

## **Exhibit A**

### **ASSET PURCHASE AGREEMENT**



**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**DSI HOLDINGS, INC.,**

**AND**

**EACH SUBSIDIARY OF DSI HOLDINGS, INC.  
SET FORTH ON THE SIGNATURE PAGES HERETO<sup>1</sup>**

**AND**

**ABLECO FINANCE LLC**

**(as Agent on behalf of the Lenders under the Loan Agreement  
and not in its individual capacity)**

**Dated as of June 24, 2011**

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<sup>1</sup> Deb Shops, Inc., Deb Shops, Inc., Joy Shops, Inc., Joy Shops, Inc., D.B. Interest, Inc., D.B. Know, Inc., D.B. Royalty, Inc., Deb E Commerce, Inc., Tops'n Bottoms of New York, Inc., Deb Shops of Alabama, Inc., Deb Shops of Arizona, Inc., Deb of Arkansas, Inc., Deb of California, Inc., Deb of Colorado, Inc., Deb of Connecticut, Inc., Deb of Delaware, Inc., Deb Fashions of Florida, Inc., Deb Shops of Georgia, Inc., Deb Shops of Idaho, Inc., Deb of Illinois, Inc., Deb of Indiana, Inc., Deb Shops of Iowa, Inc., Deb of Kansas, Inc., Deb of Kentucky, Inc., Deb Shops of Louisiana, Inc., Deb of Maine, Inc., Deb Shops of Maryland, Inc., Deb of Massachusetts, Inc., Deb of Michigan, Inc., Deb Shops of Minnesota, Inc., Deb Shops of Missouri, Inc., Deb of Montana, Inc., Deb of Nebraska, Inc., Deb of New Hampshire, Inc., Deb of New Jersey, Inc., Deb of New Mexico, Inc., Deb of New York, Inc., Deb Shops of North Carolina, Inc., Deb of North Dakota, Inc., Deb Shops of Ohio, Inc., Deb Shops of Oklahoma, Inc., Deb of Oregon, Inc., Deb of Pennsylvania, Inc., Deb of Rhode Island, Inc., Deb of South Carolina, Inc., Deb of South Dakota, Inc., Deb of Tennessee, Inc., Deb of Texas, Inc., Deb of Utah, Inc., Deb of Vermont, Inc., Deb of Virginia, Inc., Deb of Washington, Inc., Deb of West Virginia, Inc., Deb of Wisconsin, Inc. and Deb of Wyoming, Inc.



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## **EXHIBITS**

<b>Exhibit A</b>	<b>Bid Procedures Order</b>
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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of June 24, 2011 (this "Agreement"), is entered into by and among DSI Holdings, Inc. ("Holdings"), Deb Shops, Inc. (a Pennsylvania corporation), Deb Shops, Inc. (a New Jersey corporation), Joy Shops, Inc. (a Delaware corporation), Joy Shops, Inc. (a Pennsylvania corporation), D.B. Interest, Inc., D.B. Know, Inc., D.B. Royalty, Inc., Deb E Commerce, Inc., Tops'n Bottoms of New York, Inc., Deb Shops of Alabama, Inc., Deb Shops of Arizona, Inc., Deb of Arkansas, Inc., Deb of California, Inc., Deb of Colorado, Inc., Deb of Connecticut, Inc., Deb of Delaware, Inc., Deb Fashions of Florida, Inc., Deb Shops of Georgia, Inc., Deb Shops of Idaho, Inc., Deb of Illinois, Inc., Deb of Indiana, Inc., Deb Shops of Iowa, Inc., Deb of Kansas, Inc., Deb of Kentucky, Inc., Deb Shops of Louisiana, Inc., Deb of Maine, Inc., Deb Shops of Maryland, Inc., Deb of Massachusetts, Inc., Deb of Michigan, Inc., Deb Shops of Minnesota, Inc., Deb Shops of Missouri, Inc., Deb of Montana, Inc., Deb of Nebraska, Inc., Deb of New Hampshire, Inc., Deb of New Jersey, Inc., Deb of New Mexico, Inc., Deb of New York, Inc., Deb Shops of North Carolina, Inc., Deb of North Dakota, Inc., Deb Shops of Ohio, Inc., Deb Shops of Oklahoma, Inc., Deb of Oregon, Inc., Deb of Pennsylvania, Inc., Deb of Rhode Island, Inc., Deb of South Carolina, Inc., Deb of South Dakota, Inc., Deb of Tennessee, Inc., Deb of Texas, Inc., Deb of Utah, Inc., Deb of Vermont, Inc., Deb of Virginia, Inc., Deb of Washington, Inc., Deb of West Virginia, Inc., Deb of Wisconsin, Inc. and Deb of Wyoming, Inc. (collectively, "Sellers"), and Ableco Finance LLC, as Agent on behalf of the Lenders under the Loan Agreement and not in its individual capacity ("Buyer").

### WITNESSETH:

WHEREAS, Sellers, the Lenders and Agent are parties to the Loan Agreement;

WHEREAS, promptly after the date hereof, Sellers shall commence cases (the "Bankruptcy Cases") under Chapter 11 of Title 11 of the United States Code (as it may be amended from time to time as applicable to the Bankruptcy Cases, the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") (the date of such commencement being referred to as the "Petition Date");

WHEREAS, Sellers shall retain possession of their assets and be authorized under the Bankruptcy Code to continue the operation of their businesses as debtors-in-possession;

WHEREAS, Sellers desire to sell, transfer and assign to Buyer, and Buyer desires to acquire and assume from Sellers, pursuant to Sections 363 and 365 of the Bankruptcy Code, the Purchased Assets and Assumed Liabilities as more specifically provided herein; and

WHEREAS, certain terms used in this Agreement are defined in Section 1.1.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the Parties hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.1 Certain Definitions. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

“Ableco” means Ableco Finance LLC.

“Accounts Receivable” means all accounts, accounts receivable, contract rights to payment, notes, and notes receivable of Sellers related to the Business.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“Agent” means Ableco as First Lien Administrative Agent on behalf of the Lenders under the Loan Agreement (and not in its individual capacity).

“Agreement Regarding Credit Bid” shall have the meaning set forth in Section 3.1.

“Alternative Proposal” has the meaning set forth in Section 7.2.

“Assets” means collectively, the Purchased Assets and the Excluded Assets.

“Assumed Liabilities” shall have the meaning set forth in Section 2.3.

“Auction” shall have the meaning set forth in the Bid Procedures Order.

“Bankruptcy Cases” shall have the meaning set forth in the Recitals.

“Bankruptcy Code” shall have the meaning set forth in the Recitals.

“Bankruptcy Court” shall have the meaning set forth in the Recitals.

“Benefit Plan” shall have the meaning set forth in Section 5.13(a).

“Bid Procedures Order” means an Order of the Bankruptcy Court, in substantially the form attached hereto as Exhibit A, approving the bid procedures with respect to the Auction, the Expense Reimbursement and the Initial Minimum Overbid, and providing that if no qualified Competing Bid is received by the bid deadline established in accordance with the Auction, Buyer’s bid shall be determined to be the winning bid for the Purchased Assets.

“Business” means the business and operations of Sellers relating to the retail sale of clothing and accessories.

"Business Day" means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

"Buyer" shall have the meaning set forth in the Preamble.

"Buyer Documents" shall have the meaning set forth in Section 6.2.

"Cash Payment" shall have the meaning set forth in Section 3.1.

"CBA" means that certain Agreement between Deb Shops, Inc. and Pace International Union, Philadelphia Local 2-286, entered into as of December 29, 2000, as amended through the date hereof.

"Closing" shall have the meaning set forth in Section 4.1.

"Closing Date" shall have the meaning set forth in Section 4.1.

"COBRA" shall have the meaning set forth in Section 5.13(a).

"Code" means the Internal Revenue Code of 1986, as amended.

"Competing Bid" shall have the meaning set forth in Section 7.2(a).

"Contract" means any contract, indenture, note, bond, lease, Real Property Lease, Personal Property Lease or other agreement (including, without limitation, employment and consulting agreements) to which any Seller is a party, relating to the Business, as set forth on Schedule 1.1(a).

"Critical Trade Vendors" shall mean those entities set forth on Schedule 2.1(q) (such schedule to be updated by Buyer in its sole and absolute discretion from time to time until one (1) Business Day prior to the Closing Date; provided, however, that no such update shall result in an adjustment of the Purchase Price).

"Critical Vendor Motion" means that certain motion in substantially the form attached as Exhibit G to the Agreement Regarding Credit Bid.

"Cure Amounts" means any and all amounts required, as a condition to assumption or assignment, to be paid to a non-debtor party to a Purchased Contract pursuant to Section 365(b) of the Bankruptcy Code.

"DIP Financing" means that certain Financing Agreement by and among Sellers, the lenders party thereto, and Ableco, L.L.C. as Collateral Agent and Administrative Agent.

"DIP Order" means any Order of the Bankruptcy Court relating to the DIP Financing.

"Director/Officer Taxes" shall have the meaning set forth in Section 11.4(a).

"Directors/Officers" shall have the meaning set forth in Section 11.4(a).

**"Documents"** means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials related to the Business and the Purchased Assets, in each case whether or not in electronic form.

**"Employee Claims"** means any claim, demand, action, cause of action, damage, loss, cost, Liability or expense, including legal costs, made or brought by any Employee, including, but not limited to, any Employment Claim made pursuant to any applicable Laws relating to employment standards, occupational health and safety, labor relations, workers compensation, pay equity, employment equity, the Americans with Disabilities Act, the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Family and Medical Leave Act or the Fair Labor Standards Act or any other federal, state or local, statutory or decisional Law regarding employment discrimination.

**"Employee Obligations"** means all wages, bonuses, vacation pay, sick time, pension payments, overtime pay, change of control payments, severance pay and any other termination or severance obligations and any other compensation or obligation which may be due by statute, contract or Law relating to the employment in respect of the Business of the Employees.

**"Employees"** means all individuals, as of the date hereof, whether or not actively at work as of the date hereof, who are employed by Sellers in connection with the Business, together with individuals who are hired in respect of the Business after the date hereof and prior to the Closing.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

**"Excluded Assets"** shall have the meaning set forth in Section 2.2.

**"Excluded Contracts"** means all Contracts other than Purchased Contracts.

**"Excluded Liabilities"** shall have the meaning set forth in Section 2.3.

**"Expense Reimbursement"** shall have the meaning set forth in Section 7.1.

**"Factor/Vendor"** means any of Rosenthal & Rosenthal, Inc., The CIT Group/Commercial Services, Inc., Milberg Factors, Inc., and Turn On Products, Inc.

**"Final Order"** means an Order, judgment, or other decree of the Bankruptcy Court that has not been vacated, reversed, modified, amended, or stayed, and for which the time to further appeal or seek review or rehearing has expired with no appeal, review or rehearing having been filed or sought.

**"Furniture and Equipment"** means all furniture, fixtures, furnishings, equipment, vehicles, leasehold improvements, and other tangible personal property owned or leased by

Sellers in the conduct of the Business, including all artwork, desks, chairs, tables, computer and computer-related hardware (including, computers, file servers, facsimile servers, scanners, printers, and networks), copiers, telephone lines and numbers, telecopy machines and other telecommunication equipment, cubicles, cash registers, point-of-sale equipment, warehouse equipment, and miscellaneous office furnishings and supplies.

