

EXHIBIT A

ASSET PURCHASE AGREEMENT

among

**EVERYTHING BUT WATER, LLC,
JUST ADD WATER, INC.**

and

ORLANDO BATHING SUIT, LLC

Dated as of April __, 2009

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EXHIBITS

Exhibit A	--	Form of Assignment of Leased Properties
Exhibit B	--	Form of Assignment of Intellectual Property
Exhibit C	--	Form of Bill of Sale and Assignment and Assumption Agreement
Exhibit D	--	Purchaser's Disclosure Schedule
Exhibit E	--	Sellers' Disclosure Schedule
Exhibit F	--	Form of General Release

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of April __, 2009, among Everything But Water, LLC, a Delaware limited liability company ("EBW"), Just Add Water, Inc., a Texas corporation ("JAW"; together with EBW, each a "Seller" and collectively, the "Sellers"), and Orlando Bathing Suit, LLC, a Delaware limited liability company (the "Purchaser").

RECITALS

WHEREAS, the Sellers are engaged in the business of selling swimwear, apparel and related accessories in the United States and Puerto Rico (the "Business");

WHEREAS, on February 25, 2009 (the "Petition Date"), the Sellers commenced voluntary cases under chapter 11 (the "Chapter 11 Cases") of title 11 of the United States Code 11. U.S.C. §§ 101 et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, the Sellers wish to sell, assign and transfer to the Purchaser, and the Purchaser wishes to purchase and acquire from the Sellers, the Purchased Assets (as defined below) free and clear of all liens, claims, encumbrances and interests, whether known or unknown, liquidated or unliquidated, other than as expressly permitted hereunder and, in connection therewith, the Purchaser is willing to pay the Purchase Price (as defined below) (including, without limitation, the assumption of the Assumed Liabilities (as defined below)), all upon the terms and subject to the conditions set forth herein;

WHEREAS, the parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Purchased Assets and the assignment of the Assigned Contracts (as defined below) pursuant to Section 363 and 365 of the Bankruptcy Code; and

WHEREAS, the execution and delivery of this Agreement and the Parties' ability to consummate the transactions set forth in this Agreement are subject, among other things, to the entry of Bankruptcy Sale Order;

NOW, THEREFORE, in consideration of the promises and the representations, warranties, agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Seller and the Purchaser hereby agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.01 Definitions. For purposes of this Agreement:

"Action" means any claim, as defined in the Bankruptcy Code, action, complaint, suit, litigation, arbitration, appeal, petition, demand, inquiry, hearing, proceeding, investigation or other dispute, whether civil, criminal, administrative or otherwise, at law or in equity, by or before any Governmental Authority or any third person.

"Affected Assets" has the meaning given to it in Section 5.03.

“Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

“Agreement” has the meaning given to it in the preamble hereto.

“Allocation” has the meaning given to it in Section 2.07.

“Alternate Purchaser” has the meaning given to it in Section 8.01(j).

“Alternate Transaction” has the meaning given to it in Section 8.01(c).

“Ancillary Agreements” means the Bill of Sale and Assignment and Assumption Agreement, the Assignments of Leased Properties, the Assignments of Intellectual Property and any other instrument or agreement contemplated by this Agreement or the foregoing.

“Assigned Contracts” has the meaning given to it in Section 2.01(a)(x).

“Assigned Leased Real Property” has the meaning given to it in Section 2.01(a)(i).

“Assignments of Leased Properties” means the Omnibus Assignment and Assumption of Lease Agreement to be executed and delivered by the Sellers and the Purchaser at the Closing with respect to the leases of the Leased Real Property that are Assigned Contracts, substantially in the form attached hereto as Exhibit A.

“Assignments of Intellectual Property” means the Assignments of Owned Intellectual Property to be executed and delivered by the Sellers and the Purchaser at the Closing, substantially in the form attached hereto as Exhibit B.

“Assumed Liabilities” has the meaning given to it in Section 2.02(a).

“Assumed Trade Payables” has the meaning given to it in Section 2.02(a)(iv).

“Assumption Notice” has the meaning given to it in Section 2.05(e).

“Bankruptcy Code” has the meaning given to it in the recitals hereto.

“Bankruptcy Court” has the meaning given to it in the recitals hereto.

“Bankruptcy Sale Order” means an order issued by the Bankruptcy Court, which Bankruptcy Sale Order shall be reasonably acceptable to Purchaser.

“Bidding Procedures Motion” means a motion, in form and substance reasonably satisfactory to Purchaser, to approve the Bidding Procedures Order.

“Bill of Sale and Assignment and Assumption Agreement” means the Bill of Sale and Assignment and Assumption Agreement to be executed and delivered by the Sellers and the Purchaser at the Closing, substantially in the form attached hereto as Exhibit C.

“Business” has the meaning given to it in the recitals hereto.

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the City of New York.

“Business Employees” means all current employees, officers and directors of Sellers and their Affiliates who perform, as of the date hereof, services related to the Business.

“Chapter 11 Cases” has the meaning given to it in the recitals hereto.

“Closing” has the meaning given to it in Section 2.09.

“Closing Date” has the meaning given to it in Section 2.09.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985.

“Consent” means any consent, waiver, approval, order or authorization of, or registration, declaration or filing with or notice to, any Governmental Authority or other Person.

“Contracts” means any contract, arrangement, note, bond, commitment, purchase order, sales order, franchise, guarantee, indemnity, indenture, instrument, lease, license or other agreement, understanding, instrument or obligation, whether written or oral, all amendments, supplements and modifications of or for any of the foregoing and all rights and interests arising thereunder or in connection therewith.

“Control” (including the terms “controlled by” and “under common control with”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs, policies or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by Contract, credit arrangement or otherwise.

“Conveyance Taxes” means all sales, use, value added, transfer, stamp, stock transfer, real property transfer and similar Taxes.

“Corporate Name” has the meaning given to it in Section 5.07(a).

“Credit Bid” means a credit bid for any combination of a portion of the Pre-Petition Obligations and/or a portion of the DIP Obligations in an amount equal to \$12,500,000 (after giving effect to any adjustments provided in Sections 2.06(b) and 2.08) which may include the assumption of a portion of the Pre-Petition Obligations by Purchaser, provided that such Pre-Petition Obligations and DIP Obligations may be assigned by the Pre-Petition Lenders and/or DIP Lenders to their designee (including without limitation, an acquisition entity) on or prior to the Closing Date.

“Designation Right Contract” has the meaning given to it in Section 2.05(e).

“Designation Right Period” has the meaning given to it in Section 2.05(e).

“Determined Cure Costs” means, in the aggregate, all amounts payable to counterparties of Assigned Contracts (other than Excluded Contracts) on account of the assumption of the Assigned Contracts (other than Excluded Contracts) as set forth in Section 1.01(a) of the Purchaser’s Disclosure Schedule; provided, that if one or more objection(s) to the proposed cure costs is filed with the Bankruptcy Court, such amount as required by Section 365(b) of the Bankruptcy Code.

“DIP Note” means that certain Debtor-In-Possession Revolving Loan Promissory Note, dated as of March 2, 2009 issued by D.B. Zwirn Special Opportunities Fund, L.P., as agent for the lenders from time to time parties thereto.

“DIP Credit Documents” means the Loan Documents (as such term is defined in the DIP Note).

“DIP Lenders” means the several banks and other financial institutions or entities from time to time that are lenders under the DIP Note.

“DIP Obligations” means “Obligations” as such term is defined in the DIP Note.

“DIP Order” means the Final Order of the Bankruptcy Court approving the Sellers’ Motion (A) for Authorization to (i) Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364; (ii) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (iii) Grant Priming Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. § 364(c) and (d); (iv) Provide Adequate Protection to Pre-Petition Lenders Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 and (B) to Schedule a Final Hearing Pursuant to Bankruptcy Rule 4001 dated April 30, 2009.

“EBW” has the meaning given to it in the preamble hereto.

“EBW Holdco” means EBW Holdco, LLC, a Delaware limited liability company.

“Employee Plans” means (i) all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, and all bonus, stock option, stock purchase, restricted stock, incentive, deferred compensation, active or retiree medical or life insurance, hospital, dental, vision care, drug, sick leave, disability (including short term disability and long term disability), salary continuation, maternity or paternity, legal benefits, unemployment benefits, pension, supplemental retirement, savings, severance, fringe or other benefit plans, programs or arrangements, and all employment, consulting, termination, severance or other contracts or agreements, to which any of the Sellers or ERISA Affiliates is a party, with respect to which any Seller or ERISA Affiliate has any obligation or which are maintained, contributed to or sponsored by a Seller or ERISA Affiliate for the benefit of any Business Employee; (ii) each employee benefit plan related solely to the Business for which any of the Sellers could incur liability under Section 4069 of ERISA in the event such plan has been or were to be terminated; (iii) any plan related solely to the Business in respect of which any of the Sellers could incur liability under Section 4212(c) of ERISA; and (iv) any Contracts between any of the Sellers or any of their Affiliates, and any Business Employee.

“Environmental Claim” means any and all written complaints, summons, citations, directives, orders, claims, litigation, investigations, notices of violation, judgments, administrative, regulatory or judicial actions, suits, demands or proceedings, or written notices of noncompliance or violation by any Governmental Authority or Person involving or alleging potential liability arising out of or resulting from any violation of any Environmental Law or the presence or Release of Hazardous Material at, onto, from, beneath or otherwise relating to: (i) any of the Leased Real Property or any other assets, properties or businesses of Sellers or any of their respective predecessors in interest; or (ii) any facilities receiving or handling Hazardous Materials generated by any of the Sellers or any of their respective predecessors in interest.

“Environmental Laws” means all Federal, state, local and foreign laws, statutes, ordinances, rules, regulations, permits, licenses, registrations, orders, judgments, decrees, injunctions, or legally enforceable requirements of any Governmental Entity which are in existence on the date hereof, and all final court orders and decrees and arbitration awards imposing liability or establishing standards of conduct for protection of the environment and human health and safety including the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. 9601 et seq., as amended; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. 6901 et seq., as amended; the Clean Air Act (“CAA”), 42 U.S.C. 7401 et seq., as amended; the Clean Water Act (“CWA”), 33 U.S.C. 1251 et seq., as amended; the Occupational Safety and Health Act (“OSHA”), 29 U.S.C. 655 et seq.

“Environmental Permits” means any permit, registration, certificate, qualification, approval, identification number, license and other authorization required under or issued pursuant to any applicable Environmental Law or otherwise required by any applicable Governmental Authority.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means a person required at any particular time to be aggregated with any of the Sellers under Sections 414(b), (c), (m) or (o) of the Tax Code or Section 4001 of ERISA.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder.

“Excluded Assets” has the meaning given to it in Section 2.01(b).

“Excluded Contract” has the meaning given to it in Section 2.05(a).

“Excluded Liabilities” has the meaning given to it in Section 2.02(b).

“Excluded Taxes” means (i) all Taxes (other than (A) Pre-Closing Lien Taxes and (B) Conveyance Taxes (as may be reduced or eliminated pursuant to Section 1146(b) of the Bankruptcy Code and/or the Sale Order entered by the Bankruptcy Court) assessed on the transfer of the Purchased Assets to the Purchaser) relating to the Sellers, the Purchased Assets or the Business for any Pre-Closing Period and (ii) any income Taxes imposed on the Sellers. For purposes of this Agreement, in the case of any Straddle Period, Excluded Taxes shall be

apportioned between pre-Closing and post-Closing periods as follows: (a) Property Taxes relating to the Purchased Assets allocable to the Pre-Closing Period shall be equal to the amount of such Property Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that fall within the portion of the Straddle Period ending on (and including) the day before the Closing Date and the denominator of which is the number of days in the entire Straddle Period, and (b) Taxes (other than Property Taxes) relating to the Purchased Assets for the Pre-Closing Period shall be computed as if such taxable period ended as of 12:01 a.m. New York time on the Closing Date.

“FCPA” has the meaning given to it in Section 3.24.

“Final Order” means an order, judgment or other decree of the Bankruptcy Court or any other court or judicial body with proper jurisdiction, as the case may be, which is in full force and effect, as to which no appeal is pending and which has not been, and is not subject to being, reversed, stayed, modified or amended.

“Financial Statements” means (i) the consolidated audited financial statements of EBW Holdco and Subsidiaries for each of the fiscal years ended December 31, 2007 and 2008 and the notes thereto and (ii) the unaudited financial statements for the twelve (12) months ended February 28, 2009.

“GAAP” means United States generally accepted accounting principles and practices in effect from time to time applied consistently throughout the periods involved.

“Governmental Authority” means any federal, national, supranational, foreign, state, provincial, local, county, municipal or other government, any governmental, regulatory or administrative authority, agency, department, bureau, board, commission or official or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority, or any court (including the Bankruptcy Court), tribunal, judicial or arbitral body, or any Self-Regulatory Organization.

“Hazardous Material” shall include, without regard to amount and/or concentration (a) any element, compound, or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substances, extremely hazardous substance or chemical, hazardous waste, medical waste, biohazardous or infectious waste, special waste, or solid waste under Environmental Laws; (b) petroleum, petroleum-based or petroleum-derived products; (c) polychlorinated biphenyls; (d) any substance exhibiting a hazardous waste characteristic including but not limited to corrosivity, ignitibility, toxicity or reactivity as well as any radioactive or explosive materials; and (e) any raw materials, building components, including but not limited to asbestos-containing materials and manufactured products containing Hazardous Materials.

“Indebtedness” means any liabilities or obligations, whether contingent or otherwise (including penalties, interest and premiums), including any of the following: (i) in respect of borrowed money or with respect to advances of any kind (including under any applicable credit line); (ii) evidenced by bonds, notes, debentures or similar instruments, (iii) for the payment of money relating to any capitalized lease obligation; (iv) for the deferred purchase

price of goods or services or for trade or barter arrangements; (v) evidenced by a letter of credit or reimbursement obligation with respect to any letter of credit or similar facilities; (vi) under interest rate, currency or commodity hedging, swap or similar derivative transactions; (vii) all guarantees, assumptions, endorsements or other agreements and arrangements having the economic effect of a guarantee of any Person by the Sellers; (viii) all bank overdrafts; (ix) all obligations pursuant to any Contract with any factor or receivables; and (x) all liabilities and other obligations of others of the kind described in clauses (i) – (ix) that are secured by a Lien on any properties or assets of the Sellers.

“Insurance Policies” has the meaning given to it in Section 3.16.

“Intellectual Property” means all (i) foreign and domestic trademarks, service marks, brand names, Internet domain names, logos, symbols, trade dress, assumed names, fictitious names, trade names and other indicia of origin, all applications and registrations for all of the foregoing, and all goodwill associated therewith and symbolized thereby, including without limitation all extensions, modifications and renewals of same (collectively, **“Trademarks”**); (ii) foreign and domestic patentable inventions, and all patents, registrations, and applications therefor, including without limitation divisions, continuations, continuations-in-part and renewal applications, and including without limitation renewals, extensions and reissues; (iii) confidential and proprietary information, trade secrets and know-how, including without limitation processes, schematics, databases, formulae, drawings, prototypes, models, designs and customer lists; (iv) foreign and domestic published and unpublished works of authorship, whether copyrightable or not (including, but not limited to, computer software), copyrights therein and thereto, and registrations and applications therefor, and all renewals, extensions, restorations and reversions thereof; (v) electronic data processing, information, recordkeeping, communications, telecommunications, networking, account management, inventory management and other such applications, software, and hardware, equipment and services (including, but not limited to, all applications and software installed on all hardware and equipment, and all databases, firmware, and related documentation), and Internet websites and related content (collectively, **“IT Systems”**); and (vi) all other intellectual property or proprietary rights and claims or causes of action arising out of or related to any infringement, misappropriation or other violation of any of the foregoing, including without limitation rights to recover for past, present and future violations thereof.

“Intercompany Loans” means, with respect to each Seller, any intercompany Indebtedness related to the Business between any such Seller and another Seller or Affiliates of another Seller, whether or not evidenced by promissory notes and/or recorded in the books and records of such Sellers.

“Inventory” means all inventory and all finished goods, merchandise, work in progress, residual by-products, samples, supplies, spare parts, shipping materials, packaging materials, raw materials and other consumables relating to the Business and maintained, held or stored by or for any of the Sellers as of the Closing Date, wherever located, and any prepaid deposits for any of the same.

“IRS” means the Internal Revenue Service of the United States.

“JAW” has the meaning given to it in the preamble hereto.

“Law” means any federal, national, supranational, foreign, state, provincial, local, county, municipal or similar statute, law, common law, writ, injunction, decree, guideline, policy, ordinance, regulation, rule, code, Order, constitution, treaty, requirement, judgment or judicial or administrative doctrines enacted, promulgated, issued, enforced or entered by any Governmental Authority.

“Leased Real Property” means the leasehold interests of the Sellers and the security deposits appurtenant thereto described in Section 3.09(a) of the Sellers’ Disclosure Schedule, together with (a) any prepaid rent, security deposits and options to renew or purchase relating to the foregoing and (b) all buildings and other structures, facilities or improvements currently or hereafter located thereon, all fixtures, systems and items of personal property of such Seller used or useful in (to the extent Sellers hold rights, title and interest in such Leased Real Property) the Business attached or appurtenant thereto and all easements, rights of way, options, renewal rights, licenses, rights and appurtenances relating to the foregoing.

