

204976

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March 14, 2002

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

ENTERED
Office of the Secretary

MAR 15 2002

Part of
Public Record

Re: Finance Docket No. 34186, David W. Wulfson, Gary E. Wulfson, Lisa W. Cota, Richard C. Szuch, and Peter A. Szuch -- Control of New York and Ogdensburg Railway Company, Inc.

Dear Secretary Williams:

Enclosed for filing are a signed original and ten copies of Verified Notice of Exemption in the above-captioned case. Also enclosed is a check in the amount of \$1,000 as filing fee for the same.

Respectfully submitted,

Andrew P. Goldstein

Andrew P. Goldstein
Attorney for Applicants

FEE RECEIVED
0101905004
MAR 14 2002

Enclosures

APG/rmm

FILED
MAR 14 2002
SURFACE
TRANSPORTATION BOARD

SURFACE
TRANSPORTATION BOARD



204976

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34186

DAVID W. WULFSON, GARY E. WULFSON, LISA W. COTA,
RICHARD C. SZUCH, AND PETER A. SZUCH --
CONTROL OF NEW YORK AND OGDENSBURG RAILWAY
COMPANY, INC.

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Office of the Secretary

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VERIFIED NOTICE OF EXEMPTION

FILED

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SURFACE
TRANSPORTATION BOARD



Andrew P. Goldstein
McCarthy, Sweeney & Harkaway, P.C.
Suite 600
2175 K Street, N.W.
Washington, DC 20037
(202) 393-5710

Attorney for Applicants

Dated: March 14, 2002

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MAR 14 2002

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34186

**DAVID W. WULFSON, GARY E. WULFSON, LISA W. COTA,
RICHARD C. SZUCH, AND PETER A. SZUCH --
CONTROL OF NEW YORK AND OGDENSBURG RAILWAY
COMPANY, INC.**

VERIFIED NOTICE OF EXEMPTION

David W. Wulfson, Gary E. Wulfson, Lisa W. Cota, Richard C. Szuch, and Peter A. Szuch (collectively "Applicants"), individuals who have been authorized to directly or indirectly control the Vermont Railway, Inc. ("VTR"), Clarendon & Pittsford Railroad Company ("CLP"), Green Mountain Railroad Corporation ("GMRC"), and Washington County Railroad Company ("WACR"),¹ all Class III carriers, file this Notice of exemption pursuant to 49 C.F.R. § 1180.2(d) and 1180.4(g) to control New York and Ogdensburg Railway Company, Inc. ("NYOG"), a non-contiguous Class III railroad, through acquisition of the majority of its common stock.

¹ See STB Finance Docket No. 33607, David W. Wulfson, Gary E. Wulfson, Lisa W. Cota, Richard C. Szuch, and Peter A. Szuch -- Control Exemption -- Clarendon & Pittsford Railroad Company, Green Mountain Railroad Corporation, and Vermont Railway, Inc. (served August 20, 1998), and Finance Docket No. 33816, David W. Wulfson, et al. -- Control of Washington County Railroad Company, Verified Notice of Exemption dated November 4, 1999. Control of GMRC is exercised through the stock ownership by applicants of NLR Company ("NLR"), a non-carrier that controls GMRC.

Summary of the Proposed Transaction

The Applicants are David W. Wulfson, Gary E. Wulfson, Lisa W. Cota, Richard C. Szuch and Peter A. Szuch, all members of the same family. Their business address is One Railway Lane, Burlington, VT 05401, and their business telephone number is (802) 658-2550. Counsel to whom questions regarding the transaction can be addressed is:

Andrew P. Goldstein
McCarthy, Sweeney & Harkaway, P.C.
Suite 600
2175 K Street, N.W.
Washington, DC 20037
(202) 393-5710

NYOG conducts rail operations over a line of railroad between (a) Norwood, NY, and Norfolk, NY, a distance of 4.8 miles, and (b) Norwood and Ogdensburg, NY, a distance of 25.2 miles. NYOG connects at Norwood with CSX Transportation and has no other railroad connection. At Ogdensburg, NYOG serves port facilities on the St. Lawrence Seaway. This Notice seeks an exemption so that the Applicants, who control four other Class III railroads directly or indirectly, can also continue in control of NYOG, likewise expected to be a Class III railroad. Applicants plan on exercising their control of NYOG on or after March 22, 2002.