**"GAAP"** means generally accepted accounting principles in the United States.

**"Governmental Body"** means any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

**"Holdings"** shall have the meaning set forth in the Preamble.

**"Indebtedness"** of any Person means, without duplication, (i) the principal and interest of, and premium (if any) in respect of, (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued liabilities arising in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of other Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

**"Initial Minimum Overbid"** means Two Million Dollars (\$2,000,000).

**"Intellectual Property"** means all worldwide intellectual property rights used or useful by Sellers in connection with the Purchased Assets, including all (i) patents, patent applications and inventions, (ii) trademarks, service marks, trade names and trade dress, which expressly includes the goodwill and any common law rights associated with the foregoing, (iii) domain names, (iv) copyrights, including copyrights in computer software, (v) confidential and proprietary information, including trade secrets and know-how ("**Trade Secrets**"), (vi) licenses relating to any of the foregoing and (vi) registrations and applications for registration of the foregoing.

**"Inventory"** means all of Sellers' now owned or hereafter acquired inventory and goods, wherever located, relating to the Business including, without limitation, all inventory and goods that (a) are leased by any Seller as lessor, (b) are held by such Seller for sale or lease or to be furnished under a Contract of service, (c) are furnished by any Seller under a Contract of service, or (d) consist of raw materials, work in process, finished goods or material used or consumed in connection with the Business.



**"Knowledge"** means, with respect to Sellers, as to a particular matter, the actual knowledge as of the date of inquiry or verification, and without independent verification or investigation, of Mark Hoffman (Chief Executive Officer of Holdings) and Barry Susson (Chief Financial Officer of Holdings).

**"Law"** means any federal, state, local or foreign law, statute, code, ordinance, rule or regulation or Order.

**"Legal Proceeding"** means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

**"Lenders"** means the "Lenders," as such term is defined in the Loan Agreement.

**"Liability"** means any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due), and including all costs and expenses relating thereto.

**"Lien"** means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, or transfer restriction under any shareholder or similar agreement or encumbrance; provided, however, that Assumed Liabilities which pertain to particular Purchased Assets shall not constitute Liens.

**"Loan Agreement"** means that certain Amended and Restated First Lien Credit Agreement, dated as of October 23, 2007, among Holdings and its subsidiaries party thereto, the Lenders party thereto and Agent, as amended, modified or supplemented from time to time.

**"Material Adverse Effect"** means (i) a material adverse effect on the business, assets, results of operations or financial condition of Sellers (taken as a whole), the Business or the Purchased Assets (except for the Bankruptcy Cases), or (ii) a material adverse effect on the ability of Sellers to consummate the transactions contemplated by this Agreement or perform their obligations under this Agreement, other than (a) the effect of any change resulting from any action taken by Buyer or its Affiliates with respect to the transactions contemplated hereby or with respect to Sellers, or any effect resulting from the filing of the Bankruptcy Cases; (b) a generally applicable change in applicable Law or GAAP or interpretation thereof; (c) any public announcement of this Agreement; (d) any actions or inactions by Sellers in accordance with this Agreement; (e) changes in conditions generally affecting the industries in which Sellers conduct the Business that do not affect the Business, the Purchased Assets or the Assumed Liabilities in a disproportionate manner when compared to the effect of the same on other Persons engaged in such industries; or (f) general economic, political or financial market conditions.

**"New Revolving Facility"** means that certain new revolving credit facility to be entered into by Buyer (or its designee(s) hereunder) with respect to the Business with a minimum amount available to be drawn on Closing of \$15,000,000, which amount shall be inclusive of amounts owed under the DIP Financing.

**"Order"** means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

**"Ordinary Course of Business"** means the ordinary and usual course of normal day-to-day operations of the Business consistent with the past practice of the Business through the date hereof, subject to any duties and restrictions imposed on Sellers under the Bankruptcy Code.

**"Overbid Protection"** shall have the meaning set forth in Section 7.1.

**"Parties"** means Sellers, Agent and Buyer.

**"Permits"** means any approvals, authorizations, consents, licenses, permits or certifications of a Governmental Body.

**"Permitted Exceptions"** means (i) all defects, exceptions, restrictions, easements, rights of way, encumbrances and Liens reflected in policies of title insurance which have been made available to or are obtained by Buyer and that would not interfere with the use of the Purchased Assets or conduct of the Business in accordance with historical practice; (ii) statutory Liens for current Taxes, assessments or other governmental charges not yet delinquent or, to the extent set forth on Schedule 5.12 (as such Schedule may be amended by Sellers from time to time prior to Closing with the consent of Buyer), the amount or validity of which is being contested in good faith by appropriate proceedings; (iii) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the Ordinary Course of Business; (iv) zoning, entitlement and other land use and environmental regulations by any Governmental Body provided that such regulations have not been violated; (v) title of a lessor under a capital or operating lease; (vi) the Assumed Liabilities as pertain to particular Purchased Assets; and (vii) such other imperfections in title which would not materially interfere with the use of the Purchased Assets.

**"Person"** means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

**"Personal Property Leases"** shall have the meaning set forth in Section 5.4.

**"Petition Date"** shall have the meaning set forth in the Recitals.

**"Products"** means any and all products developed, manufactured, procured, marketed or sold by Sellers, whether work in progress or in final form, in connection with the Business.

**"Prospective Employees"** shall have the meaning set forth in Section 8.10(a).

**"Purchase Price"** shall have the meaning set forth in Section 3.1.

**"Purchased Assets"** shall have the meaning set forth in Section 2.1.

**"Purchased Contracts"** means the Contracts set forth on Schedule 1.1(c), as such Schedule may be amended from time to time in accordance with this Agreement.

**"Purchased Intellectual Property"** means the Intellectual Property and related Software and Technology of the Sellers relating to the Business, all as set forth on Schedule 1.1(d).

**“Qualified Critical Trade Vendor”** means any of (i) a Factor/Vendor that agrees to the terms and conditions set forth in the Critical Trade Vendor Motion, (ii) a Critical Trade Vendor that is factored by a Factor/Vendor, if both the Critical Trade Vendor and the applicable Factor/Vendor have agreed to the terms and conditions set forth in the Critical Trade Vendor Motion, and (iii) a Critical Trade Vendor that is not factored by a Factor/Vendor, if the Critical Trade Vendor has agreed to the terms and conditions set forth in the Critical Trade Vendor Motion; provided, that in the case of each of clauses (i), (ii) and (iii), the Critical Trade Vendor Motion has been approved by Final Order of the Bankruptcy Court.

**“Real Property Leases”** shall have the meaning set forth in Section 5.3.

**“Residual Amounts”** shall have the meaning set forth in Section 2.1(u).

**“Sale and Bid Procedures Motion”** means the motion or motions of Sellers, in form and substance acceptable to Buyer and Sellers, to be filed with the Bankruptcy Court seeking approval and entry of the Bid Procedures Order, and, in the event that Buyer is the winning bidder at the Auction or no Competing Bid is submitted, the Sale Order.

**“Sale Order”** shall be an Order of the Bankruptcy Court, in the form attached hereto as Exhibit B or as otherwise approved by Buyer in its sole and absolute discretion, approving this Agreement and all of the terms and conditions hereof, approving the sale and assignment to Buyer of all of the Purchased Assets (assuming that either Buyer is the winning bidder at the Auction contemplated hereby or no Competing Bid is submitted for the Purchased Assets by the deadline for such bids set forth in the Bid Procedures Order), and approving and authorizing Sellers to consummate the transactions contemplated hereby. Without limiting the generality of the foregoing, such order shall find and provide, among other things, that (i) the Purchased Assets sold to Buyer pursuant to this Agreement shall be transferred to Buyer free and clear of all Liens (other than Liens specifically assumed or created by Buyer and Permitted Exceptions), claims (other than Assumed Liabilities), encumbrances and interests (including Liens, claims, encumbrances and interests of any Governmental Body), such Liens, claims, encumbrances and interests to attach to the proceeds of sale of the Purchased Assets, (ii) the Purchased Contracts may be assumed by Sellers and assigned to Buyer under Section 365 of the Bankruptcy Code, (iii) Buyer has acted in “good faith” within the meaning of Section 363(m) of the Bankruptcy Code, (iv) this Agreement was negotiated, proposed and entered into by the Parties without collusion, in good faith and from arm’s length bargaining positions, (v) the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or the breach hereof as provided in Section 12.2 hereof, and (vi) this Agreement and the transactions contemplated hereby are binding upon, and not subject to rejection or avoidance by, any chapter 7 or chapter 11 trustee of Sellers.

**“Sellers”** shall have the meaning set forth in the Preamble.

**“Seller Documents”** shall have the meaning set forth in Section 5.1.

**“Software”** means, except to the extent generally available for purchase from third Persons, any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (ii) databases and

compilations, including any and all data and collections of data, whether machine readable or otherwise, (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons and (iv) all documentation including user manuals and other training documentation related to any of the foregoing, in each case, relating to the Business.

"Stayed Tax Liens" shall have the meaning set forth in Section 5.12(d).

"Tax Contest" shall have the meaning set forth in Section 11.4(b).

"Tax Indemnity Cap" shall mean \$2,000,000.

"Tax Return" means all returns, declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes.

"Taxes" means (i) all federal, state, local or foreign taxes, charges or other assessments, including, without limitation, all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, Inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, and (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with any item described in clause (i).

"Technology" means, collectively, all designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used or useful in the Business or in the design, development, reproduction, maintenance or modification of, any of the Products.

"Termination Date" shall have the meaning set forth in Section 4.4(d).

"Trade Secrets" shall have the meaning set forth in Section 1.1 (in the definition of Intellectual Property).

"Transfer Taxes" means sales, use, stamp, documentary stamp, recording, transfer or similar fees or Taxes or governmental charges (including any interest, fine, penalty, additions to Tax or additional amount thereon) payable in connection with the Sellers' transfer of the Purchased Assets to Buyer pursuant to this Agreement.

"Transferred Employees" shall have the meaning set forth in Section 8.10(b).

"WARN Act" means the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state Law related thereto.

"Wind Down Payments" shall have the meaning set forth in Section 3.1.