“Liabilities” means any and all debts, liabilities, obligations to perform services and other obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, known or unknown or determined or determinable, including those arising under any Law, Action or Order and those arising under any Contract.

“Licensed Intellectual Property” means all Intellectual Property used or useful in (to the extent Sellers hold rights, title and interest in such Licensed Intellectual Property) connection with the Business that any Seller is licensed or otherwise permitted by other Persons to use.

“Liens” means any mortgage, deed of trust, pledge, assignment, security interest, encumbrance, lien, Mechanics Lien, charge, hypothecation, deemed trust, Action, easement, charge or otherwise, or claim of any kind or nature whatsoever in respect of any property, other than any license of Intellectual Property, including any of the foregoing created by, arising under, or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of a financing statement naming the owner of the property as to which such lien relates as the debtor under the Uniform Commercial Code or any comparable Law in any other jurisdiction.

“Loss” has the meaning given to it in Section 5.03.

“Material Adverse Effect” means any event, circumstance, development, change or effect that, individually or in the aggregate with all other events, circumstances, developments, changes or effects, (a) has had or would reasonably be expected to have or result in a material adverse effect or change in the results of operations, properties, assets, liabilities or condition (financial or otherwise) of the Business, the Purchased Assets or the Assumed Liabilities including, without limitation, an Event of Default (as such term is defined in the DIP Note) under the DIP Note, or (b) has or would reasonably be expected to prevent, materially delay or materially impair the ability of the Sellers to consummate the Transactions, except, in

each case, for any such effects resulting from or attributable to (i) general economic or political conditions; (ii) any condition arising solely by reason of the commencement of the Chapter 11 Cases; (iii) changes caused by acts of war, armed hostilities or terrorism occurring after the date hereof; (iv) changes arising from the consummation of the Transactions or the announcement of the execution of this Agreement; and (v) any change that generally affects the industry in which the Sellers operate; provided, however, that the foregoing clauses (other than clause (ii)) shall not include, and thus the determination of "Material Adverse Effect" shall not exclude, any event, circumstance, development, change or effect that has a disproportionately adverse effect on the Business, the Purchased Assets, the Assumed Liabilities or the Sellers as compared to the effect on other affected Persons.

"Material Contracts" has the meaning given to it in Section 3.12.

"Mechanics Liens" means mechanics', carriers', workers', repairers' and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of the Sellers, or pledges, deposits or other liens securing the performance of bids, trade contracts, leases or statutory obligations (including workers' compensation, unemployment insurance or other social security legislation).

"Order" means any order, writ, judgment, injunction, decree, rule, ruling, directive, stipulation, determination or award made, issued or entered by or with any Governmental Authority, whether preliminary, interlocutory or final, including, without limitation, any Order entered by the Bankruptcy Court in the Chapter 11 Case (including, without limitation, the Sale Order).

"Owned Intellectual Property" means all Intellectual Property used or useful in (to the extent the Sellers hold rights, title and interest in such Owned Intellectual Property) connection with the Business that is owned by any Seller, directly or indirectly, jointly or individually.

"PBGC" has the meaning given to it in Section 3.10(d).

"Permits and Licenses" means all of the rights and benefits accruing under any franchises, permits, consents, certificates, clearances, approvals, exceptions, variances, permissions, filings, publications, declarations, notices, licenses, agreements, waivers and authorizations, including Environmental Permits, of or with any Governmental Authority held, used or made by any of the Sellers in connection with the Business.

"Permitted Liens" means (a) statutory Liens for Pre-Closing Lien Taxes not yet due or delinquent (or which may be paid without interest or penalties) set forth on Section 1.01(b)(i) of the Sellers' Disclosure Schedule; (b) Liens (if any) securing the Assumed Liabilities set forth on Section 1.01(b)(ii) of the Sellers' Disclosure Schedule; (c) zoning, landmarking, entitlement, conservation restriction and other land use and environmental regulations by Governmental Authorities which do not materially interfere with the occupancy or current use of the Purchased Assets; (d) all covenants, conditions, restrictions, easements, rights of way, licenses and other similar interests in land (excluding, for greater certainty, as of the Closing, any mortgages, assignments of rents or any other financial charges except those in the preceding

clause (a)) which were recorded as of the Petition Date, including any rights of way, easements, or other instruments granting similar rights that may be registered or recorded after such times without the consent of the Sellers and which do not materially interfere with the occupancy, value or current use of any such real property or any interests therein; and (e) matters which would be disclosed by an accurate survey or inspection of the real property which do not or could not materially impair the occupancy, value or current use of such real property which they encumber.

“Person” means any individual, partnership, firm, corporation, limited liability company, association, joint venture, trust, Governmental Authority, first nation, aboriginal or native group or band, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“Petition Date” means the date on which the Chapter 11 Cases were commenced by the filing of voluntary petitions under the Bankruptcy Code, being February 25, 2009.

“Pre-Closing Lien Taxes” means any Property Taxes or other Taxes imposed on the Sellers that are not yet due or delinquent relating to the Purchased Assets or the Business for any Pre-Closing Period which if unpaid would result in the imposition of a Lien on any of the Purchased Assets.

“Pre-Closing Period” means any taxable period (or portion thereof) ending on or prior to the Closing Date.

“Pre-Petition Lenders” means the financial institutions or entities from time to time that made loans under the Pre-Petition Financing Agreement.

“Pre-Petition Financing Agreement” means the Financing Agreement, dated as of April 18, 2006, by and among EBW (formerly known as EBW Opco, LLC), as borrower, EBW Holdco, as guarantor, the Pre-Petition Lenders party thereto, and D.B. Zwirn Special Opportunities Fund, L.P., as collateral agent and administrative agent, as amended.

“Pre-Petition Obligations” means all indebtedness, obligations and liabilities of the Sellers incurred prior to the Petition Date arising from or related to the Pre-Petition Financing Agreement, together with all fees, expenses, indemnities and reimbursement obligations due thereunder and interest thereon accruing both before and after the Petition Date to the extent allowable under Section 506(b) of the US Bankruptcy Code, whether such indebtedness, obligations or liabilities are direct or indirect, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising.

“Property Taxes” means real and personal ad valorem property Taxes and any other Taxes imposed on a periodic basis and measured by the value of any item of property.

“Purchased Assets” has the meaning given to it in Section 2.01(a).

“Purchase Price” has the meaning given to it in Section 2.06.

“Purchaser” has the meaning given to it in the preamble hereto.

“Purchaser’s Disclosure Schedule” means the Disclosure Schedule attached hereto as Exhibit D, dated as of the date hereof, delivered by the Purchaser to the Sellers in connection with this Agreement.

“Purchaser’s Knowledge” means the actual knowledge of the person set forth on Section 1.01(b) of the Purchaser’s Disclosure Schedule, after having made reasonable inquiries and investigation.

“Receivables” means any and all accounts receivable, notes and other amounts receivable from third parties, including customers, arising from the conduct of the Business before the Closing, whether or not in the ordinary course of business, together with any unpaid financing charges accrued thereon.

“Registered” means, solely with respect to Intellectual Property, issued by, registered or filed with, renewed by or the subject of a pending application or registration before any Governmental Authority or Internet domain name registrar.

“Regulations” means the Treasury Regulations (including Temporary Regulations) promulgated by the United States Department of Treasury with respect to the Tax Code or other federal tax statutes.

“Related Party” has the meaning given to it in Section 3.26(a).

“Release” means any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, or disposing of Hazardous Materials (including the abandonment or discarding of barrels, containers or other closed receptacles containing Hazardous Materials) into the environment.

“Representatives” means, with respect to a particular Person, any director, officer, employee or other representative of such Person, including such Person’s attorneys, financial advisors and restructuring advisors.

“Sale Order” means the Order of the Bankruptcy Court approving the sale of the Purchased Assets to the Purchaser in form and substance reasonably acceptable to the Sellers and the Purchaser, pursuant to, *inter alia*, Sections 363 and 365 of the Bankruptcy Code authorizing and approving, *inter alia*, the sale of the Purchased Assets to the Purchaser on the terms and conditions set forth herein free and clear of all Encumbrances (other than Permitted Liens), the assumption and assignment of the Assumed Liabilities, and the assumption and assignment of the Assigned Contracts to the Purchaser. The Sellers shall use their commercially reasonable efforts to have included in such Order authorization for the Sellers and the Purchaser to execute, deliver and/or file the Uniform Commercial Code, lien releases, discharges, financing change statements and such other documents, notes or instruments as the Purchaser may deem reasonably necessary to release Liens (save and except for Permitted Liens) on the Purchased Assets.

“Sellers” has the meaning given to it in the preamble hereto.

"Sellers' Disclosure Schedule" means the Disclosure Schedule attached hereto as Exhibit E, dated as of the date hereof, delivered by the Sellers to the Purchaser in connection with this Agreement.

"Sellers' Knowledge" means the actual knowledge of the persons set forth on Section 1.01(c) of the Sellers' Disclosure Schedule, after having made reasonable inquiries and investigation.

"Straddle Period" means any taxable period beginning on or prior to and ending after the Closing Date.

"Subsidiary" means, when used with reference to any Person, any corporation, partnership, limited liability company, joint venture, stock company or other entity of which such Person (either acting alone or together with its other Subsidiaries), directly or indirectly, owns or has the power to vote or to exercise a controlling influence with respect to 50% of more of the capital stock or other voting interests, the holders of which are entitled to vote for the election of a majority of the board of directors or any similar governing body of such corporation, partnership, limited liability company, joint venture, stock company or other entity.

"Suits" has the meaning given to it in Section 3.08(b)(ii).

"Tax" or "Taxes" means any and all taxes, assessments, charges, duties, fees, levies or other governmental charges, including, without limitation, all federal, state, provincial, local, foreign and other income, franchise, profits, gross receipts, capital gains, capital stock, transfer, property, sales, use, value-added, occupation, property, excise, severance, windfall profits, stamp, license, payroll, social security, withholding and other taxes, assessments, charges, duties, fees, levies or other governmental charges of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a Tax Return), all estimated taxes, deficiency assessments, additions to tax, penalties and interest and shall include any liability for such amounts as a result either of being a member of a combined, consolidated, unitary or affiliated group or of a contractual obligation to indemnify any person or other entity.

"Tax Code" means the U.S. Internal Revenue Code of 1986, as amended through the date hereof.

"Tax Documents" has the meaning given to it in Section 5.09(a).

"Tax Returns" means any and all returns, reports, documents, declarations, claims for refund or other information or filings required to be supplied to any Governmental Authority or jurisdiction (foreign or domestic) with respect to Taxes together with all schedules or attachments thereto, including, without limitation, information returns where required, any documents with respect to or accompanying payments of estimated Taxes, or any documents with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information, and including any amendments of any of the foregoing.

"Termination Date" means May 4, 2009.

“Transactions” means the transactions contemplated by this Agreement and the Ancillary Agreements.

“Transfer” has the meaning given to it in Section 2.04(a).

“Transferred Employees” has the meaning given to it in Section 6.01(a).

“Transferred Intellectual Property” has the meaning given to it in Section 2.01(a)(ix).

“Unassigned Contract” has the meaning given to it in Section 2.05(e).

“WARN Act” means the Worker Adjustment and Retraining Notification Act of 1988.

SECTION 1.02 Interpretation and Rules of Construction. In this Agreement, except to the extent otherwise provided or that the context otherwise requires:

(a) when a reference is made in this Agreement to an Article, Section or Schedule, such reference is to an Article or Section of or Schedule to, this Agreement unless otherwise indicated;

(b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

(c) whenever the words “include,” “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation”;

(d) the words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

(f) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

(g) references to a Person are also to the Person’s heirs, executors, administrators, personal representatives, successors and permitted assigns, as applicable; and

(h) references to agreements are also to the same agreements as amended, restated or otherwise modified from time to time.

ARTICLE II PURCHASE AND SALE

SECTION 2.01 Purchase and Sale of Assets.

(a) Upon the terms and subject to the conditions of this Agreement, and subject to Sections 2.05(b) and 5.07(b), at the Closing, each Seller shall sell, assign, transfer, convey and deliver, or cause to be sold, assigned, transferred, conveyed and delivered, to the Purchaser, and the Purchaser shall purchase and acquire from such Seller all of such Seller's rights, title and interest, as of the Closing Date, in and to any and all assets, properties, rights and claims of any kind or nature, whether tangible or intangible, real, personal or mixed, wherever located and whether or not carried or reflected on the books and records of any of the Sellers, whether now existing or hereinafter acquired, which relate to the Business or which are used or useful in or held for use in, or were acquired in connection with, the operation of the Business, excluding only the Excluded Assets (such assets, properties, rights and claims to be acquired hereunder, collectively, the "Purchased Assets"), free and clear of all Liens (except for Permitted Liens) and all claims against the Purchaser. Nothing herein shall be construed to require Sellers to sell any Purchased Assets in which they do not hold any right, title or interest. The Purchased Assets shall include, but not be limited to, the following:

(i) the Leased Real Properties (the "Assigned Leased Real Property") set forth on Section 2.01(a)(i) of the Purchaser's Disclosure Schedule; provided that such Assigned Leased Real Property shall be equal to or greater than 30 leases;

(ii) all of the Sellers' rights in and to the tangible personal property owned, related to, or used or useful in or held for use in the conduct of, the Business, including, but not limited to, the physical assets and equipment, machinery, tools, supplies, spare parts, molds, trucks, cars, other vehicles and rolling stock, furniture, fixtures, trade fixtures, leasehold improvements, office materials and supplies, and other tangible personal property located on, or off, the premises of the Leased Real Property;

(iii) the Inventory;

(iv) all cash and cash equivalents, securities (other than any equity interests in the Sellers) and negotiable instruments of the Sellers on hand, in lock boxes, in financial institutions or elsewhere;

(v) all bank accounts of the Sellers;

(vi) the Receivables;

(vii) all files, operating data, books of account, general, financial and Tax (other than income Tax) records, personnel records of the Transferred Employees, invoices, shipping records, supplier lists, price lists, vendor lists, mailing lists, catalogs, sales promotion literature, advertising materials, brochures, standard forms of documents, manuals of operations or business procedures, research materials, contracts, instruments, filings, administrative and pricing manuals, correspondence, memoranda, plats, architectural plans, surveys, title insurance policies, drawings, plans and specifications, environmental reports, maintenance or service records, soil tests, engineering reports,

expired purchase orders, operating records, operating safety manuals, and other material and documents, books (including applicable portions of minute books), records and files (whether or not in the possession of any of the Sellers or their respective Representatives, stored in hardcopy form or on magnetic, optical or other media) and any rights thereto owned, associated with or employed by any of the Sellers in the conduct of the Business or otherwise related to the Purchased Assets or the Assumed Liabilities;

(viii) all goodwill associated with the Business or the Purchased Assets, including rights under any confidentiality agreements executed by any third party for the benefit of any of the Sellers to the extent relating to the Business;

(ix) the Owned Intellectual Property and Licensed Intellectual Property as set forth on Section 2.01(a)(ix) of the Purchaser's Disclosure Schedule (the "Transferred Intellectual Property");

(x) All the Sellers' rights to and in the Contracts and the Assigned Real Property Leases listed in Section 2.01(x) of the Purchaser's Disclosure Schedule to which each of the Sellers is a party, together with all contracts and agreements and leases, entered into or acquired by any Seller between the date hereof and the Closing Date which have been approved in writing by the Purchaser (collectively, the "Assigned Contracts");

(xi) The Permits and Licenses and all deposits and prepaid expenses held by third parties and/or governmental agencies, save and except any such Permit and License that is an Excluded Asset;

(xii) all stationery, forms, labels, shipping material, the sales and promotional literature, catalogs, brochures, art work, photographs, advertising material, customer lists and other sales related materials related to the Business;

(xiii) all rights to the telephone and facsimile numbers and email addresses used in the Business, as well as rights to receive mail and other communications addressed to the Sellers and relating in any way to the Business (including mail and communications from customers, suppliers, distributors and agents;

(xiv) except for any such amounts required to be paid to the Pre-Petition Lenders or the DIP Lenders under the DIP Order, the amount of, and all rights to any, insurance proceeds received by the Sellers after the date hereof in respect of the loss, destruction or condemnation of any Purchased Assets occurring prior to, on or after the Closing or relating to any Assumed Liabilities;

(xv) all unexpired, transferable warranties, indemnities, or guaranties from any third party with respect to any Purchased Asset, including any item of real property, personal property or equipment;

(xvi) to the extent transferable and to the extent related to the Purchased Assets, the full benefit of all representations, warranties, guarantees, indemnities, undertakings,

certificates, covenants, agreements and all security therefor received by any of the Sellers on the purchase or other acquisition of the Purchased Assets;

(xvii) any rights, demands, claims, credits, allowances, rebates, or rights of setoff (other than against the Sellers or any of their Affiliates) arising out of or relating to any of the Purchased Assets;

(xviii) any rights to net Tax refunds, credits or similar benefits;;

(xix) all deposits received by any of the Sellers from any subtenants with respect to any subleases of Leased Real Property, save and except with respect to any sublease under a lease that is an Excluded Asset;

(xx) all prepaid and deferred items that relate to the Business or the Purchased Assets, including all prepaid rentals and unbilled charges, fees and deposits;

(xxi) all confidentiality, non-compete and similar agreements entered into by any of the Sellers or any of their respective Representatives in connection with a sale of the Purchased Assets or the Business, save and except for any such agreement that is an Excluded Asset;

(xxii) all current and prior insurance policies of any of the Sellers that relate to the Business or any of the Purchased Assets or Assumed Liabilities, to the extent that the Purchaser elects as set forth on Section 2.01(a)(xxii) of the Purchaser's Disclosure Schedule; and

(xxiii) all other assets, properties, rights and claims of any of the Sellers of any kind or nature which relate to the Business, which are used or useful in or held for use in the Business, or which relate to the Purchased Assets (in each case, other than the Excluded Assets) not otherwise described above.

