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ASSET PURCHASE AGREEMENT

*by and between*

DIALUCK CORPORATION,  
And its designee  
(Buyer)

*and*

OTC INTERNATIONAL, LTD.  
(Seller)

*Dated as of May 1, 2008*

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (together with the Schedules, Exhibits and Annexes hereto, collectively referred to as the "Agreement") is made as of May 1, 2008 by and between debtors and debtors-in-possession OTC International, Ltd. ("OTC") (the "Seller"), and Dialuck Corporation ("Dialuck") on behalf of a designated entity ("Designee"), which Designee will be an existing affiliate of Dialuck or another entity which Dialuck will cause to be formed to purchase the Transferred Assets and assume the Assumed Liabilities (Dialuck and Designee are collectively, "Buyer").

### WITNESSETH:

WHEREAS, on April 3, 2008 (the "Petition Date"), OTC filed a voluntary petition for relief, and continues to operate as a debtor-in-possession, under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Case");

WHEREAS, in connection with the Bankruptcy Case and subject to the terms and conditions herein, Seller wishes to sell and assign to Buyer, and Buyer desires to purchase and acquire from Seller, pursuant to sections 363 and 365 of the Bankruptcy Code, free and clear of all Liens, Claims or Encumbrances, all of the Transferred Assets which are used in connection with Seller's diamond and jewelry business (the "Business") and assume from the Seller the Assumed Liabilities;

NOW, THEREFORE, in consideration of the premises, the mutual obligations of the parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

**1.01 Definitions.** Capitalized terms used in this Agreement shall have the meanings ascribed to them in Annex A hereto or as may be set forth throughout the provisions of this Agreement.

### ARTICLE II

#### PURCHASE AND SALE OF THE ASSETS

**2.01 Purchase and Sale of the Assets.** Subject to the terms, provisions and conditions of this Agreement, at the Closing referred to in Section 3.01 hereof, pursuant to Sections 363 and 365 of the Bankruptcy Code, Seller shall sell, assign, transfer (without recourse, representation or warranty whatsoever except as expressly set forth herein) and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, all of Seller's right, title and interest, if any, in and to the following assets and properties of Seller that are held by them solely for use in

connection with the operation of the Business and in existence on the Closing Date (collectively, the "Transferred Assets"):

(a) OTC Third-Party Accounts Receivable. All OTC third-party accounts receivable that are not more than 30 days past due as of the Closing Date and all OTC accounts receivable created as a result of OTC's sale of OTC Inventory subsequent to the date of this Agreement (the "OTC Accounts Receivable");

(b) OTC Inventory. All Inventory of OTC, other than the Excluded Inventory, including any related Intellectual Property specific to such Inventory, including the Inventory referenced in Schedule 4.05, Inventory returned to and received by the Seller prior to Closing (collectively the "OTC Inventory"), the Memo Inventory and all Inventory purchased by OTC in accordance with the Financing Order subsequent to the date of this Agreement and which is remaining as of the Closing Date (collectively the "Other OTC Inventory");

(c) Real Property Lease. All of Seller's right, title and interest in and to the Real Property Lease and the leasehold at 31-00 47<sup>th</sup> Avenue, Long Island City, NY;

(d) Trademarks. All of Seller's right, title and interest in and to any and all trademarks and/or trade names (collectively, the "Trademarks") owned and/or used by Seller in connection with the Seller's business, including, without limitation, the marketing and sale of the Seller's products. For purposes of the foregoing, the "Trademarks" shall be deemed to include any and all designs and logos, and all goodwill, constituting, and/or related to the Trademarks. All of such right, title and interest in and to the Trademarks, inclusive of the goodwill and all designs and logos related thereto, are herein collectively referred to as the "Trademark Rights". Any such Trademarks which are registered, are herein referred to as the "Trademark Registrations". All Trademarks owned or used by Seller in the operation of its business are identified on Schedule 2.01(d);

(e) Copyrights. All of Seller's right, title and interest in and to any and all copyrights (collectively, the "Copyrights") owned and/or used by Seller in connection with the Seller's business, including, without limitation, any all design copyrights owned and/or used by Seller in connection with the design and/or manufacture of any of jewelry and/or any of Seller's jewelry lines. Without limiting the foregoing, all of the Copyrights are listed on Schedule 2.01(e) to this Agreement. All of such right, title and interest in and to the Copyrights are herein collectively referred to as the "Copyright Rights". Any such Copyrights which are registered, are herein referred to as the "Copyright Registrations".

(f) Other Transferred Assets. All other assets related to the Business, including but not limited to: i) furniture, fixtures and equipment, including all computer hardware, servers and software systems, and related licenses and agreements related thereto to the extent assignable; ii) all telephone systems including all telephone and facsimile/telex numbers; iii) all intellectual property, including but not limited to all URL's domain names (such as "Netaya.com") not included in any Intellectual Property included in 2.01(d) and (e) above; iv) all other trademarks and trade names (such as "OTC" and "Netaya") not included in 2.01 (d) and (e) above; v) all goodwill and intangibles; vi) all supplier, customer and vendor lists, and approved vendor licenses and numbers; vii) all other credit insurance or other claims related

to the Transferred Assets uncollected by Seller as of the Closing Date; and viii) any and all prepaid expenses and deposits (collectively the "Other Transferred Assets").

The Transferred Assets also include (i) copies of any Books and Records related to the Transferred Assets and (ii) all contracts, agreements and open orders related to the Transferred Assets, a list of which is annexed hereto as Schedule 2.01(f) (collectively, the "Assumed Contracts") and the Assumed Contract Rights associated therewith.

Except as expressly set forth in this Section 2.01 or the Schedules relating thereto, no other assets or properties of Seller shall be transferred, assigned or delivered to Buyer pursuant to this Agreement, and no other assets or properties of Seller shall be included as Transferred Assets for the purposes of this Agreement. For the avoidance of doubt, notwithstanding any other provision to the contrary in this Agreement, the Transferred Assets do not include the Excluded Assets.

For the avoidance of any doubt, and notwithstanding anything to the contrary contained in this Agreement, including, but not limited to the allocation of portions of the Purchase Price to certain of the Transferred Assets, Buyer expressly states and Seller acknowledges that Buyer will acquire and/or take assignment of the Transferred Assets only in their entirety.

**2.02 Excluded Assets.** Notwithstanding the foregoing, Seller is not selling and Buyer is not purchasing pursuant to this Agreement, and the Transferred Assets shall not include, any assets not specifically listed in Section 2.01 or the Schedules relating thereto (such assets not specifically so listed, the "Excluded Assets"). Property, assets or contracts not specifically listed as a Transferred Asset or an Excluded Asset shall be deemed an Excluded Asset. The Excluded Assets shall include, but not be limited to:

- (a) the Excluded Receivables identified on Schedule 2.02(a) hereto and any and all accounts receivable generated from the sale of Excluded Inventory;
- (b) the Excluded Inventory identified on Schedule 2.02(b) hereto;
- (c) the Estate Claims, other than claims and causes of action specifically related to the Transferred Assets;
- (d) corporate minute books, stock transfer books and Tax Returns of Seller;
- (e) all original records and files (in whatever media) to the extent relating to the Business;
- (f) the Seller's jewelers block insurance policy and all rights and claims associated therewith; and
- (g) cash, cash equivalents, insurance claims (except credit insurance claims related to the Transferred Assets that were uncollected by Seller as of the Closing), indemnification claims, notes receivable, and tax refunds for all periods ending prior to the Closing Date including, but not limited to, all carry back claims whether or not filed as of the date of this Agreement.

**2.03 Method of Conveyance.** The sale, transfer, conveyance, assignment and delivery by Seller of the Transferred Assets to Buyer in accordance with Section 2.01 hereof shall be effected on the Closing Date by Seller's execution and delivery to Buyer of (i) a Bill of Sale and assignment to transfer the right, title and interest in and to the Transferred Assets to Buyer, without representation, recourse, or warranty, express or implied, and (ii) such other duly executed assignments and other conveyance instruments with respect to Seller's transfer of intangible and intellectual property rights, real property interests, including, without limitation, assignment of leases, and other Transferred Assets as shall be reasonably necessary to be delivered by Seller to effectuate the purchase and sale of the Transferred Assets as contemplated by the terms, provisions and conditions hereof, in each case in form reasonably acceptable to Buyer and Seller.

**2.04 Assumption of Liabilities.** Except as otherwise expressly provided in this Section 2.04, Buyer shall not assume or be responsible for, and shall in no event be liable for any debts, liabilities or obligations of (or claims against) Seller, whether fixed or contingent, known or unknown, liquidated or unliquidated, suspected or unsuspected, material or immaterial, absolute or contingent, matured or unmatured, determinable or undeterminable, direct or indirect, secured or unsecured, or otherwise. As the sole exception to the first sentence of this Section 2.04, effective as of the Closing Date, Buyer hereby assumes and agrees to pay, discharge or perform, as appropriate, when due or otherwise on a timely basis, only the following liabilities (collectively, the "Assumed Liabilities"):

(a) all liabilities and obligations of Seller accruing, arising out of, or to be performed from and after the Closing Date under the Assumed Contracts; and

(b) except as otherwise provided herein, all liabilities and obligations relating to or arising out of the ownership or use of the Transferred Assets from and after the Closing Date;

(c) all liabilities and obligations of Seller accruing, arising out of, or to be performed from July 1, 2008 through the Closing Date, in the event that Closing has not occurred by June 30, 2008.