Section 1.2 Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

Exhibits/Schedules. The Exhibits and Schedules to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one Schedule shall not be deemed to have been disclosed on any other Schedule unless explicitly cross-referenced thereto. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

Herein. The words such as "herein," "hereinafter," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) The Parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

**ARTICLE II**  
**PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES**

Section 2.1 **Purchase and Sale of Assets.** On the terms and subject to the conditions set forth in this Agreement, at the Closing Buyer shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Buyer the Purchased Assets. "**Purchased Assets**" shall mean all of Sellers' right, title and interest in, to and under the following assets of Sellers (but excluding Excluded Assets) as of the Closing related to the Business:

- (a) all accounts receivable of Sellers related to the Business including, without limitation, any accounts receivable arising out of or in connection with any Excluded Contract or Excluded Asset;
- (b) all cash, cash equivalents, bank deposits and similar cash items of Sellers, other than the Cash Payment;
- (c) all Inventory;
- (d) all deposits (including, without limitation, all customer deposits and security deposits for rent, electricity, telephone or otherwise, but excluding customer and security deposits relating to stores subject to Real Property Leases that are Excluded Assets) and other prepaid charges and expenses of Sellers;
- (e) subject to the provisions of Section 9.1(g), all rights of Sellers under each Real Property Lease set forth on Schedule 1.1(c), together with Sellers' interests in and to all improvements and fixtures under each such Real Property Lease, and other appurtenances thereto, and Sellers' rights in respect thereof;
- (f) all Furniture and Equipment;
- (g) all Purchased Intellectual Property;
- (h) all Purchased Contracts;
- (i) all Sellers' Documents that are used in, held for use in or intended to be used in, or that arise out of, the Business, including Documents relating to accounts receivable, Products, services, marketing, advertising, promotional materials, Purchased Intellectual Property and all files, customer lists, files and documents (including credit information), supplier lists, records, literature and correspondence, whether or not physically located on any of the premises referred to in clause (e) above, excluding any Documents exclusively related to any Excluded Assets;
- (j) all Permits used by Sellers in the Business, to the extent transferable;
- (k) all supplies owned by Sellers and used in connection with the Business;



(l) to the extent transferable, all insurance policies or rights to proceeds thereof relating to the Purchased Assets (other than any directors and officers or fiduciary insurance policy, each of which shall be an Excluded Asset);

(m) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with Employees and agents of Sellers or with third parties to the extent relating to the Business or the Purchased Assets (or any portion thereof);

(n) all rights of Sellers under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors if and to the extent that such rights are assignable by operation of Law and relating to Products sold, or services provided, to Sellers or to the extent affecting any Purchased Assets other than any warranties, representations and guarantees pertaining exclusively to any Excluded Assets;

(o) all goodwill and other intangible assets associated with the Business, including customer and supplier lists and the goodwill associated with the Purchased Intellectual Property owned by Sellers;

(p) any cash refunds for Taxes received by Sellers after the Closing Date (inclusive of any interest received thereon, net of any Taxes incurred with respect thereto) with respect to Taxes paid on or prior to the Closing Date;

(q) rights, claims or causes of action of Sellers, including any rights or claims as arise under Chapter 5 of the Bankruptcy Code, against the Critical Trade Vendors;

(r) any rights, claims or causes of action of Sellers against third parties other than Tax authorities relating to assets, properties, Business or operations of Sellers arising out of events occurring on or prior to the Closing Date other than causes of action under Chapter 5 of Title 11 of the United States Code (excluding any such causes of action of Sellers against Critical Trade Vendors which shall be Purchased Assets);

(s) to the extent transferable, all Tax credits of Sellers;

(t) to the extent that Buyer determines, in its sole and absolute discretion, to assume any Benefit Plan, any trust or other funding vehicle associated with such Benefit Plan;

(u) all cash, cash equivalents, bank deposits, retainers and similar cash items funded by Buyer in accordance with the Wind Down Payments to the extent that such amounts are not applied to, or otherwise used with respect to, the line items set forth in Schedule 3.1 (including, without limitation, the allowed fees, costs and expenses of attorneys, accountants and other professionals of the Company engaged in connection with such Schedule) (collectively, the "Residual Amounts"); and

(v) the assets set forth on Schedule 2.1.

Notwithstanding anything herein to the contrary, Buyer may, from time to time, amend the Purchased Assets so as to include additional assets in its sole and absolute discretion until three (3) Business Days prior to the Closing Date (except that Buyer may not add as a Purchased

Asset anything specifically listed in Section 2.2 below as an Excluded Asset, other than Excluded Contracts, and accounts receivable and proceeds relating thereto, and Intellectual Property rights); and provided, however, that no such addition shall result in any adjustment of the Purchase Price. Furthermore, Buyer may, from time to time, amend Schedule 1.1(c) so as to transfer one or more Real Property Leases to Schedule 2.6(c) in its sole and absolute discretion until three (3) Business Days prior to the Closing Date, in which case such Real Property Lease shall be treated in accordance with Section 2.6(c).

Section 2.2 Excluded Assets. Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to Buyer, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets. "Excluded Assets" shall mean all assets, properties, interests and rights of Sellers other than the Purchased Assets, including without limitation each of the following assets:

- (a) the Cash Payment;
- (b) all customer and security deposits relating to Real Property Leases that are Excluded Assets;
- (c) all Excluded Contracts;
- (d) all obligations, Liabilities and Indebtedness, including any note Indebtedness, owed to or by any Seller to or by any Affiliate of any Seller;
- (e) any Intellectual Property rights of Sellers other than the Purchased Intellectual Property;
- (f) any (i) confidential personnel and medical records pertaining to any Employee; (ii) other books and records that Sellers are required by Law to retain or that Sellers determine are necessary or advisable to retain including, without limitation, Tax Returns, financial statements, and corporate or other entity filings; provided, however, that Buyer shall have, to the extent allowed by applicable Law, the right to make copies of any portions of such retained books and records that relate to the Business or any of the Assets; (iii) minute books, stock or membership interest records and corporate seals; and (iv) documents relating to proposals to acquire the Business by Persons other than Buyer;
- (g) any causes of action under Chapter 5 of Title 11 of the United States Code, and proceeds deriving therefrom, other than causes of action of Sellers against Critical Trade Vendors;
- (h) all of Sellers' rights under this Agreement and/or other documents and agreements executed in connection with the transactions provided for herein;
- (i) any trust or other funding vehicle associated with any Benefit Plan that is not a Purchased Asset;
- (j) the Assets set forth on Schedule 2.2(i); and



- (k) any equity interests in any Seller or any subsidiary thereof.

Notwithstanding anything herein to the contrary, Buyer may, from time to time, exclude additional assets from the Purchased Assets in its sole and absolute discretion until three (3) Business Days prior to the Closing Date; provided, however, that no such exclusion shall result in any adjustment of the Purchase Price.

Section 2.3 Assumption of Liabilities. On and subject to the terms and conditions of this Agreement, Buyer shall assume and become responsible for all of the Assumed Liabilities at the Closing. Buyer will not assume or have any responsibility, however, with respect to any other obligation or liability of Sellers not included within the definition of Assumed Liabilities, including, without limitation: (i) Taxes (x) imposed on any Seller for any period or (y) related to the Business or the Purchased Assets for all Tax periods (or portions thereof) ending on or prior to the Closing (except, in each case, as expressly provided below); (ii) any costs or expenses incurred in connection with, or related to, the administration of the Bankruptcy Cases, including, without limitation, any accrued professional fees and expenses of attorneys, accountants, financial advisors and other professional advisors related to the Bankruptcy Cases (except as expressly provided below); (iii) liabilities to the extent relating to the Excluded Assets, including Liabilities relating to Excluded Contracts; (iv) Liabilities and obligations of Sellers under this Agreement; (v) all Liabilities and obligations arising under any Purchased Contract (and all liabilities for any breach, act or omission under any Purchased Contract) arising prior to the Closing; (vi) all obligations, Liabilities and Indebtedness, including any note Indebtedness, owed by any Seller to any Affiliate of any Seller; (vii) other than as set forth in Section 2.3(h), any Employee Obligations to any Employee arising out of such Employee's employment by Sellers prior to the Closing; (viii) any Employee Claim of any Employee arising out of such Employee's employment by Sellers prior to the Closing; (ix) other than as set forth in Section 2.3(p), any WARN Act Liabilities; and (x) all other Liabilities and obligations for which Buyer does not expressly assume any liability (collectively, the "Excluded Liabilities"). Buyer's assumption of the Assumed Liabilities shall in no way expand the rights or remedies of third parties against Buyer as compared to the rights and remedies which such parties would have had against Sellers had this Agreement not been consummated. From and after the Closing Date, Buyer shall pay, perform and discharge, as and when due or as may otherwise be agreed between Buyer and the obligee, all of the Assumed Liabilities. The "Assumed Liabilities" are specifically as follows:

- (a) all Liabilities of Sellers set forth on Schedule 2.3(a);
- (b) all Liabilities under the Purchased Contracts arising after the Closing;
- (c) all Liabilities arising from the sale of Products after the Closing pursuant to product warranties, product returns and rebates;
- (d) all Liabilities with respect to the Business or the Purchased Assets arising after the Closing;
- (e) all allowed pre-petition Liabilities to Qualified Critical Trade Vendors to the extent that such Liabilities have not previously been paid by Sellers;

- (f) all undisputed post-petition Liabilities to Critical Trade Vendors and to Factor/Vendors that have not agreed to the terms and conditions set forth in the Critical Trade Vendor Motion to the extent that such Liabilities have not previously been paid by Sellers;
- (g) all Liabilities under Sellers' gift cards relating to the Purchased Assets;
- (h) all Liabilities associated with (i) Employee vacation and sick leave accruals with respect to Transferred Employees in an aggregate amount not to exceed \$1,600,000 and (ii) severance benefits, determined in accordance with Sellers' severance policy as set forth on Schedule 5.13, for any Employee who is not a Transferred Employee in an aggregate amount not to exceed \$250,000;
- (i) all personal property Taxes or similar ad valorem obligations levied with respect to the Purchased Assets in an aggregate amount not to exceed \$130,000;
- (j) all real property Taxes to the extent required for Buyer to assume any Real Property Lease that is a Purchased Contract;
- (k) all payroll or employment related Taxes for any taxable period;
- (l) subject to Section 12.8, all Liabilities relating to amounts required to be paid by Buyer hereunder;
- (m) Transfer Taxes;
- (n) all sales and use Taxes for taxable periods ending on or prior to the Petition Date assessed following a formal or informal review by the applicable taxing authority with respect to the Wisconsin, New York and Maine sales and use Tax audits described on Schedule 5.12 in an aggregate amount not to exceed \$120,000;
- (o) all Liabilities set forth on Schedule 3.1 in an amount not to exceed the lesser of (A) the aggregate amount set forth in such Schedule or (B) the specific amount set forth on a line item basis next to each item on Schedule 3.1;
- (p) the CBA; and
- (q) all WARN Act Liabilities incurred by Sellers on or after the Closing Date to the extent that such Liabilities directly and solely result from Buyer's failure to offer employment to a sufficient number of Employees to avoid incurring such Liabilities (by way of example, in the event that Sellers would incur WARN Act Liabilities based on the termination of 50 Employees at a single employment site, (i) if Sellers terminate one Employee prior to or after the Closing Date and Buyer terminates 49 Employees on or after the Closing Date, any WARN Act Liabilities that arise (based on the termination of 50 Employees at a single employment site) shall not have directly and solely resulted from Buyer's failure to offer employment to a sufficient number of Employees to avoid incurring such Liabilities, and such Liabilities will not be Assumed Liabilities under this Agreement, (ii) if Sellers terminate zero Employees prior to or after the Closing Date and Buyer terminates 50 Employees on or after the Closing Date, any WARN Act Liabilities that arise shall have directly and solely resulted from Buyer's failure to

offer employment to a sufficient number of Employees and Buyer shall assume all WARN Act Liabilities associated with such 50 Employees, and (iii) if Sellers terminate 10 Employees prior to or after the Closing Date and Buyer terminates 50 Employees on or after the Closing Date, any WARN Act Liabilities that arise shall have directly and solely resulted from Buyer's failure to offer employment to a sufficient number of Employees and Buyer shall assume all WARN Act Liabilities associated with the 50 (not 60) Employees terminated by Buyer); provided, that Sellers shall have taken all appropriate action to contest such Liabilities, if any, before the applicable Governmental Body.

Notwithstanding anything herein to the contrary, Buyer may, from time to time, amend Schedule 2.3(a) so as to assume additional Liabilities of Sellers in its sole and absolute discretion until three (3) Business Days prior to the Closing Date. Such additional Liabilities shall be Assumed Liabilities for all purposes hereunder.