Purpose Sought to be Accomplished

Control of NYOG by the Applicants will place NYOG under common control with four other Class III railroads, and offer economies of managerial expertise that would not otherwise be available to NYOG.

List of the states in which any part of the property of each applicant carrier is situated. NYOG is situated entirely in New York. VTR operates in Vermont and New

York, as does CLP. GMRC operates in Vermont and New Hampshire. WACR operates entirely in Vermont.

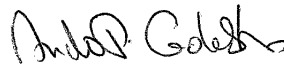
Map. See Exhibit No. 1 hereto.

Agreement. There is a draft Agreement attached as Exhibit No. 2.

Because control of only Class III carriers is involved, labor protective conditions are inappropriate. See 49 U.S.C. 11326(c).

The transaction is not subject to environmental reporting requirements under 49 C.F.R. § 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is not subject to the historic requirements under 49 C.F.R. § 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

Respectfully submitted,



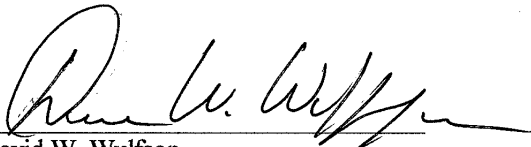
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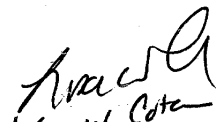
Attorney for Applicants

VERIFICATION

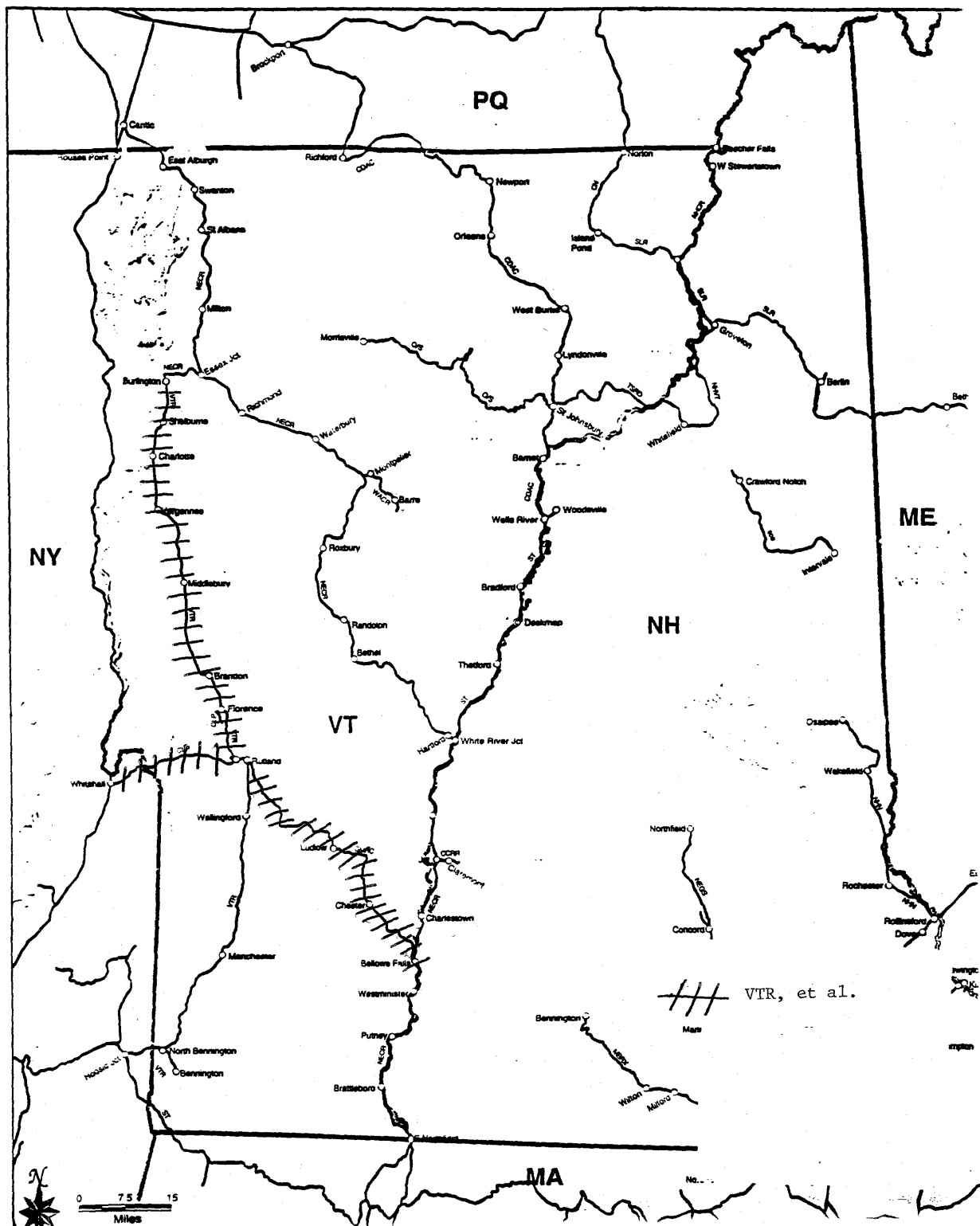
I, David W. Wulfson, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Notice.