(b) Notwithstanding anything in Section 2.01(a) to the contrary, the Sellers shall not sell, convey, assign, transfer or deliver, nor cause to be sold, conveyed, assigned, transferred or delivered, to the Purchaser, and the Purchaser shall not purchase or acquire, and the Purchased Assets shall not include, the Sellers' right, title and interest in and to the following assets of the Sellers (collectively, the "Excluded Assets"):

(i) the company seal, charter documents, stock or equity record books and such other similar books and records (including applicable portions of minute books), in each case pertaining solely to the organization, existence or capitalization of the Sellers and not involving or related to the Purchased Assets, Assumed Liabilities or the Business;

(ii) all rights of the Sellers under this Agreement and the Ancillary Agreements;

(iii) Tax Returns of the Sellers (other than the copies of such Tax Returns obtained pursuant to Section 5.09 or otherwise);

- (iv) any Excluded Contract and rights thereunder;
- (v) any assets relating to the Employee Plans;
- (vi) all rights, claims, causes of action and avoidance actions under chapter 5 of the Bankruptcy Code (whether or not asserted as of the Closing Date); and
- (vii) any right, property or asset that is listed or described in Section 2.01(b)(vi) of the Purchaser' Disclosure Schedule. The Purchaser at its sole discretion shall be allowed to amend or supplement Section 2.01(b)(vi) of the Purchaser's Disclosure Schedule at any time on or prior to the date that is three (3) days prior to the Closing Date (or such later time as the Sellers and the Purchaser may agree or as set forth in the second sentence of Section 2.05(d) or the proviso in Section 2.08) to add to the properties or assets to be excluded under this Section 2.01(b)(vii) without any adjustment to the Purchase Price; provided, however, that in any event, no more than 35 leases for the Leased Real Property shall ultimately be among the Excluded Assets.

SECTION 2.02 Assumption and Exclusion of Liabilities.

(a) The Purchaser shall assume no liability or obligation of the Sellers, or of any predecessor or any Affiliate of any of the Sellers, except the liabilities and obligations expressly set forth in this Section 2.02(a) (collectively, the "Assumed Liabilities"), which the Purchaser or its permitted assignee (as contemplated by Section 10.06), as the case may be, shall assume and pay, perform and discharge in accordance with their respective terms, subject to any defenses or claimed offsets asserted in good faith against the obligee to whom such liabilities or obligations are owed:

(i) all Liabilities of the Sellers under the Assigned Contracts for the lease of real property and the other Assigned Contracts, in each case (A) for which all necessary consents and/or Bankruptcy Court approval to transfer have been obtained and (B) arising and relating solely to the period from and after the Closing and not to the extent arising out of any breach or default thereof or other activities prior to the Closing, and, with respect to the foregoing Assigned Contracts and subject to the proviso in Section 2.08, all Determined Cure Costs, it being understood and agreed that all such Determined Cure Costs shall be paid as a portion of the Purchase Price in accordance with Section 2.06(b);

(ii) all Liabilities in respect of Permits and Licenses (other than any that is an Excluded Asset), in each case arising and relating solely to the period from and after the Closing and not to the extent arising out of any breach or default thereof or other activities prior to the Closing;

(iii) (A) all Property Taxes and assessments on the Purchased Assets that relate to the period from and after the Closing, and (B) all Pre-Closing Lien Taxes;

(iv) all trade payables of the Sellers to third parties (other than to any Seller or any Affiliate of any Seller) arising from the conduct of the Business in the ordinary course of business, incurred by the Sellers after the Petition Date and prior to the Closing (the "Assumed Trade Payables");

(v) an amount equal to such portion of the Pre-Petition Obligations, together with the Credit Bid, will equal \$12,500,000; and

(vi) all Liabilities set forth in Section 2.02(a)(vii) of the Purchaser's Disclosure Schedule.

(b) Notwithstanding anything to the contrary in this Agreement, the parties expressly acknowledge and agree that the Purchaser shall not assume or in any manner whatsoever be liable or responsible for any Liabilities of any of the Sellers, or of any predecessor or Affiliate of any of the Sellers, whether existing on the Closing Date or arising thereafter as a result of any act, omission or circumstance taking place prior to the Closing, other than the Assumed Liabilities. Purchaser shall not be a successor in interest to the Seller for any purpose and is not answerable for any successor liability claims. The Liabilities not specifically assumed by Purchaser pursuant to Section 2.02(a) shall be referred to herein collectively as the "Excluded Liabilities." Without limiting the foregoing, the Purchaser shall not be obligated to assume, and does not assume, and hereby disclaims all of the Excluded Liabilities, including, without limitation, all of the following Liabilities, of the Seller, or of any predecessor or Affiliate of any of the Sellers:

(i) all Excluded Taxes;

(ii) any Liabilities relating to or arising out of the Excluded Assets;

(iii) all accounts payable (other than Assumed Trade Payables);

(iv) any Environmental Liabilities in respect of the Leased Real Property and any area used pursuant to the Permits and Licenses relating to the Business, or Hazardous Material or environmental conditions that exist on or prior to the Closing Date;

(v) the Sellers' obligations under this Agreement and the Ancillary Agreements and any fees or expenses incurred by any of the Sellers in connection with the negotiation, preparation, approval or execution of this Agreement and the Ancillary Agreements and/or the sale of the Purchased Assets pursuant hereto, including, without limitation, the fees and expenses of counsel, independent auditors, brokers, bankers, investment bankers and other advisors or consultants and any success (or similar fees) arising in connection therewith;

(vi) any Liabilities arising as a result of any Action initiated at any time, to the extent related to the Business or the Purchased Assets on or prior to the Closing Date, including, without limitation, all Liabilities arising in connection with the Actions set forth on Section 2.02(b)(vi) of the Purchaser's Disclosure Schedule;

(vii) any Liabilities arising from or related to the Employee Plans or to the termination of any such Employee Plans;

(viii) any liability or obligation of the Sellers arising out of or relating to any pension, 401(k), employee benefit, retirement or profit sharing plan or trust, or any liability for continuation coverage under COBRA;

(ix) any Liability relating to the employment or termination of employment of any (x) Person arising from or related to the operation of the Business prior to Closing or the Transactions (including but not limited to, any severance or stay or incentive bonuses) or (y) Person who is not a Transferred Employee arising on or after the Closing, not expressly assumed by Purchaser under Article VI;

(x) any Liabilities arising under Intercompany Loans and all promissory notes related thereto;

(xi) all Liabilities arising under the Pre-Petition Financing Agreement;

(xii) all Liabilities arising under the DIP Credit Documents;

(xiii) subject to Section 2.02(a)(iii)(B), Section 2.02(a)(iv), Section 2.02(a)(v), and Section 2.02(a)(vi), any Liabilities arising from the ownership or operation of the Business prior to the Closing, including, without limitation, (A) all Liabilities in respect of Indebtedness that relates to the period prior to the Closing, and (B) all Liabilities arising from the ownership or operation of the Business at any time on or prior to the Petition Date;

(xiv) any Liabilities arising from the operation of any successor liability Laws, including, without limitation, "bulk sales" statutes, to the extent that non-compliance therewith or the failure to obtain necessary clearances would subject the Purchaser or the Purchased Assets to the claims of any creditors of any of the Sellers or Affiliate of any of the Sellers, or would subject any of the Purchased Assets to any Liens or other restrictions (except for Permitted Liens);

(xv) any Liabilities of any of the Sellers not related to the operation of the Business;

(xvi) (A) any Liabilities relating to any defective products sold or distributed by any of the Sellers prior to the Closing or otherwise arising from the operation of the Business prior to the Closing, including, without limitation, any obligation to replace or repair any such defective product or to return the purchase price of any such defective product, except to the extent expressly assumed by the Purchaser pursuant to Section 2.02(a)(iv) and (B) any Liabilities for personal injury claims, product recalls or similar actions relating to the operation of the Business prior to the Closing; and

(xvii) any violation of an applicable Law or Order prior to the Closing by any of the Sellers, including, without limitation, any Environmental Law.

(c) Nothing contained in this Agreement shall require the Purchaser to pay or discharge any Assumed Liabilities (i) prior to such Assumed Liabilities becoming due and payable in accordance with the underlying terms of any Contracts giving rise to or governing such Assumed Liabilities or (ii) so long as the Purchaser shall in good faith contest the amount or validity thereof.

SECTION 2.03 Purchase of Purchased Assets. On the terms and subject to the conditions of this Agreement, on the Closing Date (a) the Purchaser shall purchase the Purchased Assets from the Sellers, and (b) the Purchase Price shall be paid as set forth in Section 2.06.

SECTION 2.04 Assignment of Contracts and Rights.

(a) To the extent that any Contract to be sold, transferred, conveyed or assigned (any sale, transfer, conveyance or assignment, a "Transfer") to the Purchaser pursuant to the terms of Section 2.01 is not capable of being Transferred to the Purchaser (after giving effect to the Sale Order) without the Consent of a third Person, or if such Transfer or attempted Transfer would, or if the subsequent Transfer or attempted Transfer of the equity interests of the Purchaser would, constitute a breach thereof or a violation of any Law, nothing in this Agreement or in any document, agreement or instrument delivered pursuant to this Agreement will constitute a Transfer or an attempted Transfer thereof prior to the time at which all Consents necessary for such Transfer will have been obtained unless an Order of the Bankruptcy Court effects such Transfer without Consent.

(b) Subject to Sections 7.02(g) and 7.02(k), to the extent that any Consent referred to in Section 2.04(a) is not obtained by the Closing with respect to any such Contract to be Transferred to the Purchaser, each Seller will with respect to each such Contract, from and after the Closing and until the earlier to occur of (x) the date on which such applicable Consent is obtained and (y) the date on which such Seller liquidates and ceases to exist, use commercially reasonable efforts during the term of such Contract to (i) provide to the Purchaser or its Affiliate, as applicable, the benefits under such Contract, (ii) cooperate in any reasonable and lawful arrangement (including holding such Contract in trust for the Purchaser or its Affiliate, as applicable, pending receipt of the required Consent) designed to provide such benefits to the Purchaser or its Affiliate, as applicable, and (iii) enforce for the account of the Purchaser or its Affiliate, as applicable, any rights of such Seller under such Contract (including the right to elect to terminate such Contract in accordance with the terms thereof upon the direction of the Purchaser). Subject to Sections 7.02(g) and 7.02(k), the Purchaser will, and, as applicable, will cause its Affiliates to, cooperate with the applicable Sellers in order to enable the Sellers to provide to the Purchaser and any of its Affiliates that purchase any Purchased Assets hereunder the benefits contemplated by this Section 2.04(a). Subject to Sections 7.02(g) and 7.02(k), the Purchaser will pay any amount it would have been required to pay under any such Contract had the Contract been assigned (after obtaining the requisite Consent) to the Purchaser or its Affiliate, as applicable, at the Closing.

SECTION 2.05 Assumption of Assigned Contracts.

(a) Subject to the second sentence of Section 2.05(d), at any time and from time to time on or before one (1) day prior to the Closing Date, the Purchaser may, by written notice to the Sellers, elect to exclude from the Transactions (i) any one or more of the Contracts that would otherwise be Purchased Assets (including any lease pursuant to which the Leased Real Property is leased by any of the Sellers) and (ii) any one or more of the Permits and Licenses; provided, however, that in any event, no more than 35 leases for the Leased Real Property shall ultimately be among the Excluded Assets. Any Contract or Permit and License designated in such a notice pursuant to the preceding sentence or designated as an Excluded

Contract pursuant to the second sentence of Section 2.05(d) or the proviso in Section 2.08 (each such designated Contract or Permit and License, an "Excluded Contract", and all such designated Contracts and Permits and Licenses collectively, the "Excluded Contracts") shall no longer be an Assigned Contract or a Permit and License to be assigned to the Purchaser hereunder. There shall be no adjustment to the Purchase Price as a result of the Purchaser's election to exclude any one or more of the Contracts or Permits and Licenses from the Transactions pursuant to this Section 2.05(a) except that the Purchaser shall not be required to make any payments for Determined Cure Costs or any other amounts for any such Excluded Contracts.

(b) At the time of Closing, and subject to Section 2.05(a), the approval of the Bankruptcy Court pursuant to the Sale Order or such other Order of the Bankruptcy Court and/or the consent of the applicable counterparties to the extent necessary to effect the assignment in any case, the Sellers shall assume (to the extent required) and then assign to the Purchaser and the Purchaser shall assume from the Sellers, to the extent provided in Section 2.02(a), all the Assigned Contracts.

(c) Subject to the terms of Section 2.06 and Section 2.05(a), the Purchaser shall make provision for the payment of the Determined Cure Costs in accordance with the Sale Order. The Sellers shall use their commercially reasonable efforts, including the filing and prosecution of any and all appropriate proceedings in the Bankruptcy Court, to establish the Determined Cure Costs, if any, for each Assigned Contract, in accordance with the Sellers' books and records as of the Petition Date.

(d) The Sellers have delivered to the Purchaser true and complete copies of the Assigned Contracts and Permits and Licenses, or in the case of oral Assigned Contracts true and complete written descriptions thereof (in each case including all amendments thereto and assignments thereof) on or before the earlier of the tenth (10th) Business Day (a) after the date hereof or (b) prior to the hearing(s) to approve the Sale Order. Notwithstanding any provision in this Agreement to the contrary, the Purchaser shall not be required to purchase, acquire or assume any Assigned Contract or Permit and License (or any Liabilities thereunder) a true and complete copy (or in the case of any oral Assigned Contracts, a true and complete written description) of which has not been timely delivered by the Sellers to Purchaser in accordance with the preceding sentence, and the Purchaser may by written notice to the Sellers, elect to make such Assigned Contract or License and Permit an Excluded Contract. Notwithstanding any provision in this Agreement to the contrary, from and after the date hereof through the Closing Date, the Sellers will not reject or take any action to reject, repudiate or disclaim (or fail to take any action that would result in rejection by operation of law of) any Contract without the prior written consent of the Purchaser.

(e) The Purchaser shall have the right, by written notice to the Sellers within sixty (60) days after the Closing Date, to specify any Contracts and Leased Real Property that are not included as Assigned Contracts (each such Contract and Leased Real Property, an "Unassigned Contract") that shall be held by the Sellers and not rejected pursuant to Section 365 of the Bankruptcy Code (any such Contract, a "Designation Right Contract") for the duration of the Designation Right Period (as defined below), and the Sellers shall have the right at any time following sixty (60) days after the Closing to cause any Unassigned Contract other than the Designation Right Contracts to be rejected pursuant to Section 365 of the Bankruptcy Code; it

being understood and agreed that, without limiting any other obligation of the Sellers hereunder, none of the Sellers shall in any event reject or seek to reject any Contract or Leased Real Property during the period beginning on the date hereof and ending on the sixty (60) day period following the Closing Date, except with the Purchaser's written consent. As to Designation Right Contracts, the Sellers shall not seek to reject such contracts for a period of sixty (60) days following the Closing Date (the "Designation Right Period") and, as soon as practicable after receiving further written notice(s) (each, an "Assumption Notice") from the Purchaser during the Designation Right Period requesting assumption and assignment of any Designation Right Contract, the Sellers shall, subject to the Purchaser demonstrating adequate assurance of future performance thereunder, take all actions reasonably necessary to seek to assume and assign to the Purchaser pursuant to Section 365 of the Bankruptcy Code any Contract(s) and Leased Real Property set forth in the Assumption Notice, and any applicable cure cost shall be satisfied in accordance with the definition of Assumed Liabilities. The Sellers agree and acknowledge that the covenant set forth in this Section 2.05(e) shall survive the Closing. With respect to any Designation Right Contract, the Purchaser shall pay and be solely responsible for all costs (which in the case of Leased Real Property shall be limited to such costs as set forth in the budget described in Section 2.05(e) of the Purchaser's Disclosure Schedule) arising from, relating to, or in connection with the continuation by the Sellers of such Designation Right Contract for the period during the Designation Right Period from the Closing Date up to and including the date in which such Designation Right Contracts are assumed and assigned to the Purchaser or rejected in accordance with 365 of the Bankruptcy Code or the Sale Order. Notwithstanding anything in this Agreement to the contrary, on the date any Contract or Leased Real Property is assumed and assigned to the Purchaser pursuant to this Section 2.05(e), such Contract or Leased Real Property shall be deemed an Assigned Contract for all purposes under this Agreement.

SECTION 2.06 Purchase Price. The purchase price (the "Purchase Price") payable in consideration for the sale, transfer, assignment, conveyance and delivery by the Sellers to the Purchaser of the Purchased Assets shall consist of the following:

- (a) the Credit Bid;
- (b) the assumption at the Closing by the Purchaser of the Assumed Liabilities from the Sellers, including the assumption of the obligation to pay to the applicable counterparties of the applicable Assigned Contracts in accordance with Section 2.05(c) an amount equal to the Determined Cure Costs payable in cash by the Purchaser under Section 2.05(c).