Section 2.4 Purchased Assets. Subject to the provisions of Section 2.6(c) regarding the post-Closing time frame and procedure for assumption or rejection of Real Property Leases, at Closing, and pursuant to Section 363 and Section 365 of the Bankruptcy Code, Sellers shall sell or assume and assign to Buyer and Buyer shall buy or take an assignment from Sellers, as the case may be, the Purchased Assets and Assumed Liabilities.

Section 2.5 Further Conveyances and Assumptions.

(a) From time to time following the Closing, Sellers and Buyer shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Buyer and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Buyer under this Agreement and the Seller Documents (including, without limitation, the Residual Amounts) and to assure fully to Sellers and their respective Affiliates and their respective successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Buyer under this Agreement and the Seller Documents, and to otherwise make effective the transactions contemplated hereby and thereby.

(b) If following the Closing, the Sellers receive or become aware that they hold any property, right, claim, demand or asset which constitutes a Purchased Asset then the Sellers shall transfer such property, right, claim, demand or asset to the Buyer as promptly as practicable for no additional consideration.

(c) If following the Closing, the Buyer receives or becomes aware that it holds any property, right, claim, demand or asset which constitutes an Excluded Asset, then the Buyer shall transfer such property, right, claim, demand or asset to the Sellers as promptly as practicable for no additional consideration.

Section 2.6 Transitional Matters.

(a) From and after Closing, Sellers shall retain full right and authority to use, enforce, pursue remedies and take actions with respect to any of the Excluded Assets.

(b) Buyer will retain and make available to Sellers, for a period of three (3) years following the Closing Date (or longer if reasonably requested), the Documents delivered by Sellers to Buyer, if reasonably needed by Sellers for liquidation, winding up, Tax reporting or other proper purposes; provided, that Sellers will use reasonable efforts to retain copies of Documents and the Parties otherwise will reasonably cooperate to minimize inconvenience to Buyer.

(c) Real Property Leases. Sellers agree that from the date of this Agreement through the date that is one hundred and twenty (120) days after the Closing Date, or such other date mutually agreed to by Buyer and Sellers, provided, that in no event shall such date exceed two hundred and ten (210) days after the Petition Date, Sellers will provide Buyer, at Buyer's expense, with the rights and benefits under the Real Property Leases set forth on Schedule 2.6(c). Buyer's access to and use of the real property subject to the Real Property Leases set forth on Schedule 2.6(c) will be subject to and consistent with the Sellers' obligations, if any, to third parties with respect to such Real Property Leases; and Buyer will perform such obligations as required and shall assume all liability for any damage or destruction to the real property as a result of such access and use. In addition to the Purchase Price, Buyer shall promptly pay the reasonable and actual incremental costs or administrative claims incurred by Sellers as a result of providing such rights and benefits to Buyer or due to the deferral of the decision to reject such unexpired leases in order to provide such use or access, a good faith estimate of which incremental costs shall be set forth in Schedule 2.6(c), and shall name Sellers as an additional insured on any insurance policy (including liability and casualty policies) covering such real property. Sellers shall, upon the written request of Buyer, promptly make a motion in the Bankruptcy Cases to assume and assign to Buyer any Real Property Lease listed on Schedule 2.6(c) and any such Real Property Lease shall be deemed to be a Purchased Contract. The Cure Amounts, as determined by the Bankruptcy Court, if any, necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from any defaults under those Real Property Leases set forth on Schedule 2.6(c) to be assumed and assigned to Buyer shall be paid by Buyer, and Sellers shall have no liability therefor or thereafter. Buyer shall provide Sellers with not less than fifteen (15) days' prior written notice specifying the date that it will no longer require such rights and benefits with respect to any Real Property Lease set forth on Schedule 2.6(c) and Buyer shall have no further obligation with respect to such incremental costs or administrative claims after the later of such termination date or the last day of the payment period in which such termination date occurs and any such Real Property Lease shall be deemed an Excluded Contract.

Section 2.7 Bulk Sales Laws. Buyer hereby acknowledges that it has no objection to Sellers not complying with the requirements and provisions of any "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

### **ARTICLE III** **CONSIDERATION**

Section 3.1 Purchase Price; Assumed Liabilities. In consideration of the transfer of the Purchased Assets to Buyer and the other undertakings set forth herein, the purchase price (the "Purchase Price") for the Purchased Assets shall be (i) as and when such amounts become due,

cash paid by Buyer on behalf of Sellers to the parties set forth on Schedule 3.1 in an amount not to exceed the lesser of (A) the aggregate amount set forth on such Schedule or (B) the specific amount set forth on a line item basis next to each item on Schedule 3.1 (the "Wind Down Payments"), plus (ii) cash in an amount equal to the outstanding obligations under the DIP Financing as of the Closing Date (collectively with the Wind Down Payments, the "Cash Payment"), plus (iii) Seventy Five Million Dollars (\$75,000,000) to be satisfied in the form of a credit against the amount of Sellers' debt under the Loan Agreement pursuant to Section 363(k) of the Bankruptcy Code, plus (iv) the assumption of the Assumed Liabilities by Buyer at Closing, plus (v) the extension or replacement of certain letters of credit pursuant to and as set forth in that certain agreement among the Agent, the Lenders, Sellers and certain other parties (the "Agreement Regarding Credit Bid"). The Cure Amounts, as determined by the Bankruptcy Court, if any, necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Purchased Contracts assumed at Closing, shall be paid by Buyer, and Sellers shall have no liability therefor. The Agent (on behalf of the Lenders and not in its individual capacity) shall make such credit bid. In accordance with the provisions of Section 12.8, it is understood and agreed that Agent, in its capacity as Buyer, may assign the right to receive the Purchased Assets and all other rights of Buyer hereunder, and the obligation to assume the Assumed Liabilities, to one of more of its designees. In consideration of such assignment, such designee(s) shall be required to issue to the Lenders certain equity securities and term debt as contemplated by the Agreement Regarding Credit Bid.

#### **ARTICLE IV** **CLOSING AND TERMINATION**

Section 4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Section 9.1, Section 9.2 and Section 9.3 hereof (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II hereof (the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP (or at such other place as the Parties may designate in writing) as soon as practicable following the satisfaction or waiver of the conditions set forth in Article IX (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) and no later than a date that is three (3) Business Days after the Sale Order becomes a Final Order, unless extended by Buyer. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date," and the Closing shall be deemed effective at the close of business on the Closing Date.

Section 4.2 Deliveries by Sellers. At the Closing, Sellers shall deliver to Buyer:

- (a) a duly executed bill of sale and assignment;
- (b) duly executed assignments of the U.S. trademark registrations and applications included in the Purchased Intellectual Property, in a form suitable for recording in the U.S. trademark office, and general assignments of all other Purchased Intellectual Property;
- (c) the officer's certificate required to be delivered pursuant to Section 9.1(a) and Section 9.1(b); and



(d) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Buyer, as may be necessary to convey the Purchased Assets to Buyer.

Section 4.3 Deliveries by Buyer. At the Closing, Buyer shall deliver to Sellers:

(a) the Cash Payment, in immediately available funds, as set forth in Section 3.1;

(b) the officer's certificate required to be delivered pursuant to Section 9.2(a) and Section 9.2(b); and

(c) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Sellers, as may be necessary to convey the Purchased Assets to Buyer and for Buyer to assume the Assumed Liabilities.

Section 4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by mutual written consent of Sellers and Buyer;

(b) by Sellers or Buyer, as applicable, if any of the conditions set forth in Section 9.3 shall have become incapable of fulfillment other than as a result of a breach by the Sellers or Buyer, as applicable, of any covenant or agreement contained in this Agreement, and such condition is not waived by the non-breaching party;

(c) by Sellers or Buyer if there shall be in effect a final Order or other nonappealable final action of a Governmental Body of competent jurisdiction permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; it being agreed that the Parties hereto shall promptly appeal any adverse determination which is not nonappealable (and pursue such appeal with reasonable diligence);

(d) by Buyer, if the Closing shall not have occurred on or before the close of business on the date which is seven (7) Business Days after the Sale Order becomes a Final Order or such later date as determined by Buyer (the "Termination Date"); provided, however, that if the Closing shall not have occurred on or before the Termination Date and either (a) such failure to close is due to (1) a material breach of any representation, warranty, covenant or agreement contained in this Agreement by Buyer or (2) a breach by Buyer of the obligations set forth in Section 8.2 hereof, or (b) (1) Sellers have not materially breached any representation, warranties, covenants or agreements contained in this Agreement and (2) Sellers have not breached the obligations set forth in Section 8.2 hereof, then Buyer may not terminate this Agreement pursuant to this Section 4.4(d);

(e) by Buyer, if any of the conditions to the obligations of Buyer set forth in Section 9.1 shall have become incapable of fulfillment other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement, and such condition is not waived by Buyer;

(f) by Buyer, if there shall be a material breach by Sellers of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 9.1 or Section 9.3 and which breach cannot be cured or has not been cured by the earlier of (i) ten (10) Business Days after the giving of written notice by Buyer to Sellers of such breach and (ii) the Termination Date;

(g) by Buyer in the event the Petition Date has not occurred within three (3) Business Days after the date hereof, or in the event the Bankruptcy Court has not entered (i) the Bid Procedures Order on or before thirty (30) days following the Petition Date and (ii) the Sale Order on or before ninety (90) days after the Petition Date;

(h) by Buyer or Sellers, if the Closing has not occurred by October 25, 2011; provided that if a party is in breach of any representation, warranty, covenant or agreement contained in this Agreement, then such party shall not be entitled to terminate pursuant to this Section 4 (h);

(i) by Sellers, if any condition to the obligations of Sellers set forth in Section 9.2 shall have become incapable of fulfillment other than as a result of a breach by Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers;

(j) by Sellers, if there shall be a material breach by Buyer of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 9.2 or Section 9.3 and which breach cannot be cured or has not been cured by the earlier of (i) ten (10) Business Days after the giving of written notice by Sellers to Buyer of such breach and (ii) the Termination Date;

(k) by Sellers, if the Closing shall not have occurred on or before the Termination Date; provided, however, that if the Closing shall not have occurred on or before the Termination Date and either (a) such failure to close is due to (1) a material breach of any representation, warranty, covenant or agreement contained in this Agreement by Sellers or (2) a breach by Sellers of the obligations set forth in Section 8.2 hereof, or (b) (1) Buyer has not materially breached any representation, warranties, covenants or agreements contained in this Agreement and (2) Buyer has not breached the obligations set forth in Section 8.2 hereof, then Sellers may not terminate this Agreement pursuant to this Section 4.4(k); or

(l) with no further action by either Party, if the Bankruptcy Court shall enter an Order approving a Competing Bid and the transaction contemplated by such Competing Bid is thereafter consummated.

**Section 4.5 Procedure Upon Termination.** In the event of termination and abandonment by Buyer or Sellers, or both such Parties, pursuant to Section 4.4 hereof, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate, and the purchase of the Purchased Assets hereunder shall be abandoned, without further action by Buyer or Sellers. If this Agreement is terminated as provided herein each Party shall return all documents, work papers and other material of any other Party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to

the Party furnishing the same. If this Agreement is terminated pursuant to Sections 4.4(a), (b), (c), (d), (e), (f), (g), (h) (as to Section 4.4(h), only if Buyer is not in breach of any representation, warranty, covenant or agreement contained in this Agreement), or (l), Sellers shall pay (i) all reasonable fees, costs and expenses incurred by Buyer in connection with the transactions contemplated by this Agreement through the Petition Date, plus (ii) the Expense Reimbursement to Buyer, and the Parties shall have no further obligations to one another except for any obligations that, by their terms, survive the termination of this Agreement, as described in Section 4.6(a).