**2.05 Excluded Liabilities.** Except for the Assumed Liabilities, Buyer shall not assume, and shall have no responsibility for, any liabilities of Seller, as a successor in interest or otherwise and Seller shall be solely and exclusively liable for all such liabilities. For the avoidance of doubt, the Excluded Liabilities shall include, without limitation:

(a) any payments required to be made, or costs or other expenses required to be made, by Seller prior to the Closing Date with respect to any Assumed Contract;

(b) all liabilities resulting from a breach by Seller of any Assumed Contract and all duties, liabilities or obligations thereunder, in each case, to the extent arising from or related to the period of time prior to the Closing Date;

(c) all liabilities and obligations for which Seller shall be responsible pursuant to Section 6.01(d) hereof;

(d) all liabilities, accounts payable and obligations of Seller accruing, arising or to be performed prior to the Closing Date except as provided in 2.04(c) above.; and

(e) all other liabilities or obligations of Seller of any kind or nature whatsoever, known or unknown, not related to the Transferred Assets.

**2.06 Purchase Price.** In addition to assuming the Assumed Liabilities, as consideration for the purchase of the Transferred Assets, Buyer shall, subject to the terms and conditions hereof, pay to Seller an aggregate amount of approximately Twenty Three Million Dollars \$23,000,000, subject to the purchase price adjustment set forth in Section 2.12 (the "Purchase Price") itemized as follows:

(a) An amount equal to 77% of the gross OTC Accounts Receivable as of the Closing Date;

(b) An amount for the OTC Inventory computed employing the following formula:

(i) Metal (gold and silver) by weight at Market Price on the Closing Date;

(ii) Diamonds (mounted or loose) at a rate of 50% of Book Value;

(iii) Cameos, watches, colored stones and other miscellaneous inventory at a rate of 20% of Book Value;

(iv) Notwithstanding the foregoing, for all Memo Inventory an amount equal to Seller's Book Value;

(c) An amount equal to Seller's Book Value for the Other OTC Inventory

(d) Two Million Five Hundred Thousand (\$2,500,000) for the Other Transferred Assets, Real Property Lease, Trademarks, Trademark Rights, Copyrights, Copyright Rights, Assumed Contracts and Assumed Contract Rights.

**2.07 Deposit.** Simultaneously with the delivery of this Agreement by Buyer, Buyer shall deliver to Seller a cashier's check or wire transfer payable to Seller in an amount equal to (\$2,300,000) (together with any interest earned thereon, the "Deposit"). One Million (\$1,000,000) of the Deposit shall be non-refundable unless (i) there is a Winning Bidder and Buyer is not the Winning Bidder or (ii) this Agreement is Terminated in accordance with Sections 3.02(a), (b), (d), (e) or (g). The Deposit shall be held in an interest bearing escrow account by Seller's counsel. Notwithstanding the foregoing provisions of this Section 2.07, if Buyer is the Winning Bidder, the entire Deposit shall be credited against the Purchase Price. If Buyer is not the Winning Bidder or Back-up Bidder, the Deposit shall be returned to Buyer in accordance with provisions of Section 3.04 hereof; except, however, that the non-refundable portion of the Deposit shall be governed by the second sentence of this paragraph.

**2.08 Closing Payment.** At the Closing, a payment of the Purchase Price less the Deposit shall be made by Buyer to the Seller by cashier's check or wire transfer of immediately available funds in accordance with written instructions provided by Seller not less than one (1) Business Day prior to Closing.

**2.09 Purchase Price Allocation.** The Purchase Price and the Assumed Liabilities shall be allocated, apportioned and adjusted among the Transferred Assets as provided for herein.

**2.10 Cure.** If, as a condition to the assumption and assignment of any of the Assumed Contracts to be assigned to Buyer, it shall be necessary to cure any defaults thereunder, then as a condition to such assignment, Seller shall perform such acts and/or pay such sums (if any) as shall be required to cure any such default and shall pay any and all Cure Costs on or prior to the Closing Date. Notwithstanding, Seller shall not be required to pay Cure Costs in excess of Five Hundred Thousand Dollars.

**2.11 Further Conveyances and Assumptions.** From time to time following the Closing, Seller and Buyer shall execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Buyer and Buyer's respective successors and assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Buyer under this Agreement and to assure fully to Seller and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Buyer under this Agreement, and to otherwise make effective the transactions contemplated hereby and thereby.

**2.12 Purchase Price Adjustment.** The Purchase Price shall be adjusted at Closing as follows: (i) upward or downward in accordance with the formulaic calculations detailed in sections 2.06(a)-(c) of this Agreement, which calculations and adjustments correlate directly to the amount of each of the OTC Accounts Receivable, OTC Inventory and Other OTC Inventory in existence on the Closing Date, (ii) Buyer shall receive a credit against the Purchase Price due at Closing for all purchases of goods funded by Buyer subsequent to July 1, 2008 in accordance with Section 2.04(c) herein, (iii) the Purchase Price shall be adjusted upward in an amount equal to all deposits provided by Seller in connection with the purchase of goods pursuant to the Financing Order which goods shall not have been delivered and received by Seller prior to the

Closing, and (iv) the Purchase Price shall be adjusted upward in an amount equal to expenses paid by Seller, for expenses incurred by Seller subsequent to June 30, 2008 and prior to Closing, which expenses are not paid by Buyer prior to Closing pursuant to Section 2.04(c).

### ARTICLE III

#### CLOSING AND TERMINATION

**3.01 Closing Date.** Subject to the satisfaction of each of the conditions set forth in Article VII hereof (or the written waiver thereof by the party entitled to waive that condition), the closing of the purchase and sale of the Transferred Assets and the assumption of the Assumed Liabilities provided for in Article II hereof (the “Closing”) shall take place at 10:00 a.m. at the offices of Klestadt & Winters, LLP, 292 Madison Avenue, New York, New York (or at such other place as the parties may mutually agree in writing) on the later of (i) the earlier of the date on which all of the conditions set forth in Article VII hereof have been satisfied (or waived by the party entitled to waive that condition) or July 15, 2008, or (ii) such later date that may be mutually acceptable to Buyer, Seller and Lenders. The date on which the Closing shall be held is referred to in this Agreement as the “Closing Date.”

**3.02 Termination.** This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing Date as follows:

(a) by mutual written agreement of Seller and Buyer;

(b) by Buyer upon (i) the failure or lack of satisfaction of any of the conditions set forth in Section 7.02 hereof by the Closing Date or (ii) a material breach of any representation, warranty, covenant or agreement of Seller set forth in this Agreement such that the conditions set forth in Section 7.02 hereof would be incapable of being satisfied; provided, however, that the right to terminate this Agreement pursuant to this Section 3.02(b) for breaches shall only be available to Buyer if Buyer delivers written notice of such breach to Seller no later than the later of (i) 5pm on July 11, 2008 or (ii) two (2) days after Buyer discovers the material breach, but in any event not later than July 14, 2008;

(c) by Seller upon (i) the failure or lack of satisfaction of any of the conditions set forth in Section 7.01 hereof by the Closing Date or (ii) a material breach of any representation, warranty, covenant or agreement of Buyer set forth in this Agreement such that the conditions set forth in Section 7.01 hereof would be incapable of being satisfied; provided, however, that the right to terminate this Agreement pursuant to this Section 3.02(c) for breaches shall only be available to Seller if Seller deliver to Buyer written notice of such breach no later than the later of (i) 5pm on June 11, 2008, or (ii) two (2) days after Seller discovers the material breach, but in any event not later than July 14, 2008;

(d) by Buyer or Seller, if there shall be any order, writ, injunction or decree of any court or governmental authority binding on Buyer or Seller which prevents or permanently prohibits or restrains Buyer and/or Seller from consummating the transactions contemplated hereby and such order, writ, injunction or decree is or shall become final and non-appealable,



except if such order, writ, injunction or decree resulted from any action instituted by the party seeking to terminate this Agreement pursuant to this Section 3.02(d);

(e) by Buyer or Seller, if the Closing has not occurred by July 15, 2008, or such later date as Buyer, Seller and Lenders may agree, for any reason; provided, however, that the right to terminate this Agreement pursuant to this Section 3.02(e) shall not be available to Buyer, in the case of a material breach of this Agreement by Buyer or a failure to perform or satisfy the conditions set forth in Article VII hereof under its control, or to Seller, in the case of a material breach of this Agreement by Seller or a failure to perform or satisfy the conditions set forth in Article VII hereof under their control, where such breach or failure to perform or satisfy has been the cause of, or resulted in, the failure of the Closing to occur by July 15, 2008; provided further however, that if the Closing has not occurred on or before July 15, 2008 the Seller shall be deemed to have elected to terminate pursuant to the first sentence of this subsection (e) unless the Lenders shall have agreed in writing to extend the closing date beyond July 15, 2008;

(f) by Buyer on or before June 16, 2008, in the event that Buyer is unable to obtain sufficient financing to consummate the transactions contemplated hereby in a form and substance acceptable to Buyer in its sole discretion;

(g) by Seller in the event that Cure Costs exceed the sum of Five Hundred Thousand Dollars (\$500,000) in the aggregate;

(h) Any termination of this Agreement by Seller pursuant to subsections (a) through (g) above, shall be subject to the consent of the Lenders and the Committee, which shall not be unreasonably withheld. Any dispute between Seller, the Lenders or the Committee regarding Seller's termination of this Agreement shall be resolved by the Bankruptcy Court upon an order to show cause or a motion on shortened notice to be brought by the Debtors.