SECTION 2.07 Allocation of the Purchase Price. No later than thirty (30) days after the Closing Date, the parties agree to allocate the Purchase Price pursuant to the requirements of Section 1060 of the Internal Revenue Code of 1996 (the "Allocation"). In the event that the parties are unable to reach such an agreement within thirty (30) days after the Closing Date, they will select a qualified, independent and nationally recognized appraiser and that firm's decision shall be binding upon the parties and the fees and expenses shall be borne by the Purchaser. The parties also agree to use such Allocation in completing and filing Internal Revenue Code Form 8594 for federal income tax purposes.

SECTION 2.08 Determined Cure Costs.

(a) The Purchaser agrees to satisfy all Determined Cure Costs pursuant to Section 365(b) of the Bankruptcy Code, as and when such Determined Cure Costs become due, in respect of Assigned Contracts for which all necessary consents and/or Bankruptcy Court approval to transfer have been obtained to the extent set forth on Section 1.01(a) of the Purchaser's Disclosure Schedule.

(b) The Sellers will reasonably cooperate with the Purchaser to secure, before the Closing Date, all Consents, provided, that, neither the Sellers nor the Purchaser shall have any obligation to offer or pay any consideration in order to obtain any such consents, approvals or waivers, except for such amounts as the Purchaser shall be obligated to pay as a condition to any assumption and assignment (including Determined Cure Costs) pursuant to Section 365(b) of the Bankruptcy Code; provided, however, the Purchaser shall not be required to waive any of the conditions precedent to the Closing Date set forth in Section 7.01.

SECTION 2.09 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement shall take place at a closing (the "Closing") to be held at the offices of Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York at 10:00 a.m. New York time on the third Business Day following the satisfaction or waiver of the conditions to the obligations of the parties hereto set forth in Section 7.01 and Section 7.02 (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions), or at such other place or at such other time or on such other date as the Sellers and the Purchaser may mutually agree upon in writing. The date of the Closing is herein referred to as the "Closing Date."

SECTION 2.10 Closing Deliveries by the Seller. At the Closing, the Sellers shall deliver or cause to be delivered to the Purchaser:

(a) the Bill of Sale and Assignment and Assumption Agreement, the Assignments of Leased Properties in recordable form, the Assignments of Intellectual Property and such other instruments, in each case in form and substance and in registrable or recordation form where applicable, reasonably satisfactory to the Purchaser, as may be reasonably requested by the Purchaser to effect the transfer of the Purchased Assets to the Purchaser, or to register or record or evidence such transfer on the public records, in each case duly executed by each applicable Seller and the other parties thereto (other than the Purchaser);

(b) the Ancillary Agreements, duly executed by each applicable Seller and the other parties thereto (other than the Purchaser) other than the Ancillary Agreements delivered pursuant to Section 2.10(a);

(c) a certificate of non-foreign status pursuant to section 1.1445-2(b)(2) of the Regulations from each Seller;

(d) copies of resolutions of the managing member and the board of managers (or equivalent governing body) of each Seller authorizing and approving the execution and

delivery of this Agreement and the Ancillary Agreements and the performance by such Seller of its obligations hereunder and thereunder, certified by the Secretary of such Seller;

(e) an incumbency certificate dated the Closing Date for each Seller executed by the Secretary of such Seller which shall identify the names and titles and bear the signatures of the officers of such Seller individually authorized to execute and deliver this Agreement and the Ancillary Agreements to which such Seller is a party;

(f) termination statements, lien releases, discharges, financing change statements or other documents, notices or other instruments as the Purchaser may reasonably deem necessary to release Liens (other than Permitted Liens) on the Purchased Assets, each in form and substance reasonably satisfactory to the Purchaser duly executed by any holders of such Liens;

(g) written consents in form and substance reasonably satisfactory to the Purchaser duly executed by the applicable Sellers and counterparties evidencing any consents necessary to effect the assignment to the Purchaser of the Contracts set forth in Section 7.02(j) of the Sellers' Disclosure Schedule and the assignment to the Purchaser of Intellectual Property pursuant to Section 5.07(b);

(h) a certificate of a duly authorized officer of each Seller certifying that all conditions set forth in Section 7.02(a) have been satisfied (or to the extent any such condition has been waived in accordance with the terms hereof, attaching thereto the applicable written waiver);

(i) a certificate executed by each of the Sellers' chief executive officer stating that (i) all of the representations and warranties of such Seller set forth in this Agreement are in all material respects (except for those representations and warranties that are qualified by materiality which shall be true and correct in all respects) true, correct, and accurate as of the Closing Date, and (ii) all covenants set forth in this Agreement to be performed by such Seller on or prior to the Closing Date have been performed in all material respects; and

(j) such other customary documents and instruments of transfer, assumptions and filings as may be reasonably requested by Purchaser to be delivered by any Seller to consummate the Transactions or otherwise give effect to this Agreement.

SECTION 2.11 Closing Deliveries by the Purchaser. At the Closing, the Purchaser shall deliver, or cause to be delivered,

(a) To the Sellers:

(i) the Bill of Sale and Assignment and Assumption Agreement, the Assignments of Leased Properties and the Assignments of Intellectual Property, in each case in form and substance reasonably satisfactory to the Sellers to effect the assumption by the Purchaser of the Assumed Liabilities, duly executed by the Purchaser;

(ii) the Ancillary Agreements to which the Purchaser is a party, duly executed by the Purchaser other than the Ancillary Agreements delivered pursuant to Section 2.11(a)(i);

(iii) a certificate of a duly authorized officer of the Purchaser certifying as to the matters set forth in Section 7.01(a);

(iv) a copy of resolutions of the managing member and the board of managers and of the Purchaser authorizing and approving the execution and delivery of this Agreement and the Ancillary Agreements to which it is a party and the performance by the Purchaser of its obligations hereunder and thereunder, certified by the Secretary of the Purchaser; and

(v) such other customary documents and instruments of transfer, assumptions and filings as may be reasonably requested by Sellers to be delivered by the Purchaser to consummate the Transactions or otherwise give effect to this Agreement.

(b) the Purchase Price (to the extent due and payable at the Closing) in accordance with Section 2.06.

SECTION 2.12 Relinquishment of Control. At the Closing, the Sellers shall turn over actual possession and control of all of the Purchased Assets to the Purchaser by taking such actions as may be required or reasonably requested by the Purchaser to effect such transfer of possession and control.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Each of the Sellers hereby jointly and severally represents and warrants to the Purchaser as follows:

SECTION 3.01 Organization, Authority and Qualification. Each of the Sellers is a limited liability company or corporation, as the case may be, duly organized, validly existing and, except as a result of the commencement of the Chapter 11 Cases, in good standing under the laws of the jurisdiction of its incorporation, formation or organization, and, subject to obtaining the approval of the Bankruptcy Court, has all necessary power and authority to enter into this Agreement and the Ancillary Agreements, to carry out its obligations hereunder and thereunder, and to consummate the Transactions. Each of the Sellers has all necessary power and authority to own, lease, operate and conduct its business, properties and assets as now being conducted. Each of the Sellers is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its respective business makes such licensing or qualification necessary, except to the extent that the failure to be so licensed, qualified or in good standing (a) has resulted from the commencement or continuance of the Chapter 11 Cases; or (b) would not: (i) adversely affect the ability of such Seller to carry out its obligations under this Agreement and the Ancillary Agreements, and to consummate the Transactions; or (ii) otherwise reasonably be expected to have, individually or

in the aggregate, a Material Adverse Effect. Subject to obtaining the Sale Order from the Bankruptcy Court, the execution and delivery of this Agreement and the Ancillary Agreements by each Seller, the performance by each Seller of its obligations hereunder and thereunder, and the consummation by each Seller of the Transactions have been duly authorized by all requisite action on the part of such Seller and its stockholders or members, as the case may be, and no other corporate or limited liability company action or proceeding on the part of any of the Sellers are necessary to authorize the execution and delivery of this Agreement and the Ancillary Agreements by each of the Sellers, or the consummation of the Transactions. This Agreement has been, and upon their execution, the Ancillary Agreements shall have been, duly executed and delivered by each Seller, and (assuming due authorization, execution and delivery by the Purchaser), subject to the approval of the Bankruptcy Court, this Agreement constitutes, and, upon their execution, the Ancillary Agreements shall constitute, legal, valid and binding obligations of such Seller, enforceable against such Seller in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and subject to general principles of equity. JAW does not have any Subsidiaries and EBW's sole Subsidiary is JAW.

SECTION 3.02 No Conflict. Subject to obtaining the approval of the Bankruptcy Court and assuming that all consents, approvals, authorizations and other actions described in Section 3.03 have been obtained, all filings and notifications listed in Section 3.02 of the Sellers' Disclosure Schedule have been made, and any applicable waiting period has expired or been terminated, and except as may result from any facts or circumstances relating solely to the Purchaser, the execution, delivery and performance of this Agreement and the Ancillary Agreements by each Seller and the consummation of the Transactions hereby and thereby do not and will not, except as set forth in Section 3.02 of the Sellers' Disclosure Schedule: (a) violate, conflict with or result in the breach of the certificate of incorporation, articles of incorporation, bylaws, certificate of formation, operating agreement, limited liability company agreement or similar formation or organizational documents of any of the Sellers; (b) conflict with or violate any Law or Order applicable to any of the Sellers or any of the Purchased Assets or Assumed Liabilities; (c) violate, conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any note, bond, mortgage or indenture, Contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which any of the Sellers is a party and which constitutes a Purchased Asset or Assumed Liability, or result in the creation of any Lien on any of the Purchased Assets, except to the extent that any such rights of termination, amendment, acceleration, suspension, revocation or cancellation and such Liens are not enforceable (before or after consummation of the Transactions) due to operation of the Bankruptcy Code and except, in the case of clauses (b) and (c), for any such conflict, violation, breach or default that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or reasonably be expected to result in the imposition of any Lien against any of the Purchased Assets.

SECTION 3.03 Governmental Consents and Approvals. The execution, delivery and performance of this Agreement and each Ancillary Agreement by the Sellers do not or, upon the entry by the Bankruptcy Court of the Sale Order as required by Section 7.01(d) and Section 7.02(d), will not require any consent, approval, authorization or other Order of, action by, filing

with or notification to, any Governmental Authority or any other Person under any of the terms, conditions or provisions of any Law or Order applicable to any Seller or by which any of the Purchased Assets may be bound, any Contract to which any of the Sellers is a party or by which such Seller may be bound, except as described in Section 3.03 of the Sellers' Disclosure Schedule.

SECTION 3.04 Financial Condition. Except as set forth on Section 3.04 of the Sellers' Disclosure Schedule, the Financial Statements, copies of which have been delivered to the Purchaser, fairly represent in all material respects the consolidated financial condition of the Sellers as at the respective dates thereof and the consolidated results of operations of the Seller for the fiscal periods ended on such respective dates, and since December 31, 2007, no event or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

SECTION 3.05 Litigation. Except (a) for the Chapter 11 Cases or (b) as set forth in Section 3.05 of the Sellers' Disclosure Schedule, there is no pending Action by or against any of the Sellers or relating to the Business or any of the Purchased Assets or Assumed Liabilities, or, to the Sellers' Knowledge, threatened against or affecting the any of the Sellers or relating to the Business or any of the Purchased Assets or Assumed Liabilities, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or which would reasonably be expected to affect the legality, validity or enforceability of this Agreement, any Ancillary Agreement or the consummation of the Transactions.

SECTION 3.06 Compliance with Laws. Except as set forth in Section 3.06 of the Sellers' Disclosure Schedule or as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Sellers (a) have conducted and continues to conduct the Business in accordance with all applicable Laws and Orders applicable to the Business, (b) have complied with and continues to comply with all Laws and Orders applicable to the Purchased Assets and the Assumed Liabilities, (c) are not in violation of any such Law or Order, and (d) have not received any notice that any violation of any such Law or Order is being or may be alleged.

SECTION 3.07 Environmental Matters. Except as set forth in Section 3.07 of the Sellers' Disclosure Schedule:

(a) To the Knowledge of the Sellers, the Business, the Leased Real Property, or any properties or facilities owned, leased or operated by the Business are in compliance with Environmental Laws;

(b) The Business possesses and is in compliance with all Environmental Permits necessary for the conduct of its business as presently conducted;

(c) There has been no Release by the Business, at the Leased Real Property;

(d) No Environmental Claims have been asserted against the Business, nor do the Seller have knowledge or notice of any threatened or pending Environmental Claim against the Business or any predecessor in interest;

(e) The Sellers are not aware of any Environmental Claims that have been asserted against any facilities that may have received Hazardous Materials generated by the Business or any predecessor in interest;

(f) Neither the Business, nor to the knowledge of the Sellers, the Leased Real Property, nor any properties or facilities currently or formerly owned, leased, operated or otherwise used by the Business or a predecessor in interest is subject to any agreement that may require it to pay to, reimburse, guarantee, pledge, defend, indemnify or hold harmless any Person for or against any Environmental Liabilities; and

(g) Sellers have delivered to the Purchaser true and complete copies of all environmental reports, studies, investigations or correspondence regarding any Environmental Liabilities of any Seller or any environmental conditions at any of the Leased Real Property which are in possession of any Seller or its agents.

SECTION 3.08 Intellectual Property.

(a) Section 3.08(a) of the Sellers' Disclosure Schedule sets forth a true and complete list of all (i) Registered or otherwise material Owned Intellectual Property; and (ii) Licensed Intellectual Property.

(b) Except as set forth in Section 3.08(b) of the Sellers' Disclosure Schedule:

(i) All Owned Intellectual Property is subsisting and valid and enforceable, and is not subject to any outstanding order, judgment or decree restricting its use or adversely affecting any Seller's rights thereto.

(ii) None of the Sellers are violating and has not violated any Intellectual Property rights. There are no Actions, reissues, reexaminations, public protests, interferences, arbitrations, mediations, oppositions, cancellations, Internet domain name dispute resolutions or other proceedings (collectively, "Suits") pending, decided, threatened or asserted concerning any claim or position that the Seller or any of its indemnitees have violated any Intellectual Property rights.

(iii) There are no Suits pending, decided, threatened or asserted concerning the Owned Intellectual Property, and no valid basis for any such Suits exists. There are no Suits pending, decided, threatened or asserted concerning the Licensed Intellectual Property or the right of the Seller to use the Licensed Intellectual Property, and Seller is not aware of any valid basis for any such Suits or claims.

(iv) A Seller owns or otherwise holds valid rights to use all Transferred Intellectual Property. Except as set forth in Section 3.08(b)(iv) of the Sellers' Disclosure Schedule, all such rights are free of all Liens and are fully assignable by a Seller to any Person, without payment, consent of any Person or other condition or restriction. The Transferred Intellectual Property constitutes all Intellectual Property that is used in, or contemplated to be used in, the conduct of the Business as currently conducted and as currently contemplated to be conducted in the future. No Person is violating any Transferred Intellectual Property.

(v) No Person other than a Seller has any ownership interest in, or a right to receive a royalty or similar payment with respect to, any of the Owned Intellectual Property. No Person is entitled to a royalty or similar payment with respect to Intellectual Property not owned by the Seller. None of the Sellers have not granted any options, licenses, assignments or agreements of any kind relating to (i) ownership of rights in Owned Intellectual Property; or (ii) the marketing or distribution of Owned Intellectual Property.

(vi) None of the Sellers have not entered into any agreement to indemnify any other Person against any charge of infringement of any third party Intellectual Property, except for customary infringement indemnities agreed to in the ordinary course of business and included as part of any contracts for the license or sale of products or services. None of the Sellers have entered into any agreement granting any third party the right to bring infringement actions or otherwise to enforce rights with respect to the Owned Intellectual Property or pursuant to which any Seller has agreed not to sue or otherwise enforce any legal rights with respect to Owned Intellectual Property.

(vii) Each of the Sellers has timely made all filings and payments with the appropriate foreign and domestic agencies required to maintain in subsistence all Registered Owned Intellectual Property. All documentation necessary to confirm and effect each of the Seller's ownership of the Owned Intellectual Property, if acquired from other Persons, has been recorded in the United States Patent and Trademark Office, the United States Copyright Office and other official offices.

(viii) Each of the Sellers has taken all reasonable measures to protect the secrecy, confidentiality and value of all Intellectual Property that is a trade secret or is otherwise valuable or non-public proprietary information.

(ix) The IT Systems used in the operation of the Business are adequate in all material respects for their intended use and for the operation of the Business as is currently operated and as are currently contemplated to be operated by the Sellers, and are in good working condition (normal wear and tear excepted). There has not been any malfunction with respect to any such IT Systems since January 1, 2007 that has not been remedied or replaced in all material respects.

(x) All computer software that is owned by any of the Sellers: (i) performs substantially in accordance with the documentation or other written material used in connection with it; and (ii) does not contain any viruses or disabling devices known to the Sellers. The source code for all such computer software will compile into object code or otherwise be capable of performing the functions described in the documentation pertaining thereto and is sufficiently documented to enable a computer software developer of reasonable skill to understand, modify, repair, maintain, compile and otherwise utilize all aspects of such computer software without reference to other sources of information.

SECTION 3.09 Real Property.