Section 4.6 Effect of Termination.

(a) In the event that this Agreement is validly terminated in accordance with Section 4.4, this Agreement shall terminate and each of the Parties shall be relieved of its respective duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Buyer or Sellers; provided, however, that this Section 4.6 and the obligations of the Parties set forth in Section 4.5, Section 8.3, Section 8.5 and Article XII hereof shall survive any such termination and shall be enforceable hereunder; and provided further, however, no termination shall relieve any party from liability for its breach or non performance of its obligations hereunder prior to the date of such termination.

(b) Remedies. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby jointly and severally represent and warrant to Buyer that:

Section 5.1 Authorization of Agreement. Subject to the entry of the Sale Order:  
(a) each Seller has all requisite power, authority and legal capacity to execute and deliver this Agreement and each Seller has all requisite power, authority and legal capacity to execute and deliver each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by any Seller in connection with the consummation of the transactions contemplated by this Agreement (the "Seller Documents"), to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby; and (b) this Agreement has been, and each of the Seller Documents will be at or prior to the Closing, duly and validly executed and delivered by each Seller and (assuming the due authorization, execution and delivery by the other Parties hereto and thereto and the entry of the Sale Order) this Agreement constitutes, and each of the Seller Documents when so executed and delivered will constitute, legal, valid and binding obligations of each Seller, enforceable against each Seller in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).



Section 5.2 Title to Purchased Assets. Other than the real property subject to the Real Property Leases and the personal property subject to the Personal Property Leases, Sellers have good title to the Purchased Assets and, at the Closing, the Buyer, pursuant to the Sale Order, shall acquire good title in, to and under (subject to the Purchased Contracts (other than Purchased Contracts assumed or assigned post-Closing) being assumed and assigned in accordance with Section 2.1) all of such Purchased Assets, in each case free and clear of all Liens, other than Permitted Exceptions, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code. The Purchased Assets include all of the properties and assets required to operate, in all material respects, the Business in the Ordinary Course of Business. For the sake of clarity, the right to use any assets included in the Purchased Assets in which Sellers have leasehold or non-ownership rights to use shall be assigned to Buyer only through the assumption and assignment of the Purchased Contracts in accordance with and subject to this Agreement.

Section 5.3 Real Property. Schedule 1.1(a) sets forth a complete list of all real property and interests in real property leased by Sellers (individually, a "Real Property Lease" and collectively, the "Real Property Leases") as lessee or lessor in connection with the Business and which are part of the Purchased Assets. Sellers have a valid and enforceable leasehold interest under each Real Property Lease under which it is a lessee.

Section 5.4 Tangible Personal Property. Schedule 1.1(a) sets forth all leases of personal property ("Personal Property Leases") relating to personal property used by Sellers or to which any Seller is a party or by which the properties or assets of any Seller are bound, in each case relating to the Business. Each Seller has a valid and enforceable leasehold interest under each Personal Property Lease under which it is a lessee.

Section 5.5 Intellectual Property. Schedule 1.1(a) sets forth an accurate and complete list of all Intellectual Property. To Sellers' Knowledge, Sellers own all right, title and interest to, or are licensees with respect to, the Purchased Intellectual Property, and can convey such property free and clear of Liens pursuant to the Sale Order. To the Knowledge of Sellers, (i) no Person is engaging in any activity that infringes any Purchased Intellectual Property and (ii) no claim has been asserted to any Seller that the use of any Purchased Intellectual Property or the operation of the Business infringes or violates the Intellectual Property of any third party. The Purchased Intellectual Property and the rights under the Purchased Contracts include the rights to use all Intellectual Property required to operate the Business as currently conducted.

Section 5.6 Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement, and no Person is entitled to any fee or commission or like payment from Buyer or Sellers in respect thereof, in each case other than as set forth on Schedule 5.6.

Section 5.7 Litigation. Except as set forth on Schedule 5.7 and other than in connection with the Bankruptcy Cases, there is no suit, action, litigation, arbitration proceeding or governmental proceeding or audit, including appeals and applications for review, in progress, pending or, to the best of Sellers' Knowledge, threatened against or relating to any Seller or any judgment, decree, injunction, deficiency, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of any Seller to enter into this Agreement or to consummate the transactions contemplated

hereby and Sellers have no Knowledge of any existing ground on which any such action, suit or proceeding may be commenced with any reasonable likelihood of success.

Section 5.8 Compliance with Laws. Except as set forth on Schedule 5.8, Sellers have conducted and are presently conducting the Business in compliance with all applicable Laws, except where such non-compliance would not result in a Material Adverse Effect.

Section 5.9 Permits. Schedule 5.9 sets forth all material Permits used by Sellers in the Business. Sellers are in compliance with the material terms of all such Permits, and all such Permits are valid and in full force and effect, and no proceeding is pending or, to the Knowledge of Sellers, threatened, the object of which is to revoke, limit or otherwise affect any such Permit.

Section 5.10 Inventory.

(a) No Inventory is materially damaged in any significant way, including, but not limited, to damage caused by water, except for any such damage which would not have a Material Adverse Effect on the Inventory taken as a whole;

(b) To Sellers' Knowledge, the Inventory has not been part of a current or past product recall;

(c) The Inventory is in material compliance with United States federal guidelines for such products as of the date hereof, except for such compliance failure which would not have a Material Adverse Effect on the Inventory taken as a whole; and

(d) The Inventory is in working condition except for such failure to be in working condition which would not have a Material Adverse Effect on the Inventory taken as a whole.

Section 5.11 Contracts. The Purchased Contracts include all Contracts material to the ownership and/or operation of the Business. Sellers have not, and, to Sellers' Knowledge, no other party to any Purchased Contract has, commenced any action against any of the parties to any Purchased Contract or given or received any written notice of any default or violation under any Purchased Contract that has not been withdrawn or dismissed except to the extent such default or violation will be cured as a result of the payment of the applicable Cure Amounts. Each Purchased Contract is, or will be upon the Closing, valid, binding and in full force and effect in accordance with its terms.

Section 5.12 Taxes. Except as set forth on Schedule 5.12:

(a) Since January 1, 2008, all income Tax Returns required to have been filed by Sellers (for which the time for filing has passed) have been duly filed;

(b) To the Knowledge of the Sellers, no federal or state income Tax Return audits are pending with respect to any Seller;

(c) No Seller has received written notice from any Governmental Body of future federal or state income Tax Return audits;

(d) There are no material liens with respect to Taxes upon any of the Purchased Assets, other than (i) Permitted Exceptions and (ii) Liens that may arise to the extent payment of such Taxes is stayed as a result of the Bankruptcy Cases ("Stayed Tax Liens"); and

(e) No Seller has (i) waived any statute of limitations in respect of any Tax Returns that have not been filed as of the date hereof or (ii) agreed to any extension of time with respect to the assessment of Taxes for which such Taxes have not been paid as of the date hereof, in each case other than pursuant to extensions of time to file Tax Returns obtained in the ordinary course of business.

#### Section 5.13 Employee Benefits.

(a) Schedule 5.13 sets forth all "employee benefit plans", as defined in Section 3(3) of ERISA, and all other material employee benefit arrangements, employment agreements or payroll practices maintained by Sellers or to which Sellers contribute or are obligated to contribute thereunder for Employees (the "Benefit Plans"). Neither Sellers nor any of their affiliates and any trade or business (whether or not incorporated) which is or has ever been under common control, or which is or has ever been treated as a single employer, with any of them under Section 414(b), (c), (m) or (o) of the Code has in the last six years contributed or has been obligated to contribute to any "employee pension plans", as defined in Section 3(2) of ERISA, subject to Title IV of ERISA or Section 412 of the Code, including a "multiemployer plan", as defined in Section 3(37) of ERISA. None of the Seller Plans provide for post-employment life or health insurance, benefits or coverage for any participant or any beneficiary of a participant, except as may be required under the Consolidate Omnibus Budget Reconciliation Act of 1985, as amended, ("COBRA") and at the expense of the participant or the participant's beneficiary.

(b) True, correct and complete copies of the following documents, with respect to each of the Benefit Plans, have been made available or delivered to Buyer by Sellers, to the extent applicable: (i) any plans, all amendments thereto and related trust documents, and amendments thereto; (ii) the most recent Forms 5500 and all schedules thereto; (iii) the most recent IRS determination letter; (iv) the most recent summary plan descriptions; (v) written communications to employees relating to the Benefit Plans; and (vi) written descriptions of all non-written agreements relating to the Benefit Plans.

(c) The Benefit Plans have been maintained, in all material respects, in accordance with their terms and with all provisions of ERISA, the Code and other applicable federal and state laws and all contributions required to have been made under any of the Benefit Plans to any funds or trusts established thereunder or in connection therewith have been made, in all material respects, by the due date thereof (including any valid extension).

#### Section 5.14 Labor Matters.

(a) Other than as set forth on Schedule 5.14(a), (i) no Seller is a party to any labor or collective bargaining agreement with respect to its Employees, (ii) no Employee of any Seller is represented by any labor organization, (iii) no labor organization or group of Employees of any Seller has made a pending demand for recognition or request for certification, (iv) and

there are no representation or certification proceedings or petitions seeking a representation election presently pending or, to the Knowledge of Sellers, threatened, to be brought or filed with the National Labor Relations Board or other labor relations tribunal involving any Seller.

(b) There are no strikes, lockouts, work stoppages or slowdowns pending or, to the Knowledge of Sellers, threatened against or involving any Seller.

(c) There are no unfair labor practice charges, arbitrations, grievances or complaints pending or, to the Knowledge of Sellers, threatened in writing against any Seller relating to the employment or termination of employment of any individual by any Seller except those which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(d) There are no complaints, charges, administrative proceedings or claims against any Seller pending or, to the Knowledge of Sellers, threatened in writing to be brought or filed with any Governmental Body based on or arising out of the employment by any Seller of any Employee except those which, individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

(e) Sellers have not incurred any liability or obligation under the WARN Act or similar state Laws, which remains unpaid or unsatisfied.

(f) Except as set forth on Schedule 5.14(f), the employment of each Employee of Sellers is at-will. Schedule 5.14(f) lists all written (and includes a summary of all legally binding oral) employment and consulting agreements to which any Seller is a party or by which it is bound. Complete and correct copies of the agreements or arrangements listed and summarized on Schedule 5.14(f) have been provided or made available to Buyer.

Section 5.15 Sellers' Representations and Warranties Generally. Sellers' representations and warranties herein (including as made or qualified in the Schedules hereto) are made by Sellers in their respective corporate or limited liability company capacity, without personal liability to Sellers' directors, officers, members or counsel, or Sellers' signatory, other than with respect to fraudulent or criminal activity with respect to the transactions contemplated hereby.

## **ARTICLE VI**

### **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Sellers that:

Section 6.1 Organization and Good Standing. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware.

Section 6.2 Authorization of Agreement. Buyer has full limited liability company power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Buyer in connection with the consummation of the transactions contemplated hereby and thereby (the "Buyer Documents"), and to consummate the transactions contemplated hereby and thereby.

The execution, delivery and performance by Buyer of this Agreement and each Buyer Document have been duly authorized by all necessary action on behalf of Buyer. This Agreement has been, and each Buyer Document will be at or prior to the Closing, duly executed and delivered by Buyer, and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Buyer Document when so executed and delivered will constitute, legal, valid and binding obligations of Buyer, enforceable against Buyer, in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 6.3 Financial Advisors. Other than as set forth on Schedule 6.3, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer in connection with the transactions contemplated by this Agreement and no person is entitled to any fee or commission or like payment in respect thereof.

Section 6.4 Litigation. There is no suit, action, litigation, arbitration proceeding or governmental proceeding or audit, including appeals and applications for review, in progress, pending or, to the best of Buyer's knowledge, threatened against or relating to Buyer or any judgment, decree, injunction, deficiency, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of Buyer to enter into this Agreement or to consummate the transactions contemplated hereby and Buyer is not aware of any existing ground on which any such action, suit or proceeding may be commenced with any reasonable likelihood of success.

Section 6.5 Financial Capability. Buyer (i) has, or has firm commitments for, as of the date hereof, and will have as of the Closing, sufficient funds to assume the Assumed Liabilities and pay any expenses incurred by Buyer in connection with the transactions contemplated by this Agreement; (ii) has, as of the date hereof, and will have as of the Closing, the resources and capabilities (financial or otherwise) to perform its obligations hereunder and (iii) has not, as of the date hereof, and will not have as of the Closing, incurred any obligation, commitment, restriction or Liability of any kind which would impair or adversely affect such resources and capabilities.

Section 6.6 Condition of the Business. Notwithstanding anything contained in this Agreement to the contrary, Buyer acknowledges and agrees that Sellers and each of their directors, officers, employees, agents, shareholders, Affiliates, consultants, counsel, accountants and other representatives are not making any representation or warranty whatsoever, express or implied, beyond those expressly given by Sellers in Article V hereof (as modified by the Schedules hereto), and Buyer acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets and the Business are being transferred on a "WHERE IS" and, as to condition, "AS IS" basis.



## **ARTICLE VII**

### **BANKRUPTCY COURT APPROVAL**

Section 7.1 Approval of Expense Reimbursement and Overbid Protection. Prior to the Petition Date, Sellers shall pay all reasonable fees, costs and expenses incurred by Buyer in connection with the transactions contemplated by this Agreement through the Petition Date. Subject to the entry of the Bid Procedures Order, in consideration for Buyer having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Sellers, Sellers shall pay to Buyer promptly upon the effective date of termination of this Agreement in accordance with, and only to the extent provided in, the provisions of Section 4.5 Buyer's reasonable fees, costs and expenses (including, without limitation, consultants' and attorneys' reasonable fees, costs and expenses) incurred in connection with the transactions contemplated by this Agreement through the date of termination, provided that the amount of such expense reimbursement does not exceed Five Hundred Thousand Dollars (\$500,000) (the "Expense Reimbursement"). In addition, the Bid Procedures Order shall provide for an initial overbid protection in the amount of Two Million Dollars (\$2,000,000) over and above the aggregate of the Purchase Price and the Expense Reimbursement, and minimum bid increments thereafter of Five Hundred Thousand Dollars (\$500,000) (the "Overbid Protection"), and Buyer shall have the ability to credit bid at the Auction the amount of the Expense Reimbursement.

Section 7.2 Competing Transaction.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers of higher or better competing bids (each a "Competing Bid"). From the date hereof (and any prior time) and until the completion of the Auction or as otherwise directed by the Bankruptcy Court, Sellers are permitted to cause their representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates, agents and representatives) in connection with any sale or other disposition of the Purchased Assets. In addition, Sellers shall be permitted to respond to any inquiries or offers to purchase all or any part of the Purchased Assets (each, an "Alternative Proposal"), provided that such Person enters into a non-disclosure agreement in favor of Sellers and perform any and all other acts related thereto which are required under the Bankruptcy Code or other applicable law, including supplying information relating to the Business and the assets of Sellers to prospective buyers. No later than two Business Days prior to the Auction, Sellers shall provide to Buyer a copy of any such Alternative Proposal and any written response of Sellers thereto and regularly update Buyer as to the status of any negotiations in connection therewith.

(b) Following completion of the Auction, Sellers are not permitted to cause their representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and Agent and their respective agents and representatives) in connection with any sale or other disposition of the Purchased Assets. In addition, unless otherwise directed by the Bankruptcy Court, Sellers shall not after completion of the Auction respond to any Alternative Proposal or perform any other acts related thereto, including supplying information relating to the Business and the assets of Sellers to prospective buyers of the Purchased Assets.

Section 7.3 Bankruptcy Court Filings. Sellers shall use commercially reasonable efforts (A) to file the Sale and Bid Procedures Motion with the Bankruptcy Court on the Petition Date, and (B) to seek entry of the Bid Procedures Order and the Sale Order. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Bid Procedures Order and the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of demonstrating that Buyer is a "good faith" Buyer under Section 363(m) of the Bankruptcy Code. In the event the entry of the Bid Procedures Order and the Sale Order shall be appealed, Sellers shall use commercially reasonable efforts to defend such appeal.

## **ARTICLE VIII** **COVENANTS**

Section 8.1 Access to Information. Sellers agree that, prior to the Closing Date, Agent and Buyer shall be entitled, through their respective officers, employees and representatives (including their respective legal advisors and accountants), to make such investigation of the properties, businesses and operations of the Business and such examination of the books, records and financial condition of the Business, the Purchased Assets and the Assumed Liabilities as they reasonably request and to make extracts and copies of such books and records. Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances and shall be subject to restrictions under applicable Law. Sellers shall cause their respective officers, employees, consultants, agents, accountants, attorneys and other representatives to cooperate with Agent and Buyer and Agent's and Buyer's representatives in connection with such investigation and examination, and Buyer and its representatives shall cooperate with Sellers and their respective representatives and shall use their reasonable efforts to minimize any disruption to the Business.

Section 8.2 Further Assurances. Each of Sellers and Buyer shall use commercially reasonable efforts to (a) take all actions necessary or appropriate to consummate the transactions contemplated by this Agreement on or prior to the Termination Date and (b) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement.

### Section 8.3 Confidentiality.

(a) Agent and Buyer acknowledge that the confidential information provided to them in connection with this Agreement, including under Section 8.1, and the consummation of the transactions contemplated hereby, is subject to the terms and conditions of that certain confidentiality provision set forth in Section 11.6 of the Loan Agreement.

(b) Following the completion of the Auction, Sellers agree to maintain, and shall cause their respective Affiliates (other than the shareholders of Holdings) to maintain, unless disclosure is required by applicable Law, the confidentiality of any confidential information regarding the Business which is in Sellers' or any of their respective Affiliate's (other than the shareholders of Holdings) possession or of which Sellers or any of their respective Affiliates (other than the shareholders of Holdings) are aware. Sellers hereby further agree, unless disclosure is required by applicable Law, to take all appropriate steps, consistent

with Sellers' past practice, and to cause each of their respective Affiliates (other than the shareholders of Holdings) to take all appropriate steps, consistent with Sellers' past practice, to safeguard such confidential information and to protect it against disclosure, misuse, espionage, loss and theft. In furtherance and not in limitation of the foregoing, Sellers shall not, and shall cause their respective Affiliates (other than the shareholders of Holdings) not to, unless required by applicable Law, disclose to any Person (a) any confidential information regarding the Business, provided, that confidential information shall not include information that becomes generally available to the public other than as a result of the breach of this Section 8.3(b) or information not otherwise known by the Sellers that becomes available to any Seller from a Person other than Buyer, or (b) any of the discussions or negotiations conducted with Buyer in connection with this Agreement, provided, that Sellers shall be entitled to disclose (i) any information required to be disclosed by Sellers to the Bankruptcy Court, the United States Trustee, parties in interest in the Bankruptcy Cases, other Persons bidding on assets of Sellers, (ii) any information required to be disclosed by Sellers pursuant to any applicable Law (including, without limitation, the Bankruptcy Code), Legal Proceeding or Governmental Authority, or (iii) any information to Sellers' counsel and financial advisor; provided, that, in each case, such disclosure shall be limited to the information that is so required to be disclosed and the Person(s) to whom such disclosure is required. Notwithstanding anything in this Section 8.3 to the contrary, unless disclosure is required by applicable Law, the confidentiality of any Trade Secrets of the Business shall be maintained for so long as such Trade Secrets continue to be entitled to protection as Trade Secrets of the Business.

**Section 8.4    Preservation of Records.** Sellers (or any subsequently appointed bankruptcy estate representative, including, but not limited to, a trustee, a creditor trustee or a plan administrator) and Buyer agree that each of them shall preserve and keep the books and records held by it relating to the pre-Closing Business for a period of three (3) months from the Closing Date and shall make such books and records available to the other parties (and permit such other party to make extracts and copies of such books and records at its own expense) as may be reasonably required by such party in connection with, among other things, any insurance claims by, Legal Proceedings or Tax audits against or governmental investigations of Sellers or Buyer or any of their respective Affiliates (other than the shareholders of Holdings) or in order to enable Sellers or Buyer to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event Sellers, on the one hand, or Buyer, on the other hand, wish to destroy such records during such three (3) month period, such Party shall first give twenty (20) days' prior written notice to the other and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within that twenty (20) day period, to take possession of the records within thirty (30) days after the date of such notice.

**Section 8.5    Publicity.** Neither Sellers, on the one hand, nor Agent or Buyer, on the other hand, shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Parties hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Buyer or Sellers, disclosure is otherwise required by applicable Law or with respect to filings to be made with the Bankruptcy Court in connection with this Agreement. Notwithstanding the foregoing, the Parties may publicly disclose the existence of this Agreement.



Section 8.6 Operation of Business. Until the Closing, Sellers shall use commercially reasonable efforts, except as otherwise required, authorized or restricted pursuant to the Bankruptcy Code or an Order of the Bankruptcy Court, to operate the Business in the Ordinary Course of Business (among other things, Sellers will not incur unreasonable liabilities, including, without limitation, inappropriate increases in Inventory or factoring of accounts receivable). Sellers shall use commercially reasonable efforts to (A) preserve intact their respective business organizations, (B) maintain the Business and the Purchased Assets (normal wear and tear excepted), (C) keep available the services of their respective officers and Employees, (D) maintain satisfactory relationships with licensors, licensees, suppliers, contractors, distributors, consultants, customers and others having business relationships with Sellers in connection with the operation of the Business (other than payment of pre-petition claims), (E) pay all of their respective post-petition obligations in the Ordinary Course of Business, and (F) continue to operate the Business in all material respects in compliance with all Laws applicable to the Business and Sellers. Without limiting the generality of the foregoing, and except (i) as otherwise expressly provided in or contemplated by this Agreement, or (ii) required, authorized or restricted pursuant to the Bankruptcy Code or an Order of the Bankruptcy Court, on or prior to the Closing Date, Sellers may not, without the prior written consent of Buyer, take any of the following actions with respect to the Business:

(a) modify in any manner the compensation of any of the Employees or officers, or accelerate the payment of any such compensation (other than in the Ordinary Course of Business or such that the liability associated with such modification is excluded from the Assumed Liabilities);

(b) engage any new Employee other than in the Ordinary Course of Business, provided, however, that Sellers shall not engage any new Employee whose aggregate annual compensation exceeds \$50,000;

(c) remove or permit to be removed from any building, facility, or real property any Asset or any Inventory (other than in connection with the sale of Inventory in the Ordinary Course of Business and the sale of fixtures, equipment and related assets in connection with the closing of stores in an amount not to exceed \$250,000);

