely want the buyer to be under some obligation to keep seller's information confidential and not to use that information for any purpose other than in connection with the transaction. Both parties have an interest in setting forth what kind of publicity, if any, will be allowed prior to the consummation of the transaction. Additionally, the parties may want to clarify that each party has to bear its own expenses in connection with the deal, or to provide that one party has to bear the transaction expenses of the other party under certain circumstances.

Another advantage of an LOI is that it can allow for compliance with regulatory and other external requirements without completion of a definitive agreement. If a transaction is going to be subject to the notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, for example, the parties can file a premerger notification report upon entering into an LOI. This in turn will allow the clock to start running on the applicable waiting periods and, in a worst case scenario, allow any potential anti-trust concerns to be raised earlier in the process. A buyer can also provide an executed LOI to its lender or other funding sources in order to expedite the financing approval process. Similarly, a seller could provide the LOI to any vendors, customers, landlords, regulatory offices or other parties that may need to consent to the transaction.

### B. Disadvantages of LOIs

There are also downsides to entering into LOIs, especially from the seller's standpoint. A prudent lawyer will always counsel his or her selling client that the LOI represents the best deal the seller will ever get from that buyer. A seller's negotiating leverage is at its all time high right before execution of the LOI. After that, the negotiating leverage tends to shift dramatically. No buyer will come back and say they want to pay more for a company, but they often will have reasons why they want to pay less. There seems to be an unwritten rule that a party cannot alter the terms of an LOI, even though the LOI specifically says it is non-binding, unless outside circumstances dictate such a change. Unfortunately for the seller, a sudden uptick in company performance does not lead to an increase in the purchase price, but a similar downtick will often lead to a price decrease or at least a restructure.

Another disadvantage of an LOI is that it may inadvertently be deemed to be a binding agreement (with a court filling in the terms that are missing). While careful drafting can avoid many of these concerns (see the discussion below), there are still risks involved in this area. Similarly, the parties may have differing expectations about what aspects of the LOI will be binding. A seller, for example, would love to have a binding purchase price provision, but a buyer will rarely if ever agree to such a provision.

Conversely, a buyer will usually insist on a binding "no-shop" provision and will usually get this. There are also concerns about the negotiations surrounding an LOI. The fear is that the negotiations of the LOI will get bogged down into detail and will consume so much time that it would be more efficient to just negotiate the definitive agreement. Also, if the negotiations delve into too much detail, difficulties may arise that would be easier to overcome in the give and take of actual contract negotiations.

There is no consensus among lawyers as to the advisability of LOIs in acquisition transactions. However, the current trend seems to be to use them as a precursor to document preparation in order to assist in the negotiation process. If an attorney is going to advise a client to use the LOI, he or she needs to be well versed in the ramifications of using it, including the fundamental question of whether the LOI is binding or non-binding.

## II. ENFORCEABILITY OF LOIS

### A. General Principles.

One of the first questions to be decided is whether the LOI will be binding or non-binding on the parties. As a practical matter, most LOI's in M&A transactions are intended to be partially binding and partially non-binding. For an LOI to be a binding contract, it must contain a manifestation of the parties' intent to be bound, as well as the parties' agreement to the essential or material terms of the contract. If the parties do not manifest an intent to be bound, a court generally will not enforce the contract. Thus, an unequivocal statement respecting the parties' intent or lack thereof must always be included in any wll drafted LOI.

Nevertheless, while a court will generally not enforce a LOI where the agreement does not set forth all of the material terms, there are instances where courts go beyond this general rule and find that there is a binding LOI. *See Shann v. Dunk*, 84 F3d 73 (2d Cir. 1996). For example, the legal principle of promissory estoppel can be used to argue for an enforceable LOI. Promissory estoppel provides that a promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. Thus, even where a LOI is unenforceable because of a lack of an essential term, a court may still award damages to a party who changed its position in reliance on a belief that the other would proceed with the transaction based upon promissory estoppel. Additionally, a party's conduct, in the absence of any language to the contrary, can also lead to a binding agreement. The *Texaco v. Pennzoil* case expounded upon below is a good example illustrating this point

### B. The Non-Binding Letter of Intent.

In order to have a non-binding LOI, the letter must unequivocally express that the intention of the parties is to not create a binding agreement. In addition, it is advisable to omit at least one of the essential terms of the agreement in the letter. From a drafting standpoint, by avoiding terms such as "agree," "this agreement," or "contract" and instead using terms such as "propose," "we propose," and "proposal," the parties will be more clear in the intent that the LOI is meant to be non-binding. Some courts do find, however, that a LOI is partially enforceable based on an obligation to negotiate in good faith (see below). If the parties do not wish for any facet of the LOI to be binding, and further do not want to risk that a court will in any way find that there were any binding concepts under any legal theory, it may be preferable to avoid the LOI format completely and just work with a bullet point discussion outline or term sheet that is clearly marked as being non-binding.

### C. The Fully Binding Letter of Intent.

In *Bryant v. Clark,* the Texas Supreme Court held that "a contract that is certain and definite in its terms and leaves no reasonable doubt as to the intention of the parties to the contract is enforceable." Thus, for the LOI to be binding, the letter must unequivocally express the parties' intent to be bound and must further include all essential terms. In a case where intent is clearly stated, courts will bind the parties in accordance with those clear and express intentions. *See Teachers Inc. & Annuity Ass'n of Am. v. Tribune Co*., 670 F. Supp. 491 (S.D.N.Y. 1987). However, it is rare that all of an LOI will be expressly meant to be fully binding. There typically are too many variables that have yet to be determined to give the parties enough comfort that they can agree to be completely bound at the LOI stage.

### D. Duty to Negotiate in Good Faith

The Restatement (Second) of Contracts provides that every contract imposes upon each party a duty of good faith and fair dealing. An LOI that is purposefully drafted to be non-binding does not create an enforceable contract, and thus imposes no duty of good faith and fair dealing. Nevertheless, a court can enforce a party's obligation to negotiate in good faith if an otherwise non-binding LOI provides for such obligation, and thus one party's breach of the obligation is actionable. An LOI that expressly provides for an obligation to negotiate in good faith and fair dealing should prevent a party from renouncing the deal altogether, abandoning negotiations, or insisting on terms that do not conform to the LOI. For this reason, a party may wish to include an obligation of good faith and fair dealing in the binding provisions of the LOI.

## E. *Texaco v. Pennzoil* – A Letter of Intent Gone Bad

In 1984, Getty Oil and Pennzoil signed a "Memorandum Agreement" for a complex investment and stock transfer whereby Pennzoil would purchase Getty Oil stock. The Memorandum set forth general terms of the investment that had been reached in conversation and provided that the Memorandum was subject to the approval of the Board of Getty Oil. The Memorandum was to expire if not approved at the January 2nd meeting of the Board and signed by persons who made up the majority shareholders of Getty Oil. After discussions, the Getty Oil Board approved the acquisition by Pennzoil and on January 4th, both parties issued press releases with "agreement in principle" to the terms of the Memorandum and lawyers on both sides began preparations of final agreements. Also on January 4th, Getty Oil and Texaco began discussions regarding Texaco purchasing Getty Oil. On January 5th, the Board of Getty Oil accepted a better stock offer from Texaco and voted to withdraw its negotiated counter-offer to Pennzoil which had already been announced as "agreed in principle" with Pennzoil. On January 6th, Texaco issued a press release that Getty Oil and Texaco would merge; consequently, Pennzoil protested and Getty Oil filed suit for a declaratory judgment that it was not bound by any contract with Pennzoil; final agreements for the Texaco and Getty Oil merger were signed on January 6-8. In ruling on this case, the court looked to the intent of the parties as determined by their acts and communications; the court looked at several factors to help determine whether the parties intended to be bound only by a formal signed writing:

i. Whether a party expressly reserves the right to be bound only when a written agreement is signed;
ii. Whether there was any partial performance by one party that the party disclaiming the contract accepted;
iii. Whether all essential terms of the alleged contract had been agreed upon; and
iv. Whether the complexity or magnitude of the transaction was such that a formal, executed writing would normally be expected

The court also noted that a reasonable conclusion from reading the entire memorandum was that the phrase "after the execution and delivery of this Agreement" was chiefly used to indicate the timing of various acts that were to occur, and not to impose an express precondition to the formation of a contract. Furthermore, the court said that although the magnitude of the transaction was such that a signed writing would normally be expected, there was sufficient evidence to support an inference by the jury that the exception was satisfied here by the Memorandum of Agreement that was signed by a majority of shareholders of Getty Oil. In the end, Getty Oil was found to be in breach of the Memorandum of Agreement (their LOI) and owed Pennzoil $10.6 billion (later settled for $3 billion). See *Texaco, Inc. v. Pennzoil Co.,* 729 S.W.2d 768 (Tex. App. 1987), ref. n.r.e., cert. dismissed 108 S.Ct. 1305, 485 U.S. 994, 99 L.Ed.2d 686.

## F. The Hybrid Letter of Intent

As mentioned above, the trend in current M&A practice is to enter into an LOI that has some portions that are expressly binding and some portions that are expressly non-binding. For example, in the form LOI contained as an exhibit to the Model Stock Purchase Agreement prepared by the Committee on Negotiated Acquisitions of the Section of Business Law of the American Bar Association, the letter is bifurcated into two separate sections—one that says its provisions are intended to be non-binding and thus subject to definitive documentation, and one that says its provisions are intended to be binding and enforceable on the parties. The provisions that are usually included in the non-binding portion of the LOI are the so called "deal points", including the amount of the purchase price, the transaction structure, the method of paying the purchase price, and other ancillary issues such as employment, non-competition agreements and liabilities to be assumed. The non-binding portion of the letter will often also include a list of the contingencies that have to be satisfied in order for the parties to reach a binding agreement. It is a good idea from a drafting standpoint to list all of the outstanding contingencies, as this helps to backstop an argument that this portion of the LOI is non-binding.

Conversely, the binding portions of the LOI will be more straight-forward and will typically impose some affirmative or negative duty on the parties. For example, the seller will usually want the buyer to keep all information regarding the seller confidential. The buyer will want the seller to agree not to offer the business or to negotiate with any third party during the time the buyer and seller are negotiating. The seller may want some exceptions to this obligation. Each party will want to make it clear who is responsible for payment of transactional expenses prior to closing and whether there will be any obligation to pay the other party's expenses under any circumstances. The parties will want to agree on what rights, if any, the parties have to announce the transaction to the public. The buyer will want the seller to be obligated to give it access to the seller's books and records for due diligence purposes. The parties may also want to set forth rights and limitations for the buyer in terms of contacting the seller's customers, vendors or employees. Finally, the parties will want to have some agreement as to the termination date of the LOI. A more detailed discussion of these particular provisions is set forth below.

## III. TYPICAL LOI PROVISIONS

As mentioned above, there is no definitive format for drafting an LOI. The choice of format is usually a matter of personal preference. Nevertheless, there are certain provisions that are usually found in every LOI, regardless of the shape of the document. A checklist of provisions that are typically found in an LOI is attached to this paper as Exhibit A.

### A. Typical Non-Binding Provisions

1. Transaction Structure. In an M&A transaction, the deal structure (asset sale, stock sale, merger, etc.) determines the tax treatment to the parties, as well as the status of liabilities after the closing. A discussion of the differences in tax and liability treatment is beyond the scope of this paper. However, the structure issue is one that is prudently addressed at the letter of intent stage because of the profound impact on the rest of the transaction. Because of the large amount of dollars that could be involved and the impact of liability assumption (or non-assumption) on the parties, this is not a point that the parties should defer until the drafting of the definitive agreement.
2. Purchase Price. Most LOIs will contain the anticipated purchase price or at least a range for the purchase price that can change based on due diligence. If the purchase price is going to be anything but all cash paid at the closing, those details need to be discussed at this stage. If there is to be an "earn-out" or other contingent payment based on the future performance of the target, those parameters need to be spelled out in as much detail as possible. It is preferable to know that you cannot reach agreement on this fundamental point at this stage of the transaction rather than after substantial negotiations and due diligence as taken place.

   The method of payment of the purchase price needs to be set forth as well. If the buyer desires to retain a portion of the purchase price to insure against post closing liabilities, then that fact should be expressed. If there is a requirement that the seller provide a certain amount of working capital at the closing, then the LOI should at least set forth the buyer's expectation for a working capital requirement. If it is expected that the seller will finance all or a portion of the purchase price, then the terms of the financing, with as much detail as possible, should be set forth.

   One word of caution here to those representing sellers—as mentioned above, the purchase price does not go up from this point forward. A buyer may come back after conducting due diligence and have reasons for wanting to reduce the purchase price (lack of definitive contracts, incorrect financial statements, etc), but the buyer never comes back and offers to pay more. A seller should not "settle" for a purchase price at the LOI stage in anticipation of getting the number raised during negotiations. In fact, this statement holds true for all material terms of the transaction that are included in the letter of intent—employment terms (salary, employment term, duties), the length and scope of a non-competition agreement, etc. Even though these terms are couched as non-binding, they are considered to be morally binding absent some extenuating circumstance that dictates that there be a change in those terms.
3. Assumed Liabilities. To the extent possible, the LOI should set forth, in an asset sale, the types of liabilities that the buyer expects to assume. In a stock sale, if there are liabilities for which the buyer will not be responsible following the closing, that fact should be set out as well.
4. Timing of the Transaction. The LOI will often contain an anticipated schedule for the transaction, including an anticipated closing date. In the definitive provisions (see below), there often will be a binding date upon which the LOI will terminate if the dates set forth in this section are not met.
5. Non-Competition Agreements/Employment Issues. If the buyer expects for the seller and/or its principals not to compete with the business after the closing, then those expectations should be included in the LOI. In addition, it is prudent for the parties to agree upon the duration and scope of the non-compete at this juncture to avoid material

disagreements later. Similarly, if the buyer expects certain individuals from the seller's side to be involved as an employee or consultant after the closing, those expectations should be set forth in as much detail as possible in the LOI (duration, title, salary, etc).

6. Contingencies to Closing. As mentioned above, the non-binding portion of the LOI should contain all of the open items that have to be resolved prior to consummation of a definitive transaction. Examples of contingencies that are often seen in this section include the following:

   a. Due diligence review by the buyer;
   b. Financing to be obtained by the buyer;
   c. Negotiation of a definitive agreement;
   d. Requirement for any financial statements to be delivered;
   e. Resolution of any outstanding legal, tax, accounting or similar matters;
   f. Release of liens;
   g. Conduct of business between letter of intent and closing (this can also be in the binding part);
   h. Obtaining any required third party consents; and
   i. Any other points that are germane to the business being acquired

## B. Typical Binding Provisions

1. Confidentiality. A seller will want to keep a prospective buyer from using its confidential information for any purpose other than the subject transaction. Often, the parties have already entered into some form of confidentiality or non-disclosure agreement prior to the LOI stage. However, in the event that they have not, one common binding provision of an LOI is an agreement on the part of the buyer not to disclose seller's confidential information or to use it for any purpose other than the transaction.

2. No-Shop Provisions. One of the most heavily negotiated provisions of the LOI is the "no-shop" provision that prohibits a seller from having any contact with another potential buyer while negotiations are on-going with the buyer. A buyer will often insist on a provision of this nature prior to spending substantial amounts of time and money in connection with its due diligence review. The buyer does not want to be used as a "stalking horse" to allow the seller to obtain a better deal. The seller will want to narrow the scope and duration of this provision to the extent possible, because it only works to the seller's disadvantage in this process (although, arguably, the buyer would offer a lower purchase price if this provision were not included as part of the LOI). Additionally, if the seller is a publicly traded entity or otherwise has a diverse ownership base, the seller may wish to include a "fiduciary out" exception to the no-shop provision. In short, a fiduciary out frees the seller from its obligations under the no-shop provision of the LOI if the fiduciary duties of the seller's board of directors or other governing body to the company's shareholders or other owners require the seller to do so. See Weible and Oliver, "Fiduciary Out Provision Can Benefit Both Parties to a Transaction and Should Be Included in Most Sale Agreements" Mergers & Acquisitions Law Report: News Archive, BNA Insight (June 27, 2011). If a fiduciary out is a concern for the seller, then it may consider adding a provision of this nature. The buyer, on the other hand will likely resist such a provision, and will certainly wish to narrow the scope of when the seller can exercise the fiduciary out. The buyer may also as for some sort of break up fee if the seller exercises its fiduciary out.

3. Expenses. The binding portion of the LOI will typically contain a provision that requires each party to bear its own expenses in connection with the negotiation and consummation of the transaction. Any deviations from this general rule will also be contained in this provision. For example, if the buyer is to be reimbursed for its expenses if the seller exercises its fiduciary out, then this exception would be included in the expenses section. Similarly, a buyer will sometimes offer to pay all or a portion of a seller's expenses if the buyer eventually elects not to pursue the transaction.

4. Publicity. It is common for an LOI to contain a binding provision that prohibits either party from making any public announcement regarding the transaction without the consent of the other party. If one of the parties is a publicly traded entity, it is also common to include an exception to allow that party to make an announcement if it in good faith believes that it needs to do so in order to comply with its obligations under applicable securities laws.

5. Due Diligence Access. The LOI will usually provide an agreement on behalf of the seller to give the buyer access to its books and company records in order to facilitate due diligence. It is also common, if the seller has concerns about the buyer contacting third parties such as employees, landlords, vendors or customers, to set parameters under which the buyer can contact those third parties.
6. Termination. Most LOIs will contain a provision that the obligations under the LOI will terminate if the transaction is not consummated by a certain date. Some of the binding provisions, such as confidentiality and publicity, will usually by their terms expressly survive the termination of the LOI.

## IV. CONCLUSIONS

There are definite advantages and disadvantages to using an LOI. If a client decides to use an LOI as a precursor to a transaction, it is of upmost importance that they include their lawyer in the drafting process. As was hopefully demonstrated above, there are many traps for the uninitiated in connection with the construction of a letter of intent. A lawyer should always insist on being part of the negotiation of a client's LOI. It is a great disservice to the client to allow them to negotiate and enter into the LOI and then bring it to the lawyer to draft the definitive documents.

## EXHIBIT A
## LETTER OF INTENT CHECKLIST

Set forth below is a checklist of bullet points that would traditionally be addressed in a letter of intent for an acquisition.

* Transaction structure (asset or stock purchase, merger, etc)
* Purchase price
* Assumed liabilities
* Method of payment of purchase price
* Timing of transaction/termination of letter of intent
* Contingencies to closing:

    Due diligence review

    Financing

    Definitive agreement

    Any financial statements to be delivered

    Resolution of any outstanding legal, tax, accounting or similar matters

    Release of liens

    Conduct of business between letter of intent and closing

    Third party consents

    Any other issues that are germane to the business being acquired

* Confidentiality
* Non-competition agreements
* Employee matters

    Employment agreements for continuing employees

    Employee benefit plans

    Severance for non-continuing employees

* Exclusivity (i.e. the seller agrees not to solicit other purchasers)

    Fiduciary Outs

* Expenses
* Publicity