(a) Section 3.09(a) of the Sellers' Disclosure Schedule lists the street address and legal description where appropriate of each parcel of real property leased or subleased by any Seller as tenant or subtenant, as the case may be, which is used or useful in (to the extent Sellers hold rights, title and interest in such real property) or held for use in the conduct of the Business, and the identity of the lessee of each such parcel of Leased Real Property. The Sellers have delivered to the Purchaser true and complete copies of the leases and subleases in effect at the date hereof (including all amendments thereto and assignments in respect thereof) relating to the Leased Real Property, and there has not been any sublease or assignment entered into by any of the Sellers in respect of the leases and subleases relating to the Leased Real Property. Each lease and sublease in respect of the Leased Real Property is a valid lease or sublease and Sellers have received no written notice of default except as disclosed in Section 3.09(a) of the Sellers' Disclosure Schedule. No Seller has received notice of any pending condemnation proceeding or any threatened condemnation that would preclude or impair the use of any Leased Real Property by the Business for the purposes for which it is currently used. No Seller has received notice of the applicable Governmental Authority altering its zoning Laws so as to affect or potentially affect the Leased Real Property.

(b) The utility and other services provided to the Leased Real Property are adequate to conduct and operate the Business as currently carried out on such Property. All of the buildings, structures, appurtenances and equipment situated on the Leased Real Property are adequate and suitable for the purposes for which they are presently being used and, with respect to each, the Sellers have adequate rights of ingress and egress for operation of the Business in the ordinary course of business.

(c) The Leased Real Property constitutes all of the real property used in the conduct of the Business.

(d) Except as set forth in Section 3.09(d) of the Sellers' Disclosure Schedule, the Sellers have valid and binding leasehold interests in all of its respective material assets, free and clear of any Liens, except, in each case, for Permitted Liens.

(e) Except as set forth in Section 3.09(e) of the Sellers' Disclosure Schedule, no options or rights of first offer or rights of first refusal or similar rights or options have been granted by any Seller to any Person (other than the Purchaser) that are enforceable despite the continuation of the Bankruptcy Cases to purchase, lease or otherwise acquire any interest in any of the Leased Real Property.

(f) Subject to the entry of the Sale Order, except as set forth on Section 3.09(f) of the Sellers' Disclosure Schedule, all real property leases listed in Section 3.09(a) of the Sellers' Disclosure Schedule are assumable by the Seller and assignable by the Sellers to Purchaser pursuant to Section 365 of the Bankruptcy Code.

(g) Neither of the Sellers owns any real property that is used or useful for the Business.

SECTION 3.10 Employee Benefit Matters.

(a) **Employee Plans and Material Documents.** Section 3.10(a) of the Sellers' Disclosure Schedule lists all Employee Plans. The Sellers have made available to the Purchaser a true and complete copy of each Employee Plan and all amendments made to such plans together with, as applicable, any applicable collective bargaining agreements and ancillary agreements, the most recent determination letter, if applicable, all current summary descriptions, and, if applicable, the Form 5500 and attached schedules, actuarial report and financial statements relating to those Employee Plans for the most recent two years.

(b) **Compliance.** Each Employee Plan has been operated in all material respects in accordance with its terms and the requirements of all applicable Laws (including, without limitation, all Tax rules with which compliance is required for any intended favorable Tax treatment). There is no material default or violation of an Employee Plan by any party thereto and no action is pending or, to the Sellers' Knowledge, threatened with respect to any Employee Plan and, to the Sellers' Knowledge, no fact or event exists that could give rise to any such Action.

(c) **Qualification of Certain Employee Plans.** Each Employee Plan that is intended to be qualified under Section 401(a) of the Tax Code or Section 401(k) of the Tax Code has received a favorable determination letter from the IRS covering all of the provisions applicable to the Employee Plan for which determination letters are currently available, and each trust established in connection with any Employee Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Tax Code has received a determination letter from the IRS that it is so exempt, and, to the Sellers' Knowledge, no fact or event has occurred since the date of such determination letter or letters from the IRS to adversely affect the qualified status of any such Employee Plan or the exempt status of any such trust.

(d) **Unsatisfied Liability.** Except as set forth in Section 3.10(d) of the Sellers' Disclosure Schedule, (i) none of the Sellers nor any ERISA Affiliate has incurred any unsatisfied Liability under the Employee Plans (other than Pension Benefit Guaranty Corporation ("PBGC") premiums) to the PBGC or the Internal Revenue Service under Title IV of ERISA or Section 412 of the Code that could result in the imposition of any Liability on Purchaser; (ii) no event has occurred and no condition exists that would subject any of the Sellers either directly or by reason of its affiliation with an ERISA Affiliate to any Tax, fine, lien, penalty or other Liability imposed by ERISA, the Code or other applicable Law that could result in the imposition of any Liability on Purchaser; and (iii) no written communication has been received from the PBGC in respect of any Employee Plan subject to Title IV of ERISA concerning the funded status of any such plan, and (iv) no administrative investigation, audit or other administrative proceeding by the Department of Labor, the PBGC, the Internal Revenue Service or other governmental agencies are pending, threatened or in progress (including, without limitation, any routine requests for information from the PBGC).

(e) **Multiemployer Plan.** No Employee Plan is a "multiemployer plan" within the meaning of Section 3(37) of ERISA. None of the Sellers nor any ERISA Affiliate has incurred or is expected to incur any "withdrawal liability" within the meaning of Section 4201 of

ERISA to any multiemployer plan that could result in the imposition of any Liability on the Purchaser.

(f) Retiree Medical Plans. Except as set forth in Section 3.10(f) of the Sellers' Disclosure Schedule, no Seller has incurred any current or projected liability in respect of post-employment or post-retirement health, medical or life insurance benefits for current, former or retired employees of any Seller, except as required to avoid an excise tax under Section 4980B of the Code or otherwise except as may be required pursuant to any other applicable Law.

(g) Accelerated Payments. No Employee Plan exists that, as a result of the execution of this Agreement, shareholder approval of this Agreement, or the transactions contemplated by this Agreement (whether alone or in connection with any subsequent event(s)), could result in (i) severance pay or any increase in severance pay upon any termination of employment after the date of this Agreement, (ii) accelerate the time of payment or vesting or result in any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or result in any other material obligation pursuant to, any of the Employee Plans or (iii) result in payments which would not be deductible under Section 280G of the Code.

SECTION 3.11 Taxes. Except as set forth in Section 3.11 of the Sellers' Disclosure Schedule:

(a) Sellers have timely filed or caused to be timely filed or will timely file or cause to be timely filed with the appropriate taxing authorities (taking into account extensions to file Tax Returns) all Tax Returns that are required to be filed with respect to the income or operations of the Business or the ownership of the Purchased Assets on or prior to the Closing Date;

(b) All Taxes shown to be payable on such Tax Returns have been paid or will be timely paid and all material Taxes due by or with respect to the income or operations of the Business or the ownership of the Purchased Assets for the Pre-Closing Period have been timely paid or will be timely paid in full on or prior to the Closing Date;

(c) (i) None of the Sellers are the subject of an audit or other examination of Taxes by the Tax authorities of any nation, state, province or locality with respect to the income or operations of the Business or the ownership of the Purchased Assets; (ii) no such audit is threatened or pending; and (iii) the Seller have not received any written notices from any Tax authority relating to any issue that could result in any liability for Taxes with respect to the income or operations of the Business or the ownership of the Purchased Assets;

(d) (i) The Sellers have not entered into an agreement or waiver or been requested to enter into an agreement or waiver extending any statute of limitations relating to the payment or collection of Taxes with respect to the income or operations of the Business or the ownership of the Purchased Assets that has not expired and (ii) the Sellers are not presently contesting the liability for Taxes with respect to the income or operations of the Business or the ownership of the Purchased Assets before any court, tribunal or agency;

(e) All Taxes that the Sellers are (or were) required by Law to withhold or collect with respect to the income or operations of the Business or the ownership of the Purchased Assets in connection with amounts paid or owing to any employee, Representative, independent contractor, creditor, stockholder or other third party have been duly withheld or collected, and have been timely paid over to the proper authorities to the extent due and payable;

(f) No claim has ever been made by any taxing authority in a jurisdiction where the Sellers do not file Tax Returns with respect to the income or operations of the Business or the ownership of the Purchased Assets that the Sellers are or may be subject to taxation by that jurisdiction with respect to the income or operations of the Business or the ownership of the Purchased Assets;

(g) There are no Liens for Taxes or security interests on any of the Purchased Assets arising in connection with any failure (or alleged failure) to pay any Taxes (other than Permitted Liens); and

(h) Sellers are not a foreign persons within the meaning of Section 1445 of the Tax Code and the Regulations thereunder.

SECTION 3.12 Material Contracts.

(a) Section 3.12(a) of the Sellers' Disclosure Schedule sets forth all Contracts concerning the Transferred Intellectual Property or that are related to, or used in or held for use in, the Business (except for Contracts that are Excluded), including, without limitation:

(i) Contracts for the purchase or sale of assets, products or services;

(ii) Sole source supply Contracts for the purchase of Inventory or other goods or services that are otherwise not generally available and that are used in connection with the Business;

(iii) Contracts pursuant to which a Seller grants to any Person the right to manufacture, design, market, distribute or resell any Business product, or to represent a Seller with respect to any such product, or act as agent for any Seller in connection with the marketing, distribution or sale of any Business product;

(iv) Contracts for the lease of tangible personal property;

(v) Contracts containing a covenant that restricts a Seller or any Affiliate of a Seller from engaging in any line of business or competing with any Person;

(vi) Contracts providing for indemnification by a Seller, other than in connection with respect to standard terms and conditions of a Contract for the purchase or sale of assets, products or services in the ordinary course of business;

(vii) Employment, management, consulting, buying agent, independent contractor, subcontractor, retainer, or other similar type of Contracts, other than unwritten at-will employment Contracts, under which services are provided by any Person and

agreements or commitments to enter into the same (including without limitation, agreements with designers);

- (viii) Contracts relating to a joint venture of the Business;
- (ix) Currency exchange, interest rate, commodity exchange or similar Contracts;
- (x) Contracts for capital expenditures;
- (xi) Contracts with any director, officer or employee of any Seller (other than (A) employment agreements covered in clause (vii) above), (B) payments of compensation for employment to employees in connection with unwritten at-will employment Contracts and (C) participation in Employee Plans by employees);
- (xii) Contracts or licenses of any patents, trademarks, trade names, service marks, copyrights or other Intellectual Property received from or granted to third parties;
- (xiii) Contracts for radio, television newspaper or other media advertising;
- (xiv) Contracts not made in the ordinary course of business; and
- (xv) Contracts for professional services.

(such Contracts collectively, "Material Contracts", and each a "Material Contract" except to the extent any individual Contract is of a de minimis amount in relation to the Business and not material, individually or in the aggregate with other Contracts, to the Business, in which cases such Contract is not a Material Contract).

(b) The Sellers have delivered to the Purchaser true and complete copies of the Material Contracts (including all amendments thereto and assignments thereof).

(c) Except as set forth in Section 3.12(c) of the Sellers' Disclosure Schedule, each Material Contract (i) is valid and binding on the applicable Seller and the counterparties thereto, and is in full force and effect; and (ii) upon consummation of the Transactions, except to the extent that any consents set forth in Section 3.02 of the Sellers' Disclosure Schedule and Bankruptcy Court approvals to transfer are not obtained or as otherwise would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, shall continue in full force and effect without penalty or other adverse consequence. Except as disclosed in Section 3.12(c) of the Sellers' Disclosure Schedule, the applicable Seller and the counterparties thereto, are not in breach of, or default under, any Material Contract to which any of them is a party except for breaches or defaults that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or, upon entry or issuance of the Sale Order by the Bankruptcy Court, would not preclude the Sellers from assigning such Material Contract to the Purchaser and that would be cured or rendered unenforceable in accordance with the Sale Order.

SECTION 3.13 Brokers. Except as set forth in Section 3.13 of the Sellers' Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage, finder's

or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of any Seller.

SECTION 3.14 Title to Purchased Assets; Good Condition.

(a) The Sellers have good and valid title to, or in the case of leased assets, a valid leasehold interest in, all of the Purchased Assets.

(b) All of the tangible personal property used or useful in (to the extent Sellers hold rights, title and interest in such tangible personal property) or held for use in connection with the Business is in good operating condition and repair, free of defects and in a state of good maintenance, ordinary wear and tear excepted, and is adequate and suitable for the purposes for which it is presently being used or intended.

SECTION 3.15 Sufficiency of Assets. The Purchased Assets constitute all of the assets, rights, interests and properties of every nature and kind whatsoever used or useful in (to the extent Sellers hold rights, title and interest in such tangible personal property) or held for use in the conduct of the Business, or otherwise necessary for the Purchaser to conduct and operate the Business immediately after the Closing in all material respects as conducted and operated by the Sellers during a given point in time in the 12-month period prior to the date hereof and as presently conducted.

SECTION 3.16 Insurance. Set forth in Section 3.16 of the Sellers' Disclosure Schedule is an accurate and complete list of each insurance policy and insurance arrangement that covers the Purchased Assets, the Assumed Liabilities, the Business or employees (including self insurance, but excluding insurance policies providing benefits under welfare plans and directors' and officers' insurance) of the Business (the "Insurance Policies"). The Insurance Policies are in full force and effect, all premiums thereon have been paid, and the Sellers are otherwise in compliance in all material respects with the terms and provisions of such policies. No Seller is in default under any of the Insurance Policies (or any policy required to be set forth in Section 3.16 of the Sellers' Disclosure Schedule) and, to the Sellers' Knowledge, there exists no event, occurrence, condition or act (including the purchase of the Purchased Assets hereunder) that, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default thereunder. No Seller is aware of any pending notice of cancellation or non-renewal of any such Insurance Policies nor, to the Sellers' Knowledge, has the termination of any such Insurance Policies been threatened, and there exists no event, occurrence, condition or act (including the purchase of the Purchased Assets hereunder) that, with the giving of notice, the lapse of time or the happening of any other event or condition, would entitle any insurer to terminate or cancel any such Insurance Policies.

SECTION 3.17 Suppliers and Customers. Section 3.17(a) of the Sellers' Disclosure Schedule sets forth (a) the 10 largest customers of the Business based on sales volume of the Business since December 31, 2007, and (b) the 10 largest suppliers of the Business based on consolidated purchases by the Business during such period. The relationships of the respective Sellers with each such supplier and customer are good commercial working relationships and, except as set forth in Section 3.17(b) of the Sellers' Disclosure Schedule, no such supplier or customer has canceled or otherwise terminated its relationship with any Seller.

Except as set forth in Section 3.17(c) of the Sellers' Disclosure Schedule, no Seller (i) has received any notice that any such supplier or customer has cancelled, or threatened to cancel, its relationship with any Seller or the Business or intends to reduce the amounts sold to or bought from, as applicable, any Seller, or (ii) has not received any notice that any such supplier or customer has or intends to, modify in any material respect the terms or conditions of any Contract between the Seller and any such supplier or customer.

SECTION 3.18 Permits. The Sellers have made available to the Purchaser prior to the date hereof a true and complete copy of each of the Permits and Licenses, each of which is listed in Section 3.18 of the Sellers' Disclosure Schedule. The Sellers have obtained and possess all Permits and Licenses and have made all registrations or filings with or notices to any Governmental Authority necessary for the lawful conduct of the Business as presently conducted and operated, or necessary for the lawful ownership of its properties and assets or the operation of the Business as presently conducted and operated. Each such Permit and License is valid and in full force and effect and the Sellers are in material compliance with all such Permits and Licenses. Each such Permit and License is included in the Purchased Assets. The consummation of the Transactions will not result in the revocation, cancellation or termination of, or any adverse amendment or modification to, any such Permit and License. Any applications for the renewal of any such Permit and License that are due prior to the Closing Date will be timely made or filed by the applicable Seller prior to the Closing Date. No proceeding to modify, suspend, revoke, withdraw, terminate or otherwise limit any such Permit and License is pending or, to the Sellers' Knowledge, threatened and there is no valid basis for any such proceeding. No administrative or governmental action or proceeding has been taken in connection with the expiration, continuance or renewal of any such Permit and License and there is no valid basis for any such proceeding.

SECTION 3.19 Absence of Certain Changes. Other than as a result of the commencement of the Chapter 11 Cases, since December 31, 2007, the Business has not experienced any (a) damage, destruction or loss, whether covered by insurance or not, individually having a cost of \$10,000 or more; (b) except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, change in accounting methods or principles or any write-down, write up or revaluation of any of the Purchased Assets or Assumed Liabilities, in each case except depreciation accounted for in the ordinary course of business and write-downs of inventory which reflect the lower of cost or market and, in each case, which are in the ordinary course of business and in accordance with GAAP; or (c) sale, assignment, transfer, lease or license (other than a Permitted Encumbrance) of or on any of the Business' tangible assets, except in the ordinary course of business consistent with past practice, or agreement, whether orally or in writing, to do any of the foregoing in this subsection (c). Since December 31, 2007, other than as a result of the commencement of the Chapter 11 Cases, there has not been, occurred or arisen any agreement, condition, action, omission or event which would be prohibited (or require consent) under Section 5.01 had it existed, occurred or arisen after the date of this Agreement.

SECTION 3.20 Labor Matters.