(d) sell, lease or otherwise dispose of, mortgage, hypothecate or otherwise encumber any Asset (other than sales of Inventory in the Ordinary Course of Business and other than any Liens provided for in the DIP Order);

(e) amend, terminate or renew any Contract other than in the Ordinary Course of Business; provided, that any such amendment, termination or renewal shall not increase the term of any such Contract by more than one (1) year or result in an obligation of any Seller in excess of \$50,000;

(f) fail to pay any required filing, processing or other fee, or fail to use commercially reasonable efforts to maintain the validity of Sellers' rights in, to or under any Purchased Intellectual Property;

(g) fail to use commercially reasonable efforts to maintain all Permits of Sellers, including those used in the operation of the Business;

(h) make any unusual or extraordinary efforts to collect any outstanding accounts receivable or intercompany obligation, liability or Indebtedness, give any discounts or concessions for early payment of such accounts receivable or intercompany obligation, liability or Indebtedness, other than the usual discounts given by the Business in the Ordinary Course of Business and make any sales of, or, other than Liens provided for in the DIP Order, convey any interest in, any accounts receivable or intercompany obligation, liability or Indebtedness to any third party;

(i) other than transactions pursuant to agreements or arrangements in effect on the Petition Date as set forth on Schedule 8.6(i), engage in any transaction with any Affiliate, subsidiary, shareholder, officer or director of any Seller (other than in the Ordinary Course of Business), incur or assume any long term or short term debt with or on behalf of any such Person or guarantee, endorse or otherwise be liable or responsible (whether directly, indirectly, contingently or otherwise) for the obligations of any such Person;

(j) other than as set forth in Section 8.6(a), increase the salaries or other compensation payable to any of Sellers' directors, officers or Employees;

(k) make any change in their method of accounting, except in accordance with GAAP;

(l) other than with respect to a Competing Bid, enter into any Contract that would survive the Closing (other than in the Ordinary Course of Business and provided that the term of such Contract does not exceeds one (1) year and that such Contract does not create an obligation of any Seller in excess of \$50,000);

(m) return Inventory with an aggregate value of more than \$25,000 to any single vendor;

(n) fail to maintain any insurance policy in effect on the date hereof or amend any such policy other than extensions in the Ordinary Course of Business;

(o) accelerate the payment of any obligation, Liability or Indebtedness of any Seller; and

(p) agree, whether in writing or otherwise, to do any of the foregoing.

Section 8.7 Section 363(b)(1)(A). Buyer shall honor and observe any and all policies of Sellers in effect on the Petition Date prohibiting the transfer of personally identifiable information about individuals and otherwise comply with the requirements of Section 363(b)(1)(A) of the Bankruptcy Code.

Section 8.8 Adequate Assurances Regarding Purchased Contracts and Certain Real Property Leases. With respect to each Purchased Contract and Real Property Lease set forth on Schedule 1.1(c), Buyer shall provide adequate assurance of the future performance of such

Purchased Contract and Real Property Lease by Buyer as required by Sections 365(b)(1)(C) and/or 365(f)(2)(B) of the Bankruptcy Code, as applicable.

Section 8.9 Material Adverse Effect. Sellers shall promptly inform Buyer in writing of the occurrence of any event that has had, or is reasonably expected to have, a Material Adverse Effect.

Section 8.10 Employee Matters.

(a) Sellers shall reasonably assist Buyer to engage, in Buyer's sole and absolute discretion, the services of Sellers' (i) store associates and other store staff, (ii) district managers, and (iii) regional managers, in each case currently engaged in staffing the Business ("Prospective Employees"), on terms and conditions satisfactory to Buyer and such Prospective Employees. Buyer shall be provided access to, and be allowed to communicate with, such Prospective Employees. Sellers shall not, and shall not attempt to, engage or transfer the services of any of the Prospective Employees to any other business operated by Sellers or their successors; provided, however, that in the event Buyer engages and then later terminates the services of any Prospective Employee, Sellers may later re-engage the services of such individuals.

(b) Buyer shall, in consultation with Sellers, identify the names of the Prospective Employees whose services it wishes to engage at least five (5) days prior to the Closing Date. Such individuals who accept such offer or otherwise continue employment with Buyer are hereinafter referred to as the "Transferred Employees." Nothing herein shall obligate Buyer to employ any Transferred Employee for any particular length of time following the Closing Date.

(c) Except as set forth on Schedule 2.3(a), Sellers shall, subject to restrictions imposed by the Bankruptcy Code, as such may be modified by order of the Bankruptcy Court, be responsible for payment of all compensation due to Employees with respect to the period prior to the Closing Date, including, but not limited to any unpaid wages, salary, unused vacation or sick leave earned and accrued (to the extent not paid), health benefits, severance, WARN Act Liability (other than as set forth in Section 2.3(p)), or change of control obligations; provided, that Buyer shall be responsible for all Liabilities associated with Employee vacation and sick leave accruals with respect to Transferred Employees.

(d) Effective as of the Closing Date, Buyer shall either (i) assume the Benefit Plans or (ii) provide the Transferred Employees with employee benefit plans substantially similar, in the aggregate, to the Benefit Plans provided to such Transferred Employees by Sellers immediately prior to Closing (which could include a combination of assumed Benefit Plans and newly-established employee benefit plans) and such Transferred Employees shall be credited for service earned on and prior to the Closing Date with Sellers in addition to service earned with Buyer on or after the Closing Date to the extent that any Benefit Plan that is a Purchased Asset or the employee benefit plans of Buyer, as applicable, take into account service for purposes of eligibility, vesting or the calculation of vacation, sick days, severance, layoff and similar benefits (but not for purposes of pension benefit accruals).

(e) Buyer shall offer to employ all Employees subject to the CBA who remain employed by Sellers and who are providing services with respect to the Business immediately prior to the Closing under the terms and conditions set forth in the CBA, and such Employees shall be deemed to be Transferred Employees for the purposes hereof.

Section 8.11 Name Change; Chapter 7. Within twenty one (21) days after the Closing, the Sellers shall (i) take all steps necessary to effect a change in their respective corporate names to remove the words "Deb" and "Deb Shops" from such names and (ii) file a motion in the Bankruptcy Court to convert the Bankruptcy Cases to cases under chapter 7 of the Bankruptcy Code.

Section 8.12 Stayed Tax Liens. Prior to the Closing, Sellers shall notify Buyer within three (3) Business Days after any Stayed Tax Lien arises.

Section 8.13 Cooperation. Sellers, on the one hand, and Buyer, on the other hand, will provide each other with such cooperation and information as either of them may reasonably request of the other in connection with filing any Tax Return, amended Tax Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes, or participating in or conducting any audit or other proceeding in respect of Taxes (such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings and other determinations by Tax authorities). In addition, Buyer shall make available to Sellers, without charge to Sellers, such office space and employee support reasonably necessary to assist Sellers to wind up Sellers' operations following the Closing, resolve the Bankruptcy Cases, dissolve any or all of the Sellers and prepare and file the Tax Returns. Any information obtained under this Section 8.12 shall be kept confidential except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting any audit or other proceeding.

## **ARTICLE IX**

### **CONDITIONS TO CLOSING**

Section 9.1 Conditions Precedent to Obligations of Buyer. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Buyer in whole or in part to the extent permitted by applicable Law):

(a) The representations and warranties of Sellers set forth in this Agreement qualified as to materiality shall be true and correct and those not so qualified shall be true and correct in all material respects at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties qualified as to materiality shall be true and correct and those not so qualified shall be true and correct in all material respects, on and as of such earlier date); and Buyer shall have received a certificate signed by an authorized officer of each Seller, dated the Closing Date, to the foregoing effect in his or her corporate or limited liability company (not personal) capacity (it being acknowledged and agreed that the signatory to such certificate shall have no personal liability as a result of signing such certificate absent fraud);

(b) Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them prior to the Closing Date, and Buyer shall have received a certificate signed by an authorized officer of each Seller, dated the Closing Date, to the forgoing effect in his or her corporate or limited liability company (not personal) capacity (it being acknowledged and agreed that the signatory to such certificate shall have no personal liability as a result of signing such certificate absent fraud);

(c) Sellers shall have delivered, or caused to be delivered, to Buyer all of the items set forth in Section 4.2;

(d) Buyer shall have received all Permits necessary or useful for the conduct of the Business (which Buyer shall use commercially reasonable efforts to timely obtain);

(e) From the date hereof through the Closing Date, (i) there shall have been no Material Adverse Effect and (ii) Buyer shall have received a certificate signed by an authorized officer of each Seller, dated the Closing Date, to the forgoing effect in his or her corporate or limited liability company (not personal) capacity (it being acknowledged and agreed that the signatory to such certificate shall have no personal liability as a result of signing such certificate absent fraud);

(f) The Purchased Contracts shall be sold and assumed and assigned to Buyer by Order of the Bankruptcy Court satisfactory to Buyer in its sole and absolute discretion, except for any Purchased Contracts to be assumed and assigned after the Closing;

(g) The aggregate Cure Amounts as determined by the Bankruptcy Court shall not be more than 125% (exclusive of "Common Area Maintenance" adjustments for the applicable lease year in which the Closing occurs pursuant to the terms of Real Property Leases that are Purchased Assets) of the aggregate Cure Amounts set forth on Schedule 9.1(g) (which Schedule shall set forth each Purchased Contract and the Cure Amount associated therewith);

(h) The period to challenge or contest the validity, amount, perfection, or priority of the claims of the Lenders under the Loan Agreement shall have expired with no such challenge or contest having been asserted, or any such challenge or contest having been resolved to the satisfaction of the Buyer in its sole and absolute discretion;

(i) The obligations outstanding under the DIP Financing as of the Closing Date shall have been repaid in full;

(j) The Bid Procedures Order shall have become a Final Order (unless this condition shall have been waived in writing by Buyer);

(k) The Sale Order shall have become a Final Order (unless this condition shall have been waived in writing by Buyer); and

(l) All consents or similar approvals, if any, required of any Governmental Body to the Closing shall have been received.



**Section 9.2 Conditions Precedent to Obligations of Sellers.** The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part to the extent permitted by applicable Law):

(a) The representations and warranties of Buyer set forth in this Agreement qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, on and as of such earlier date); and Sellers shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect in his or her corporate or limited liability company (not personal) capacity (it being acknowledged and agreed that the signatory to such certificate shall have no personal liability as a result of signing such certificate absent fraud);

(b) Buyer shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Buyer on or prior to the Closing Date; and Sellers shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect in his or her corporate or limited liability (not personal) capacity (it being acknowledged and agreed that the signatory to such certificate shall have no personal liability as a result of signing such certificate absent fraud);

(c) To the extent that Buyer determines, in its sole and absolute discretion, to assign its rights, interests and obligations hereunder to one or more of its designees, such designee(s) shall deliver to Sellers the certificates required to be delivered pursuant to Section 9.2(a) and Section 9.2(b) hereof, certifying to such matters with respect to itself or themselves;

(d) Buyer shall have delivered, or caused to be delivered, to Sellers the Purchase Price; and

(e) the Sale Order shall have been entered and be effective, not subject to any stay.

**Section 9.3 Condition Precedent to Obligations of Buyer and Sellers.** The respective obligations of Buyer and Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of the following conditions (which may be waived by Buyer and Sellers in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; and

(b) Buyer and Sellers shall have each received duly executed copies of that certain Release attached hereto as Exhibit C.



Section 9.4 Frustration of Closing Conditions. Neither Sellers nor Buyer may rely on the failure of any condition set forth in Section 9.1, Section 9.2 or Section 9.3, as the case may be, if such failure was caused by such Party's breach of this Agreement.

## **ARTICLE X**

### **NO SURVIVAL**

Section 10.1 No Survival of Representations and Warranties. The Parties hereto agree that the representations and warranties contained in this Agreement shall not survive the Closing hereunder, and none of the Parties shall have any liability to each other after the Closing for any breach thereof. The Parties hereto agree that the covenants contained in this Agreement to be performed after the Closing shall survive the Closing hereunder, and each Party hereto shall be liable to the other after the Closing for any breach thereof.

## **ARTICLE XI**

### **TAX MATTERS**

Section 11.1 Transfer Taxes. Buyer shall be responsible for all Transfer Taxes.

Section 11.2 Purchase Price Allocation. Within sixty (60) days after the Closing Date, Buyer and Sellers will agree to a certificate of allocation detailing the allocation of the Purchase Price and Assumed Liabilities among the Purchased Assets. Buyer and Sellers will treat Sellers' transfer of the Purchased Assets to Buyer as an exchange governed by Section 1001 and Section 1060 of the Code and, in accordance with such treatment, will each file an Internal Revenue Service Form 8594 "Asset Acquisition Statement under Section 1.1060-1" at the times and in the manner as required by Treasury Regulation 1060-1 consistent with the certificate of allocation. The certificate of allocation will be conclusive and binding on the Parties for all purposes, including reporting and disclosure requirements under the Code and any foreign, state, or local Tax authority, except as provided by a change in applicable Tax Law or the good faith resolution of a Tax contest.

Section 11.3 Audits, Claims and Proceedings. Sellers shall have the right to control the conduct of the defense of any audit, claim, proceeding, investigation, or other controversy relating to Taxes ("Tax Claim") of Sellers for any taxable period ending on or prior to, or including, the Closing Date; provided, however, that Sellers will not have the right to settle any such Tax Claim if the resolution or determination of such Tax Claim is reasonably likely to materially adversely affect Buyer without first obtaining Buyer's written consent, such consent to not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, the foregoing does not apply to Taxes and disputes thereof described in Section 11.4 hereof.

Section 11.4 Tax Indemnity for Directors and Officers.

(a) Subject to compliance with the requirements of Section 11.4(b), Buyer shall indemnify and hold harmless any person who, on the date hereof or on the Closing Date, is a director, officer or Employee of any Seller (such persons, "Directors/Officers") for any Liability owed by such Director/Officer with respect to unpaid Colorado, Idaho, Illinois, Louisiana, Michigan, Nebraska, Texas and Wisconsin income and/or franchise Taxes of any Seller (such taxes, "Director/Officer Taxes") up to an amount that does not exceed, in the

aggregate for all such Liabilities and all such persons, the Tax Indemnity Cap. Solely for the purposes of this Section 11.4, the Directors/Officers shall be deemed third party beneficiaries of this provision with the right to enforce Buyer's obligations under this Section 11.4.

(b) Any Director/Officer shall as promptly as practicable notify Buyer in writing upon receipt by such Director/Officer of any pending or threatened Tax audit, contest or assessment for any Director/Officer Taxes (a "Tax Contest"). Buyer, at its expense, shall control the conduct and resolution of any Tax Contest, and such Director/Officer shall execute and deliver to Buyer a power of attorney on behalf of Buyer (or its legal counsel) to that effect. Buyer shall keep any Director/Officer making an indemnity claim hereunder apprised of material developments in any Tax Contest applicable to such Director/Officer. If any Tax Contest requires the payment of all or a portion of the disputed Director/Officer Tax, Buyer shall advance the amount of such Tax to the Director/Officer, subject to the Tax Indemnity Cap. For the avoidance of doubt, to the extent that a Director/Officer does not comply with his/her obligations under this Section 11.4(b), such Director/Officer shall not be indemnified for Director/Officer Taxes.

## **ARTICLE XII**

### **MISCELLANEOUS**

Section 12.1 Expenses. Except for the Expense Reimbursement that may be owed by Sellers to Buyer pursuant to Section 4.5, if any, each of Sellers and Buyer shall bear their own fees, costs and expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby; provided, that prior to the Petition Date, Sellers shall pay all reasonable fees, costs and expenses incurred by Buyer in connection with the transactions contemplated by this Agreement through the Petition Date.

#### Section 12.2 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.6 hereof; provided, however, that if the Bankruptcy Cases have not been commenced or have been closed, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware or the Delaware Chancery Court and any appellate court thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereto hereby consents to process being served by any Party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 12.7.

Section 12.3 Waiver of Right to Trial by Jury. Each Party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

Section 12.4 Entire Agreement; Amendments and Waivers. This Agreement (including the Schedules and Exhibits hereto) represents the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought or, if such amendment, supplement, modification or waiver can be so construed, by both Parties. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

Section 12.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed in the State of Delaware.

Section 12.6 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), (ii) when sent by facsimile (with written confirmation of transmission) or electronic mail (and no notice of failure of delivery was received within a reasonable time after such message was sent) or (iii) one Business Day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses, facsimile numbers and e-mail addresses (or to such other address, facsimile number or e-mail address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Sellers, to:

Deb Shops, Inc.  
9401 Blue Grass Road  
Philadelphia, Pennsylvania 19114  
Attention: Mark Hoffman  
Telephone: (215) 676-6000  
Telecopier: (215) 698-8664  
Email: mhoffman@debshops.com

with a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Ted S. Waksman, Esq. and Michael F. Walsh, Esq.  
Telephone: (212) 310-8000  
Telecopier: (212) 310-8007  
Email: ted.waksman@weil.com and michael.walsh@weil.com

If to the Agent or Buyer, to:

Ableco Finance LLC  
299 Park Avenue, 22nd Floor  
New York, New York 10171  
Attention: Joe Naccarato  
Telephone: (212) 891-2100  
Telecopier: (212) 891-1541  
Email: jnaccarato@ablecofinance.com

with a copy to:

Klee, Tuchin, Bogdanoff & Stern LLP  
1999 Avenue of the Stars, 39th Floor  
Los Angeles, California 90067  
Attention: Michael L. Tuchin, Esq. and David A. Fidler, Esq.  
Telephone: (310) 407-4000  
Telecopier: (310) 407-9090  
Email: mtuchin@ktbslaw.com and dfidler@ktbslaw.com

Each Party entitled to notice may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving all other Parties notices in the manner herein set forth.

Section 12.7 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or

legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 12.8 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for Sellers' estates or any trustee appointed in a chapter 7 case if the Bankruptcy Cases are converted from chapter 11. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement except as provided below and except as provided in Section 11.4. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Sellers, on the one hand, or Buyer, on the other hand (by operation of law or otherwise), without the prior written consent of the other Parties hereto and any attempted assignment without the required consents shall be void; provided, however, that Buyer intends to (and may, without the consent of Sellers) assign its rights, interests, and obligations hereunder to one or more of its designees. Provided that Buyer is declared to be the Winning Bidder under the Bid Procedures Order (or, if no Auction is scheduled or conducted and the Bankruptcy Court approves the transactions contemplated hereby) and that any designee(s) of Ableco, as Buyer and as Agent on behalf of the Lenders and not in its individual capacity, shall have entered into an agreement with the Agent and the Lenders whereby, among other things, such designee(s) will be sufficiently capitalized by the Lenders to pay the Purchase Price and to assume the Assumed Liabilities in connection with any such designation (it being acknowledged and agreed that, among other things, a finding by the Bankruptcy Court that such designee(s) have demonstrated adequate assurance of future performance as required by Sections 365(b)(1)(C) and/or 365(f)(2)(B) shall be deemed to satisfy such condition) and that Sellers shall be intended third party beneficiaries of such provisions of such agreement, then upon any such permitted assignment, the references in this Agreement to Buyer shall apply solely to such designee(s), and the Parties hereto agree that Ableco, as Buyer and as Agent, on behalf of the Lenders, shall have no liability or continuing obligations of any kind whatsoever hereunder. To the extent that any such designee(s) does not enter into such an agreement with the Agent and the Lenders, upon any such permitted assignment, the references in this Agreement to Buyer shall apply solely to such designee(s), and the Parties hereto agree that Ableco, as Buyer and as Agent on behalf of the Lenders, shall have no liability or continuing obligations of any kind whatsoever hereunder, other than its obligation to cause such designee(s) to pay the Purchase Price and to cause the Closing contemplated by this Agreement. In connection with any such permitted assignment by Ableco, as Buyer and as Agent, on behalf of the Lenders and not in its individual capacity, to such designee(s), upon the Closing (a) such designee(s) shall be deemed to have assumed \$60,000,000 of Sellers' debt under the Loan Agreement and (b) notwithstanding clause (a) above, the credit set forth in Section 3.1(iii) shall remain \$75,000,000 and, accordingly, Sellers shall no longer remain liable for the payment of such \$75,000,000 of debt (but, for the avoidance of doubt, Sellers shall remain liable for the balance of the obligations under the Loan Agreement).



Section 12.9 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile or electronic mail), each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

*[Signature Pages Follow]*





IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

**SELLERS:**

DSI HOLDINGS, INC.

By: Barry Sisson  
Name: Barry Sisson  
Title: Asst. Treasurer

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

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DEB SHOPS, INC. (a New Jersey corporation)  
JOY SHOPS, INC. (a Delaware corporation)  
JOY SHOPS, INC. (a Pennsylvania corporation)  
D.B. INTEREST, INC.  
D.B. KNOW, INC.  
D.B. ROYALTY, INC.  
DEB E COMMERCE, INC.  
TOPS'N BOTTOMS OF NEW YORK, INC.  
DEB SHOPS OF ALABAMA, INC.  
DEB SHOPS OF ARIZONA, INC.  
DEB OF ARKANSAS, INC.  
DEB OF CALIFORNIA, INC.  
DEB OF COLORADO, INC.  
DEB OF CONNECTICUT, INC.  
DEB OF DELAWARE, INC.  
DEB FASHIONS OF FLORIDA, INC.  
DEB SHOPS OF GEORGIA, INC.  
DEB SHOPS OF IDAHO, INC.  
DEB OF ILLINOIS, INC.  
DEB OF INDIANA, INC.  
DEB SHOPS OF IOWA, INC.  
DEB OF KANSAS, INC.  
DEB OF KENTUCKY, INC.  
DEB SHOPS OF LOUISIANA, INC.  
DEB OF MAINE, INC.  
DEB SHOPS OF MARYLAND, INC.  
DEB OF MASSACHUSETTS, INC.  
DEB OF MICHIGAN, INC.  
DEB SHOPS OF MINNESOTA, INC.

By: Bary Sisson  
Name: BARRY SISSON  
Title: SVP CFO

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DEB OF WEST VIRGINIA, INC.  
DEB OF WISCONSIN, INC.  
DEB OF WYOMING, INC.

By: Baum  
Name: BAUM Sussan  
Title: SUP CFO

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**BUYER AND AGENT:**

ABLECO FINANCE LLC (as Agent on behalf of  
the Lenders under the Loan Agreement and not in its  
individual capacity)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Handwritten signature: Dan Wolf]*  
*[Handwritten title: President]*

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PAGE 4

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