**3.03 Procedure upon Termination.** In the event of the termination of this Agreement, written notice thereof shall forthwith be given by the party or parties so terminating to the other party or parties, and this Agreement shall terminate, and the transactions contemplated hereby shall be abandoned, without further action by Seller or Buyer, except that the provisions of this Article III and Sections 6.04, 9.01, 9.04, 9.10, 9.12 and 9.13 hereof shall survive any termination of this Agreement and nothing contained in this Agreement shall relieve any party hereto from liability for any breach or inaccuracy of its representations, warranties, covenants or agreements contained in this Agreement prior to such termination.

**3.04 Refund of Buyer's Deposit.** Buyer shall forfeit the Deposit if Buyer terminates this Agreement for any reason other than as set forth in Section 3.02 (a), (b), (d), (e) or (g) hereof, if Seller terminates this Agreement due to Buyer's breach of this Agreement as set forth in Section 3.02 hereof, or if Buyer is unwilling or unable to close this transaction (including the payment in full in cash of the Purchase Price) on or before July 15, 2008 or such later date as may be mutually agreed to by the parties. Such forfeiture shall be the sole and exclusive remedy available to Seller in the event of any breach of this Agreement by Buyer. If this Agreement is terminated by Seller in the absence of any breach by Buyer, or if Buyer is not the winning bidder (the "Winning Bidder") or the back-up bidder (the "Back-up Bidder"), the entire Deposit in the

amount of \$2,300,000.00 plus accrued interest shall be returned to Buyer within seven (7) days after the entry of an order approving the sale of the Assets to the Winning Bidder(s) or Back-up Bidder; provided, however, that if Buyer is the Back-up Bidder, the entire Deposit in the amount of \$2,300,000.00 plus accrued interest shall be returned to Buyer within two (2) Business Days after the consummation of the transactions contemplated hereunder by Seller and the Winning Bidder but in any event not later than thirty (30) days after entry of the Sale Order. Notwithstanding the foregoing, in the event Buyer terminates this Agreement pursuant to Section 3.02(f), the entire Deposit, other than the sum of One Million Dollars (\$1,000,000), shall be returned by Seller to Buyer, together with all accrued interest, within two (2) business days after Seller's receipt of notice of such termination.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES OF SELLER**

Each Seller hereby individually represents and warrants to Buyer as follows:

#### **4.01 Organization, Good Standing and Due Authorization.**

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite corporate power and authority to own, lease and operate its properties, as applicable, and to carry on the Business as it is now being conducted, subject to the limitations, if any, imposed by applicable bankruptcy law. Seller is duly qualified to do business and is in good standing in all jurisdictions in which the location of Seller's assets or the operation of its Business makes such qualification necessary, except where the failure to be so qualified would not have a material adverse effect on the Business taken as a whole.

(b) Seller has full corporate power and authority to execute and deliver this Agreement and the Other Agreements to which it is a party, and, subject to Bankruptcy Court approval, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Other Agreements to which Seller is a party and the performance and consummation of the transactions contemplated hereby and thereby by Seller have been duly authorized by all necessary corporate action on the part of Seller.

(c) This Agreement has been duly executed and delivered by Seller, and the Other Agreements to which Seller is a party have been or will be duly executed and delivered by Seller, and subject to Bankruptcy Court approval and the due authorization, execution and delivery of such agreements by the other parties thereto, this Agreement and the Other Agreements constitute, or will constitute, valid and binding obligations of Seller, enforceable against Seller in accordance with their terms.

**4.02 Brokers.** All negotiations relative to this Agreement and the transactions contemplated hereby have been carried out by Seller directly with Buyer without the intervention of any Person on behalf of Seller in such manner as to give rise to any valid claim by any Person against Buyer for a finder's fee, brokerage commission or similar payment.

#### **4.03 Intellectual Property.**

(a) Trademarks. Schedule 2.01(d) contains a true, correct and complete list of all Trademarks. To the best of Seller's knowledge, all such Trademarks are valid and subsisting; and none of the Trademarks is infringed or otherwise violated or has been challenged or threatened in any way by any Person (including any employee, former employee, contractor or consultant of the Company), and no claims have been filed against the use by the Seller of any trademarks, service marks, trade names, or trade dress used in the business of the Seller as currently conducted.

(b) Copyrights. Schedule 2.01(e) contains a true, correct and complete list of all Seller's Copyrights. All such Copyrights, whether or not registered, are valid and enforceable in all respects, and none of the Copyrights is infringed or otherwise violated or has been challenged or threatened in any way by any Person (including any employee, former employee, contractor or consultant of the Seller), and no claims have been filed against the use by the Seller of any writings or other expressions used in the business of the Company as currently conducted.

**4.04 OTC Accounts Receivable.** Schedule 4.04 contains a true, correct and complete list of Seller's outstanding accounts receivable as of April 25, 2008.

**4.05 OTC Inventory/OTC Other Inventory.** Schedule 4.05 contains a true, correct and complete list of OTC Inventory as of April 25, 2008 as confirmed in connection with a complete physical inventory conducted by Seller, under the direction and supervision of the vault custodian.

**4.06 Memo/Consigned Inventory.** Schedule 4.06 contains a true, correct and complete list of all active and verifiable "memo" or consigned goods in the possession of Seller's customers.

### **ARTICLE V**

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

Buyer hereby represents and warrants to each Seller as follows:

##### **5.01 Organization, Good Standing and Due Authorization.**

(a) Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

(b) Buyer has full power and authority to execute and deliver this Agreement and the Other Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Other Agreements to which Buyer is a party and the performance and consummation of the transactions contemplated hereby and thereby by Buyer have been duly authorized by all necessary action on the part of Buyer.

(c) This Agreement has been duly executed and delivered by Buyer, and the Other Agreements to which it is a party have been or will be duly executed by Buyer, and subject to the due authorization, execution and delivery of such agreements by the other parties thereto, this Agreement and the Other Agreements constitute, or will constitute, the valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms.

**5.02 No Violation; Consents and Approvals.** Neither the execution and delivery by Buyer of this Agreement or the Other Agreements to which it is a party nor the consummation of the transactions contemplated hereby or thereby nor compliance by it with any of the provisions hereof or thereof (a) conflict with or result in a violation of (i) any provision of the organizational documents of Buyer or (ii) any judgment, order, writ, injunction, decree, statute, law, ordinance, rule or regulation binding upon Buyer in any material respect or (b) violate, conflict with, or result in a breach of any of the terms of, or constitute a default under, or give rise to any right of termination, modification, cancellation or acceleration under, (A) any note, bond, mortgage, indenture, deed of trust, contract, commitment, arrangement, license, agreement, lease or other instrument or obligation to which Buyer is a party or by which Buyer may be bound or to which any of Buyer's assets may be subject or affected in any material respect and that, in each case, is material to the business of Buyer, or (B) any material license, permit, authorization, consent, order or approval of, or registration, declaration or filings with, any Governmental Entity.

**5.03 Financing.** Buyer shall have on the Closing Date sufficient unrestricted immediately available funds on hand to pay the Purchase Price.

**5.04 Litigation.** There are no actions, suits, proceedings or investigations pending or threatened in any court or before any Governmental Entity against Buyer which might result in a material adverse effect on the ability of Buyer to consummate the transactions contemplated hereby and fulfill all of its obligations hereunder.

**5.05 Brokers.** All negotiations relative to this Agreement and the transactions contemplated hereby have been carried out by Buyer directly with Seller without the intervention of any Person on behalf of Buyer in such manner as to give rise to any valid claim by any Person against Seller for a finder's fee, brokerage commission or similar payment.

**5.06 No Application of HSR.** No filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, is required to be made in connection with the consummation of the transactions contemplated hereunder.

**5.07 "AS IS" Transaction.** Buyer hereby acknowledges and agrees that, except as otherwise expressly provided in this Agreement, Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Business or to the Transferred Assets, including, without limitation, income to be derived or expenses to be incurred in connection with the Business or the Transferred Assets, the physical condition of any personal or real property comprising a part of the Transferred Assets or which is the subject of any contract to be assumed by Buyer at the Closing, the environmental condition or other matter relating to the physical condition of any real property or improvements which are the subject of any assigned lease to be assumed by Buyer at the Closing, the zoning of any such real property

or improvements, the value or transferability of the Transferred Assets (or any portion thereof), the terms, amount, validity or enforceability of any Assumed Contracts, or the merchantability or fitness of the Transferred Assets). Without in any way limiting the foregoing, other than as expressly set forth in Article IV of this Agreement, Seller hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Transferred Assets. Buyer further acknowledges that Buyer has had an opportunity to conduct an independent inspection and investigation of the physical condition of the Transferred Assets, made available by Seller. Accordingly, if the Closing occurs, Buyer will accept the Transferred Assets at the Closing Date “AS IS,” “WHERE IS,” and “WITH ALL FAULTS,” subject to the provisions of this Agreement and the Sale Order providing that the sale of the Transferred Assets is free and clear of all Liens, Claims and Encumbrances. Without in any way limiting the foregoing, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SPECIFICALLY SET FORTH IN THIS AGREEMENT OR THE OTHER AGREEMENTS, SELLER HAS PROVIDED NO REPRESENTATIONS OR WARRANTIES AND SPECIFICALLY DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED, TO ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## ARTICLE VI

### COVENANTS OF THE PARTIES

#### 6.01 Employees.

(a) No employees of Seller shall be transferred from Seller to Buyer under this Agreement. Notwithstanding, Buyer shall have the right but not the obligation to offer employment to all or any of Seller’s existing employees.

(b) Nothing in this Agreement shall create any rights in favor of any Person not a party hereto, including any employee of Seller, or constitute an employment agreement or condition of employment for any employee of Seller.

(c) Seller shall retain, and Buyer shall not assume, any Employee Benefit Plans or any other arrangement or agreements (including with respect to any retention or sale bonus arrangements of Seller) relating to employees. All liabilities relating to or otherwise arising out of, the Employee Benefit Plans, and all Liabilities relating to or otherwise arising out of, any employee’s employment with any Seller or the termination of said employment shall be Excluded Liabilities, and Buyer shall have no obligation or liability with respect to such Employee Benefit Plans, arrangements or agreements.

(d) To the extent that any obligations might arise under the WARN Act, or under any similar provision of any law, rule or regulation (hereinafter referred to collectively at “WARN Obligations”) as a consequence of the transactions contemplated by this Agreement, Seller shall be responsible for any WARN Obligations arising as a result of any employment losses to employees of Seller occurring prior to or following the date of the Closing.

**6.02** [Reserved]

**6.03 Cooperation.** From the date hereof until the Closing, Seller and Buyer agree (a) to cooperate with each other in determining whether any filings are required to be made or consents are required to be obtained in any jurisdiction in connection with the consummation of the transactions contemplated hereby and in making or causing to be made any such filings promptly and in seeking to obtain in a timely manner any such consent; and (b) to use all commercially reasonable efforts to obtain promptly the satisfaction of the conditions to the consummation of the transactions contemplated herein and to fulfill their respective obligations hereunder. Seller and Buyer shall furnish to each other all such information as may be reasonably required in order to effectuate the foregoing.

**6.04 Confidentiality.** The parties acknowledge that Seller and Buyer have previously executed a confidentiality agreement (the “Confidentiality Agreement”), which Confidentiality Agreement will continue in full force and effect in accordance with its terms until the Closing Date. From and after the Closing Date, the Confidentiality Agreement shall be terminated and of no further force or effect. Notwithstanding the foregoing, upon the entry of the Sale Order approving this Agreement, Buyer may disclose the transactions contemplated by this Agreement and other information that may be deemed confidential under the terms of the Confidentiality Agreement to employees of Seller in communications regarding Buyer’s potential hiring of such employees, solely to the extent that such disclosure is reasonably required for such purpose.

**6.05 Certain Tax Matters.**

(a) Seller shall be responsible for and shall pay all Taxes relating to the Transferred Assets or the Business for any period ending prior to the Closing Date, and Buyer shall be responsible for and shall pay all Taxes relating to the Transferred Assets or the Business for the period from and after the Closing Date. The amount of all such proration shall be settled and paid on the Closing Date; provided, however, that final payments with respect to proration that are not able to be calculated on the Closing Date shall be calculated and paid as soon as practicable thereafter.

(b) Seller shall use reasonable efforts to obtain Bankruptcy Court approval that, in accordance with Section 1146(a) of the Bankruptcy Code, the making or delivery of any instrument of transfer under the transactions contemplated by this Agreement shall not be taxed under any law imposing any transfer Tax, sales Tax, real estate Tax, stamp Tax or similar Tax (collectively, “Transfer Taxes”). If the Bankruptcy Court grants such approval, the instruments transferring the Transferred Assets to Buyer shall contain the following endorsement:

“Because this [instrument] has been authorized pursuant to Order of the United States Bankruptcy Court for the Southern District of New York, relating to a plan of reorganization of the Grantor, it is exempt from transfer taxes, stamp taxes or similar taxes pursuant to 11 U.S.C. § 1146(a), and any officer receiving this [instrument] is hereby authorized and directed to permit the transfer contemplated by this [instrument] without the payment of any stamp tax, transfer tax or similar tax.”

Buyer and Seller shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation. In the event that any Transfer Taxes shall be payable in connection with the transactions contemplated hereby, the payment of such Transfer

Taxes shall be the responsibility of Seller and not Buyer. Seller shall prepare and file all Tax Returns in connection with all such Transfer Taxes and shall provide Buyer with copies thereof at least five (5) Business Days before they are due to be filed.

(c) Seller and Buyer shall cooperate with each other and provide each other with such assistance as reasonably may be requested by either of them in connection with the preparation of any Tax Return or any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to any liability for Taxes under this Agreement. The party requesting assistance hereunder shall reimburse the party providing assistance for all reasonable third-party out-of-pocket expenses incurred in providing such assistance. Nothing in this Section 6.05 shall require Buyer to be liable for any income tax liability of Seller.

#### **6.06 Access to Information; Communications with Third Parties.**

(a) From the date hereof until the Closing, Seller shall permit Buyer and its representatives to have reasonable access upon reasonable notice, during normal business hours, to the employees of the Business and Transferred Assets, and to such records, contracts and documents relating to the Business and the Transferred Assets as Buyer or its representatives shall reasonably request in connection with the transactions contemplated hereby. In connection therewith, Buyer shall have reasonable access to inspect and quantify the Transferred Assets for the purpose of verification of the amount and/or weight of certain Transferred Assets relative to the computation of the corresponding Purchase Price for the Transferred Assets as of the day prior to the Closing Date.

(b) After the Closing Date, Buyer shall permit Seller and their representatives to have reasonable access, during normal business hours, following reasonable advance notice and at Seller's sole expense, to the Books and Records as is reasonably necessary for (i) the preparation and filing of Tax Returns and other reports and documents required to be filed by Seller pursuant to applicable law or regulation, (ii) administering benefit or pension plans of Seller that cover any employee or former employee of the Business, (iii) pursuing insurance or other recoveries for any loss or (iv) the prosecution, defense or conduct of any litigation or investigative proceeding, including without limitation any causes of action under chapter 5 of the Bankruptcy Code. Seller shall have the right to retain copies of financial books, records and/or information in its possession related to the Business, the Transferred Assets or the Assumed Liabilities (except to the extent that Seller deem it necessary to retain originals of such books, records and information, in which case Seller shall have the right to retain originals of such documents and shall provide Buyer with copies thereof). Seller shall have the right for a period of six years following the Closing Date to have access to such books, records and accounts, correspondence, production records, employment records and other similar information as are transferred to Buyer pursuant to the terms of this Agreement for the purpose of concluding its involvement in the Business for the period prior to the Closing Date.

(c) Seller shall reimburse Buyer for all reasonable third party costs and expenses (including reasonable attorney's fees) incurred by Buyer in complying with requests made pursuant to this Section 6.06 (b).

**6.07 Notifications.** Buyer and Seller shall give prompt notice to the other of any representation or warranty made by Buyer or Seller contained in this Agreement becoming materially untrue or inaccurate or any failure of Buyer or Seller to comply with or satisfy in any material respect any covenant, condition, or agreement to be complied with or satisfied by it under this Agreement.

**6.08 Seller's Records.** From the Date of this Agreement up to the Closing Date, Seller shall maintain "perpetual" account of movement and/or (as appropriate and applicable) conversion, collection, and or return of all OTC Inventory, Other OTC Inventory and OTC Accounts Receivable. Furthermore, prior to the Closing Date, Seller shall afford Buyer and Buyer's attorneys, accountants, consultants and representatives (collectively, "Representatives"), reasonable access to Seller's business, properties, offices, Books and Record and employees, and shall provide to Buyer and its Representatives such additional financial and operating data and other information as Buyer shall from time to time reasonably request upon advance written notice. Seller shall permit Buyer and its Representatives to contact employees of Seller for determining and verifying the precise terms and nature of their arrangements. Buyer and its Representatives shall have reasonable access to Seller's professionals and advisers and shall be entitled to monitor the conduct of Seller's business operations. In addition, Seller shall consult in good faith with Buyer and its Representatives in connection with the conduct of Seller's business operations.

**6.09 Bankruptcy Covenants.** In connection with the transactions contemplated by this Agreement, Seller intends to file with the Bankruptcy Court a Motion (the "Sale Motion"), seeking, *inter alia*: (a) an order approving bidding procedures and other matters incidental to the proposed sale of the Transferred Assets (the "Sale Procedures Order"); and (b) a proposed order approving the sale of the Transferred Assets, a copy of which shall be annexed to the Sale Motion.

(a) Sales Procedure Order. The Sales Procedure Order shall approve and include, *inter alia*, the following bidding terms and conditions: (i) a breakup fee in an amount equal to 2.5% of the Purchase Price, (ii) reimbursement for legal and accounting fees incurred by Buyer in connection with its due diligence and the negotiation and preparation of the relevant transactional documents not to exceed One Hundred Thousand Dollars (\$100,000), (iii) an initial overbid of Seven Hundred Fifty Thousand Dollars (\$750,000) over and above the Purchase Price by any competing bidders for the Transferred Assets in their entirety (which amount shall include the breakup fee and expense reimbursement provided for in 6.09(a)(i) and (ii)), (iv) subsequent bidding increments of One Hundred Thousand Dollars (\$100,000), (v) bids must be submitted so as to be actually received by Seller's counsel no later than three business days prior to the scheduled auction sale, (vi) bids for the Transferred Assets in their entirety must include an executed asset purchase agreement in substantially the same form and on terms and conditions no less favorable than those set forth in this Agreement, (vii) bids must be unconditional and not contingent upon any event, including without limitation any due diligence investigation or the receipt of financing, (viii) bids must be accompanied by financial statements or other evidence in a form acceptable to Seller, in its reasonable discretion, that the proposed bidder is willing, capable and qualified to pay the Purchase Price and to perform the obligations set forth in this Agreement, (ix) bids must be accompanied by a certified check in an amount equal to ten percent (10%) of the proposed purchase price of the assets to be purchased, and (x)



all bids must be open bids. Notwithstanding anything to the contrary herein, bids may be submitted for any portion of the Transferred Assets and/or any other Assets other than the Transferred Assets.

(b) Pleadings. Seller shall promptly provide Buyer with the proposed final drafts of all further documents, motions, orders, or pleadings that Seller proposes to file with the Bankruptcy Court that relate to the approval of this Agreement, the Transferred Assets, or the consummation of the transactions contemplated hereby, or any provision therein or herein, and shall provide Buyer and its counsel with a reasonable opportunity to review and comment on such documents, motions, orders, or pleadings. Seller shall promptly make any filings, take all actions, and use their best efforts to obtain any and all other approvals and orders necessary or appropriate for consummation of the sale of the Transferred Assets, subject to their obligations to comply with any order of the Bankruptcy Court. In the event an appeal is taken, or a stay pending appeal is requested, from any of the orders of the Bankruptcy Court in connection with this Agreement or the transactions contemplated hereunder, Seller shall immediately notify Buyer of such appeal or stay request and, upon Buyer's request, shall provide to Buyer within two days after Seller's receipt thereof a copy of the related notice of appeal or order of stay. Seller shall also provide Buyer with written notice of any motion, application, brief or other pleading filed in connection with any appeal from any of such orders.

(c) Sale Order. Without limiting the generality of the foregoing provisions of this Section 6.09, the order of the Bankruptcy Court approving the transactions contemplated under this Agreement in their entirety shall be reasonably acceptable in form and substance to Buyer and shall include provisions, among other things (i) approving this Agreement (including the Schedules, Exhibits and Annexes hereto) in its entirety and approving the sale of the Transferred Assets and assignment of the Assumed Contracts to Buyer on the terms and conditions set forth in this Agreement, and authorizing Seller to proceed with this transaction, (ii) stating that any objections timely filed with respect to the sale of the Transferred Assets that have not been withdrawn, are overruled or the interests of such objections have been otherwise satisfied or adequately provided for by the Bankruptcy Court, (iii) finding that the Purchase Price represents fair value for the Transferred Assets, (iv) finding that the sale is in the best interests of Seller's estate and creditors, (v) finding that Buyer is a good faith Buyer of the Transferred Assets under Section 363(m) of the Bankruptcy Code and that the provisions of Section 363(n) of the Bankruptcy Code have not been violated, (vi) providing that the sale of the Transferred Assets to Buyer shall be free and clear of any and all Liens, Claims and Encumbrances whatsoever under Section 363 of the Bankruptcy Code and any other applicable sections of the Bankruptcy Code, (vii) providing that the Bankruptcy Court shall retain jurisdiction for the purpose of enforcing the provisions of the Sale Order including, without limitation, compelling delivery of the Transferred Assets to Buyer and protecting Buyer against any Liens, Claims and Encumbrances against Seller or the Transferred Assets, (viii) finding that Buyer is not liable for any brokers' commissions, (ix) authorizing and directing Seller to execute, deliver, perform under, consummate and implement this Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the foregoing, (x) determining that Buyer is not a successor to Seller or the Business or otherwise liable for any of the Excluded Liabilities or Excluded Assets and permanently enjoining each and every holder of any of the Excluded Liabilities or Excluded Assets from commencing, continuing or otherwise pursuing or enforcing any remedy, claim, cause of action

or Liens, Claims and Encumbrance against Buyer or the Transferred Assets related thereto, and (xi) finding that, pursuant to Section 1146(a) of the Bankruptcy Code, the transaction contemplated by this Agreement is in contemplation of a plan or plans of reorganization to be confirmed in Seller's bankruptcy cases commenced on the Petition Date, and as such shall be free and clear of any and all transfer tax, stamp tax or similar taxes; provided, however, that Buyer's obligations hereunder shall not be conditioned on the finding set forth in this subsection (xi) (the "Sale Order") and the failure of the Sale Order to include a finding consistent with subparagraph (xi) shall not make the Sale Order unacceptable to the Buyer, provided that the Seller has fulfilled its obligations under section 6.05(b) of this Agreement. Seller shall use their best efforts to obtain entry of the Sale Order. Buyer's obligations to consummate the transactions contemplated herein shall be conditioned upon the Bankruptcy Court's entry of the Sale Order in form and substance satisfactory to Buyer. To the extent that there is any inconsistency between this paragraph and the Sale Order, the Sale Order shall govern.

**6.10 Filings and Authorizations.** Each Seller and Buyer, as promptly as practicable, (i) shall make, or cause to be made, all such filings and submissions under Laws, rules and regulations applicable to it or its Affiliates, as may be required to consummate the transactions contemplated herein, in accordance with the terms of this Agreement, (ii) shall use all commercially reasonable best efforts to obtain, or cause to be obtained, all authorizations, approvals, consents and waivers from all governmental and non-governmental Persons necessary to be obtained by it or its Affiliates, in order to consummate the transactions contemplated herein; provided, however, that neither Buyer nor Seller shall be obligated to consummate the transactions contemplated by this Agreement absent the prior approval of the Bankruptcy Court and neither Buyer nor Seller shall be obligated to modify the Agreement in any material respect to satisfy the Bankruptcy Court, and (iii) shall use all commercially reasonable efforts to take, or cause to be taken, all other actions necessary, proper or advisable in order for it to fulfill its obligations hereunder. Seller and Buyer shall coordinate and cooperate with one another in exchanging such information and supplying such reasonable assistance as may be reasonably requested by each in connection with the foregoing.

**6.11 Amendment to List of Assumed Contracts.** Notwithstanding anything herein to the contrary, at any time prior to the Sale Hearing, (a) Buyer shall be entitled in its sole discretion to remove any executory contracts or unexpired leases from the list of Assumed Contracts by providing written notice thereof to Seller and any contracts or unexpired leases so removed shall not constitute Transferred Assets at Closing and (b) Buyer shall be entitled in its sole discretion to request, up to fourteen (14) days prior to the Sale Hearing, Seller to add to the list of Assumed Contracts any executory contracts or unexpired leases of Seller to the extent solely related to the Business by providing written notice thereof to Seller, and any contracts or unexpired leases so added shall constitute Transferred Assets to the extent that Seller is able to schedule a hearing on the assumption and assignment of these added contracts for the Sale Hearing; provided that Buyer shall not be entitled to add to the list of Assumed Contracts any executory contracts or unexpired leases of Seller that Seller has rejected by order of the Bankruptcy Court.

**6.12 Waiver of Compliance.** Buyer waives compliance by Seller with all applicable bulk sales or bulk transfer laws.

**6.13 Conduct of Business by Seller Pending the Closing Date.** Between the date of execution of this Agreement and the Closing Date, Seller shall not take any action inconsistent with the timely consummation of the transaction contemplated hereby, and Seller covenants and agrees that:

(a) the Business shall be conducted in the same manner conducted subsequent to the Petition Date and prior to the execution of this Agreement and Seller shall preserve the organization of the Business and maintain the existing relations with customers, suppliers, business partners and others having business dealing with the Business;

(b) Seller shall (i) maintain, preserve and protect all of the Transferred Assets in substantially the same condition in which they exist on the date hereof, and (ii) preserve, protect and prosecute all intellectual property rights related to the Business; and

(c) Seller shall not take any action which will have or reasonably be expected to have, individually or in the aggregate, a material adverse effect on the transaction contemplated by this Agreement, the Business, or the Transferred Assets.

## ARTICLE VII

### CONDITIONS TO OBLIGATIONS OF PARTIES

**7.01 Conditions to Obligations of Seller.** The obligation of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment at or prior to the Closing of each of the following conditions (any or all of which may be waived in whole or in part by Seller):

(a) Representations and Warranties. The representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date (except for such representations and warranties which are made expressly as of a specified date or period, which shall be true and correct or true and correct in all material respects, as herein above required, as of such specified date or period).

(b) Performance. Buyer shall have performed and complied, in all material respects, with all agreements, obligations and covenants required by this Agreement to be so performed or complied with by Buyer at or prior to the Closing Date.

(c) Officer's Certificate. Buyer shall have delivered to Seller a certificate, dated as of the Closing Date, executed by an authorized officer or representative of Buyer, certifying the fulfillment of the conditions specified in Sections 7.01(a) and 7.01(b) hereof.

(d) Closing Documents. Subject to the terms, conditions and provisions hereof, and contemporaneously with the performance by Seller of their obligations set forth in Section 7.02 hereof, Buyer shall have executed and delivered to Seller each of the following, in a form mutually acceptable to Seller and Buyer, at the Closing:

(i) A certified copy of all necessary corporate actions on Buyer's behalf approving the execution, delivery and performance of this Agreement and the Other Agreements to which it is a party;

(ii) the Intellectual Property Assignment, executed by Buyer, assigning to Buyer the Intellectual Property in the form attached hereto as Exhibit 7.01(d)(ii);

(iii) the Assignment and Assumption Agreement executed by Buyer in the form attached hereto as Exhibit 7.01(d)(iii); and

(iv) such other documents as may be requested by Seller's counsel as necessary to consummate the transactions contemplated by this Agreement.

(e) Judgments, Decrees and Litigation. There shall not be in effect or exist any judgment, order, injunction or decree issued by a Governmental Entity restraining, prohibiting the consummation of or imposing material modifications on the transactions contemplated by this Agreement or any pending litigation by a Governmental Entity or other third party seeking to restrain, prohibit or impose material modifications on the consummation of the transactions contemplated hereby.

(f) Bankruptcy Court. The Sale Order (i) shall have been entered, (ii) shall not have been stayed, materially modified or amended, dissolved, revoked or rescinded without Seller's consent, and (iii) shall be in full force and effect on the Closing Date.

(g) Sale of Netaya Assets. Simultaneously with the Closing, Seller shall sell and Buyer shall purchase substantially all of the assets of Netaya for the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000) pursuant to the terms and conditions of that certain asset purchase agreement by and between Netaya and Buyer annexed hereto as Schedule 7.01(g).

**7.02 Conditions to Obligations of Buyer.** The obligation of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment at or prior to the Closing Date of each of the following conditions (any or all of which may be waived in whole or in part by Buyer).

(a) Representations and Warranties. The representations and warranties made by Seller in this Agreement shall be true and correct, in each case, as of the date of this Agreement and as of the Closing Date (except for such representations and warranties which are made expressly as of a specified date or period, which shall be true and correct or true and correct in all material respects, as herein above required, as of such specified date or period), except where the failure of such representations and warranties to be true and correct would not result in a material adverse effect on the Business, taken as a whole.

(b) Performance. Seller shall have performed and complied, in all material respects, with all agreements, obligations and covenants required by this Agreement to be so performed and complied with by Seller at or prior to the Closing.

(c) Officer's Certificate. Seller shall have delivered to Buyer an officer's certificate, dated the Closing Date, executed by an authorized officer or representative of each

Seller, as the case may be, certifying the fulfillment of the conditions specified in Sections 7.02(a) and 7.02(b) hereof.

(d) Closing Documents. Subject to the terms, conditions and provisions hereof and contemporaneously with the performance by Buyer of its obligations set forth in Section 7.01 hereto, Seller shall have executed and delivered to Buyer the following, in a form mutually acceptable to Seller and Buyer, at the Closing:

(i) A certified copy of all necessary corporate actions on Seller's behalf approving the execution, delivery and performance of this Agreement and the Other Agreements to which any Seller is a party;

(ii) The Bill of Sale executed by Seller, assigning to Buyer the Transferred Assets not otherwise transferred in substantially the form attached hereto as Exhibit 7.02(d)(ii);

(iii) The Intellectual Property Assignment, executed by Seller, assigning to Buyer the Intellectual Property in substantially the form attached hereto as Exhibit 7.01(d)(ii); and

(iv) The Assignment and Assumption Agreement executed by Seller in substantially the form attached hereto as Exhibit 7.01(d)(iii).

(e) Bankruptcy Court. The Sale Order (i) shall have been entered, (ii) shall not have been stayed, materially modified or amended, dissolved, revoked or rescinded without Buyer's consent, and (iii) shall be in full force and effect on the Closing Date.

(f) Judgments, Decrees and Litigation. There shall not be in effect or exist any judgment, order, injunction or decree issued by a Governmental Entity restraining, prohibiting the consummation of or imposing material modifications on the transactions contemplated by this Agreement or any pending litigation by a Governmental Entity or other third party seeking to restrain, prohibit or impose material modifications on the consummation of the transactions contemplated hereby.

(g) Employment Agreements. Prior to the Sale Hearing, Buyer shall have executed employment agreements with the Key Employees on terms and conditions mutually acceptable to Buyer and the Key Employees and Non-Compete Agreement with Yoram Sheinman on terms and conditions mutually acceptable provided however that nothing in such non-compete agreement will have any effect on Yoram Sheinman's duties and obligations with respect to the continued wind-down of the Seller's Business and financial affairs including, but not limited to, the disposition of the Excluded Inventory.

(h) Going Concern. Seller shall at all times up to the Closing Date maintain its Business as a going concern and there shall not have been any material disruption in the operations of Seller's Business.

(i) Sale of Netaya Assets. Simultaneously with the Closing, Seller shall sell and Buyer shall purchase substantially all of the assets of Netaya (the "Netaya Assets") for the

sum of Two Million Five Hundred Thousand Dollars (\$2,500,000) pursuant to the terms and conditions of that certain asset purchase agreement by and between Netaya and Buyer annexed hereto as Schedule 7.01(i).

(j) Lender Consent to Netaya Transaction. Simultaneous with Closing, Lenders shall provide Netaya with a release of any and all liens, claims and security interests against Netaya and the Netaya Assets..

(k) Cure Costs. Simultaneously with Closing, Seller shall pay all Cure Costs in connection with the assumption and assignment of the Assigned Contracts to Buyer.

(l) Material Adverse Change. From the Date of this Agreement no material adverse change or effect upon the Business, the Transferred Assets and/or the Premises shall have occurred, including but not limited to, the loss of any major customer, supplier, or order.

## ARTICLE VIII

### POST-CLOSING SERVICES AND AGREEMENT

**8.01 Copyright and Trademark License.** Buyer shall, to the extent necessary, provide Seller with a license to use the Trademarks, Copyrights and any and all other Intellectual Property sold and assigned by Seller to Buyer for the sole and limited purpose of selling or otherwise disposing of the Excluded Inventory and collecting the Excluded Accounts Receivable. Buyer shall not be entitled to any royalty payment, fee or any other form compensation for such license.

**8.02 Accounts Receivable Collection Services.** After the Closing, Buyer shall act as agent for Seller to collect the Excluded Accounts Receivable and, except as provided herein, shall take all steps reasonably necessary to facilitate the collection of the Excluded Accounts Receivable. Buyer shall not receive any fee, compensation, expense reimbursement or any other form of consideration for such accounts receivable collection services rendered.

(a) Reporting. Buyer shall provide the Seller with weekly reports which detail all payments received on account of Excluded Accounts Receivable. Reports shall be provided on Wednesday (or the next business day if Wednesday is a holiday) of each week for collections received by Buyer during the prior week (“Weekly Collection Reports”). Copies of weekly Collection Reports shall be simultaneously transmitted to the Lenders as follows: (i) Sovereign Bank, One Financial Plaza, Mail Stop: RI1-TWR-03-10, Providence, RI 02903, Attn: Ms. Janice Stinchfeld and (ii) ABN AMRO Bank N.V., 55 East 52<sup>nd</sup> Street, 2<sup>nd</sup> Floor, New York, NY 10055, Attn: Mr. Bryan Matthews, or as otherwise designated by Lenders.

(b) Payment Remittance. Buyer shall not deposit, cash or otherwise negotiate (except to the order of the Seller) any payment received on account of Excluded Accounts Receivable. Any and all payments received by Buyer on account of Excluded Accounts Receivable shall be held in trust for Seller and delivered to the Seller together with the Weekly Collection Reports.

(c) Agent's Limitations. Buyer shall not negotiate or authorize any discount, compromise or other settlement of any Excluded Account Receivable without the consent of Seller and the Lenders. Similarly, Buyer shall not engage or retain any collection agency, counsel or any other third party to assist with the collection of or commence any action in connection with the Excluded Accounts Receivable.

**8.03 License for Use of Premises.** Buyer shall provide Seller with a license to use a portion of the Premises reasonably necessary for Seller to continue to wind down its business operations and financial affairs and to liquidate the Excluded Inventory through to and including January 31, 2009. In connection therewith, Seller shall be provided with use of computers, storage for books and records, telephones, copiers and any other resources located in the Premises which are reasonably necessary to effectuate the wind down of Seller's business operations and financial affairs. Seller shall be provided with its own safe located at the Premises in which the Excluded Inventory shall be kept. Buyer shall not maintain any of its own inventory in such safe or otherwise commingle any of its inventory with the Excluded Inventory. Buyer shall not receive any royalty, fee, expense reimbursement or any other form of consideration for such license or other resources provided by Buyer to Seller.

## ARTICLE IX

### MISCELLANEOUS

**9.01 Fees and Expenses.** Except as expressly otherwise provided in this Agreement, Seller and Buyer shall each respectively pay all fees and expenses incurred by them, or on behalf of them, in connection with, or in anticipation of, this Agreement and the Other Agreements and the transactions contemplated hereby and thereby. Notwithstanding the foregoing, the prevailing party in any suit or action brought against any other party to enforce the terms of this Agreement or any rights or obligations hereunder shall be entitled to receive reimbursement of its reasonable costs, expenses and attorneys' fees (internal and external) and disbursements, including the reasonable costs and expenses of experts and internal resources expended, actually incurred in connection with such suit or action.

**9.02 Further Assurances.** From time to time after the Closing, at the request of one of the parties hereto and at the expense of the party so requesting, each of Seller and Buyer agrees to execute and deliver to such requesting party such other documents and take such other action as such requesting party may reasonably request in order to consummate more effectively the transactions contemplated hereby. Seller and Buyer shall cooperate with each other and provide each other with such assistance as reasonably may be requested by either of them, including with respect to the prosecution and defense of claims. The party requesting assistance hereunder shall reimburse the party providing assistance for all reasonable third-party out-of-pocket expenses incurred in providing such assistance including, but not limited to, reasonable attorneys fees.

**9.03 Remittance of Funds and Return of Inventory Received In Error.** From time to time after the Closing, Seller may receive payments in error from customers on account of Transferred Assets and Buyer may receive payments in error from customers on account of Excluded Assets. Seller and Buyer shall promptly notify each other in the event of receipt of any misdirected payments and shall promptly deliver to the appropriate party any and all such payments received. Similarly, Seller and Buyer shall promptly notify each other of the receipt of any returned Inventory which should have been properly returned to the other party and make immediate arrangements for the delivery of all such Inventory to the appropriate party.

**9.04 Notices.** All notices, demands, consents, requests, instructions and other communications to be given or delivered or permitted under or by reason of the provisions of this Agreement or in connection with the transactions contemplated hereby shall be in writing and shall be deemed to be delivered and received by the intended recipient as follows: (i) if personally delivered, on the business day of such delivery (as evidenced by the receipt of the personal delivery service), (ii) if mailed certified or registered mail return receipt requested, five (5) Business Days after being mailed, (iii) if delivered by overnight courier (with all charges having been prepaid), on the business day of such delivery (as evidenced by the receipt of the overnight courier service of recognized standing), or (iv) if delivered by facsimile transmission, on the business day of such delivery if sent by 5:00 p.m. in the time zone of the recipient, or if sent after that time, on the next succeeding Business Day (as evidenced by the printed confirmation of delivery generated by the sending party's telecopier machine). If any notice, demand, consent, request, instruction or other communication cannot be delivered because of a changed address of which no notice was given (in accordance with this Section 9.04), or the refusal to accept same, the notice, demand, consent, request, instruction or other communication shall be deemed received on the second Business Day after the notice is sent (as evidenced by a sworn affidavit of the sender). All such notices, demands, consents, requests, instructions and other communications will be sent to the addresses or facsimile numbers as set forth below or to such other address or facsimile number as a party may have furnished to the other parties in writing in accordance herewith.

If to Seller to:

OTC International, Ltd.  
31-00 47<sup>th</sup> Avenue  
Long Island City, NY 11101  
Attn: Mr. Yoram Sheinman

Facsimile:

with copies to:

Klestadt & Winters, LLP  
292 Madison Avenue  
New York, New York 10017  
Attention: Ian R. Winters, Esq.  
Patrick J. Orr, Esq.  
Telephone: 212-972-3000



Facsimile: 212-972-2245

and

Sovereign Bank  
One Financial Plaza, Mail Stop: RI1-TWR-03-10  
Providence, RI 02903  
Attn: Ms. Janice Stinchfeld  
Facsimile: 401-456-0914

and

ABN AMRO Bank N.V.  
55 East 52<sup>nd</sup> Street, 2<sup>nd</sup> Floor  
New York, NY 10055  
Attn: Mr. Bryan Matthews  
Facsimile: 212- 409-5778

If to Buyer, to:

Dialuck Corporation  
18 East 48<sup>th</sup> Street, 12<sup>th</sup> Floor  
New York, NY 10017  
Attention: Mr. Anshul Gandhi  
Telephone: (212) 768-2323  
Facsimile: (212) 768-4204

with copies to:

Halperin Battaglia & Raicht, LLP  
555 Madison Avenue, 9th Floor  
New York, New York 10022  
Attention: Christopher J. Battaglia, Esq.  
Donna L. Lieberman, Esq.  
Telephone: 212-765-9100  
Facsimile: 212-765-0964

**9.05 Entire Agreement.** This Agreement, the Other Agreements, the Schedules, the Exhibits and Annexes hereto and thereto, and the Confidentiality Agreement, contain the entire understanding of the parties hereto with respect to the subject matter hereof and thereof and supersede any and all prior agreements and understandings, oral and written, among the parties with respect to the subject matter hereof and thereof.

**9.06 Survival.** Provided the Closing occurs, the representations and warranties and the covenants required to be performed prior to the Closing Date contained in this Agreement shall

terminate as of the Closing Date (other than the representations and warranties contained in Section 5 which shall survive for twelve (12) months after the Closing Date). All covenants and other obligations required to be performed after the Closing Date shall survive the Closing Date.

**9.07 Benefit; Risk of Loss.** Upon consummation of the Closing, Buyer will receive the benefits of the Transferred Assets and accrue the obligations of the Assumed Liabilities from and after 12:01 a.m. EST on the Closing Date, and as of such time, the risk of loss of the Transferred Assets shall be deemed transferred from Seller to Buyer. Seller shall receive the benefits of Transferred Assets and bear all risk of loss or damage with regard to the Transferred Assets up to and through the Closing Date

**9.08 Severability.** Should any provision of this Agreement for any reason be declared invalid or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity or enforceability of any of the other provisions of this Agreement, which other provisions shall remain in full force and effect and be enforced to the fullest extent permitted by law.

**9.09 Binding Effect; Assignment.** This Agreement and all of the provisions hereof shall be binding upon, inure to the benefit and be enforceable by, the parties hereto and their respective legal representatives, successors and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, whether voluntarily, involuntarily, by operation of Law or otherwise, by any party hereto without the prior written consent of the other parties hereto; provided, however, it is contemplated that Designee will be purchasing the Transferred Assets through a newly-formed entity and such transaction shall not be prohibited or otherwise limited by this Section 9.09. Buyer may assign the Transferred Assets to any of its Affiliates, except as prohibited by applicable law.

**9.10 No Third-Party Beneficiaries.** This Agreement is not intended, and shall not be deemed, to confer upon or give any Person (including, without limitation, any past or current employee of Seller) except the parties hereto and their respective legal representatives, successors and permitted assigns any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Agreement.

**9.11 Counterparts.** This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**9.12 Construction of Agreement; Interpretation.** This Agreement has been negotiated by the respective parties hereto and their legal counsel and the language hereof will not be construed for or against any party. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

**9.13 Governing Law.** This Agreement and any claim related directly or indirectly to this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of law thereof that would defer to or result in the application of the substantive laws of any other jurisdiction. The parties agree that,

during the period from the date hereof until the date on which Seller's bankruptcy case are closed or dismissed (the "Bankruptcy Period"), the Bankruptcy Court shall have exclusive jurisdiction to resolve any controversy, claim or dispute arising out of or relating to this Agreement, the Other Agreements or any other agreement entered into in connection herewith, the implementation and enforcement hereof or thereof or the breach hereof or thereof. The parties further agree that, following the Bankruptcy Period, any action or proceeding with respect to such controversy, claim or dispute may be brought against any of the parties exclusively in the United States District Court for the Southern District of New York, and each of the parties hereby consents to the personal jurisdiction of such court and the Bankruptcy Court (and to the appropriate appellate courts) in any such action or proceeding and waives any objection, including, without limitation, any objection to the laying of venue or on the grounds of forum non conveniens, which any of them may now or hereafter have to the bringing of such action or proceeding in such respective jurisdictions. Each party hereby irrevocably consents to the service of process of any of the aforesaid courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the other parties to such action or proceeding. Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury.

**9.14 Amendments and Waivers.** This Agreement may not be amended, modified or supplemented except pursuant to an instrument in writing signed by each of the parties hereto. Any failure of Seller to comply with any term or provision of this Agreement may be waived by Buyer at any time by an instrument in writing signed on behalf of Buyer and any failure of Buyer to comply with any term or provision of this Agreement may be waived by Seller at any time by an instrument in writing signed on behalf of Seller, but any such waiver or failure to insist upon strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

**9.15 Schedules, Exhibits and Annexes.** The Schedules, Exhibits and Annexes referred to herein are attached hereto and incorporated herein by this reference.

**9.16 Litigation Support.** In the event and for so long as any party hereto is actively contesting or defending any action, suit, grievance, arbitration, proceeding, hearing, investigation, charge, complaint, claim or demand with respect to any third party in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction on or prior to Closing relating to or involving the Business, the Transferred Assets, the Hired Employees or the Assumed Liabilities, the other parties will reasonably cooperate with such contest or defense and make reasonably available its personnel, records and information applicable to such matter as may be necessary in connection with prudent handling of such contest or defense, at the contesting or defending party's expense.

**9.17 Terms Generally.** As used in this Agreement (a) words in the singular shall be held to include the plural and vice versa, (b) words of one gender shall be held to include the other genders as the context requires, (c) the terms "hereof", "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement and not

to any particular provision of this Agreement, (d) references to Article, Section, paragraph, Annex, Exhibit and Schedule are references to the Articles, Sections, paragraphs, Annexes, Exhibits and Schedules to this Agreement, unless otherwise specified, (e) the word “including” and words of similar import when used in this Agreement, shall mean “including, without limitation”, unless otherwise specified, and (f) the word “or” shall not be exclusive.

**[SIGNATURE PAGE FOLLOWS]**

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

DIALUCK CORPORATION

By: /s/Anshul Gandhi  
Name: Anshul Gandhi  
Title: CEO

OTC INTERNATIONAL, LTD.

By: /s/Yoram Sheinman  
Name: Yoram Sheinman  
Title: President

Definitions

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

“Assignment and Assumption Agreement” shall mean the Assignment and Assumption Agreement, dated as of the Closing Date, between Seller and Buyer, in the form attached hereto as Exhibit 7.01(d)(iii).

“Assumed Contracts” shall have the meaning ascribed to in Section 2.01 hereof.

“Assumed Contracts Rights” shall mean the rights and benefits of Seller under the Assumed Contracts which Seller will assign to Buyer pursuant to this Agreement and the Sale Order.

“Back-up Bidder” shall have the meaning ascribed to it in Section 3.04 hereof.

“Bankruptcy Case” shall have the same meaning ascribed to it in the second paragraph of this Agreement.

“Bankruptcy Code” shall mean 11 U.S.C. 101 et. seq., as amended.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the Southern District of New York.

“Bankruptcy Period” shall have the meaning ascribed to it in Section 9.13 hereof.

“Bill of Sale” shall mean the Bill of Sale, dated as of the Closing Date, from Seller to Buyer, in the form attached hereto as Exhibit 7.02(d)(ii).

“Books and Records” shall mean all books, records and files (including, without limitation, all computerized records and other storage media and the software used in connection therewith, plans, drawings, diagrams, manuals and operating records) held or maintained by, or in the control of, Seller pertaining to the Transferred Assets.

“Book Value” shall mean the Seller’s cost of goods, as reflected in Seller’s books and records, which cost shall include invoice price for goods purchased, duty, freight, insurance, broker’s charges.

“Business Day” shall mean 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.

“Buyer” shall have the meaning ascribed to it in the first paragraph of this Agreement.

“Claims” shall mean any claim, liability, obligation or right to payment whatsoever, whether or not such right is reduced to judgment, liquidated, fixed, contingent, matured, disputed, legal, equitable, secured or unsecured.

“Closing” shall have the meaning ascribed to it in Section 3.01 hereof.

“Closing Date” shall have the meaning ascribed to it in Section 3.01 hereof.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Committee” shall mean the Official Committee of Unsecured Creditors appointed in the Bankruptcy Cases.

“Cure Costs” shall mean all monetary liabilities, including pre-Petition Date monetary liabilities, of Seller that must be paid or otherwise satisfied to cure all of Seller’s monetary defaults under the Assumed Contracts at the time of the assumption thereof and assignment to Buyer as provided hereunder as such amounts are determined by the Bankruptcy Court.

“Deposit” shall have the meaning ascribed to it in Section 2.07 hereof.

“Designee” shall have the meaning ascribed to it in the introductory paragraph.

“Dialuck” shall have the meaning ascribed to it in the introductory paragraph.

“Employee Benefit Plans” means employee benefit plans, as defined in Section 3(3) of ERISA, and all other material employee benefit arrangements or payroll practices, including, without limitation, bonus plans, consulting or other compensation agreements, incentive, equity or equity-based compensation, or deferred compensation arrangements, stock purchase, severance pay, sick leave, vacation pay, salary continuation, disability, hospitalization, medical insurance, life insurance, scholarship programs maintained by any Seller or to which any Seller contributed or is obligated to contribute thereunder for current or former employees of any Seller.

“Encumbrance” shall mean (except for any lien for Taxes not yet due) any Claim, charge, lease, covenant, encumbrance, security interest, Lien, interest, option, pledge, covenants, license, right of others, mortgage, hypothecation, conditional sale, or restriction (whether on voting, sale, transfer, defenses, set-off or recoupment rights, disposition, or otherwise) against or with respect to tangible or intangible property or rights, whether imposed by agreement, understanding, law, equity, or otherwise, including, without limitation, any outstanding unfair labor practice charges or complaints, liens under ERISA or Section 412 of the Code and successor liability with respect to any multiemployer plan to which Seller or any ERISA Affiliate has contributed or been required to contribute, except for any restrictions on transfer generally arising under any applicable federal or state securities law, only to the extent such encumbrances may be released, discharged or otherwise eliminated under section 363(f) of the Bankruptcy Code.

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

“ERISA Affiliate” shall mean any Seller and any trade or business (whether or not incorporated) which are or have ever been under common control, or which are or have ever been treated as a single employer, with such Seller under Section 414(b), (c), (m) or (o) of the Code.

“Estate Claims” shall mean all claims and causes of action held by Seller against any party other than Seller, including without limitation claims or causes of action arising under or of a type described in, sections 547 through 550 of the Bankruptcy Code, or arising under any other statutory or common law principles of law or equity.

“Excluded Assets” shall have the meaning set forth in Section 2.02 hereof.

“Excluded Inventory” shall mean the inventory not purchased by the Buyer and identified on Schedule 2.02(b) hereto.

“Excluded Liabilities” shall mean have the meaning ascribed to it in Section 2.05 hereof.

“Final Order” shall mean an order, writ, injunction judgment or decree of a court of competent jurisdiction, the operation or effect of which has not been reversed, stayed, modified or amended and any and all appeal periods with respect to such order, judgment or other decree have expired, or as to which all appeals have been determined, withdrawn or dismissed with prejudice.

“Financing Order” shall mean the third interim order under 11 U.S.C. §§ 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and Fed. R. Bankr. P. 2002, 4001 and 9014(i) authorizing debtor to obtain post-petition financing, (ii) authorizing debtor to use cash collateral, (iii) granting adequate protection to prepetition secured parties and (iv) scheduling a final hearing pursuant to bankruptcy rules 4001(b) and (c) entered on April 28, 2008 or such other and further interim or final orders entered in connection therewith.

“Governmental Entity” shall mean any court, administrative or regulatory agency or commission or other foreign, federal, state or local governmental authority or instrumentality.

“Intellectual Property” shall mean (a) any and all patents and patent applications, (b) trademarks, service marks, certification marks, trade names, brand names, trade dress, logos, business and product names, slogans, and registrations and applications for registration thereof, (c) copyrights (including software) and registrations thereof, (d) inventions, processes, designs, formulae, trade secrets, know-how, industrial models, confidential and technical information, manufacturing, engineering and technical drawings, product specifications and confidential business information, (e) intellectual property rights similar to any of the foregoing, (f) computer software, (g) copies and tangible embodiments thereof (in whatever form or medium, including electronic media), (h) stock keeping units, and (i) all goodwill associated with any of the foregoing.

“Intellectual Property Assignment” shall mean the Intellectual Property Assignment Agreement, dated as of the Closing Date, between Seller and Buyer, in the form attached hereto as Exhibit 7.01(d)(ii).



“Inventory” shall mean (a) finished products and goods which Seller owns on the Closing Date offered for sale by the Business, (b) raw materials and work-in-process owned by Seller on the Closing Date and used in the manufacture of finished goods offered for sale by the Business and (c) packaging materials and labels, stores and supplies owned by Seller on the Closing Date and used in the sale of finished goods and/or products offered for sale by the Business. For purposes of this Agreement, “Inventory” shall also be deemed to include product and goods returned by a customer for credit against an outstanding Receivable to the extent that such product or goods have been received by Seller prior to the Closing.

“Key Employees” shall mean each of Michael Sheinman, Michael Pasquale, Elian Schlesinger and Boaz Hirshberg.

“Lenders” shall mean, collectively, Sovereign Bank, Sovereign Precious Metals, LLC, and ABN AMRO Bank N.V.

“Lien” shall mean any lien, mortgage, deed of trust, claim, charge, pledge, security interest, hypothecation, levy, lease, easement, other real estate declaration or encumbrance of any kind.

“Market Price” shall mean the Second London Fix price for gold and silver respectively on the date that is one day prior to the Closing Date.

“Memo Inventory” shall mean the inventory identified in Schedule 4.06 hereto and any and all additional Inventory delivered by Seller to its customers on a consignment basis subsequent to the date of this Agreement in the ordinary course of its business.

“Netaya” shall mean Netaya Corporation, a New York corporation with its principal place of business located at 31-00 47<sup>th</sup> Avenue, Long Island City, NY.

“OTC Accounts Receivable” shall have the meaning shall have the meaning ascribed to it in Section 2.01(a) hereof.

“OTC Inventory” shall have the meaning ascribed to it in Section 2.01(b) hereof.

“Other OTC Inventory” shall have the meaning ascribed to it in Section 2.01(b) hereof.

“Other Agreements” shall mean the Bill of Sale, the Assignment and Assumption Agreement, the Employments Agreements, the Non-Compete agreement, the Intellectual Property Assignment and any other agreement to be executed, delivered or provided under this Agreement.

“Other Transferred Assets” shall have the meaning ascribed to it in Section 2.01(f) hereof.

“Person” shall mean an individual, corporation, partnership, association, limited liability company, trust, joint venture, unincorporated organization, other entity or group (as defined in Section 13(d)(3) of the Securities and Exchange Act of 1934, as amended).

“Premises” shall mean that portion of real property located 31-00 47<sup>th</sup> Avenue, Long Island City, NY leased by the Seller from Landlord pursuant to the terms and conditions of the Real Property Lease.

“Purchase Price” shall have the meaning ascribed to it in Section 2.06 hereof.

“Real Property Lease” shall mean that certain Agreement of Lease by and among 31-02 47<sup>th</sup> Avenue Associates, L.P., as landlord, and OTC f/k/a A Touch of Class, Ltd., as tenant, dated as of May 25, 1994, together with all amendments, riders and modifications thereto.

“Receivable and Inventory Schedules” means Schedules 2.01(a) and 2.01(b).

“Receivables” shall mean the payment obligations of a customer for products or goods delivered or for services rendered by Seller in the Business. For purposes of this Agreement, a “Receivable” shall also be deemed to include product or goods returned by a customer for credit against its Receivable which product or goods have not been received by Seller prior to the Closing.

“Representatives” shall have the meaning ascribed to it in Section 6.08 hereof.

“Sale Hearing” shall have the meaning ascribed to it in the Sale Procedures Order.

“Sale Motion” shall have the meaning ascribed to it in Section 6.09 hereof.

“Sale Order” shall have the meaning ascribed to it in Section 6.09(c) hereof.

“Sale Procedures Order” shall have the meaning ascribed to it in Section 6.09 hereof.

“Seller” shall have the meaning ascribed to it in the first paragraph of this Agreement.

“Taxes” shall mean all taxes, charges, fees, levies, penalties or other assessments imposed by any United States federal, state, local or foreign taxing authority, including, but not limited to, income, gross receipts, license, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Sec. 59A), custom duty, capital stock, excise, real property, personal property, water and sewer charges, municipal utility district, ad valorem, sales, use, transfer, franchise, payroll, employment, withholding, severance, social security or other tax of any kind whatsoever, including any interest, penalties or additions attributable thereto, whether disputed or not.

“Tax Return” shall mean any return, declaration, report, claim for refund, information return or other document (including any related or supporting information) required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transferred Assets” shall have the meaning ascribed to it in Section 2.01 hereof.

“Transfer Taxes” shall have the meaning ascribed to it in Section 6.05(b) hereof.

“WARN Act” shall have the meaning ascribed to it in Section 6.01(d) hereof.

“Winning Bidder” shall have the meaning ascribed to it in Section 3.04 hereof.

**EXHIBITS TO SALE AGREEMENT ARE VOLUMINOUS AND  
AVAILABLE UPON REQUEST TO DEBTOR'S COUNSEL.**