(a) Except as set forth in Section 3.20(a) of the Sellers' Disclosure Schedule, (i) none of the Sellers are a party to any collective bargaining, voluntary recognition, union or

similar agreement with respect to any of the Business Employees, no union represents or claims to represent or is attempting to organize any of the Business Employees and the Sellers are not aware of any existing certification where no collective bargaining agreement exists, (ii) there is no unfair labor practice charge or complaint against the Sellers to their knowledge in respect of the Business pending or threatened before the National Labor Relations Board, any federal or state labor relations board or any court or tribunal, (iv) there is no strike, lockout, dispute, request for representation, slowdown or stoppage pending or threatened in respect of the Business and there has been no strike, lockout, dispute, request for representation, slowdown or stoppage within the past three (3) years in respect of the Business, and (v) none of the Sellers are a federal or state contractor or subcontractor. The Sellers do not expect that any of the matters set forth in Section 3.20(a) of the Sellers' Disclosure Schedule, individually or in the aggregate, would have a Material Adverse Effect.

(b) Except as set forth in Section 3.20(b) of the Sellers' Disclosure Schedule, there are no pending, or threatened actions, grievances, arbitrations, administrative proceedings, charges, complaints or investigations that involve the labor or employment relations of the Business, including but not limited to, issues relating to employment discrimination, wages and hours and occupational health and safety. There has not been any material adverse change in relations with the Business Employees as a result of any announcement of the Transactions.

(c) Except as disclosed in Section 3.20(c) of the Sellers' Disclosure Schedule, (i) there are no outstanding Orders against any of the Sellers under any applicable Law relating to occupational safety and health, or any other matters relating to employment or employees, in connection with the Business, (ii) any levies, assessments, and penalties made in connection with the Business against the any of the Sellers pursuant to any applicable Law relating to occupational safety and health, or any other matters relating to employment or employees, have been paid in full, and (iii) none of the Sellers are presently knowingly in violation of any applicable Law with respect to employment matters in connection with the Business.

(d) The Business has not been affected by any transaction and the Sellers have not during the last three (3) years engaged in, or planned or announced for the future, any layoffs, employment terminations or plant or facility closures in connection with the Business sufficient in number to trigger application of the WARN Act or any similar state or local Law to the Business that could result in the imposition of any Liability on Purchaser.

SECTION 3.21 Inventory. (i) Except as set forth on Section 3.21 of the Sellers' Disclosure Schedule, materially all Inventory of the Sellers is in good, merchantable and usable condition in the ordinary course of business consistent with current and past practice and (ii) the Sellers are not aware of previously sold Inventory that is subject to refunds in excess of that historically experienced by the Sellers.

SECTION 3.22 Receivables. The Receivables, (i) except for intercompany claims, have arisen out of actual sales with unaffiliated third parties in the ordinary course of business consistent with past practice, (ii) are, to the Sellers' knowledge, free and clear of all defenses and claims of any nature whatsoever other than claims for warranties and claims made in the ordinary course of business that are not material in the aggregate, and (iii) are, to the

Sellers' knowledge, collectible in the ordinary course of business consistent with past practice, net of reserves.

SECTION 3.23 Products. Except as set forth in Section 3.23 of the Sellers' Disclosure Schedule, since December 31, 2007, no Seller has, whether voluntarily or as a result of any action by any Governmental Authority or trade or consumer group, generally recalled or withdrawn (or been requested to recall or withdraw) a product for any reason, including, without limitation, any manufacturing or labeling defect or any other product safety issue, or issued any press release or public statements advising its customers or consumers of its products to treat such products in any manner other than in the ordinary course.

SECTION 3.24 Foreign Corrupt Practices Act. Neither any Seller, nor any Representative, consultant or agent thereof acting on any Seller's behalf, has made, directly or indirectly, any payment or promise to pay, or gift or promise to give or authorized such a promise or gift, of any money or anything of value, directly or indirectly, to: (a) any foreign official (as such term is defined in the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA")) for the purpose of influencing any official act or decision of such official or inducing him or her to use his or her influence to affect any act or decision of a foreign government, or any agency or subdivision thereof; or (b) any foreign political party or official thereof or candidate for foreign political office for the purpose of influencing any official act or decision of such party, official or candidate or inducing such party, official or candidate to use his, her or its influence to affect any act or decision of a foreign government or agency or subdivision thereof, in the case of both (a) and (b) above in order to assist any Seller to obtain or retain business for or direct business to the Seller and under circumstances which would subject any Seller to liability under the FCPA or any corresponding foreign Laws.

SECTION 3.25 U.S. Real Property Holding Corporation. No Seller is now or has ever been a "United States Real Property Holding Corporation," as defined in Section 897(c)(2) of the Tax Code and Section 1.897-2(b) of the regulations thereunder.

SECTION 3.26 Transactions with Related Parties. Except as set forth in Section 3.26 of the Sellers' Disclosure Schedule:

(a) No agreement or transaction between any of the Sellers and (i) any director, officer, stockholder or Affiliate of the Sellers, or (ii) any relative or spouse (or relative of such spouse) of any such director, officer, stockholder or Affiliate (such persons in (i) and (ii) being referred to herein as a "Related Party" or collectively as the "Related Parties") has been entered into.

(b) No Related Party is a director or officer of, or has any direct or indirect interest in (other than the ownership of not more than 5% of the publicly traded shares of), any Person or entity which is a supplier, vendor, or competitor of the Seller.

(c) No Related Party owns or has any interest in, directly or indirectly, in whole or in part, any tangible or intangible property used in the conduct of the Business or any Purchased Asset.

(d) Other than expense advance reimbursements not exceeding \$10,000 in the aggregate, no Related Party owes any money or other amounts to, nor is any Related Party owed any money or other amounts by, any of the Sellers.

(e) No Seller has, directly or indirectly, guaranteed or assumed any Indebtedness for borrowed money or otherwise for the benefit of any Related Party, except pursuant to the DIP Note and the Pre-Petition Financing Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Except as set forth in the corresponding sections or subsections of the Purchaser's Disclosure Schedule, the Purchaser hereby represents and warrants to the Sellers as of the date hereof and as of the Closing Date (except for representations and warranties that are made as of a specific date, which are made only as of such date) as follows:

SECTION 4.01 Organization and Authority of the Purchaser. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all necessary corporate power and authority to enter into this Agreement and the Ancillary Agreements to which it is a party, to carry out its obligations hereunder and thereunder and to consummate the Transactions. The Purchaser is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary, except to the extent that the failure to be so licensed, qualified or in good standing would not materially and adversely affect the ability of the Purchaser to carry out its obligations under this Agreement and the Ancillary Agreements to which it is a party, and to consummate the Transactions. The execution and delivery by the Purchaser of this Agreement and the Ancillary Agreements to which it is a party, the performance by the Purchaser of its obligations hereunder and thereunder and the consummation by the Purchaser of the Transactions have been duly authorized by all requisite corporate action on the part of the Purchaser. This Agreement has been, and upon their execution the Ancillary Agreements to which the Purchaser is a party shall have been, duly executed and delivered by the Purchaser, and (assuming due authorization, execution and delivery the Sellers and other parties thereto), subject to the approval of the Bankruptcy Court, this Agreement constitutes, and upon their execution the Ancillary Agreements to which the Purchaser is a party shall constitute, legal, valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and subject to general principles of equity.

SECTION 4.02 No Conflict. The execution, delivery and performance by the Purchaser of this Agreement and the Ancillary Agreements to which the Purchaser is a party do not and will not: (a) violate, conflict with or result in the breach of any provision of the certificate of incorporation or bylaws of the Purchaser; (b) conflict with or violate any Law or Order applicable to the Purchaser or its assets, properties or businesses; or (c) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any

rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which the Purchaser is a party, except, in the case of clauses (b) and (c), as would not materially and adversely affect the ability of the Purchaser to carry out its obligations under this Agreement and the Ancillary Agreements to which it is a party, and to consummate the Transactions.

SECTION 4.03 Governmental Consents and Approvals. The execution, delivery and performance by the Purchaser of this Agreement and each Ancillary Agreement to which the Purchaser is a party do not or, upon the entry by the Bankruptcy Court of the Sale Order as required by Section 7.01(d) and Section 7.02(d), will not require any consent, approval, authorization or other Order of, action by, filing with, or notification to, any Governmental Authority, except where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent or materially delay the consummation by the Purchaser of the Transactions.

SECTION 4.04 Litigation. As of the date hereof, no Action by or against the Purchaser is pending or, to the Purchaser's Knowledge, threatened, which would reasonably be expected to affect the legality, validity or enforceability of this Agreement, any Ancillary Agreement or the consummation of the Transactions.

SECTION 4.05 Condition of the Business. Notwithstanding anything contained in this Agreement to the contrary, the Purchaser acknowledges and agrees that the Sellers are not making any representations or warranties whatsoever, express or implied, beyond those expressly given by the Seller in Article III hereof (as modified by the Sellers' Disclosure Schedule) or in any of the Ancillary Agreements, and the Purchaser acknowledges and agrees that, except for the representations and warranties contained therein or in any of the Ancillary Agreements, the Purchased Assets and the Business are being transferred on a "where is" and, as to condition, "as is" basis. The Purchaser further acknowledges that neither the Sellers nor any of their Affiliates have made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Sellers or any of their Affiliates, the Business or the transactions contemplated by this Agreement not expressly set forth in this Agreement or in any of the Ancillary Agreements, and none of the Sellers or any of their Affiliates will not have or be subject to any liability to the Purchaser or any of its Affiliates resulting from the distribution to the Purchaser or its representatives or the Purchaser's use of, any such information with respect to which a representation and warranty has not been made, including any confidential memoranda distributed on behalf of the Sellers relating to the Business or other publications or data room information provided to the Purchaser or its representatives, or any other document or information in any form provided to the Purchaser or its representatives in connection with the sale of the Business and the transactions contemplated hereby with respect to which a representation and warranty has not been made. The Purchaser acknowledges that it has conducted to its satisfaction, its own independent investigation of the Business and, in making the determination to proceed with the transactions contemplated by this Agreement the Purchaser has relied on the representations and warranties of the Sellers set forth in Article III (as modified by the Sellers' Disclosure Schedule hereto) and in the Ancillary Agreements and the results of the Purchaser's own independent investigation.

ARTICLE V ADDITIONAL AGREEMENTS

SECTION 5.01 Conduct of Business Prior to the Closing.

(a) The Sellers covenant and agree that, except (1) as described in Section 5.02(a) of the Sellers' Disclosure Schedule, (2) as required by Law or as required by the Bankruptcy Code, (3) as otherwise expressly permitted by this Agreement, or (4) with the prior written consent of Purchaser, between the date hereof and the Closing, the Sellers:

(i) conduct and maintain its business in the condition as of the date hereof;

(ii) use its commercially reasonable efforts and take all necessary actions to preserve intact in all material respects the Purchased Assets, to maintain, preserve and keep the Purchased Assets in good condition and repair (normal wear and tear excepted), and to maintain in effect all material licenses, permits, and approvals of Governmental Authorities which are necessary for the conduct of the Business;

(iii) use commercially reasonable efforts to maintain the Sellers' current insurance coverage under each insurance policy maintained by the Sellers with respect to the Business, provided that the Purchaser acknowledges that, after the Closing Date, the Sellers shall have no responsibility for obtaining or maintaining any insurance relating to the Business, whether relating to or arising out of occurrences prior to, at or subsequent to, the Closing, except to the extent required to enable the Seller to comply with Section 2.01(a)(xiv);

(iv) conduct the Business only in the ordinary course of business consistent with past practice or ordinary practice for a debtor-in-possession under Chapter 11 of the Bankruptcy Code;

(v) maintain in all material respects the goodwill and organization of the Business and Sellers' relationship with the Business Employees, suppliers, customers, lenders, lessors and others having business dealings with them in connection with the Business;

(vi) subject to Section 2.05(c), use commercially reasonable efforts to obtain all necessary consents to the transfer of the Contracts that are to be transferred to the Purchaser pursuant to this Agreement;

(vii) use commercially reasonable efforts to obtain authorization pursuant to the Sale Order to execute, deliver and/or file Uniform Commercial Code, lien releases, discharges, financing change statements and such other documents, notices or instruments as the Purchaser may reasonably deem necessary to release all Liens, except for Permitted Liens, against the Purchased Assets;

(viii) pay and discharge their post petition, priority or administrative Liabilities relating to the Business as they come due in the ordinary course of business except those (A) contested in good faith by the Sellers or (B) otherwise subject to the automatic stay under the Bankruptcy Code; and

(ix) use commercially reasonable efforts to consult in good faith on a weekly basis with the Representatives of the Purchaser to report material operational developments and the general status of ongoing operations of the Business, including any Material Adverse Effect.

(b) The Sellers covenant and agree that, except (1) as described in Section 5.02(b) of the Sellers' Disclosure Schedule, (2) as required by Law or as is customary for a debtor-in-possession under Chapter 11 of the Bankruptcy Code, (3) as otherwise expressly permitted by this Agreement, or (4) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld or delayed) between the date hereof and the Closing, the Sellers shall not:

(i) sell, lease, dispose or otherwise transfer or distribute any of the Purchased Assets, or any interest therein, other than transfers and dispositions, including the sale and purchase of Inventory from suppliers, made in the ordinary course of business;

(ii) grant or announce any increase in the salaries, bonuses, severance or other benefits payable to any of the Business Employees or grant any equity or equity-based compensation to any Business Employees, other than as may be required by any Employee Plan;

(iii) effect any involuntary termination of any Business Employees without providing the Purchaser with reasonable notice of the same and a reasonable opportunity to consult with the Sellers;

(iv) adopt any employee benefit plan that would be an Employee Plan if in existence as of the date of this Agreement for any Business Employees, or amend or modify any existing Employee Plans for such employees;

(v) make any material change to any method of accounting or accounting practice or policy used by the Sellers (as it relates to the Business), other than such changes required by GAAP;

(vi) fail to exercise any rights of renewal with respect to any Leased Real Property that by its terms would otherwise expire;

(vii) enter or agree to enter into any Material Contract which may be included in the Purchased Assets, or make or agree to make a material change or modification to any existing Material Contract included in the Purchased Assets, except for agreements relating to sale and purchase of Inventory from suppliers in the ordinary course of business without providing the Purchaser with reasonable notice of the same and a reasonable opportunity to consult with the Sellers;

(viii) take or omit to take any action that would require disclosure under Article III, or that would otherwise result in a breach of any of the representations, warranties or covenants made by the Sellers in this Agreement or in any of the Ancillary Agreements;

(ix) take any action or omit to take any action which act or omission would reasonably be anticipated to have a Material Adverse Effect on the Business or the Purchased Assets;

(x) enter into any Contract regarding the license, sublicense, agreement or permission to use Intellectual Property, other than non-exclusive license agreements in the ordinary course of business;

(xi) enter into any Contract for the sublease of any of the Leased Real Property;

(xii) amend its certificate or articles of incorporation, bylaws, certificate of formation, limited liability company agreement or other organizational documents or take any other action if any such amendment or action would have an adverse effect on the ability of any Seller to consummate the Transactions or otherwise adversely affect the Business or the value, utility or transferability of the Purchased Assets;

(xiii) purchase, redeem or agree to purchase or redeem any of its equity interests, options, warrants or rights to purchase equity interests or securities of any kind convertible or exchangeable for equity interests;

(xiv) acquire any entity or all or substantially all of the assets of any entity or make any other investment outside the ordinary course of business;

(xv) make any capital expenditures, the aggregate amount of which are in excess of \$10,000;

(xvi) (A) other than in the ordinary course of business pursuant to existing credit facilities, make any loan, advance, guaranty or other extension of credit to any Person or enter into any commitment to make any loan, advance, guaranty or other extension or credit, or (B) enter into any other transaction with any Affiliate of any Seller or any employee of any Seller;

(xvii) create or incur any Encumbrance or fail to take action to discharge any involuntary Encumbrance, against or in respect of any Purchased Assets, except for Permitted Liens;

(xviii) pay, discharge, settle or satisfy any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise) in excess of \$10,000 in the aggregate, other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practices of the Business or in accordance with their terms, of liabilities reflected or reserved against in the unaudited balance sheet of the Seller as of December 31, 2008, or incurred since December 31, 2008 in the ordinary course of business consistent with past practices of the Business and in accordance with the Sellers' representations, warranties and covenants contained in this Agreement;

(xix) compromise or otherwise settle any claims relating to, or adjust any assertion or claim of a deficiency in, Taxes (or interest thereon or penalties in connection

therewith), or file any appeal from an asserted deficiency, except in a form previously approved by the Purchaser in writing, or file or amend any Tax Return, in any case before furnishing a copy to the Purchaser and affording the Purchaser an opportunity to consult with respect thereto;

(xx) make any material Tax election;

(xxi) fail to use its reasonable best efforts to collect Receivables and pay accounts payable in the ordinary course of business consistent with past practices of the Business;

(xxii) declare, issue, make or pay any dividend or other distribution of assets, whether consisting of money, other personal property, real property or other thing of value, to holders of its equity interests;

(xxiii) fail to comply, in all material respects, with all applicable Laws and Orders;

(xxiv) (A) accelerate the collection of or shorten the customary collection cycles for, solicit early collection of or alter in any material respect discounts or other incentives for early payment of, any accounts receivable of any Seller, or (B) defer the payment of or lengthen any Seller's customary payment cycles for any trade and other payables of any Seller;

(xxv) enter into any transaction with any Affiliate, director, officer, manager or employee of any Seller;

(xxvi) take any other action that would require Bankruptcy Court approval unless such approval is obtained; or

(xxvii) agree to take any of the actions specified in this Section 5.01, except as expressly contemplated by this Agreement and the Ancillary Agreements.

