

Letter of Intent Sample
for Construction Company

YOUR
MULTIMILLION-
DOLLAR
EXIT

THE ENTREPRENEUR'S BUSINESS SUCCESS(ION) PLANNER

WAYNE M. ZELL, J.D., CPA

A
BLUEPRINT
for WEALTH
GUIDE



_____, 20__

Mr. and Mrs. Doobie
Doobie Brothers Construction Corp.
123 Main Street
Fairfax, VA 22030

Dear Bob and Barb:

Acme Corp. ("Acme") is pleased to provide you with this letter of intent ("Letter of Intent"). This Letter of Intent outlines the basic terms for the proposed acquisition (the "Transaction") of the commercial construction business of Doobie Brothers Construction Corp., a Virginia corporation, and any related subsidiaries or affiliates, but excluding any affiliates that own and lease real estate to Doobie Brothers (collectively, "Doobie Brothers" or "Company"), by a newly created subsidiary of Acme ("Buyer"). This Letter of Intent only sets forth proposed principal terms of the Transaction and does not create or evidence any legally binding obligation, except as otherwise set forth under paragraph 12 entitled "Non-Binding Agreement" below. Any legally binding obligations on the parties, their affiliates or their equity owners shall be subject to, among other things, the negotiation, execution and delivery of a mutually satisfactory written definitive asset purchase agreement and the other terms and conditions set forth in this Letter of Intent.

In the Transaction, Buyer will purchase substantially all the assets (excluding cash, cash equivalents and marketable securities) and operations of the business of Doobie Brothers, including goodwill of the business and personal goodwill of your brother, Brad Doobie, to be able to operate the business after the closing of the Transaction ("Closing"). Buyer will assume certain specified post-Closing liabilities of the Company that are considered in the working capital calculation, and Company and its shareholders (collectively with the Company, "Sellers") will remain responsible for pre-Closing matters, other than certain ordinary course liabilities that Buyer will assume in accordance with Section 2(a) of this Letter of Intent. Company will also pay off all the Company indebtedness and any Sellers' brokerage fees and other transaction expenses at Closing.

Acme realizes that people are critical to the success of the Doobie Brothers business, and so this proposal assumes that after the Transaction, the Company's key management personnel (including Bob Doobie, Barb Doobie, Brad Doobie, and [key management employees]) would stay in their current positions, at compensation levels similar to what is reflected in the Company's financial statements. Following Closing, key management employees will also be able to participate in Acme's profit-sharing program. This program aligns our operating management with our private equity owners.

Our offer further assumes that Acme would retain substantially all the Company's employees after Closing at the same compensation levels or levels as adjusted and discussed during Acme's presentation (other than such employees as Acme and the Company mutually agree do not qualify for retention) and comply with all applicable legal requirements. Acme provides its management

and employees with healthcare and other benefits, summaries of which will be provided to you upon signing of this Letter of Intent.

Following the signing of this Letter of Intent, Acme will undertake due diligence prior to Closing. We have sent you a due diligence checklist to facilitate your gathering information we will need to review, and we will schedule a mutually agreeable time to undertake an on-site accounting review and operational review. Acme will perform a Phase I environmental investigation on real estate used in the business as part of its diligence, and if needed based upon the results, Phase II testing at Acme's expense.

In addition, Sellers respectfully request that Acme provide Sellers with information indicated on a due diligence checklist it will provide to Acme prior to signing of the Letter of Intent.

As we get closer to Closing, we will schedule integration planning to address Human Resources (HR) and employee benefits, accounting systems transition at the local level, IT and administrative services provided through Acme, banking requirements for cash disbursement and receipts, as well as payroll processing to ensure a smooth post-Closing transition. During the integration, we will review marketing support provided through Acme and opportunities in Acme's operating units through resource sharing. Immediately after Closing, key Acme personnel from the Finance and HR functions will be on-site to assist in this process.

Based on information provided to us to date, the principal terms of the Transaction would be substantially as follows:

1. Form of Transaction. The Transaction will be consummated by Acme as the purchase of substantially all the assets (excluding cash, cash equivalents and marketable securities) of the Company.
2. Assumption of Specified Liabilities. Acme will only assume the following liabilities of the Company:
 - (a) Specified operational liabilities incurred in the ordinary course of business by the Company relating to post-Closing payment obligations which are also considered in the working capital calculation and true-up (e.g., trade payables and certain accrued expenses).
 - (b) Specific contracts and leases as agreed by Acme, but excluding any key man insurance policies, if any, which shall be retained by Sellers.
 - (c) Post-Closing obligations under certain vehicle and equipment leases that are used in the business and are properly accounted for as operating leases. If the Company has capital leases (even if accounted for otherwise), those leases will not be assumed, and instead will be treated as debt and paid off at Closing out of the Purchase Price (as defined below).
 - (d) Acme will not assume (i) Company indebtedness, to be paid off at or before Closing, (ii) Sellers' transaction costs and brokerage and bankers' fees, to be paid off at Closing, (iii) pre-Closing obligations relating to wages, benefits, warranties, bonuses, dividends, shareholder distributions, withdrawal liability, royalty

obligations, other pre-Closing employment related costs/expenses, insurance or litigation claims; or (iv) post-Closing warranty obligations of Seller, except as specifically agreed.

3. Transaction Price. The purchase price (“Purchase Price”) in the Transaction would be up to \$ __,000,000, payable by (1) an initial payment of \$ __,000,000 (the “Closing Payment”), subject to adjustments and escrows as described below, *plus* (2) an earnout opportunity of up to \$ __,000,000, as described below. The Purchase Price is based on the valuation information provided to date and is subject to Acme’s due diligence.

(a) Earnout Opportunity.

- i. *First Earnout Payment*. The Company will receive up to \$ __,000,000 in an earnout payment after the 12-month anniversary of the Transaction Closing (“First Earnout Payment”), if the revenues of the acquired business during the 12-month period following the Closing exceeds \$ __,000,000 (“First Earnout Target”). If revenues are less than or equal to [80]% of the First Earnout Target, no First Earnout Payment will be made. If revenues for the 12-month period are higher than [80]% of the First Earnout Target, the amount of the First Earnout Payment will equal the product of the First Earnout Payment multiplied by a fraction, the numerator of which ranges proportionally from 0% at [80%] to 100% if the revenues of the 12-month period equal or exceed 100% of the First Earnout Target, and the denominator of which equals 100%. If the revenues for the 12-month exceed 100% of the First Earnout Target, any excess over 100% may be carried forward and applied to the Second Earnout Target.
- ii. *Second Earnout Payment*. The Company will receive up to \$ __,000,000 in an earnout payment after the 24-month anniversary of the Transaction Closing (“Second Earnout Payment”), if the revenues of the acquired business during the 24-month period following the Closing exceeds \$ __,000,000 (“Second Earnout Target”). If revenues for the 24-month period are less than or equal to [80]% of the Second Earnout Target, no Second Earnout Payment will be made. If revenues for the 24-month period are higher than [80]% of the Second Earnout Target, the amount of the Second Earnout Payment will equal the product of the Second Earnout Payment multiplied by a fraction, the numerator of which ranges proportionally from 0% at [80%] to 100% if the revenues for the 24-month period equal or exceed 100% of the Second Earnout Target, and the denominator of which equals 100%.

(b) Escrow. A portion of the Purchase Price shall be placed in escrow, as follows:

- i. \$ __,000,000 will be placed in escrow for a period of [12] months following Closing, to secure Sellers’ indemnification obligations and/or other liabilities of Sellers’ payable to Acme and/or Buyer in connection with the Transaction.

- (c) Assumptions. The Purchase Price is based on the following assumptions and understandings:
- (i) Any unencumbered cash, related party accounts and marketable securities and employee and shareholder advances/receivables held by the Company at Closing will be retained by the Company (in addition to the Purchase Price) and excluded from the Transaction. Employee advances/receivables shall be retained by the Company, but Buyer may facilitate collection of such advances post-Closing, upon Sellers' request. Sellers shall retain prepaid insurance and refunds of insurance premiums (including premiums and refunds attributable to Sellers' captive insurance company) on completed jobs for pre-Closing periods. The Purchase Agreement will include a post-Closing true-up to deliver the value of manufacturer rebates accrued and/or earned for the pre-Closing periods and insurance refunds earned prior to Closing, to the extent received by Buyer post-Closing.
 - (ii) The parties will further agree upon a list of Sellers' personal property not necessary to run the business (expected to have an aggregate net value under \$___,000) that will also be retained by Sellers. Sellers may also distribute vehicles owned/leased by the Company and used by Sellers personally.
 - (iii) The Company at Closing will be free of all indebtedness for borrowed money, excluding vehicle and equipment operating leases that are used in the business, and also, for the avoidance of doubt, excluding leases which continue after Closing, are properly accounted for as operating leases and were included as part of the Company's operating costs in its financial statements.
 - (iv) All capital leases, deferred compensation and sale or incentive bonuses and any other Transaction expenses and non-ordinary course liabilities of the Company and Sellers would be paid in full prior to the Closing (or, at the option of the parties, out of the Purchase Price).
 - (v) The Company will have sufficient working capital at Closing to pay all obligations as they come due in the ordinary course, subject to a post-closing working capital true-up.
- (d) True-Up. Within [___] days After Closing, the Purchase Price will be increased or decreased, on a dollar-for-dollar basis, by the difference between the actual net current assets (after netting for all current liabilities that will be assumed in the Transaction) of the Company acquired by Acme immediately prior to Closing and the target amount of working capital (the "Target Amount"). The Target Amount will be determined by mutual agreement of the parties in the Purchase Agreement and will be generally based on the [___]-month average as a starting point. Acme will prepare a calculation after completing diligence, and the parties will mutually agree on the appropriate Target Amount.
- (e) Closing Payment. Subject to the true-up adjustments described above, the Closing Payment (which may include amounts allocated to personal goodwill) less the

\$____,000,000 escrow, and less outstanding indebtedness and transaction expenses paid at Closing, would be payable at Closing by wire transfer of immediately available funds to the Company (the Purchase Price is subject to completion of diligence).

- (f) Taxes. Any pre-Closing tax matters will remain with Sellers, and Acme will not assume any of Sellers' income tax liabilities. Acme will be responsible for all post-Closing tax liabilities of Buyer that are related to the operations post-Closing.

4. Investigation.

- (a) During the period from the date this letter is signed on behalf of Sellers until the date on which any Seller or Buyer provides the other parties hereto with written notice that negotiations toward a Purchase Agreement are terminated (the "Termination Date") or the date on which Closing of the Transaction occurs, whichever is earlier, Sellers will grant to Acme and its agents, accountants, attorneys and other advisors upon reasonable prior notice and during normal working hours, full and complete access to all of the books, records, financial statements and other documents and materials relating to the financial condition, assets, liabilities and business of the Company. Subject to the Sellers' reasonable approval, Acme shall be entitled, at its own expense, prior to the Termination Date to have access to and to conduct appraisals of the equipment, buildings, and property of the Company, and to conduct an environmental and occupational safety inspection of all property of the Company. The parties will work together to minimize disruption to the Company's operations. All access described in this paragraph 4 and all information disclosed or learned in connection therewith is subject to the confidentiality provisions referred to or described in paragraph 10 of this Letter of Intent. Prior to Closing at such time as shall be mutually agreeable to Acme and Sellers, and coordinated with Sellers, Acme shall be entitled, at its own expense, to communicate with selected vendors, customers, employees and other persons having business dealings with the Company, subject to advance approval by the Sellers, which approval may be withheld in Sellers' reasonable discretion. Acme will set up a cloud-based data room for Acme, Sellers, and the Company to share diligence materials. The execution of the Purchase Agreement described below is subject to a complete legal, financial, and business review of the financial condition, assets, liabilities and business of the Company by Acme and Acme by the Company.
- (b) Acme will (and will cause each person or entity conducting due diligence on its behalf) strive to conduct such due diligence in a manner designed to cause minimal disruption to the business and operations of Acme and in accordance with all reasonable confidentiality, health, safety and security procedures adopted by the Company (and Acme shall be informed of such procedures in advance).
- (c) Acme will notify the Company if it learns of any fact or circumstance that would cause it to propose reducing the Closing Payment set forth above. If Acme notifies the Company of any proposed reduction in the Closing Payment, the Company and the Sellers shall have the right to terminate this Letter of Intent on a 5-day prior

notice without further obligation to Acme or any third party, except for confidentiality and other obligations that survive this Letter of Intent by their terms.

5. Purchase Agreement.

- (a) The parties will negotiate and prepare a definitive asset purchase agreement (the "Purchase Agreement") between the Buyer and Sellers. The Purchase Agreement will contain representations, warranties, covenants, agreements, conditions, indemnities, set offs and escrows normally associated with transactions similar to the Transaction and is consistent with the terms above, including:
- (i) Approvals. It will be a condition to the obligations of all parties that all third-party filings, consents, and expirations of waiting periods, regulatory or other, shall have been obtained, satisfied, or waived in writing by Buyer.
 - (ii) Bonds. Subject to diligence, to the extent commercially feasible, Buyer will either (i) get new bonds issued, or (ii) indemnify Sellers for the assumed contracts with respect to the existing pre-Closing bonds for the post-Closing liabilities.
 - (iii) Board and Shareholder Approval. All necessary board of director and shareholder approvals shall have been obtained by Acme, the Company, and Sellers. Buyer has the existing financial capacity to fund the Transaction and shall provide Sellers with evidence of such financial capacity immediately upon signing this Letter of Intent.
 - (iv) Restrictive Covenants. Sellers will enter into customary confidentiality, non-competition and non-solicitation covenants binding upon them and their affiliates for a period of [____] years after the Closing, within the territory of [_____].
 - (v) Payoff Letters. Sellers will deliver at Closing customary payoff letters from all lenders (other than equipment leases appropriately accounted for as operating leases that are used in the business which continue after Closing and are transferred to Acme) to the Company providing for the release of all liens on the Company's assets upon repayment of the Company's outstanding indebtedness as identified therein, in a form acceptable to Acme and its lender(s).
 - (vi) General Liability and Insurance. At Closing, Sellers may decide to obtain a general liability tail policy covering pre-Closing liabilities for a period of up to [____] years after Closing. These policies continue the coverage after Closing for pre-Closing contracts and help Sellers cover any potential claims attributable to pre-Closing matters.
 - (vii) Employee Benefits. Acme will conduct due diligence regarding the Company's employee benefit and retirement programs and offer Acme's benefits to any of the Company's employees retained by Acme

post-Closing. Acme agrees to continue the existing medical and dental plan coverage after Closing and assume the Company's health insurance arrangements for their existing term. Acme [will][will not] assume Company's 401(k) plan [but will help with the rollover of balances to the Acme plan].

- (viii) Jobs Nearing Completion. Subject in all respects to Acme's operational due diligence, Acme plans to assume all open job contracts and would complete these jobs following Closing based upon the review of the cost to complete on all open projects.
- (ix) Tax Allocation. The Purchase Agreement will specify a manner of allocating the tax basis among the assets based upon fair market value.
- (x) Warranties and General Liability Claims. Sellers will remain responsible for all construction defects and general liability claims for all work performed and completed pre-Closing, except for claims of less than [\$ __,000] per claim, which will be covered by Acme. Except as provided in the preceding sentence, Acme will not be assuming warranties on completed contracts and warranties and costs related to jobs that are over [__]% complete at the time of Closing, absent a showing that any damage was caused directly by Acme's or Buyer's post-Closing conduct.
- (xi) Payroll. During integration, Acme will work with the Company as to whether it is best for the Company to continue payroll for a few weeks after Closing (at Acme's cost and reimbursement for post-Closing matters).
- (xii) IT and Accounting Systems. After Closing, Acme will require access to the Company's pre-Closing records. Sellers will have to maintain the IT and accounting systems for a mutually agreed upon period of time after Closing, so Acme can access records as needed[, at Acme's expense].
- (xiii) Representations. The Purchase Agreement will have representations and covenants covering the business, no liens, no undisclosed liabilities, its customers and vendors, compliance with laws, sufficiency of assets, permits, employment matters, taxes, environmental matters and the quality and margin of the backlog Acme is purchasing and assuming, in form and substance that are usual and customary for similar transactions.
- (xiv) Basket and Cap. Except for fraud claims, indemnity claims for representations and warranties will be subject to a [non-tipping][tipping] basket of \$[__],000, a cap on all claims for breaches of representations and warranties that are not fundamental or statutory representations shall not exceed [__]% of the Purchase Price (inclusive of the Earnout to the extent paid), and a cap for all claims related to

breaches of fundamental and statutory representations equal to the Purchase Price (inclusive of the Earnout to the extent paid). Notwithstanding the foregoing, Acme will be responsible for warranty claims of up to \$[____],000 per claim, without being applied to the non-tipping basket. For purposes of this Letter of Intent and the Purchase Agreement, (i) “fundamental representations” of the Company and the Sellers will refer only to representations relating to organization and good standing; power, authorization and validity; non-contravention with respect to organizational documents and applicable laws, title to property and assets; and no broker, and (ii) “statutory representations” of the Company and the Sellers will refer only to representations relating to environmental matters, taxes, employee benefits, and compliance with laws, and (iii) with respect to the Buyer and Acme, organization of the Buyer, authorization of the Purchase Agreement, and responsibility for payment of Buyer’s side brokers or finders. The survival terms for any indemnity claims for breaches of representations and warranties and covenants shall be as follows – fundamental representations and statutory representations will survive for the applicable statute of limitations plus [____] days, and all other representations will survive for [12] months after the Closing, covenants (including warranty obligations) will survive until performed. Sellers will indemnify Acme and Buyer for all excluded liabilities.

(xv) Arbitration. Any disputes relating to the Purchase Agreement will be governed by Illinois law and subject to a binding arbitration with JAMS in Fairfax, Virginia, where each party will submit a proposed award to the arbitrator and after a final hearing, the arbitrator will choose one award from the submitted award proposals, without modification.

6. Real Estate Leases. Buyer will execute [triple net] facility leases at the [historic][market] rental payments reflected in the financial results that are materially equal to the current market rates. The leases will include a [____]-year initial term with [one][two] [____]-year extensions.

7. Employment Agreements. At Closing, certain members of executive management, including Bob Doobie, Barb Doobie, Brad Doobie, and [key employees], will execute employment agreements, containing compensation and benefits mutually agreed upon by the parties. Executive management will be eligible to participate in Acme’s bonus plan, which shall be based on the performance of the acquired business. The employment agreements will also include Acme’s standard restrictive covenants, subject to applicable state law restrictions.

In addition to the restrictive covenants in the Purchase Agreement, the restrictive covenants in the executives’ employment agreements will include (i) a non-disparagement clause and [one][two] year confidentiality, non-disclosure, and non-solicitation restrictions following termination of employment for any reason, and (ii) a [one][two] year non-competition restriction relating to the commercial construction business in [____], following termination of employment for any reason. The

executive will participate in the standard Acme medical coverage and expense reimbursement policies for comparable executives at Acme.

Other management employees may also be required to execute individual employment agreements with Acme. The employment agreements would provide that such employees would stay in their current positions, at compensation levels similar to or better than what is reflected in the Company's financial statements. Such agreements would also contain restrictive covenants and severance appropriate for the level of the position.

8. Exclusivity Period. In consideration of the substantial expenditures of time, effort and expense to be undertaken by Acme in connection with the various investigations referred to in Paragraph 4 of this Letter of Intent, the Company and Sellers undertake and agree that: (a) the Company and Sellers will not, and neither will cause or allow their respective officers, directors, employees, representatives, owners or other affiliates to, enter into or conduct discussions with prospective merger partners or other prospective purchasers of the stock of the Company or the assets of the Company (regardless of the form of the transaction) between the date of this Letter of Intent and [] days thereafter (the "Exclusivity Period"); and (b) the Company will conduct its business in the ordinary course and will keep intact its business organization and the goodwill of its customers, suppliers and others having business relations with the Company, during the Exclusivity Period. We have performed a limited business due diligence review to date and have available resources to complete legal and accounting due diligence within the next several weeks.
9. Closing. Acme would anticipate being able to sign definitive agreements and close the Transaction within [] days of the execution of this Letter of Intent (subject to satisfactory completion of diligence and negotiation of Transaction documents), with a target of _____ or sooner.
10. Confidentiality Disclosure, Nonsolicitation.
 - (a) Without our prior written consent or as may reasonably be required in connection with any litigation between the parties arising out of or relating to this Letter of Intent, Company and Sellers will not, and will not permit any of their directors, officers, shareholders, employees, agents, or representatives to discuss this proposal, the terms hereof, or our involvement in the Transaction contemplated hereby with any party other than Buyer or Sellers' accountants, lawyers, brokers, investment bankers, and other advisors and representatives involved in the Transaction. Without the prior written consent of Company or as may reasonably be required in connection with any litigation between the parties arising out of or relating to this Letter of Intent, Acme will not, and will not permit Buyer or any of Acme's or Buyer's respective directors, officers, shareholders, employees, agents, or representatives to discuss this proposal, the terms hereof, or Company and Sellers involvement in the Transaction contemplated hereby with any party other than Company and Sellers or Acme's accountants, lawyers, and other advisors and representatives involved in the Transaction. Notwithstanding the foregoing, if a party is required by a valid legal order to make any disclosure that would otherwise be prohibited by this Paragraph, such party shall notify the other party of such requirements so that the other party may seek, at the other party's expense, a protective order or other remedy, and

the notifying party shall reasonably assist the other party therewith at the other party's expense. If the notifying party remains legally compelled to make such disclosure, it shall: (a) only disclose such information that it is legally required to disclose; and (b) use reasonable efforts to ensure that such information is afforded confidential treatment. This Letter of Intent and all information regarding the Company that is learned by or disclosed to Acme or its representatives hereunder is subject to the confidentiality agreement entered into by Acme and the Company, dated _____ (the "Confidentiality Agreement"), and any other confidentiality agreement between the Company and Acme entered into after the date hereof, which shall continue in full force and effect. Acme acknowledges that the Company is an intended third-party beneficiary of the Confidentiality Agreement, with the right to enforce the same as if it was a party thereto. Acme will be responsible for any breach of the Confidentiality Agreement by any person or entity to whom it has disclosed any Information (as defined in the Confidentiality Agreement) and agrees, at its sole expense, to take all reasonable measures to restrain such persons and entities from prohibited or unauthorized disclosure or use of the Information. Without limitation of the foregoing, Acme will take the same measures and afford the same degree of care with respect to the confidentiality of the Information as it does with respect to its own confidential information, but in no event less than a reasonable degree of care.

(b) Without the other party's prior written consent, neither party will (and will not cause its affiliates to) for a period of one year from the date of this letter (i) induce or attempt to induce any employee of the other party to leave the other party's employ, or in any way interfere with the relationship between the other party and any of its employees, or (ii) hire or cause to be hired any employee of the other party or any person who was an employee of the other party within six months prior to such proposed hiring. The foregoing will not prevent either party and its affiliates from hiring any person as a result of general solicitations of employment (through the use of media advertisements, professional search firms or otherwise) not targeted at the other party or any of its employees.

(c) The Company retains the right to determine, in its sole discretion, what Information, properties, and personnel it wishes to make available to Acme. Although the Company has endeavored to include in any information furnished to Acme information known to it which it believes to be relevant for the purpose of Acme's investigation, Acme acknowledges and agrees that neither the Company nor any of the Company's representatives is making any representation or warranty, expressed or implied, as to the accuracy or completeness of any Information furnished to Acme, and none of the Company or any of the its representatives, nor any of their respective officers, directors, employees, partners, representatives, stockholders, owners, affiliates, advisors or agents, will have any liability to Acme or any other person resulting from the use of any Information furnished to Acme by the Company or any of its representatives. Only those representations or warranties that are made to a counterparty in a definitive agreement relating to a Possible Transaction with the Company ("**Definitive Agreement**") when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in such Definitive Agreement, will have any legal effect. Neither the Company nor its representatives shall be under any duty or obligation to update any Information. Neither the execution and delivery of this letter and the Confidentiality Agreement nor disclosure of any Information to Acme or its representatives shall be deemed by implication or otherwise to vest in Acme or its representatives any

rights in or to such Information, other than the right to use such Information solely for the purpose of evaluating the Transaction.

(d) Acme acknowledges that the covenants contained in the Confidentiality Agreement and Sections 4(b) and 10 of this Letter of Intent are fundamental for the protection of Company's legitimate business and proprietary interests and understands and agrees that money damages would not be a sufficient remedy for any breach of the Confidentiality Agreement or such Sections by Acme or its representatives. Accordingly, in the event of any breach or attempted or threatened breach of the Confidentiality Agreement or such Sections, the Company will be entitled to seek specific performance and injunctive relief or other equitable remedy for any such violation without any showing of irreparable harm or damage, and Acme hereby waives, and shall cause its representatives to waive, any requirement for the securing or posting of any bond or other security in connection with any such remedy. Such remedies shall not be deemed to be the exclusive remedies for a breach of the Confidentiality Agreement or such Sections by Acme or its representatives but shall be in addition to all other remedies available at law or equity.

Sellers acknowledge that the covenants contained in Section 10 of this Letter of Intent are fundamental for the protection of Acme's legitimate business and proprietary interests and understand and agree that money damages would not be a sufficient remedy for any breach of Section 10 by any Seller or its representatives. Accordingly, in the event of any breach or attempted or threatened breach of Section 10, Acme will be entitled to seek specific performance and injunctive relief or other equitable remedy for any such violation without any showing of irreparable harm or damage, and each Seller hereby waives, and shall cause its representatives to waive, any requirement for the securing or posting of any bond or other security in connection with any such remedy. Such remedies shall not be deemed to be the exclusive remedies for a breach of Section 10 by a Seller or its representatives but shall be in addition to all other remedies available at law or equity.

11. Fees and Expenses. Whether or not the Transaction contemplated by this Letter of Intent is consummated, the parties shall each pay their own fees and expenses in connection with these negotiations. If the Transaction is consummated, Sellers shall pay all fees and expenses incurred by it and the Company, including in all cases the fees of its and the Company's counsel, brokers, attorneys, accountants, investment bankers and other experts and advisors incident to the negotiation and preparation of this Letter of Intent if any, and the consummation of the Transaction as contemplated by this Letter of Intent. Acme will pay all fees and expenses incurred by it and Buyer, including in all cases the fees of its and Buyer's counsel, brokers, attorneys, accountants, investment bankers and other experts and advisors incident to the negotiation and preparation of this Letter of Intent if any, and the consummation of the Transaction as contemplated by this Letter of Intent. The Buyer will pay the escrow fee arising out of the Transaction.
12. Non-Binding Agreement. This letter is intended to be, and will be construed only as, a non-binding Letter of Intent and is not and will not be a binding agreement. The respective rights and obligations of Acme, Buyer, Company, and Sellers remain to be defined in the definitive Purchase Agreement, if and when the Purchase Agreement is executed. However, upon execution and delivery of this Letter of Intent by the parties, the obligations of the Company and Sellers under Paragraphs 4, 8, 10, 11, 12, 13 and 14 herein will be

binding upon the Company and Sellers, and the obligations of Acme under Paragraphs 4(b), 4(c), 10, 11, 12, 13 and 14 herein will be binding upon Acme. For purposes of clarity, the parties acknowledge that any binding agreement between them relating to the Transaction must be in writing and that no oral discussions or course of conduct following the execution of this Letter of Intent shall be construed in any manner to constitute a binding obligation on the part of any of them. This Letter of Intent will automatically terminate and be of no further force and effect upon the earliest of (i) execution of the Purchase Agreement by Buyer and Sellers, (ii) mutual written agreement of Acme, Buyer and Sellers, and (iii) 9:00 a.m. _____ time [] days from the date hereof, unless extended by written mutual agreement of the parties. Notwithstanding anything in the previous sentence, Paragraphs 10, 11, 12, 13 and 14 herein shall survive the termination of this Letter. This Letter of Intent and the Confidentiality Agreement may be amended or modified only by a writing executed by all the parties hereto. No provision of this Letter of Intent or the Confidentiality Agreement may be waived except by a writing executed by the party to be charged with such waiver. No failure or delay by the Company in exercising any right, power, or privilege hereunder or under the Confidentiality Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power, or privilege hereunder or under the Confidentiality Agreement.

13. Counterparts; Governing Law. This Letter of Intent may be executed in two or more partially or fully executed counterparts and delivered via facsimile, email in .pdf, or other similar electronic transmission (including with an electronic signature complying with the U.S. ESIGN Act of 2000 (e.g., www.docuSign.com)), each of which shall be deemed an original and will bind the signatory, but all of which together shall constitute but one and the same agreement, such agreement becoming effective when one or more counterparts have been signed by each of the parties and delivered to all other parties, it being understood that all parties need not sign the same counterpart. This Letter of Intent will be construed in accordance with the internal laws of the State of _____, without regard to its conflicts of law principles.
14. Notices. All notices and other communications under this Agreement will be in writing and will be deemed given (a) when delivered personally by hand (with written confirmation of receipt), (b) when sent by email of a .pdf document (with written confirmation of transmission), or (c) one (1) business day following the day sent by overnight courier (with written confirmation of receipt), in each case at the addresses and email addresses set forth on the signature page hereto (or to such other address or email address as a party may have specified by notice given to the other parties pursuant to this provision). All such notices or other communications shall be deemed given when received or delivery is refused.

[Signature page follows]

If the foregoing correctly sets forth your intent, kindly signify by executing and returning a copy of this letter to us. We look forward to your prompt response.

Sincerely,
ACME CORP.

By: _____
_____, President & CEO

SAMPLE

Accepted as to Paragraphs 1, 2, 3, 5, 6, 7 and 9, and
Agreed as to Paragraphs 4, 8, 10, 11, 12, 13, and 14:

Dated: _____, 20__

COMPANY:

Doobie Brothers Construction Inc.

By: _____
Robert Doobie, President & CEO

SHAREHOLDERS:

Robert Doobie

Barbara Doobie

SAMPLE