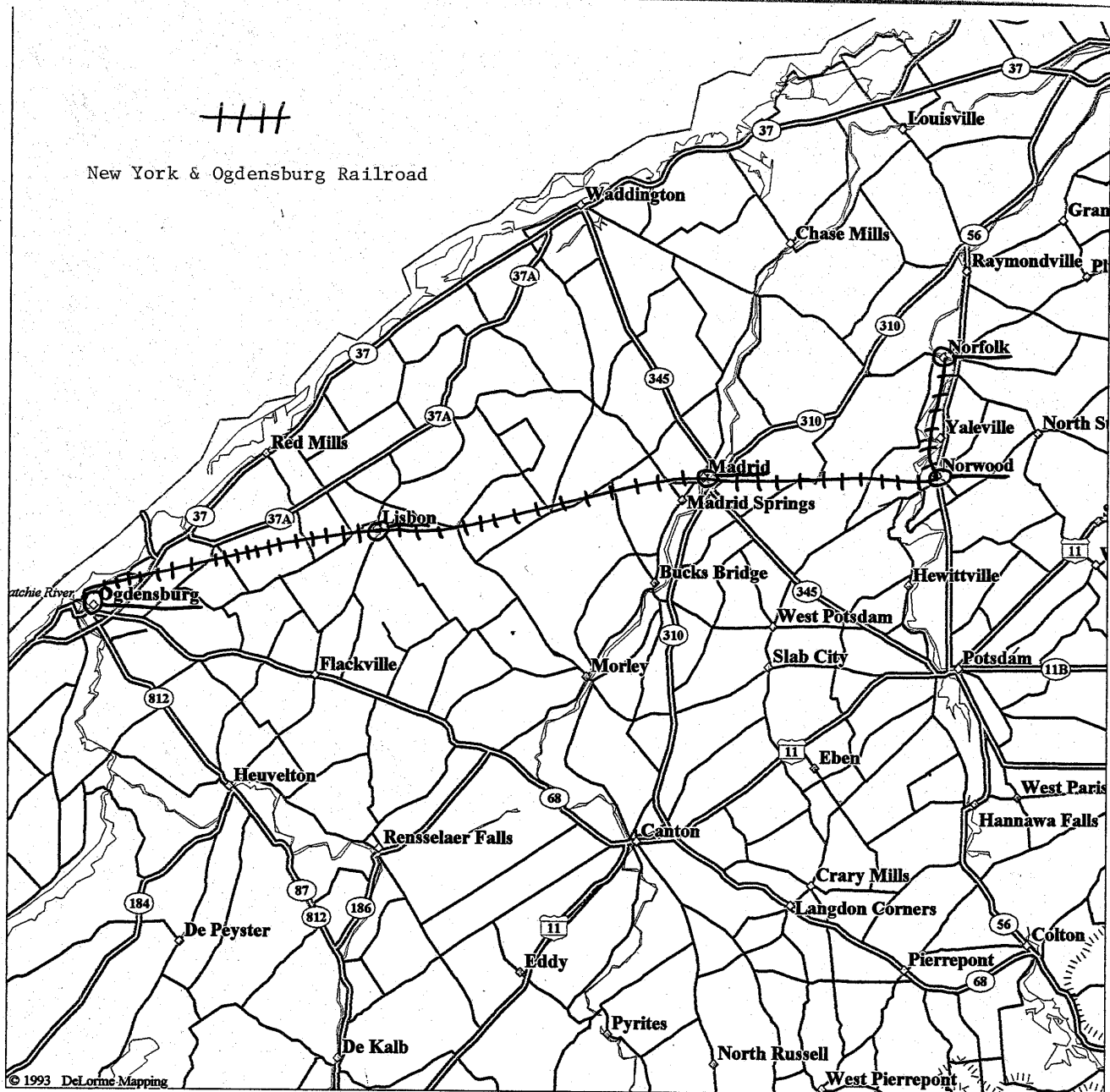
Executed on this 11th day of March, 2002.


David W. Wulfson


Lisa W. Cote
Notary expires 2/10/03

44 NEW HAMPSHIRE • VERMONT





LEGEND

- State Route
- Town, Small City
- US Highway
- County Boundary
- Population Center
- Major Street/Road
- State Route
- US Highway

- Airfield
- Open Water

Scale 1:250,000 (at center)

5 Miles

5 KM

Mag 11.00

Wed Feb 27 07:55:41 2002

DRAFT #
3/7/02
2:34 PM

STOCK PURCHASE AGREEMENT

THIS AGREEMENT, dated as of the ____ day of _____, 2002, is by and between Eyal Shapira ("Seller") and each of David W. Wulfson, Lisa W. Cota, Gary E. Wulfson, Richard C. Szuch and Peter A. Szuch ("Buyers").

The parties, intending to be bound, agree as follows:

1. Sale and Purchase of Stock. Seller agrees to sell and Buyers agree to buy 175 shares of common stock in The New York and Ogdensburg Railway Company, Inc. (the "Company") in accordance with the terms of this Agreement. The number of shares of stock to be sold by Seller and purchased by each Buyer is as follows:

David W. Wulfson	43.75
Lisa W. Cota	43.75
Gary E. Wulfson	43.75
Richard C. Szuch	21.875
Peter A. Szuch	21.875

2. Purchase Price and Payment. The aggregate purchase price to be paid by Buyers to Seller is _____ or _____ per share. Such amount, less the total deposit of _____ made pursuant to the letter of intent dated December 12, 2001, shall be payable in cash at closing.

3. Seller's Representations and Warranties. To induce Buyers to purchase his stock, Seller represents and warrants the following:

(a) Corporation duly organized. The Company is organized under the laws of the State of New York and is authorized to engage in all businesses in which it is currently engaged.

(b) Corporation in good standing. The Company is in good standing. All taxes currently due, including income and franchise taxes, have been paid. There are no pending actions or proceedings to limit or impair the Company's power to engage in business or to dissolve the Company.

(c) Stock properly issued. Seller represents that the shares owned by him constitute 87.5% of the issued and outstanding common stock of the Company, and that to the best of the Seller's knowledge, the balance of the issued and outstanding stock in the Company is owned by Douglas Golden. There are no outstanding warrants or options to purchase additional shares of stock in the Company, the Company has not issued debt instruments that are convertible into stock, and the Company has not issued any preferred stock. The Seller's shares have been properly issued and are fully paid and nonassessable.

(d) Shares free of liens or encumbrances. Seller's shares are free of any liens, encumbrances, or agreements of any kind, including stockholders' agreements or voting trusts.

(e) Company's assets. **Exhibit A** attached to this Agreement lists all material assets owned by the Company as of the date of this Agreement. Unless otherwise stated, the Company is the sole owner of each asset and none of the assets are subject to any liens or encumbrances except for those listed.

(f) Outstanding contracts, etc. **Exhibit B** attached to this Agreement lists all understandings, open orders, leases, permits, franchise agreements, written contracts and synopses of oral agreements pertaining to the Company. Attached to **Exhibit B** are copies of all such documents. The Company is not in default under or in violation of any of the agreements listed in **Exhibit B**, which violation may result in a material adverse effect on the business or condition, financial or otherwise, of the Company. **Exhibit C** attached to this Agreement lists all material liabilities of the Company not listed in **Exhibit B**.

(g) Financial statements etc. **Exhibit D** attached to this Agreement includes copies of the Company's financial statements for the period ending _____, and monthly financial statements generated prior to the date of this Agreement. Seller warrants that such financial statements are true and correct in all material respects and fairly present the financial condition of the Company as of the dates of such statements.

(h) No suits pending or imminent. Except as set forth below, there are no actions at law or equity or administrative proceedings pending or threatened against the Company or in which the Company is a plaintiff, defendant, petitioner, or respondent. **[Describe pending litigation and escrow of reserve.]**

(i) No pension plans, etc. Seller is not a party to any pension, profit-sharing, retirement, deferred compensation, or bonus or stock purchase plan relating to the Company's employees or any other personnel associated with the Company which, as it relates to the Company, shall survive the closing and impose any obligations on the Buyers. There are no disputes or controversies or claims for monies owed by Seller pending or, to Seller's knowledge, threatened with or by any current or former employees of the Company that could materially affect the Company.

(j) No breach of statute or regulation. The Company is not in violation of any applicable statute, law, ordinance, decree, order, rule or regulation of any governmental body, including, but not limited to, any material violation of any federal, state or local environmental law, and to the best of Seller's knowledge, the Company has at all times complied with such environmental laws.

By transferring the stock at closing, Seller shall be deemed to have reaffirmed the truth of each of the foregoing representations and warranties as of the date of closing. The foregoing representations and warranties shall survive the closing.

4. Conditions Precedent to Buyers' Obligation to Close. The obligations of Buyers under this Agreement shall be subject to the fulfillment in all material respects, on or prior to the closing date, of each of the following conditions:

(a) Representations and warranties true. Seller's representations and warranties shall be true on the date hereof and on the closing date.

(b) No material adverse change. Following the date of this Agreement, neither the business nor the property of the Company, taken as a whole, shall have been affected adversely to a material degree.

(c) Compliance with Agreement. Seller shall have complied in all material respects with this Agreement.

(d) Negotiation of Port Authority Agreement. Buyers shall have negotiated a satisfactory amendment to the Agreement between the Company and The Ogdensburg Bridge and Port Authority dated September 3, 1998. Buyers undertake to negotiate such agreement diligently and in good faith.

(e) Negotiation of Agreement with Douglas Golden. Buyers shall have negotiated a satisfactory agreement relating to Douglas Golden's ongoing services to the Company. Buyers undertake to negotiate such agreement diligently and in good faith.

5. Conduct of Business Pending Closing.

(a) Ordinary course. Seller agrees to cause the Company to be operated only in the ordinary course and to use his best efforts to preserve intact the assets and good will of the Company.

(b) No new contracts before closing. The Company will not enter into any new contracts or agreements nor purchase or acquire any new material assets between the date of this Agreement and the closing without first obtaining Buyers' written consent.

(c) No dividends. From the date of this Agreement to the closing, the Board of Directors of the Company will declare no dividends. Seller represents that there are no dividends unpaid that were declared in an earlier period.

(d) No salary increases; no new employees. From the date of this Agreement to the closing, the Company will not increase any employee's salary, pay any bonus or hire any new employee without first obtaining Buyers' written consent. No salaries have been increased or bonuses paid subsequent to [date of financial statements].

(e) Cash and accounts. The Company shall, at and following the closing, retain its cash, accounts receivable and accounts payable.

(f) Management. Seller acknowledges that prior to closing, Buyers' employees and advisors may make observations or suggestions regarding management of the Company to personnel of the Company. Nonetheless, management shall remain the sole province of the directors and officers of the Company, and Seller holds Buyers harmless from any actions assertedly taken in reliance upon such observations or suggestions.

6. Documents to be Delivered to Buyers at Closing. At the closing, Seller shall deliver to Buyers the following:

(a) Stock certificates. Certificates representing all of the shares of the Company capital stock to be sold, indorsed for transfer in blank.

(b) Corporate books and records. The Company's books of account and business records, minute book, stock transfer book blank stock certificates, and seal.

(c) Resignations. Seller's resignation as an officer and director of the Company.

(d) Commissioned Sales Agent Agreement. Seller agrees to execute at closing a Commissioned Sales Agent Agreement with the Company in the form attached to this Agreement as **Exhibit E**.

7. Buyers' Default Damages. If Seller shall fail to fulfill the Seller's agreements herein or if the condition precedent to Buyers' obligation to close are not met, all payments made hereunder by Buyers shall be returned to Buyers on demand. Return of such payment shall in no way limit Buyers' right to seek damages or to pursue any other remedies available as a result of Seller's default.

8. Seller's Default Damages. If Buyers shall fail to fulfill the Buyers' agreements herein, all deposits made hereunder by Buyers shall be retained by Seller. Retention of such deposits shall in no way limit Seller's right to seek damages or to pursue any other remedies available as a result of Buyers' default.

9. Attorney's Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit, along with any other expenses associated with such action.

10. Expenses. Subject to the immediately preceding paragraph, each party shall bear at its own expenses in this transaction including legal and accounting fees and the fees of any financial advisor. Each party represents that it is aware of no broker entitled to a commission with respect to the transaction described in this Agreement.

11. Time and Place of Closing. The closing shall take place at Buyers' offices in Burlington, Vermont on March 22, 2002 (or such later time as the conditions precedent to closing are met) or such other time or place as the parties agree upon in writing. If the closing has not taken place by May 1, 2002, this Agreement shall terminate and all payments made hereunder by Buyers shall be returned to Buyers.

12. Miscellaneous. Buyers' rights under this Agreement are freely assignable. This Agreement is executed in duplicate, is to be construed as a Vermont contract, is to take effect as a sealed instrument, and is binding upon and inures to the benefit of the parties hereto and their heirs, successors and permitted assigns. This Agreement may be cancelled, modified or

amended only by a written instrument executed by each party hereto. This Agreement sets forth the entire contract between the parties with respect to the subject matter hereof. This Agreement may be executed in any number of counterparts, but it shall not become effective until it has been executed by all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above first written.

Eyal Shapira

David W. Wulfson

Lisa W. Cota

Gary E. Wulfson

Richard C. Szuch

Peter A. Szuch

Index to Exhibits

Exhibit A	Assets of Company (Seller to prepare)
Exhibit B	Agreements pertaining to the Company (Seller to prepare)
Exhibit C	Liabilities of the Company (Seller to prepare)
Exhibit D	Company's Financial Statements (Seller to supply)
Exhibit E	Form of Commissioned Sales Agent Agreement (Buyers to prepare)

BTV/210079.2