SECTION 5.02 Access to Information; Consultant.

(a) From the date hereof until the Closing, upon reasonable notice, the Sellers shall, and shall cause their Representatives, accountants and counsel to: (a) afford the Purchaser, its Affiliates, potential financing sources and their respective authorized Representatives reasonable access to the offices, properties and books and records of the Sellers (to the extent relating to the Business, the Purchased Assets or the Assumed Liabilities), including access to conduct environmental site assessments; and (b) furnish to the respective authorized Representatives of the Purchaser and its Affiliates and potential financing sources such additional financial and operating data and other information regarding the Business, the Purchased Assets and the Assumed Liabilities (or copies thereof) as the Purchaser may from time to time reasonably request; provided, however, that any such access or furnishing of information shall be conducted during normal business hours, under the supervision of the applicable Seller's personnel and in such a manner as not to interfere with the normal operations of the Business; provided, further, that such review by and any information furnished to the Purchaser shall not

affect the representations and warranties made by the Sellers in this Agreement or the remedies of the Purchaser for breaches of those representations and warranties. From time to time prior to the Closing, the Sellers shall promptly supplement or amend information previously delivered to the Purchaser with respect to any matter hereafter arising which, if existing or occurring prior to or at the date of this Agreement, would have been required to be set forth or disclosed herein; provided, however, that such supplemental information shall not be deemed to be an amendment to the Sellers' Disclosure Schedule or the representations and warranties made by the Sellers in this Agreement.

(b) Without limiting the generality of the foregoing, the Sellers agree to (i) pay the reasonable fees and expenses of the consultants retained by or on behalf of the Purchaser to advise them on the operation of the Business to the extent such fees and expenses have accrued prior to the Closing and (ii) provide such consultants an office at the Sellers' corporate headquarters and reasonable access to the Sellers' books, records, operations, employees and Representatives.

SECTION 5.03 Damage or Destruction. Until the Closing, the Purchased Assets shall remain at the risk of the Sellers. In the event of any material damage to or destruction of any Purchased Asset (other than normal wear and tear) after the date hereof and prior to the Closing (in any such case, a "Loss"), the Sellers shall give notice thereof to the Purchaser, and if any such Losses would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, Purchaser shall be entitled to terminate this Agreement upon providing the Sellers written notice of such termination. If any such Loss is covered by policies of insurance, all right and claim of the Sellers to any proceeds of insurance for such Loss shall be assigned and (if previously received by the Sellers and not used prior to the Closing Date to repair any damage or destruction) paid to the Purchaser at Closing. If any such Loss is not covered by policies of insurance, the Purchaser shall have the right to reduce the Purchase Price by an amount equal to (i) the estimated cost to repair or restore the Purchased Assets affected by such Loss (the "Affected Assets") to substantially repair or restore their condition immediately prior to the occurrence of such Loss or (ii) if such Affected Assets are destroyed or damaged beyond repair, the replacement cost of the Affected Assets, and all compensation payable on account of such Loss shall be retained by the Sellers. If the Purchaser elects to reduce the Purchase Price pursuant to this Section 5.03, the Sellers and the Purchaser shall negotiate in good faith in an effort to agree upon the amount of such reduction. If the parties are unable to reach agreement within five (5) Business Days after notice of the Loss is given by the Sellers, then the amount of the reduction shall be determined by an independent, qualified insurance adjuster selected by the parties (or, if they are unable to agree on such selection, one appointed by the Bankruptcy Court upon application of either party).

SECTION 5.04 Regulatory and Other Authorizations; Notices and Consents. The Purchaser and the Sellers shall each use their commercially reasonable efforts to promptly obtain all waivers, authorizations, notices to proceed, consents, orders and approvals of all Governmental Authorities, officials and other Persons, make all required filings, applications and petitions with, and give all required notices to, the applicable Governmental Authorities and other Persons that may be or become necessary for its execution and delivery of, and the performance of its obligations pursuant to, this Agreement and the Ancillary Agreements and

will cooperate fully with the other parties in promptly seeking to obtain all such waivers, authorizations, consents, orders, notices to proceed and approvals.

SECTION 5.05 Permits and Licenses. Commencing on the date of this Agreement, the parties, cooperating in good faith, shall use commercially reasonable efforts to take such steps, including the filing of any required applications with Governmental Authorities, as may be necessary (i) to effect the transfer of the Permits and Licenses (other than Permits and Licenses that are Excluded Assets) to the Purchaser on or as soon as practicable after the Closing Date, to the extent such transfer is permissible under applicable Law, and (ii) to enable the Purchaser to obtain, on or as soon as practicable after the Closing Date, any additional licenses, permits, approvals, consents, certificates, registrations, and authorizations (whether governmental, regulatory, or otherwise) as may be necessary for the lawful operation of the Business from and after the Closing Date.

SECTION 5.06 Environmental Related Actions. Sellers shall, at their own cost and expense, be responsible for complying with the notice and transfer requirements of any Environmental Laws regarding the transfer of the Leased Real Property in compliance with, and within the time required under, Environmental Laws. All of the Environmental Permits will be modified or transferred, as the case may be, by the Sellers in compliance with, and within the time required under, Environmental Laws.

SECTION 5.07 Intellectual Property.

(a) No later than ten (10) Business Days following the Closing, each Seller shall, and shall cause its Affiliates to, file amendments with the appropriate Governmental Authorities changing its corporate name, "doing business as" name, trade name, and any other similar corporate identifier (each, a "Corporate Name") to a Corporate Name that does not contain any of the Trademarks comprising the Transferred Intellectual Property.

(b) The Sellers shall use their commercially reasonable efforts to assign to the Purchaser the Contracts concerning Licensed Intellectual Property (other than such Contracts that are Excluded Assets), or otherwise shall obtain for the Purchaser and its Affiliates the right to use Licensed Intellectual Property (other than Licensed Intellectual Property constituting Excluded Assets), such that, beginning on the Closing Date, the Purchaser and its Affiliates will have valid and enforceable rights to use all Licensed Intellectual Property (other than Licensed Intellectual Property constituting Excluded Assets) as it was used by or for the benefit of the Business (including all configurations and customizations thereof) prior to the Closing. Prior to the Closing Date, the Sellers shall use their commercially reasonable efforts to obtain all third party consents necessary to assign such agreements or to obtain such rights and the Purchaser shall cooperate with the Sellers in good faith to assist the Seller in obtaining such consents.

(c) On or before the Closing Date, the Sellers shall deliver to the Purchaser all records and information in the Sellers' possession or under the Sellers' control concerning the Owned Intellectual Property, and all copies thereof, including, but not limited to, any license and settlement agreements, the documentation, source code and object code for all computer software, documentation concerning registrations and applications, prosecution histories, correspondence with Governmental Authorities, litigation files relating to infringements,

disputes or demands, including opposition and cancellation proceedings, cease and desist and protest letters, and all documents concerning security interests, mortgages, liens and other encumbrances.

SECTION 5.08 Further Action. Each party hereto shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, to do or cause to be done all things necessary, proper or advisable under applicable Law, and to execute and deliver such documents and other papers, as may be required to carry out the provisions of this Agreement and consummate and make effective the Transactions, including using its commercially reasonable efforts to defend any lawsuits or other legal proceedings, whether judicial or administrative, whether brought derivatively or on behalf of third parties (including any Governmental Authority), challenging this Agreement. Without limiting the generality of the foregoing, the Sellers shall use their commercially reasonable efforts to cause its accountants, attorneys, advisors, employees and other Representatives to cooperate with the Purchaser in order to consummate and make effective the Transactions. In case at any time after the Closing Date any further action is reasonably necessary or desirable to carry out the purposes of this Agreement, the Sellers and the Purchaser shall take all such necessary action, without cost of the reasonable documented out-of-pocket fees and expenses to Sellers. Notwithstanding any to the contrary in this Agreement, neither the Purchaser nor any of its Affiliates shall be required, in connection with obtaining any action or no action, waiver authorization, consent, Order or approval of any Governmental Authority or Person, or otherwise in connection with the consummation or making effective of the Transactions to (x) sell, divest, hold separate, otherwise dispose of or license or conduct any portion of their respective assets, properties or businesses or the assets, properties or businesses to be acquired by the Purchaser pursuant hereto in a specified manner, or (y) agree to sell, divest, hold separate, otherwise dispose of or license or conduct any portion of their respective assets, properties or businesses or the assets, properties or businesses to be acquired by the Purchaser pursuant hereto in a specified manner, or (z) take or agree to take any other action or agree to any limitation that, in the case of clauses (x), (y) or (z), would have a material adverse effect on the Purchaser or its Affiliates or a material adverse effect on the benefits, taken as a whole, reasonably expected to be derived by Purchaser from the Transactions.

SECTION 5.09 Tax Cooperation and Exchange of Information.

(a) The parties hereto will provide the other parties (at no charge) with such cooperation and information as may be reasonably requested in filing any Tax Return, amended Tax Return or claim for refund, determining any 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 relating to the Purchased Assets or the Business. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules and related work papers and documents relating to rulings or other determinations by taxing authorities, provided, however, that the Purchaser shall not be required to provide or disclose any of its (or its Affiliates') Tax Returns or related work papers for any income Taxes. Each of the parties will make themselves (and their respective employees and Representatives) reasonably available, on a mutually convenient basis, to provide explanations of any documents or information provided under this Section 5.09(a). Each of the parties will retain all Tax Returns, schedules and work papers and all material records or other documents in its possession

(or in the possession of its Affiliates) relating to Tax matters (other than the Purchaser's income Tax matters) relevant to the Purchased Assets or the Business for the taxable period first ending after the Closing and for all prior taxable periods (the "Tax Documents") until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions. After such time or at any other time when the parties want to dispose the Tax Documents, before any of the parties shall dispose of any such documents in its possession (or in the possession of its Affiliates), the other party shall be given the opportunity, after 90 days' prior written notice, to remove and retain all or any part of such documents as such other party may select (at such other party's expense). In the event that a Seller is liquidated or otherwise ceases to be a going concern prior to the expiration of the period described in the second preceding sentence and such Seller's Tax Documents are not retained by such Seller's Affiliate, such Seller shall offer the Purchaser the opportunity described in the preceding sentence (with 90 days' prior written notice or such shorter period of notice as may be practicable) to remove and retain Tax Documents (at Purchaser's expense) and such Seller may then dispose of any such documents not removed by the Purchaser. If it is not practical to give the other party the right to retain Tax Documents, the other party may instead be given a reasonable opportunity to make copies, at its own expense of such Tax Documents. Any information obtained under this Section 5.09(a) shall be kept confidential, except as may be otherwise required in connection with the filing of Tax Returns or claims for refund or in conducting an audit or other proceeding.

(b) The Sellers shall not take any actions (including, but not limited to, filing any Tax Return or amended Tax Return, responding to any audit or inquiry by a taxing authority, or settling or compromising any controversy with a taxing authority) that could materially affect the Tax Liability of the Purchaser or any of its Affiliates without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed, provided that this Section 5.09(b) shall not apply to income Taxes or Tax Returns in respect thereof.

SECTION 5.10 Conveyance Taxes. In the event that any Conveyance Taxes (as may be reduced or eliminated pursuant to Section 1146(b) of the Bankruptcy Code and/or the Sale Order entered by the Bankruptcy Court) are assessed on the transfer of the Purchased Assets to the Purchaser, the Purchaser shall pay such Conveyance Taxes. The Sellers shall complete and file all returns associated therewith and shall cooperate with the Purchaser in order to secure any available reductions or exemptions in respect of such Conveyance Taxes.

SECTION 5.11 Nondisclosure. Neither the Purchaser nor any Seller shall disclose to the public or to any third party any material non-public information concerning or relating to the other parties hereto, other than with the express prior written consent of such other parties, except as may be required by applicable Law or the Bankruptcy Court, in which event the contents of any proposed disclosure shall be discussed with such other parties before release; provided, however, that notwithstanding anything to the contrary contained in this Agreement, any party hereto may disclose such information (a) to any of its stockholders, members, Affiliates, agents, Representatives and potential financing sources who need to know such information for the sole purpose of evaluating the Transactions, or (b) where such disclosure is required under any applicable Law. For the avoidance of doubt, as of the Closing, the Purchased Assets and the Assumed Liabilities (and any material non-public information with respect

thereto) shall be deemed the confidential information of the Purchaser, and the Sellers shall maintain the confidentiality thereof in accordance with the terms of this Section 5.11.

SECTION 5.12 Notification of Certain Matters. Except with respect to the actions required by this Agreement, the Sellers shall give prompt notice to the Purchaser, on the one hand, and the Purchaser shall give prompt notice to the Sellers, on the other hand, of (i) the occurrence or non-occurrence of any event, the occurrence or non-occurrence of which would cause any of the representations or warranties in this Agreement of any Seller or the Purchaser, respectively, to be untrue or inaccurate in any material respect at or prior to the Closing Date and (ii) any material failure of any Seller or the Purchaser, respectively, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement; provided, however, the delivery of any notice pursuant to this Section 5.12 shall not limit or otherwise affect the remedies available to the party receiving such notice under this Agreement.

SECTION 5.13 Customers and Suppliers. The Sellers shall, promptly following the request thereof by the Purchaser, seek and use their reasonable best efforts to arrange such meetings and telephone conferences with all material customers and suppliers of the Sellers as may be necessary and appropriate for the Purchaser to conduct a comprehensive review of the Sellers' relations with its customers and suppliers.

ARTICLE VI EMPLOYEE MATTERS

SECTION 6.01 Transferred Employees.

(a) Upon notice to the Sellers' and at mutually agreeable times, the Sellers will permit the Purchaser's Representatives to meet with Business Employees prior to the Closing Date. The Purchaser may, at its option, extend offers of employment to all or any of the Business Employees effective as of the Closing Date (those employees who are offered and accept employment by the Closing Date shall be known as "Transferred Employees"), it being understood that the Purchaser shall have no obligation to employ any of the employees of the Sellers. From and after the execution of this Agreement, the Sellers shall use their best efforts to assist the Purchaser in retaining those employees that are employed in connection with the Business which the Purchaser wishes to hire and the Sellers will not take any action to preclude or discourage any of the Sellers' employees from accepting any offer of employment extended by the Purchaser.

(b) Purchaser shall give Transferred Employees full credit for purposes of eligibility and vesting and benefit accruals (other than benefit accruals under a defined benefit pension plan or retiree medical plan) under the employee benefit plans or arrangements maintained by the Purchaser in which such Transferred Employees participate for such Transferred Employees' service with the Sellers or their Affiliates to the same extent recognized by the Sellers immediately prior to the Closing Date.

(c) With respect to any welfare benefit plans maintained by Purchaser for the benefit of Transferred Employees on and after the Closing Date, Purchaser shall (i) cause there to be waived any eligibility requirements or pre-existing condition limitations to the same extent waived under comparable plans of the Sellers and (ii) give effect, in determining any deductible

and maximum out-of-pocket limitations, amounts paid by such Transferred Employees with respect to similar plans maintained by Sellers.

(d) The Sellers shall retain responsibility for and continue to pay all medical, life insurance, disability and other welfare plan expenses and benefits for each Transferred Employee with respect to claims incurred by such Transferred Employees or their covered dependents on or prior to the Closing Date. If applicable, expenses and benefits with respect to claims under any welfare benefit plan of the Purchaser incurred by Transferred Employees or their covered dependents after the Closing Date shall be the responsibility of the Purchaser. For purposes of this paragraph, a claim is deemed incurred when the services that are the subject of the claim are performed; in the case of life insurance, when the death occurs, in the case of long-term disability benefits, when the disability occurs and, in the case of a hospital stay, when the employee first enters the hospital.

SECTION 6.02 No Obligation. Except as otherwise expressly provided in this Agreement, nothing contained in this Agreement shall be construed to require the employment of (or prevent the termination of employment of) any individual, require minimum benefit or compensation levels or prevent any change in the employee benefits provided to any individual Transferred Employee. No provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of any Seller or any other Person (including any beneficiary or dependent thereof) of any nature or kind whatsoever, including without limitation, in respect of continued employment (or resumed employment) for any specified period.

ARTICLE VII CONDITIONS TO CLOSING

SECTION 7.01 Conditions to Obligations of the Sellers. The obligations of the Sellers to consummate the Transactions shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any one or more of which may be waived (but only in writing) by the Sellers (provided that no such waiver shall be deemed to have cured any breach of any representation, warranty or covenant made in this Agreement):

(a) **Representations, Warranties and Covenants.** (i) All of the representations and warranties made by the Purchaser in this Agreement and in the Ancillary Agreements to which it is a party (without taking into account any materiality or similar qualifiers) shall be true and correct as of the date hereof and as of the Closing Date as though made at and as of the Closing Date (except to the extent such representations and warranties expressly speak as of an earlier date, which shall be true and correct as of such date), except for such inaccuracies that, individually or in the aggregate, would not reasonably be expected to prevent, materially delay or materially impair the ability of the Purchaser to consummate the Transactions; (ii) the Purchaser shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed by the Purchaser on or prior to the Closing Date; and (iii) with respect to clauses (i) and (ii), at the Closing there shall be delivered to the Sellers a certificate signed by a duly authorized representative of the Purchaser to the foregoing effect.

(b) **Governmental Approvals.** All authorizations, consents, orders or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Authority which are necessary to consummate the transactions contemplated

hereby shall have been filed, been obtained or occurred and such authorizations, consents, orders or approvals shall not have expired or been withdrawn.

(c) No Order. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) that has the effect of making the Transactions illegal or otherwise restraining, enjoining, otherwise prohibiting, or materially restricting the consummation of such Transactions.

(d) Sale Order. The Bankruptcy Court shall have entered the Sale Order in form and substance reasonably acceptable to the Purchaser and the Sellers and such Sale Order shall be a Final Order.

(e) Closing Deliveries. (i) The Sellers shall have received all of the deliverables of the Purchaser as set forth in Section 2.10(j).

For the avoidance of doubt, there shall be no conditions precedent to Sellers' obligation to consummate the transaction contemplated by this Agreement, except for those conditions precedent specifically set forth in this Section 7.01.

SECTION 7.02 Conditions to Obligations of the Purchaser. The obligations of the Purchaser to consummate the Transactions shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any one or more of which may be waived (but only in writing) by the Purchaser (provided that no such waiver shall be deemed to have cured any breach of any representation, warranty or covenant made in this Agreement):

(a) Representations, Warranties and Covenants. (i) All of the representations and warranties made by the Sellers in this Agreement and in the Ancillary Agreements (without taking into account any Material Adverse Effect, materiality or similar qualifiers) shall be true and correct as of the date hereof and as of the Closing Date as though made at and as of the Closing Date (except to the extent such representations and warranties expressly speak as of an earlier date, which shall be true and correct as of such date), except for such inaccuracies that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; (ii) each Seller shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed by the Sellers on or prior to the Closing Date; and (iii) with respect to clauses (i) and (ii), at the Closing there shall be delivered to the Purchaser a certificate signed by a duly authorized representative of each Seller to the foregoing effect.

(b) Governmental Approvals. All authorizations, consents, orders or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Authority which are necessary to consummate the transactions contemplated hereby shall have been filed, been obtained or occurred and such authorizations, consents, orders or approvals shall not have expired or been withdrawn.

(c) No Order. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) that has the effect of making the Transactions illegal or otherwise restraining,

enjoining, otherwise prohibiting, or materially restricting the consummation of such Transactions.

(d) Sale Order. The Bankruptcy Court shall have entered the Sale Order in form and substance reasonably acceptable to the Purchaser and the Sellers and such Sale Order shall be a Final Order.

(e) Bidding Procedures Motion. On or prior to March 2, 2009, the Bidding Procedures Motion shall have been filed in the Chapter 11 Cases.

(f) Bidding Procedures Order. On or prior to March 31, 2009, the Bidding Procedures Order shall have been entered in the Chapter 11 Cases.

(g) Credit Bid Approval. The Bankruptcy Court shall have entered an order, binding on all parties in interest in the Chapter 11 Cases (which order may be the Bankruptcy Sale Order) unconditionally allowing, authorizing and approving the credit bid by Purchaser contemplated by this Agreement pursuant to Section 363(k) of the Bankruptcy Code of a Claim by Purchaser in the Chapter 11 Cases in an amount equal to the Credit Bid.

(h) No Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Material Adverse Effect.

(i) Closing Deliveries. The Purchaser shall have received all of the deliverables of (i) the Sellers as set forth in Section 2.10.

(j) Contracts. The Sellers shall have obtained, to the extent necessary to effect the assignment of the Assigned Contracts set forth in Section 7.02(j) of the Sellers' Disclosure Schedule and the assignment of the Intellectual Property pursuant to Section 5.07(b), the approval of the Bankruptcy Court pursuant to the Sale Order and, if needed, the Consent to the assignment from the applicable counterparties, and the Sellers shall have duly assigned such Contracts and Intellectual Property to the Purchaser and such Contracts and Intellectual Property shall be in full force and effect.

(k) Permits and Licenses. All Permits and Licenses included in the Purchased Assets shall have been transferred to the Purchaser as legal and beneficial holder thereof, or, if any Permit and License is not transferable, a replacement Permit and License, on substantially similar terms, shall have been issued to the Purchaser.

(l) Release of Liens. To the extent that the Sale Order authorizes the Sellers to file, execute, deliver and/or file Uniform Commercial Code termination statements, lien releases, discharges, financing change statements and such other documents, notices or instruments absent the consent of the holder of a Lien, the Sellers shall have executed, delivered and/or filed or, at the request of the Purchaser, duly authorized the Purchaser to file, such termination statements, lien releases, discharges, financing change statements or other documents, notices or other instruments as the Purchaser may reasonably deem necessary to release Liens (other than Permitted Liens) on the Purchased Assets, to the extent they are authorized to do so absent the consent of the holder of the Lien.

(m) Intellectual Property. The Sellers shall have (i) executed and recorded all documentation necessary to confirm and effect the Sellers' ownership of the registered United States Owned Intellectual Property in the United States Patent and Trademark Office, the United States Copyright Office and other official offices, and (ii) delivered to the Purchaser all records and information necessary to confirm and effect the Sellers' ownership of all Owned Intellectual Property, including, but not limited to, evidence of entitlement to the foregoing, assignments, licenses, and other agreements, certificates, correspondence with attorneys, judicial or administrative decisions, pleadings, evaluations, opinions, and other memoranda, and any other applicable information required pursuant to Section 5.08(c).

(n) General Release. The Sellers shall deliver a general release to the Purchaser as set forth on Exhibit F; provided, that such release shall not release the Purchaser of any of its obligations hereunder or under the Ancillary Agreements and the Sale Order;

(o) Final Sellers' Disclosure Schedule. Sellers shall have delivered to the Purchaser a final version of the Sellers' Disclosure Schedule, including all schedules missing thereto as of the date hereof, all such schedules in form and substance reasonably satisfactory to the Purchaser.

ARTICLE VIII TERMINATION, AMENDMENT AND WAIVER

SECTION 8.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by either the Sellers or the Purchaser if the Closing shall not have occurred by the Termination Date; provided, however, that the right to terminate this Agreement under this Section 8.01(a) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date;

(b) by either the Purchaser or the Sellers in the event that any Order restraining, enjoining or otherwise prohibiting the Transactions shall have become a Final Order;

(c) by either the Purchaser or the Sellers without any action by either the Purchaser to Sellers or the Sellers to Purchaser, immediately upon (i) the issuance of a final and unappealable order, decree, or ruling or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the Transfer of the Purchased Assets contemplated hereby; (ii) approval by the Bankruptcy Court of a transaction with an Alternate Purchaser (as defined below) (an "Alternate Transaction"); (iii) acceptance by the Sellers of an Alternate Transaction; or (iv) the Purchaser is not declared the winning bidder upon completion of the Auction (as such term is defined in the Interim Order); provided, that in the case of (ii) and (iii) above, the Purchaser agrees to be bound by the Bidding Procedures Order if the Purchaser is a "Back-Up Bidder" (as such term is defined in the Bidding Procedures Order).

(d) by the Purchaser if, prior to the Closing Date, the Chapter 11 Cases are converted into cases under Chapter 7 of the Bankruptcy Code or dismissed, or if a trustee or examiner with expanded powers is appointed in the Chapter 11 Cases; provided, however, that if the Chapter 11 Cases are dismissed or converted to cases under Chapter 7 of the Bankruptcy

Code because of the Purchaser's failure to pay all obligations under this Agreement, then the Purchaser shall not be permitted to terminate this Agreement;

(e) by the Purchaser if there shall be excluded from the Purchased Assets any Assigned Contract that is not assignable or transferable pursuant to the Bankruptcy Code or otherwise without the consent of any Person other than Sellers, to the extent that such consent shall not have been given prior to the Closing and such Assigned Contract, in the opinion of the Purchaser in its reasonable discretion, prevents it from effectively operating the Business;

(f) by the Purchaser by written notice to the Sellers (i) if any event occurs or condition exists which would render impossible the satisfaction of one or more conditions to the obligations of the Purchaser to consummate the transactions contemplated by this Agreement as set forth in Section 7.02, or (ii) in accordance with Section 5.03;

(g) by the Sellers by written notice to the Purchaser if any event occurs or condition exists which would render impossible the satisfaction of one or more conditions to the obligations of the Seller to consummate the transactions contemplated by this Agreement as set forth in Section 7.01;

(h) by the Purchaser if there has occurred a material misrepresentation or other material breach by any Seller of its representations, warranties or covenants set forth herein or in any Ancillary Agreement; provided, however, that if such breach is susceptible to cure, subject to Section 8.01(a), the breaching party or parties shall have twenty (20) calendar days after receipt of written notice (which notice includes a summary description of such breach) from the Purchaser of its intention to terminate this Agreement if such breach continues in which to cure such breach;

(i) by the Sellers if there has occurred a material misrepresentation or other material breach by the Purchaser of its representations, warranties or covenants set forth herein or in any Ancillary Agreement to which the Purchaser is a party; provided, however, that if such breach is susceptible to cure, subject to Section 8.01(a), the Purchaser shall have twenty (20) calendar days after receipt of written notice (which notice includes a summary description of such breach) from the Sellers of its intention to terminate this Agreement if such breach continues in which to cure such breach;

(j) by the Purchaser (i) upon the consummation of any transaction or series of transactions pursuant to which the Sellers or their respective Affiliates reorganize the Business, or (ii) if all or substantially all of the Sellers' assets relating to the Business are sold, disposed of, or otherwise liquidated to a purchaser (the "Alternate Purchaser") other than in a sale to the Purchaser pursuant to the transactions contemplated by this Agreement;

(k) by the mutual written consent of each of the Sellers and the Purchaser; or

(l) upon a Termination Event (as such term is defined under the Interim Order and the Final Order) without any action on part of the Sellers or the Purchaser, provided that such Termination Event occurs on or prior to the Closing Date.

For the avoidance of doubt, there shall be no conditions precedent to Sellers' obligation to consummate the transaction contemplated by this Agreement, except for those conditions precedent specifically set forth in this Section 8.01.

SECTION 8.02 Effect of Termination. In the event that this Agreement shall be terminated pursuant to Section 8.01, all further obligations of the parties hereto under this Agreement shall terminate; provided that the obligations of the parties hereto contained in Section 5.11, Section 10.01 through Section 10.15 and this Section 8.02 shall survive any such termination.

ARTICLE IX NON-SURVIVAL OF REPRESENTATIONS AND WARRANTIES

SECTION 9.01 Non-Survival of Representations and Warranties. The representations and warranties of the parties hereto contained in this Agreement shall terminate at the Closing, or upon termination of this Agreement pursuant to Section 8.01, and, following the Closing or the termination of this Agreement, as the case may be, no party hereto shall make any claim whatsoever for any breach of any such representation or warranty. Except as otherwise provided herein, each covenant and agreement of the parties hereto contained in this Agreement or in any Ancillary Agreement shall survive the execution and delivery of this Agreement and the Closing in accordance with its terms until a claim thereon is barred by the applicable statute of limitations.

ARTICLE X GENERAL PROVISIONS

SECTION 10.01 Expenses. Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors, accountants and other advisors, incurred in connection with this Agreement and the Transactions shall be paid by the party incurring such costs and expenses, subject to Bankruptcy Court approval, whether or not the Closing shall have occurred. As between the Purchaser and the Sellers, the Sellers shall bear all of the costs of administration of the Chapter 11 Cases.

SECTION 10.02 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by an internationally recognized overnight courier service, by facsimile or registered or certified mail (postage prepaid, return receipt requested) to the respective parties hereto at the following addresses (or at such other address for any party as shall be specified by such party in a notice given in accordance with this Section 10.02):

- (i) if to the Sellers:

Everything But Water, LLC
7353 Greenbriar Parkway
Orlando, FL 32819
Facsimile: (407) 363-0967
Attention: Sheila Arnold

with a copy to:

Halperin Battaglia Raicht, LLP
555 Madison Avenue-9th Floor
New York, New York 10022-3301
Facsimile: (212) 765-0964
Attention.: Alan D. Halperin, Esq.

(ii) if to the Purchaser:

Orlando Bathing Suit, LLC
c/o DB Zwirn & Co. L.P.
745 Fifth Avenue
18th Floor, Suite 200
New York, NY 10151
Facsimile: (646) 720-9377
Attention: Peter Leibman

with a copy to:

Schulte Roth & Zabel
919 Third Avenue
New York, New York 10022
Facsimile: (212) 593-5955
Attention: David Hillman, Esq.

SECTION 10.03 Public Announcements. Neither the Purchaser, on the one hand, nor the Sellers, on the other hand, shall make, or cause to be made, any press release or public announcement in respect of this Agreement or the Transactions, or otherwise communicate with any news media without the prior written consent of the Sellers or the Purchaser, respectively, except as otherwise required by Law, applicable stock exchange regulation or in filings in the Bankruptcy Court or office of the United States trustee, and the parties to this Agreement shall cooperate as to the timing and contents of any such press release, public announcement or communication.

SECTION 10.04 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 and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party hereto. 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 are consummated as originally contemplated to the greatest extent possible.

SECTION 10.05 Entire Agreement. This Agreement (including the Exhibits hereto) and the Ancillary Agreements constitute the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and

undertakings, both written and oral, among the Sellers and the Purchaser with respect to the subject matter hereof and thereof.

SECTION 10.06 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors (including any trustee, receiver, receiver-manager, interim receiver or monitor or similar officer appointed in respect of the Sellers in the Chapter 11 Cases) and permitted assigns, but shall not be assignable or delegable by the Sellers without the prior written consent of the Purchaser and by Order of the Bankruptcy Court. The Purchaser may assign this Agreement or any of its rights or obligations hereunder to any Affiliates or financing sources of the Purchaser without the consent of the Sellers and the Purchaser shall have no further liability in respect of the rights or obligations so assigned; provided that such assignee shall assume all such rights or obligations of the Purchaser hereunder. The Sellers agree to enter into such amendments to, or restatements of, this Agreement and the exhibits hereto as may be reasonably required to give effect to this Section 10.06, so long as such amendments or restatements do not adversely affect the rights of Sellers hereunder or thereunder.

SECTION 10.07 Non-Recourse.

(a) No past, present or future director, officer, employee, incorporator, member, partner, stockholder, agent, attorney or representative of the Purchaser in such capacity, shall have any liability to any Seller for any obligations or liabilities of the Purchaser under this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby.

(b) No past, present or future director, officer, employee, incorporator, member, partner, stockholder, agent, attorney or representative of any Seller, in such capacity, shall have any liability to the Purchaser for any obligations or liabilities of the such Seller under this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby.

SECTION 10.08 Amendment. This Agreement may not be amended or modified except (a) (i) by an instrument in writing signed by, or on behalf of, the Sellers and the Purchaser or (ii) by a waiver in accordance with Section 10.09; and, (b) to the extent such amendment or modification is material, by an Order of the Bankruptcy Court.

SECTION 10.09 Waiver. Any Seller, on the one hand, or the Purchaser, on the other hand, may: (a) extend the time for the performance of any of the obligations or other acts of the other; (b) waive any inaccuracies in the representations and warranties of the other contained herein or in any document delivered by the other pursuant hereto; or (c) waive compliance with any of the agreements or obligations of the other contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of any party hereto to assert any of its rights hereunder shall not constitute a waiver of any of such rights.

SECTION 10.10 No Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

SECTION 10.11 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York and, to the extent applicable, the Bankruptcy Code. The parties hereto agree that the Bankruptcy Court shall be the exclusive forum for enforcement of this Agreement or the Transactions and (only for the limited purpose of such enforcement) submit to the jurisdiction thereof; provided that if the Bankruptcy Court determines that it does not have subject matter jurisdiction over any action or proceeding arising out of or relating to this Agreement, then each party: (a) agrees that all such actions or proceedings shall be heard and determined in a New York federal court sitting in The City of New York; (b) irrevocably submits to the jurisdiction of such court in any such action or proceeding; (c) consents that any such action or proceeding may be brought in such courts and waives any objection that such party may now or hereafter have to the venue or jurisdiction or that such action or proceeding was brought in an inconvenient court; and (d) agrees that service of process in any such action or proceeding may be effected by providing a copy thereof by any of the methods of delivery permitted by Section 10.02 to such party at its address as provided in Section 10.02 (provided that nothing herein shall affect the right to effect service of process in any other manner permitted by Law).

SECTION 10.12 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS. EACH OF THE PARTIES HERETO HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 10.12.

SECTION 10.13 Currency. Unless otherwise specified in this Agreement, all references to currency, monetary values and dollars set forth herein shall mean United States (U.S.) dollars and all payments hereunder shall be made in United States dollars.

SECTION 10.14 Construction. The parties hereto and their respective legal counsel participated in the preparation of this Agreement, and therefore, this Agreement shall be construed neither against nor in favor of any of the parties hereto, but rather in accordance with the fair meaning thereof.

SECTION 10.15 Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

[Remainder of page intentionally left blank]

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

PURCHASER

ORLANDO BATHING SUIT, LLC

By: _____

Name:

Title:

SELLERS

EVERYTHING BUT WATER, LLC

By: _____

Name:

Title:

JUST ADD WATER, INC.

By: _____

Name: