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BOX ASSIGNMENTS, Commissioner of Patents and Trademarks, Washington, D.C. 20231
Please record and index the attached original documents or copy thereof.

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| <p>1. Name of conveying party(ies): Victoria & Richard Mac Kenzie-Childs, Ltd. State of New York Corporation</p> | <p>2. Name and address of receiving party(ies): Name: MCL Acquisition Corp. Address: c/o Vogel Consulting Group, S.C., 3415 Gateway Road City: Brookfield State: WI Zip: 53045 Type of Company: Corporation Corporation-State: Delaware</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input type="checkbox"/> No (Designation must be a separate document from Assignment) Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
| <p>3. Nature of Conveyance: Assignment Execution Date: April 26, 2001</p> | |

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| <p>4. A. Trademark Application No.(s) _____</p> | <p>B. Trademark Registration No.(s) <u>2,258,535</u></p> |
| <p>Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | |

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| <p>5. Name and address of party to whom correspondence concerning document should be mailed: Michael S. Green Michael Best & Friedrich LLP One South Pinckney Street P. O. Box 1806 Madison, WI 53701-1806</p> | <p>6. Total number of applications and registrations involved: 1</p> <p>7. Total fee (37 CFR 3.41):.....\$ 40.00 <input checked="" type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Deficiencies in fee charged to deposit account</p> <p>8. Deposit account number: 50-0842</p> |
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9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Michael S. Green
Name of Person Signing

Signature

October 31, 2001
Date

Total number of pages including cover sheet, attachments, and document: **48**

OMB No. 0651-0011 (exp. 4/94)IFORM/TMASSIGN Attorney File 081343-0002

United States Postal Service Express Mail Mailing Label No. EL832141491US
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ASSET PURCHASE AGREEMENT

dated as of April 26, 2001,

by and among

MCL ACQUISITION CORP.

and

MCNY ACQUISITION CORP.,

collectively, the Buyers,

VICTORIA AND RICHARD MACKENZIE-CHILDS, LTD.

and

MACKENZIE-CHILDS OF NEW YORK, LTD.,

collectively, the Sellers

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made this 26th day of April, 2001, by and among MCL ACQUISITION CORP., a Delaware corporation ("MCL") and MCNY ACQUISITION CORP., a Delaware corporation ("MCNY"; MCL and MCNY are individually referred to as a "Buyer" and collectively as the "Buyers"), VICTORIA AND RICHARD MACKENZIE-CHILDS, LTD., a New York corporation ("MacKenzie-Childs"), and MACKENZIE-CHILDS OF NEW YORK, LTD., a New York corporation ("MacKenzie-Childs New York") each as debtors and debtors-in-possession. MacKenzie-Childs and MacKenzie-Childs New York are individually referred to as a "Seller" and collectively as the "Sellers".

RECITALS

WHEREAS, the Sellers are engaged in the business of designing, manufacturing and selling a broad line of hand crafted, fine home furnishings to upscale chain and specialty retailers (the "Business"); and

WHEREAS, the Sellers have filed a voluntary petition for relief commencing a case (the "Chapter 11 Case") under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Sections 101 et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of New York ("Bankruptcy Court"); and

WHEREAS, the Buyers desire to purchase, and the Sellers desires to sell, the Business and substantially all of the assets of the Sellers upon the terms and conditions herein set forth; and

WHEREAS, each party hereto desires to set forth certain representations, warranties, covenants and indemnity obligations, and to establish certain closing conditions, made to induce the other to execute and deliver this Agreement and to consummate the transactions contemplated hereby, all in the manner and subject to the terms and conditions set forth herein and in accordance with Sections 105, 363 and 365 of the Bankruptcy Code.

NOW, THEREFORE, for and in consideration of the mutual promises herein made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

IT IS HEREBY AGREED AS FOLLOWS:

AGREEMENT

ARTICLE I

PURCHASE AND SALE OF ASSETS

1.1 Purchased Assets. Subject to the terms and conditions herein set forth and on the Closing Date, MCL shall purchase from MacKenzie-Childs and MCNY shall purchase from MacKenzie-Childs New York, and respective Seller shall sell and transfer to the respective Buyer, the Business and each of the Seller's assets and properties of every kind and description, real, personal and mixed, tangible and intangible, and wherever situated, except only the assets excluded pursuant to Section 1.2 hereof, all as the foregoing may exist as of the Closing Date (hereinafter, all of such assets and properties are referred to as the "Purchased Assets") free and clear of all liens and encumbrances and of all interests in property as set forth in Section 363 of the Bankruptcy Code. The Purchased Assets shall include, without limitation, the following:

- (a) All inventories of whatever kind, including, without limitation, finished goods, work-in-process and raw materials, socks, and all packaging and shipping inventory (the "Inventories");
- (b) All trade and other accounts receivable, all notes receivable and all other amounts receivable (except receivables owing from MacKenzie-Childs of California, Ltd. and MacKenzie-Childs of Canada, Ltd.) (the "Receivables");
- (c) All current assets (not including cash and cash equivalents);
- (d) All prepaid expenses, advance payments and deposits (the "Prepaid Expenses");
- (e) All equipment (building or office), machinery, tooling, dies, molds, patterns, stampings, prototypes, parts, components, projects in process, furniture, antiques, artwork, fixtures, tools, related spare parts and supplies, manuals, written warranties or other similar documents related thereto and fixed assets, including, without limitation, those items listed on Schedule 1.1(e) attached hereto (the "Equipment");
- (f) All rights of the Sellers pursuant to the contracts, agreements, leases and similar obligations listed on Schedule 1.1(f) (the "Contracts");
- (g) All governmental and non-governmental licenses, permits, authorizations, certifications, accreditations, consents and indulgences;
- (h) All manufacturing, delivery, office and other supplies;
- (i) All Intellectual Property (including, without limitation, all Intellectual Property listed on Schedule 1.1(i)) and all goodwill associated with the

foregoing, all goodwill associated with respect thereto, licenses and sublicenses granted and obtained with respect thereto and rights thereunder, remedies against infringements thereof and rights to protection of interests therein under the laws of all jurisdictions;

- (j) All warranty rights, guaranty rights, causes of actions, judgments and claims and similar rights of the Sellers against vendors, suppliers, designers, architects, engineers or other third parties;
- (k) All land, buildings, improvements, fixtures and appurtenances thereto, the legal description of which is described on Schedule 1.1(k) attached hereto (the "Sellers' Real Estate");
- (l) All leasehold interest in real property;
- (m) All livestock, animals (including the young of all livestock and animals), crops, livestock feed, farm supplies and farm products;
- (n) All rights pursuant to the license agreement with Momeni, Inc., Paper Products designed U.S. Inc. (including, but not limited to, the Henny Penny Product/Design) and Dal-Tile Corporation;
- (o) All rights pursuant to the Lease for 824 Madison Avenue, New York City, New York;
- (p) All business and personnel records and documents of the Sellers;
- (q) All unemployment compensation account balances;
- (r) All cash surrender value of life insurance owned by the Sellers; and
- (s) All causes of action, choses in action and rights of recovery with respect to any of the foregoing.

1.2 Excluded Assets. The Purchased Assets shall not include, and the Sellers shall retain, the following assets:

- (a) The Sellers' rights under this Agreement;
- (b) All contracts, agreements, leases and similar obligations other than those listed on Schedule 1.1(f);
- (c) All avoidance and preferences actions available to the Sellers under the Bankruptcy Code;
- (d) All marketable securities and investments owned by the Sellers;

- (e) All minute books, stock records and similar corporate records of the Sellers;
- (f) All cash and cash equivalents; and
- (g) All items listed on Schedule 1.2(g).

1.3 Closing. The closing (the "Closing") of the purchase and sale of the Business and the Purchased Assets shall take place at 10:00 a.m., local time, on the Closing Date, at Michael Best & Friedrich LLP, One South Pinckney Street, Suite 700, Madison, Wisconsin 53703, or at such other time and place as may be mutually agreed to by the Buyers and the Sellers, including, but not limited to, Closing via mail or facsimile. The Closing shall be effective as of 12:01 a.m. on the Closing Date. If the Closing has not occurred by June 15, 2001, this Agreement shall terminate and be of no further force or effect, except that such termination shall not relieve any party from liability for any breach of this Agreement prior to such termination.

1.4 Assets Not Assignable.

(a) To the extent that any interest in any of the Purchased Assets is not capable of being assigned, transferred or conveyed without the consent, waiver or authorization of a third person (including a governmental, regulatory or administrative authority), or if such assignment, transfer or conveyance or attempted assignment, transfer or conveyance would constitute a breach of any Purchased Asset, or a violation of any Law or is not immediately practicable, this Agreement shall not constitute an assignment, transfer or conveyance of such interest, or an attempted assignment, transfer or conveyance of such interest (such interests being hereinafter collectively referred to as "Restricted Interests"). The entire beneficial interest in any Purchased Assets subject to a restriction as described above, and any other interest in such Purchased Assets which are transferable notwithstanding such restriction, shall be transferred from the Sellers to the Buyers as provided in this Section 1.4.

(b) Anything in this Agreement to the contrary notwithstanding, the Sellers shall not be obligated to transfer to the Buyers any Restricted Interests without the Buyers or the Sellers first having obtained all consents, waivers and authorizations necessary for such transfers. In consultation with the Buyers as to the practicalities of proposed actions, the Sellers shall use its best efforts to assist the Buyers in obtaining such consents, waivers and authorizations and to resolve any impracticalities of assignment referred to in Section 1.4(a) hereof.

(c) To the extent that the consents, waivers and authorizations referred to in Section 1.4(a) hereof are not obtained by the Buyers or the Sellers, or until the impracticalities of transfer referred to therein are resolved, the Sellers shall use its best efforts to (i) provide to the Buyers, at the request of the Buyers and at the applicable Sellers' expense, the benefits of any Restricted Interests, (ii) cooperate in reasonable and lawful arrangements designed to provide such benefits to the Buyers and (iii) enforce, at the request of the Buyers for the account of the Buyers, any rights of the Sellers arising from any Restricted Interests (including the right to elect to terminate in accordance with the terms thereof upon the advice of the Buyers).

1.5 Retention of Business Records. The Sellers shall retain for a period of six (6) years all of the items described in Section 1.2(e) hereof, and shall provide the Buyers access to the same during normal business hours for the purpose of inspecting, reviewing and copying the same; provided, that following the expiration of such six (6)-year period, the Sellers may dispose of any of such items which it no longer desires to retain if the Sellers first shall have notified the Buyers in writing of such proposed disposition and allowed the Buyers the opportunity to take possession of the records proposed to be disposed of by the Sellers.

ARTICLE II

CONSIDERATION FOR TRANSFER

2.1 Purchase Price. The purchase price (the "Purchase Price") for the Purchased Assets shall be Five Million One Hundred Thousand and 00/100 Dollars (\$5,100,000) plus the Buyers' assumption of the Assumed Liabilities, as hereinafter defined.

2.2 Payment of the Purchase Price.

(a) Upon execution of this Agreement, Buyers shall pay to Hancock & Estabrook, LLP, solely in its capacity as Deposit Agent (the "Deposit Agent") under this Agreement, cash in an amount equal to \$100,000 as a good faith, earnest money deposit (the "Deposit"). The Deposit shall be held by the Deposit Agent in trust. At Closing, the Deposit shall be applied to the Purchase Price. If this Agreement shall terminate or the transactions contemplated herein do not close for any reason whatsoever (except the willful misconduct of the Buyers), or if the Buyers are not the successful bidders of the Purchased Assets, the Deposit shall be immediately refunded to Buyers.

(b) On the Closing Date, the Buyers shall pay the Sellers, by wire transfer of immediately available funds an aggregate amount equal to the Purchase Price, less the amounts paid pursuant to Section 2.2(a), plus or minus, as appropriate, any prorations pursuant to Section 2.4 hereof to the Sellers and in the amounts set forth on Schedule 2.2.

2.3 Purchase Price Allocation. Buyers and Sellers shall, as soon as practicable following the Closing Date, use their best efforts to negotiate and agree upon the fair market values of the Purchased Assets and to execute a joint certificate reflecting the same. The Purchase Price shall be allocated for all reporting purposes (including financial accounting and federal and state income tax purposes) in accordance with the individual fair market values of the Assets as set forth on such joint certificate in a manner consistent with Section 1060 of the Internal Revenue Code. Neither Buyers nor Sellers shall take a position in a tax return, or examination or other administrative or judicial proceeding relating to any tax return, that is inconsistent with such allocation.

2.4 Prorations.

(a) If applicable, personal property taxes for the Purchased Assets for 2001 shall be prorated on the Closing Date based upon the taxes assessed for 2001; but if the taxes assessed for 2001 are not known on the Closing Date, such taxes shall be prorated based upon the taxes assessed for 2000 and shall be re-prorated within five (5) days after the 2001 tax assessment and rate shall become available with appropriate payment made.

(b) Real estate taxes for the Real Estate for 2001 shall be prorated on the Closing Date based upon the taxes assessed for 2001; but if the taxes assessed for 2001 are not known on the Closing Date, such taxes shall be prorated based upon the taxes assessed for 2000 and shall be re-prorated within five (5) days after the 2001 tax assessment and rates shall become available with appropriate payment made.

(c) If obtainable, final readings shall be obtained for utility services, such as gas, electricity, water and sewer. If a final reading is not obtained for any utility service, the charges therefor shall be prorated on a daily basis.

ARTICLE III

LIABILITIES

3.1 Assumed Contracts. At the Closing, the Buyers shall, by their execution and delivery of the Assumption Agreement, assume and agree to perform and discharge all of the written obligations of the Sellers under the Contracts listed on Schedule 1.1(f) attached hereto, which are to be performed or discharged, under the terms of such agreements, on or after the Closing Date, but as to any payment obligation, only to the extent that the payment is for goods, services or other types of consideration that are delivered, performed or provided on or after the Closing Date, and further provided that the Buyers shall not assume any obligation to the extent the existence thereof violates or is in breach of any of the representations, warranties and covenants of the Sellers in this Agreement (the "Assumed Liabilities").

3.2 Non-Assumption of Liabilities. Except only as provided in Section 3.1 hereof, the Buyers shall not assume, pay, perform, discharge, or accept any liabilities, debts or obligations of the Sellers of any kind whatsoever, whether actual, contingent, accrued, known or unknown, including, without limitation, any relating to taxes, employee compensation, pension, profit-sharing, vacation, health insurance, disability insurance or other employee benefit plans (including each Seller's 401k plan) and programs, worker's compensation, employee claims and lawsuits, breach or negligent performance of any contract, or breach of warranty relating thereto, liabilities resulting from breach of contract, torts (including product liabilities), illegal activity, unlawful employment or business practice, broker fees or any other liability or obligation whatsoever. All such non-assumed liabilities, debts and obligations shall remain the responsibility of the Sellers.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE SELLERS

In order to induce the Buyers to enter into this Agreement, the Sellers, jointly and severally, make the following representations and warranties to the Buyers, each of which shall be deemed to be independently material and relied upon by each Buyer, regardless of any investigation made by, or information known to, either Buyer. Any matter described on the disclosure schedules attached hereto and incorporated herein shall be set forth with reference to each separate Section of this Agreement to which the matter relates.

4.1 Subsidiaries. Except as set forth on Schedule 4.1, neither of the Sellers have any Subsidiaries.

4.2 Ownership, Organization and Qualification. The capitalization and ownership of each of the Sellers are set forth on Schedule 4.2. Each Seller is a corporation duly organized and in good standing under the laws of the State of incorporation as set forth on Schedule 4.2. Each Seller is qualified to transact business as a foreign corporation and is in good standing in the jurisdictions set forth on Schedule 4.2, and no Seller is otherwise required to be so qualified in any other jurisdiction.

4.3 Conflicting Obligations. The execution and delivery of this Agreement do not, and the consummation of the sale and purchase of the Purchased Assets and the Business contemplated hereby will not: (a) conflict with or violate any provisions of the articles or certificate of incorporation or bylaws of any Seller; (b) conflict with or violate any provisions of, or result in the maturation or acceleration of, any obligations under any Contract, Order, License or Law, to which any Seller is subject or to which any Seller is a party; or (c) violate any restriction or limitation, or result in the termination or loss of any right (or give any third party the right to cause such termination or loss), of any kind to which any Seller is bound or has.

4.4 Third Party Consents. Except as set forth on Schedule 4.4, no third party consents, approvals or authorizations are necessary for the execution and consummation of the transactions contemplated hereby, nor are any such consents, approvals or authorizations required in order for any of the Purchased Assets, including without limitation, any Contracts, Licenses, Intellectual Property or other rights of the Sellers to be assigned to the Buyers.

4.5 Enforceability. This Agreement and all other agreements of the Sellers contemplated hereby are or, upon the execution and delivery thereof will be, the valid and binding obligations of the Sellers enforceable against them in accordance with their terms.

4.6 Authorization. The Sellers have all necessary power and authority to enter into and perform the transactions contemplated hereby in accordance with the terms and conditions hereof. The execution and delivery of this Agreement, and the performance by the Sellers of each of its

obligations contained herein, have been duly approved by the Sellers' respective Board of Directors and all of its shareholders.

4.7 Organizational Documents. Attached hereto on Schedule 4.7 are true, correct and complete copies of the articles or certificate of incorporation, bylaws and other organizational documents, as amended, of each Seller.

4.8 Financial Statements. Attached hereto on Schedule 4.8 are complete copies of the Financial Statements. The Sellers' books and records of accounts accurately reflect all of the assets, liabilities, transactions and results of operations of each of the Sellers, and the Financial Statements have been prepared based upon and in conformity therewith. The Financial Statements have been prepared in accordance with generally accepted accounting principles maintained and applied on a consistent basis throughout the indicated periods, and fairly present the financial condition and results of operation of each Seller at the dates and for the relevant periods indicated. True and correct copies have been delivered to Buyers of all written reports submitted to any Seller by such Seller's auditors since December 31, 1996, relating to the findings of audits or examination of the books and records of such Seller.

4.9 Real Property; Leases.

(a) Good Title; Condition. Attached hereto on Schedule 4.9(a) sets forth a true and correct legal description of all real properties owned by the Sellers (the "Owned Real Estate"), and all real properties leased or rented by the Sellers (the "Leased Real Estate"). Each Seller has good and marketable fee simple title to all respective Owned Real Estate (including buildings, structures and fixtures thereon or attached thereto), and each Seller has good and marketable leasehold title to all respective Leased Real Estate (including buildings, structures and fixtures thereon or affixed thereto), in each case free and clear of all mortgages, liens, security interests, easements, covenants, rights-of-way and other encumbrances or restrictions of any nature whatsoever, except for Permitted Encumbrances. All buildings, structures and other improvements on the Owned Real Estate or Leased Real Estate are in reasonably good condition and repair (normal wear and tear excepted) and within the lot lines and do not encroach on the properties of any other person. The use and operation of the Owned Real Estate and Leased Real Estate conform to all applicable building, zoning, safety, and other laws, statutes, ordinances, rules, regulations, codes, licenses, permits, and all other restrictions and conditions. No portion of any of the Owned Real Estate or Leased Real Estate is located in a flood plain, flood hazard area or designated wetlands area. No Seller has received any written or oral notice of, and no Seller has any knowledge of, any assessments for public improvements against the Owned Real Estate or Leased Real Estate or any written or oral notice or Order by any governmental, regulatory or administrative authority, any insurance company which has issued a policy with respect to any of such properties or any board of fire underwriters or other body exercising similar functions that: (i) relates to violations of building, safety or fire ordinances or regulations; (ii) claims any defect or deficiency with respect to any of such properties; or (iii) requests the performance of any repairs, alterations or other work to or in any of such properties or in the streets bounding the same. There are no arrangements for the deferral of taxes or assessments for any of the Owned Real Estate. There is no condemnation, expropriation, eminent domain or similar proceeding affecting all or any portion of the Owned Real Estate or Leased Real Estate pending or, to the Knowledge of the Sellers,

threatened. Those public utilities (including water, gas, electric, storm and sanitary sewage, and telephone utilities) required to operate the facilities of the Sellers are available to such facilities, and such utilities enter the boundaries of such facilities through adjoining public streets or easement rights-of-way. Such public utilities are all connected pursuant to valid Licenses, are all in good working order and are adequate to service the operations of such facilities as currently conducted and permit full compliance with all requirements of Law.

(b) Leased Real Estate. Except as set forth on Schedule 4.9(b), each parcel of the Leased Real Estate is the subject of a written lease agreement, and there are no oral terms or past practice inconsistent with the written terms thereof. All such leases are valid and binding agreements, enforceable in accordance with their respective terms, and are in full force and effect. Each Seller has performed all obligations required to be performed by it to date under each such lease and is not in breach or default in any respect thereunder, and there has been no event which, with the giving of notice or the lapse of time or both, would become a breach or default thereunder. To the Knowledge of the Sellers, no lessor or landlord to any of such leases is in breach or default thereunder.

4.10 Purchased Assets; Title and Condition. Each Seller owns good and marketable title to all of its respective Purchased Assets, including, but not limited to, the Personal Property, free and clear of all security interests (other than those that will be discharged in accordance with the Bankruptcy Code), including any conditional sale or other title retention agreements, liens, claims, charges, pledges, exceptions, and defects of title and other encumbrances of any kind. All of the Purchased Assets are located upon the respective Seller's premises, and (except for Inventory acquired or disposed of in the Ordinary Course since the date of the Latest Balance Sheet) is reflected on the Latest Balance Sheet. All tangible Purchased Assets are in reasonably good condition and repair (normal wear and tear excepted).

4.11 All Necessary Assets; Capital Expenditures and Repairs. The Purchased Assets constitute all of the assets which are used in, and all of the assets which are necessary for, the conduct of the Business, as presently conducted and as presently planned to be conducted in the future. No Seller has a present plan to purchase or lease any other real estate or tangible personal property so as to be able to continue the Seller's Business as presently conducted or presently planned to be conducted in the future. No capital expenditures relating to the Business or remediations suggested or required by any applicable Governmental Authority or insurer, in the next twelve (12) months in an amount exceeding \$25,000 in the aggregate are necessary or have been contemplated to carry on the Business as it is presently conducted, nor are any such expenditures planned.

4.12 Receivables. All of the Receivables arose and will arise solely from bona fide transactions in the Ordinary Course. Schedule 4.12 contains a true and correct aging list of Receivables, specifying the date of original invoice and current payment status of each Receivable.

4.13 Inventories. The Inventories of each Seller consists solely of raw materials, supplies, work-in-process and finished goods and have been valued at the lower of cost or market. The Inventories consist of a quality and quantity which are usable and salable within customary time periods in the Ordinary Course. The Inventories which consist of work-in-process are being

completed on schedule. The values at which inventory is reflected on the Financial Statements have been determined on a LIFO basis with respect to the glassware and accessories, and a FIFO basis for all other Inventories of the Business, in accordance with generally accepted accounting principles consistently applied for all periods, with appropriate writedowns for slow-moving, obsolete and damaged merchandise. None of the Inventories have been consigned to others, nor is any inventory consigned to any Seller.

4.14 Intellectual Property.

(a) The Sellers own or have the right to use pursuant to license, sublicense, agreement, or permission, all Intellectual Property necessary or desirable for the operation of the businesses of the Sellers as presently conducted and as presently proposed to be conducted. Each item of Intellectual Property owned or used by each Seller immediately prior to the Closing hereunder will be owned or available for use by the Buyers on identical terms and conditions immediately subsequent to the Closing hereunder. Each Seller has taken all necessary and desirable action to maintain and protect each item of Intellectual Property that it owns or uses.

(b) No Seller has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of third parties, and none of the directors and officers (and employees with responsibility for Intellectual Property matters) of any Seller has ever received any charge, complaint, claim, demand, or notice alleging any such interference, infringement, misappropriation, or violation (including any claim that any Seller must license or refrain from using any Intellectual Property rights of any third party). No third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of any Seller.

(c) Schedule 4.14(c) identifies each patent, copyright, trademark or registration which has been issued to any Seller with respect to any of its Intellectual Property, identifies each pending patent application or application for registration which any Seller has made with respect to any of its Intellectual Property, and identifies each license, agreement, or other permission which has granted to any third party with respect to any of its Intellectual Property (together with any exceptions). The Sellers have delivered to the Buyers correct and complete copies of all such patents, registrations, applications, licenses, agreements, and permissions (as amended to date) and has made available to the Buyers correct and complete copies of all other written documentation evidencing ownership and prosecution (if applicable) of each such item. Schedule 4.14(c) identifies each trade name or unregistered trademark used by any Seller in connection with any of its businesses. With respect to each item of Intellectual Property required to be identified in Section 4.14(c):

(i) other than the Lien asserted by BSB Bank & Trust Company which will be discharged at Closing, each Seller possesses all right, title and interest in and to the respective item, free and clear of any Lien, license, or other restriction;

(ii) the item is not subject to any outstanding injunction, judgment, order, decree, ruling, or charge;

(iii) no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or is threatened which challenges the legality, validity, enforceability, use, or ownership of the item; and

(iv) no Seller has ever agreed to indemnify any Person for or against any interference, infringement, misappropriation, or other conflict with respect to the item.

(d) Schedule 4.14(d) identifies each item of Intellectual Property that any third party owns and that any Seller uses pursuant to license, sublicense, agreement, or permission. Each Seller has delivered to the Buyers correct and complete copies of all such licenses, sublicenses, agreements, and permissions (as amended to date). With respect to each item of Intellectual Property required to be identified in Section 4.14(d):

(i) the license, sublicense, agreement, or permission covering the item is legal, valid, binding, enforceable, and in full force and effect;

(ii) the license, sublicense, agreement, or permission will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Section 1.2 above);

(iii) no party to the license, sublicense, agreement, or permission is in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default or permit termination, modification, or acceleration thereunder;

(iv) no party to the license, sublicense, agreement, or permission has repudiated any provision thereof;

(v) with respect to each sublicense, the representations and warranties set forth in subsections (i) through (iv) above are true and correct with respect to the underlying license;

(vi) the underlying item of Intellectual Property is not subject to any outstanding injunction, judgment, order, decree, ruling or charge;

(vii) no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or is threatened which challenges the legality, validity, or enforceability of the underlying item of Intellectual Property; and

(viii) no Seller has ever granted any sublicense or similar right with respect to the license, sublicense, agreement, or permission.

(e) The Sellers will not interfere with, infringe upon, misappropriate, or otherwise come into conflict with, any Intellectual Property rights of third parties as a result of the

continued operation of its businesses as presently conducted and as presently proposed to be conducted.

(f) None of the directors and officers (and employees with responsibility for Intellectual Property matters) of any Seller has any Knowledge of any new products, inventions, procedures, or methods of manufacturing or processing that any competitors or other third parties have developed which reasonably could be expected to supersede or make obsolete any product or process of any Seller.

4.15 Insurance.

(a) General. Schedule 4.15(a) lists each policy of insurance owned or held by each Seller currently in effect (including without limitation, policies for fire and casualty, liability, worker's compensation, business interruption, umbrella coverage, products liability, medical, disability and other forms of insurance) specifying the insurer, amount of coverage, type of insurance, whether claims made or occurrence, policy number, deductible limits and any pending claim in excess of \$10,000, whether or not covered by insurance (the "Insurance"). True and complete copies of each policy of Insurance have been previously delivered to Buyers. The Insurance is in full force and effect, all premiums with respect thereto covering all periods up to and including the date hereof have been paid, and no notice of cancellation or termination has been received by any Seller with respect to any such policy. There are no provisions in such insurance policies providing for or allowing retroactive or retrospective premium adjustments. The Insurance is sufficient for compliance with all requirements of Law and with all agreements to which each Seller is a party. The policies evidencing the Insurance are valid, outstanding and enforceable policies subject to the terms and conditions contained therein, and there has not occurred any act or omission of any Seller which could result in cancellation of any such policy prior to its scheduled expiration date. No Seller has received any notice from or on behalf of any insurance carrier issuing any such policy that: (i) insurance rates will hereafter be substantially increased; (ii) that there will hereafter be no renewal of any such policy; or (iii) that alteration of any personal or real property or purchase of additional equipment, or modification of any method of doing business, is required or suggested. None of such policies will in any way be affected by, or terminate or lapse by reason of, the transactions contemplated by this Agreement.

(b) Denials of Coverage. No Seller has been refused any insurance with respect to the Sellers' assets or operations, nor has the dollar amount of any coverage that has been previously in effect or requested by any Seller been limited or decreased by any insurance carrier to which it has applied for or with which it has carried insurance.

(c) Claims. Schedule 4.15(c) sets forth a summary of information pertaining to all claims (other than workers compensation claims) of property damage and personal injury or death against each Seller which are currently pending or were made during the preceding three (3) fiscal years or the current fiscal year. Except as set forth on Schedule 4.15(c), all of such claims are fully satisfied or are being defended by an insurance carrier and involve no exposure to the Sellers.

4.16 Licenses. Each Seller possesses all Licenses (including, without limitation, occupancy permits for real estate and permits required pursuant to Environmental Laws) as are

necessary for the consummation of the transactions contemplated hereby or the conduct of its business or operations. All such licenses are currently in full force and effect. There is no material oral modification or past practice inconsistent with the terms of any License. Schedule 4.16 sets forth a list of all such Licenses and true and complete copies of each written document evidencing or affecting any of such Licenses have been previously delivered to Buyers. Each Seller is in compliance with the terms and conditions of all such Licenses. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will result in the revocation, or an adverse change in the terms or conditions, of any of such Licenses, and all such Licenses shall continue in full force and effect in accordance with their present terms unaffected by the consummation of the transactions contemplated hereby.

4.17 Material Contracts and Other Descriptions and Lists. Schedule 4.17 identifies the following:

(a) Leases. All leases of real or personal property, including the leases described in Section 4.9 hereof;

(b) Certain Personal Property. All items of Personal Property which have a book value or estimated current market value in excess of \$5,000;

(c) Purchase and Sale Orders. A list of written or oral agreements relating to the purchase or sale of products, services or supplies by each Seller other than individual purchase or sales orders issued in the Ordinary Course for amounts in each case not in excess of \$100,000 individually or \$200,000 in the aggregate of all such orders with the same or related parties;

(d) Certain Agreements. A list of the following described types of Contracts or documents: (A) dealership, distributorship, sales representative or similar Contracts; (B) license, royalty or similar Contracts; (C) service or maintenance; (D) protective services or security; (E) railroad track or spur track; and (F) commission or other contingent Contracts pursuant to which any Seller's obligation to make payments is in excess of \$1,000 per year, or pursuant to which any Seller's obligation to make contingent payments is dependent upon sales, revenues, income, success or other performance standard;

(e) Other Financial Obligations. A list of any other Contract which requires the Sellers to pay or expend, after the Closing, more than \$1,000 in any single instance or \$5,000 in the aggregate of all such instances with the same or related parties;

(f) Personnel. A list of: (A) all officers and directors of each Seller; (B) the names and current annual salary rates (and bonus, incentive or commission arrangements) of all present employees and agents of each Seller who receive aggregate cash remuneration at an annual base rate of \$50,000 or more; (C) all loans made by each Seller to its employees and a statement of the terms thereof; and (D) a list of each Seller's employees who are currently laid-off or on parental, disability or other leave; and (E) a list of all retired employees and directors of each Seller, or their dependents, who have received or are scheduled to receive benefits from any Seller and a description of the type and amount of all such benefits;

(g) Employment Contracts. A list of all employment, bonus, incentive compensation, profit sharing, retirement, pension, salary-continuation, post-retirement benefit, death benefit, vacation or other fringe benefit Contracts in effect, or under which any amounts remain unpaid, on the date of this Agreement or to become payable or effective after the date of this Agreement;

(h) Accrued Vacation Pay. A list of all employees who are expected, as of the Closing Date, to have earned but unused vacation days (or earned but unpaid vacation pay in lieu thereof), together with an estimate of the dollar amount thereof;

(i) Terminated Employees. A list of all employees earning base salary at an annual rate of \$50,000 or more who have terminated employment since January 1, 2001, who have announced their intention to terminate employment or who any Seller or any Shareholder has reason to believe will terminate (or will not accept) employment with either Buyer;

(j) Loans and Borrowing Agreements. A list of each written or oral (i) loan, credit or borrowing arrangement or Contract; or (ii) Contract by which any Seller or any Shareholder has guaranteed or otherwise became liable or contingently liable for the debt of another;

(k) Bank Accounts. The name of each bank or savings and loan association, or commodities or securities firm, in which each Seller has an account or safe deposit box, the numbers of each such account or box, and the names of all persons having power to borrow, discount debt obligations, cash or draw checks, enter boxes, sell or buy securities, or otherwise act on behalf of the Seller in any dealings with such banks or savings and loan association, commodities or securities firm;

(l) Capital Expenditures. A list of all outstanding written or oral commitments by each Seller to make a capital expenditure, capital addition or capital improvement;

(m) Non-Compete Covenants. A list of any written or oral covenants not to compete, non-solicitation covenants and non-disclosure covenants in favor of any Seller, or binding upon or against any Seller;

(n) Powers of Attorney. The names of all persons holding powers of attorney from any Seller and a summary statement of the terms thereof;

(o) Memberships. A list of trade association memberships owned by each Seller and copies of material documents related thereto;

(p) Bonds. A list of performance, bid or completion bonds, or letters of credit;

(q) Discounts. A list of any Contract, arrangement or program pursuant to which each Seller has offered, promised or made available to its customers any volume discount, rebate, credit or allowance;

(r) Non-Ordinary Course Agreements. A list and description of any Contract, or arrangement binding upon each Seller and which was made or entered into other than in the Ordinary Course; and

(s) Unemployment Account Balance. Each Seller's unemployment account balance with the states and as of the dates set forth on Schedule 4.17, each Seller's current unemployment compensation payroll tax rate with the states set forth on Schedule 4.17 and any anticipated increase to such tax rate.

Accurate and complete copies of each Contract or document (as amended to date) described in this Section previously have been furnished to the Buyers.

4.18 Litigation. Except as set forth on Schedule 4.18, there is not now, and there has not been since December 31, 1990, any litigation, claim, proceeding or investigation pending, or, to the Knowledge of the Sellers, threatened against or relating to any Seller, the Purchased Assets, the Business, or the transactions contemplated hereby. Schedule 4.18 discloses, with respect to each item described thereon, the name or title of the action (and parties or potential parties thereto), a description of the nature of the action or claim, and an estimate of the maximum liability of the Sellers in the event of an adverse result. Except as so described, to the Knowledge of the Sellers, no state of facts or circumstances exists which reasonably could be expected to ripen into litigation, proceeding or investigation or adversely affect the Purchased Assets, the Business (or its prospects), or the transactions contemplated hereby. Except as described on Schedule 4.18, there is no outstanding Order to which any Seller is a party or subject and which adversely affects or may affect the Purchased Assets, the Business (or its prospects), or the transactions contemplated hereby.

4.19 Compliance With Laws, Licenses or Orders. The ownership and use of the Purchased Assets and conduct of the Business do not violate and have not violated since January 1, 1996, nor is any Seller in default under, any Law, License or Order; and Buyers will not incur any liability or obligation after the Closing as a result of any violation or default of any Law, License or Order existing at the Closing or arising or accruing thereafter but based upon conditions extant at the Closing (including, but not limited to, any Seller's failure to obtain a License required by Law). No expenditures are anticipated which are necessary or appropriate for the continuation of the Business in compliance with any such Law, License or Order.

4.20 Environmental Compliance.

(a) No Violations. Neither of the Sellers, in connection with any Seller, its operations or business, has ever violated or been threatened with or received a notice, directive, violation report or charge asserting any violation of any Environmental Law.

(b) No Proceedings. No suit, proceeding or other administrative or legal action has ever been instituted against any Seller, by any federal, state or local governmental department or agency or any other person or entity concerning any Environmental Laws.

(c) Claims for Remediation. Neither of the Sellers has ever received from any federal, state or local governmental department or agency or any other person or entity any claim,

demand, directive, Order or request to investigate, restore, repair, clean up or otherwise remediate, or to contribute to the costs of investigating, restoring, repairing, cleaning up or otherwise remediating the Sellers' Real Estate.

(d) Compliance. Except as set forth on Schedule 4.20: (i) each Seller is and at all times in the past has been, in compliance with all Environmental Laws; (ii) each Seller has obtained all permits, authorizations, licenses, or approvals which are necessary or required under Environmental Laws in connection with the operation of the Seller's business, and each Seller is in compliance with such permits, authorizations, licenses, and approvals; (iii) no asbestos, urea formaldehyde or polychlorinated biphenyls are present on, at, in or under the Sellers' Real Estate; and (iv) none of the assets or operations of the Sellers are required to be upgraded, modified, or replaced in order to be in compliance with Environmental Laws.

(e) No Releases. Except as set forth on Schedule 4.20: (i) no Seller has disposed of, spilled, discharged, released or otherwise placed any Environmental Materials, on, at, in or under the Sellers' Real Estate; (ii) to the Knowledge of the Sellers, no third party has disposed of, spilled, discharged, released or otherwise placed any Environmental Materials on, at, in or under the Sellers' Real Estate or any real property adjacent to the Sellers' Real Estate; and (iii) other than the information provided in (i) and (ii), there has been no release, discharge, leakage, seepage or migration of any Environmental Materials from any aboveground or underground storage tank or any other structure currently or previously located on, at, in or under the Sellers' Real Estate.

(f) Certain Uses. Except as set forth on Schedule 4.20: (i) no septic systems or wells exist on, at, in or under the Sellers' Real Estate; (ii) neither of the Sellers' Real Estate has ever been used as a landfill, dump site or any other use which involves the disposal of Environmental Materials on the Sellers' Real Estate in a manner which may subject the Sellers, the Buyers, the Sellers' business to any claim for investigation, remediation or damages, and (iii) except with respect to the storage, use, generation, handling or removal from the Sellers' Real Estate of Environmental Materials in the Ordinary Course and in compliance with all Environmental Laws, no Environmental Materials are currently located at or ever have been used, generated, treated, stored, disposed of, handled on or removed from the Sellers' Real Estate.

(g) Storage Tanks. Except as set forth on Schedule 4.20, no aboveground or underground storage tanks have ever been located on, at, in or under the Sellers' Real Estate.

(h) List of Reports and Disposal Sites. Schedule 4.20 includes a list of: (i) all environmental investigative reports, studies or assessments (including, but not limited to, Phase I and Phase II assessments), compliance audits, laboratory analytical data, technical reviews, or the like with respect to the Sellers, the Sellers' Real Estate, the Sellers' business or any of the Sellers' assets, copies of which are attached hereto; and (ii) all past and present locations where Environmental Materials, which currently are or have been controlled by the Sellers have been sent, spilled, released, discharged or disposed.

(i) Assumption of Liability. No Seller has assumed, either contractually or by operation of law, any liability of any person or entity under any Environmental Laws.

4.21 Contingent and Undisclosed Liabilities. No Seller has debts, obligations or liabilities, nor is it subject to the imposition of any valid claim by any third party or Governmental Authority arising from the conduct of the Business or the ownership or use of its properties on or prior to the date hereof, whether such obligation, liabilities or claims are now known or unknown, fixed or contingent, of any nature whatsoever, except: (i) those fully reflected or reserved against on the Latest Balance Sheet, or (ii) those contractual and tax liabilities which have arisen in the Ordinary Course from the Balance Sheet Date through the date hereof and which are not, singly or in the aggregate, materially adverse to any Seller.

4.22 Taxes. Each Seller has filed all tax returns and reports required to be filed by it, including all tax returns and reports required to be filed by it as a result of each Seller's status as an S Corporation, including without limitation returns for all applicable federal, state and local income, franchise, sales, use, property, employment excise and other taxes, and such returns are accurate, complete and correct. Each Seller has paid all taxes, interest and penalties required to be paid pursuant to said returns or otherwise required to be paid by it, and there are no other taxes, interest or penalties payable on account of any Seller's operations except: (i) as are reflected or reserved against on the Latest Balance Sheet; or (ii) for taxes arising from the conduct of each Seller's Business and ownership of its properties for and during periods subsequent to the Balance Sheet Date which are not yet due and for which such Seller has made adequate reserves in the Seller's books and records of account. There is no tax audit or examination now pending or, to the Knowledge of the Sellers or the Shareholders, threatened with respect to any Seller. No correspondence has been received by any Seller from any state taxing authority requesting information concerning the extent of the Sellers' nexus with such state or asserting that the Sellers have such nexus so as to impose such state's taxing jurisdiction on the Sellers, and no Seller has a nexus with any state in which it does not currently file tax returns which would allow such state to impose its taxing jurisdiction on any Seller. All taxes and assessments which any Seller was or is required by Law to withhold or collect have been and are being withheld or collected by it and have been paid over to the proper Governmental Authorities or, if not yet due, are being held by the Sellers for such payment. No Seller has waived or extended any applicable statute of limitations relating to the assessment of any tax.

4.23 Labor Contracts. No Seller is (and never has been) a party to any collective bargaining agreement or bound to any other agreement with a labor union. To the Knowledge of the Sellers, the labor relations of each Seller is satisfactory in that there has not been within the preceding two (2) fiscal years of any Seller and the current fiscal year, nor is there currently, any strike, walkout or work stoppage; nor, to the Knowledge of the Sellers, is any such action threatened. There are no proceedings pending for certification or representation before the National Labor Relations Board nor, to the Knowledge of the Sellers, has there been any attempt within the preceding two (2) fiscal years or the current fiscal year to organize the employees of any Seller into a collective bargaining unit. There is no investigation pending, nor is there any uncorrected or unresolved citation, complaint or charge issued, by any agency responsible for administering or enforcing Laws relating to labor relations, employee safety or health, fair labor standards and equal employment opportunity nor, to the Knowledge of the Sellers, is any such proceeding threatened.

4.24 Performance of Contracts, Etc. No Seller is in default under, nor has any Seller breached any provision of, any Contract to which it is a party or by which it is bound, and there is

no material oral modification or past practice inconsistent with the terms of any Contract. All of such Contracts are currently in full force and effect. To the Knowledge of the Sellers, the other parties to such Contracts have complied with their obligations thereunder and are not in breach thereof. Each Seller has fully performed each such term, condition and covenant of each such Contract required to be performed on or prior to the date hereof. To the Knowledge of the Sellers, no state of facts which, with the giving of notice or the passing of time, or both, would give rise to any default under any such Contract or License.

4.25 Employee Benefit Plans.

(a) General. Schedule 4.25(a) sets forth a true and complete list of each “employee pension benefit plan” (as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)), “employee welfare benefit plan” (as defined in Section 3(1) of ERISA) and other employee benefit plans (including without limitation, those providing any stock option, stock purchase, stock appreciation right, bonus, deferred compensation, excess benefits, profit sharing, pension, thrift, savings, stock bonus, employee stock ownership, salary continuation, severance, retirement, supplemental retirement, short-or long-term disability, dental, vision care, hospitalization, major medical, life insurance, accident insurance, vacation, holiday and/or sick leave pay, tuition reimbursement, executive perquisite or other employee benefits) maintained, or contributed to, or required to be contributed to, by any Seller for the benefit of any officers or employees, current or former, active or inactive, of any Seller, whether on an active or frozen basis (all the foregoing being herein called “Benefit Plans”). No Seller has any formal plan or commitment, whether legally binding or not, to create any additional plan or modify or change any existing Benefit Plan that would affect any employee or former employee of any Seller, except as required by applicable law, including the Code. True, complete and correct copies of the following have been previously delivered to the Buyers: (i) each Benefit Plan including any amendments thereto (or, in the case of any unwritten Benefit Plans, descriptions thereof); (ii) the most recent annual report (Form 5500 series) filed with the IRS with respect to each Benefit Plan (if any such report was required); (iii) each trust agreement or other funding arrangement relating to any Benefit Plan; (iv) the most recent summary plan description together with each subsequent summary of material modifications required under ERISA with respect to each such Benefit Plan, and all material employee communications relating to each such Benefit Plan; and (v) all currently effective IRS rulings or determination letters relating to any Benefit Plan.

(b) Administration. Each Benefit Plan has been administered in all respects in accordance with its terms. All of the Benefit Plans and the Sellers are in compliance in all respects with the applicable provisions of ERISA and the Code. All material reports, returns and similar documents with respect to the Benefit Plans required to be filed with any government agency or distributed to any Benefit Plan participant have been duly and timely filed or distributed. There are no investigations by any Governmental Authority, termination proceedings or other claims (except claims for benefits payable in the normal operation of the Benefit Plans), suits or proceedings against or involving any Benefit Plan or asserting any rights or claims to benefits under any Benefit Plan that could give rise to any liability, and there are not any facts that could give rise to any liability in the event of any such investigation, claim, suit or proceeding.

(c) Contributions; Funding. All contributions to, and payments from, the Benefit Plans that may have been required to be made in accordance with the Benefit Plans and applicable law have been timely made. None of the Benefit Plans is subject to the minimum funding requirements of Section 302 of ERISA or Section 412 of the Code.

(d) Compliance. All the Benefit Plans, as and from the date adopted or as they may have been amended, as, when and to the extent required, comply and at all times applicable, complied with the applicable provisions of the Code, ERISA, the Equal Pay Act of 1963, as amended, the Age Discrimination in Employment Act of 1967, as amended, Title VII of the Civil Rights Act of 1964, as amended, all other Laws regulating employment and employee benefits, and all Orders enacted, issued or promulgated by Government Authorities responsible for the administration or enforcement of one or more of such Laws. Each Benefit Plan that is an employee pension benefit plan within the meaning of Section 3(2) of ERISA has received a determination letter from the IRS to the effect that such Benefit Plan is currently qualified and exempt from Federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and no such determination letter has been revoked nor has revocation been threatened, nor has any such Benefit Plan been amended since the date of its most recent determination letter or application therefor in any respect that would adversely affect its qualification or increase its cost. No Benefit Plan, nor any trust established thereunder, shall be amended or terminated by formal action of any Seller after the date copies thereof are disclosed, and no Benefit Plan or trust shall be amended or terminated by formal action of any Seller prior to the Closing Date, except as an amendment may be necessary to effect the transactions contemplated by this Agreement so long as any such amendment does not adversely affect Buyers' interests in the Benefit Plan being amended, or as may be adopted as a condition to the issuance of a favorable determination letter by the IRS, or as otherwise may be required to comply with the requirements of ERISA and the Code.

(e) Prohibited Transactions; Reportable Events. No "prohibited transaction" (as defined in Section 4975 of the Code or Section 406 of ERISA) has occurred which involves the assets of any Benefit Plan which could subject any employees of any Seller or any of its subsidiaries, a trustee, administrator or other fiduciary of any trusts created under any Benefit Plan to the tax or penalty on prohibited transactions imposed by Section 4975 of the Code or the sanctions and penalties imposed on prohibited transactions under Title I of ERISA. None of the Benefit Plans has been terminated nor have there been any "reportable events" (as defined in Section 4043 of ERISA and the regulations thereunder) with respect thereto. Neither the Sellers nor any trustee, administrator or other fiduciary of any Benefit Plan nor any agent of any of the foregoing has engaged in any transaction or acted or failed to act in manner which could subject any Seller or any Benefit Plan to any material tax, penalty or other liability under ERISA or any other applicable Law, whether by way of indemnity or otherwise. No Benefit Plan or related trust has any liability of any nature, accrued or contingent, including, without limitation, liabilities for federal, state or local taxes, other than for routine payments to be made in due course to participants, investment managers, trustees and beneficiaries.

(f) PBGC. None of the Benefit Plans is subject to Title IV of ERISA and there are no facts which might give rise to any liability of any Seller under Title IV of ERISA and which could reasonably be anticipated to result in any claims being made against any Seller by the Pension Benefit Guaranty Corporation. For purposes of the preceding sentence the term Seller shall be

deemed to refer also to any entity which is under common control or affiliated with any Seller, within the meaning of Section 4001 of ERISA, and the rules and regulations promulgated thereunder and/or Sections 414(b), (c), (m) or (o) of the Code and the rules and regulations promulgated thereunder.

(g) Foreign Employees. There are no officers or employees, current or former, active or inactive, of any Seller working outside the United States.

(h) Certain Matters. The execution and performance of the transactions contemplated by this Agreement will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Benefit Plan that will or may result in any payment (whether of severance pay or otherwise), acceleration, vesting or increase in benefits with respect to any employee, former employee, officer or director of any Seller. No payment which will be or may be made by any Seller to any employee, former employee, director or agent thereof will or may be characterized as an "excess parachute payment" within the meaning of Section 280F(b)(1) of the Code. No payments of any kind will become due in connection with the execution and performance of the transactions contemplated in this Agreement (either alone or upon the occurrence of any additional or subsequent events) under any Benefit Plan.

(i) Post-Retirement Benefits. No Benefit Plan provides benefits, including without limitation, death, disability, or medical benefits (whether or not insured), with respect to current or former employees of any Seller beyond their retirement or other termination of service other than (i) coverage mandated by applicable Law, (ii) death benefits or retirement benefits under any "employee pension plan", as that term is defined in Section 3(2) of ERISA, (iii) deferred compensation benefits accrued as liabilities on the books of the Sellers or (iv) benefits the full cost of which is borne by the current or former employee (or his beneficiary).

(j) COBRA. Each "group health plan" (within the meaning of Section 5000(b)(1) of the Code) maintained by each Seller as of the first day of each group health plan's first plan year beginning on or after July 1, 1986, has been administered in compliance with the continuation coverage requirements initially enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 and as formerly provided under Section 162(k) and as currently provided under Section 4980B of the Code and any regulations promulgated or proposed thereunder.

(k) Multiemployer Plans. At no time has any Seller been required to contribute to, or incurred any withdrawal liability (within the meaning of Section 4201 of ERISA) to any Benefit Plan which is a multiemployer plan as defined in ERISA Section 3(37).

(l) Health Plan Coverage. No Seller has notice of, nor any Knowledge of any disease, injury or illness which might reasonably be expected to result in claims against any Benefit Plan which could exceed \$25,000 for any participant in any calendar year.

4.26 Products Liability; Warranties. There exists no defect in the design or manufacture of any product designed, manufactured or sold by any Seller or any predecessor in interest to any Seller. There exists no pending or, to the Knowledge of the Sellers, threatened claims for personal

injury, property damage or other damage caused by any product manufactured, distributed or sold (or alleged to have been manufactured, distributed or sold by any Seller or any predecessor in interest to any Seller ("Products Liability")), and there is no valid basis for any such suit, inquiry, action, proceeding, investigation or claim. Each Seller is insured, and has been insured continuously since January 1, 1996 against Product Liabilities. The Financial Statements contain adequate reserves (calculated in accordance with Financial Accounting Standards Board Statements of Financial Accounting Standards No. 5) for all Products Liability claims which are probable or reasonably possible to be asserted.

4.27 Changes in Financial Position. Since the Balance Sheet Date, the Business as conducted by each Seller has been conducted in the Ordinary Course and there has not been:

(a) Adverse Changes. Any material and adverse change in the Business, Purchased Assets, operations, properties, prospects, assets or condition (financial or otherwise) of any Seller;

(b) Business or Property Damage. Any material damage, destruction or loss (whether or not covered by insurance) adversely affecting the Business, Purchased Assets, properties or prospects of any Seller; or

(c) Extraordinary Events. Any transaction outside the Ordinary Course of any Seller.

4.28 Events Subsequent to Latest Balance Sheet. Except as set forth on Schedule 4.28, no Seller has, since the Balance Sheet Date:

(a) Incurred Liabilities. Incurred any obligation or liability (absolute, contingent, accrued or otherwise), or guaranteed or become a surety of any debt, except in connection with the performance of this Agreement or in the Ordinary Course;

(b) Discharged Debt. Discharged or satisfied any lien or encumbrance, or paid or satisfied any obligation or liability (absolute, contingent, accrued or otherwise) other than (i) liabilities shown or reflected on the Latest Balance Sheet or (ii) liabilities incurred since the date thereof in the Ordinary Course;

(c) Reserves. Increased or established any reserve for taxes or bad accounts or any other liability on its books or otherwise provided therefor;

(d) Encumbrances. Mortgaged, pledged or subjected to any lien, charge, security interest or other encumbrance any of the Seller's assets, tangible or intangible;

(e) Disposition of Assets. Sold or transferred any assets, or canceled any debts or claims or waived any rights, except sales of inventory in the Ordinary Course, or encumbered, mortgaged or pledged any of its assets whatsoever;

(f) Dividends. Made any declaration, setting aside or payment to the shareholders of any dividend or redemption or other distribution with respect to the Sellers' capital stock, or agreed to take any such action;

(g) Stock Issuance. Issued or authorized any stock, bonds, debentures, options, warrants or other corporate securities;

(h) Sale of Business. Entered into any negotiations or Contract for the sale of the Business, or any part thereof or for the purchase of another business, whether by merger, consolidation, exchange of capital stock or otherwise (other than negotiations with respect to this Agreement);

(i) Increase Compensation. Increased or promised to increase the compensation or fringe benefits of any shareholder, officer or director, or instituted any general wage increase applicable to employees, or any specified sub-group of employees;

(j) Working Capital. Accelerated the collection of Receivables, deferred the payment of its accounts payable or accrued expenses or taken any other action outside the Ordinary Course which has or may decrease the working capital of the Seller;

(k) Accounting Procedure. Changed or modified its accounting methods or practices;

(l) Capital Expenditure. Purchased or made a commitment for the purchase of capital assets in an amount exceeding \$10,000; or

(m) Settled Litigation. Settled, or agreed to settle, any litigation, arbitration or other proceeding, pending or threatened;

(n) Employment and Labor Contracts. Entered into, amended, renewed or extended any employment Contract or collective bargaining agreement;

(o) Other Contracts. Entered into (or amended) any other Contract with any other person or entity which involves total payments or expenditures to any single person or entity of more than \$10,000 on any single Contract, or \$25,000 in the aggregate of all such Contracts with the same or related parties, or which was not entered into (or amended) in the Ordinary Course;

(p) Charter Amendments. Made any amendments to or changes in its articles or certificate of incorporation or bylaws;

(q) Breach of Contract. Performed any act, or attempted to do any act, or permitted any act or omission to act, which would cause a breach of any Contract or License to which the Seller is a party or by which it is bound;

(r) Related Party Transaction. Engaged in any transaction of the types described in Section 4.32 with a Related Party; or

(s) Certain Agreements. Agreed, orally or in writing, to do any of the foregoing.

4.29 Customers and Suppliers. Schedule 4.29 lists, in descending order, those customers of each Seller's accounting for at least \$200,000 of annual sales revenue in each Seller's most recently completed fiscal year and the suppliers of raw materials or supplies accounting for the largest annual expense to the Seller. Except as set forth on Schedule 4.29, the Sellers have received no notice, that (a) any customer of any Seller who accounted for more than \$200,000 in sales during its immediately preceding fiscal year or (b) any supplier to such Seller (if such supplier could not be replaced by the Seller with no material adverse effect to it), has terminated, curtailed, reduced, deferred, delayed or otherwise adversely impacted its business relations with the Seller or will take any such actions after the Closing.

4.30 Brokerage. Except for Conway Del Genio Gries & Co., LLC, no Seller has incurred, or made commitments for, any brokerage, finders' or similar fee in connection with the transaction contemplated by this Agreement.

4.31 Certain Payments. Neither Seller, nor any other person or entity has, directly or indirectly, on behalf of or with respect to any Seller: (a) made an unreported political contribution; (b) made or received any payment which was not legal to make or receive; (c) engaged in any transaction or made or received any payment which was not properly recorded in the books and records of the Sellers; (d) created or used any "off-book" bank or cash account or "slush fund"; or (e) engaged in any conduct constituting a violation of the Foreign Corrupt Practices Act of 1977.

4.32 Affiliate Transactions. Except as described on Schedule 4.32, no Seller: (a) has had any financial transactions or arrangements (other than payment of regular salary to any Related Party who are employees) with any Related Party since the Latest Fiscal Year End, and (b) has and will not have any present or future obligation to enter into any transaction or arrangement with any Related Party. Except as described on Schedule 4.32, no Related Party owns, directly or indirectly, or is a director, member, officer or employee of, or consultant to, any business organization which is a competitor, supplier, or customer having business dealings with any Seller, nor does any Related Party own any assets or properties which are used in the Business.

4.33 Representations and Warranties True and Correct. The representations and warranties contained herein, and all other documents, certifications, materials and written statements or written information given to the Buyers by or on behalf of the Sellers do not include any untrue statement of a material fact or omit to state a material fact required to be stated herein or therein in order to make the statements herein or therein, in light of the circumstances under which they are made, not misleading.

4.34 No Unusual Matters. To the Knowledge of the Sellers, no matter of an unusual nature exists which is applicable specifically to any Seller or the industry in which any Seller engages and which has or may have a materially adverse effect upon any Seller, its condition (financial or otherwise) or business prospects.

ARTICLE V

REPRESENTATIONS OF THE BUYERS

In order to induce the Sellers to enter into this Agreement, the Buyers make the following representations and warranties to the Sellers, each of which shall be deemed to be independently material and relied upon by the Sellers, regardless of any investigation made by, or information known to, the Sellers.

5.1 Organization. Each Buyer is a corporation duly organized and validly existing under the laws of the State of Delaware has the corporate power and authority to own all of its properties and assets and carry on its business as now being conducted and is duly qualified to do business and is in good standing in the State of New York and in each other jurisdiction where the failure to qualify would have a material and adverse affect on its business.

5.2 Enforceability; Conflicting Obligations. This Agreement and all other agreements of the Buyers contemplated hereby are or, upon the execution thereof, will be the valid and binding obligations of each Buyer enforceable against it in accordance with their terms. The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated hereby will not, conflict with or violate any provision of the certificate of incorporation or bylaws of either Buyer, nor any provisions of, or result in the acceleration of, any obligation of either Buyer.

5.3 Authorization. Each Buyer has all necessary power and authority to enter into and perform the transactions contemplated herein in accordance with the terms and conditions hereof. The execution and delivery of this Agreement, and the performance by each Buyer of its obligations contained herein, have been duly approved by each Buyer's Board of Directors.

5.4 Brokerage. Each Buyer has not incurred, nor made commitment for, any brokerage, finders or similar fee in connection with the transactions contemplated by this Agreement.

5.5 Litigation. There is no litigation, proceeding or governmental investigation pending, or to the Buyers' Knowledge, threatened against or relating to the Buyers which might adversely affect the ability of the Buyers to consummate the transactions contemplated hereby.

ARTICLE VI

COVENANTS OF THE SELLER

Each Seller covenants and agrees with the Buyers as follows:

6.1 Access. From the date hereof and until the Closing Date, the Buyers and their authorized officers, agents and representatives shall have reasonable access during normal business hours to all properties, books, records, contracts, tax returns and documents of the Sellers reasonably necessary to consummate the transactions contemplated hereby; provided, however, that the Buyers shall inform the Sellers of its intention to seek access and the matters sought to be

reviewed at least twenty-four (24) hours in advance and, further, that the access requested shall not interfere unreasonably with the business, properties or operations of the Sellers. Each Seller shall cooperate with the Buyers by using their best efforts to cause the Sellers' major customers and suppliers to meet with and respond to all questions posed by the Buyers concerning the Sellers and promptly responding to, and causing the Sellers' officers and employees promptly to respond to, all questions posed by the Buyers concerning the Sellers, its business, properties, condition (financial or otherwise) or prospects. If the transactions provided for in this Agreement are not consummated, the Buyers and their respective officers, agents and representatives will hold in confidence all information obtained from the Sellers, any of its officers, agents or representatives, excepting however, any such information which (i) was or is in the public domain, (ii) was in fact known to the Buyers prior to disclosure to the Buyers by the Sellers, or (iii) is disclosed to the Buyers by a third party other than any employee or former employee of the Sellers subsequent to disclosure by the Sellers.

6.2 Operation and Preservation of Business. From the date hereof and until the Closing Date and subject to any obligations as a debtor-in-possession under the Bankruptcy Code, the Sellers shall carry on the Business as conducted by each Seller diligently and substantially in the Ordinary Course consistent with past practice and shall use their best efforts to keep the Sellers' business organization intact, including its present relationships with employees, suppliers and customers and others having business relations with it. The Sellers shall maintain at all times in inventory quantities of raw materials, finished goods, spare parts and other supplies and materials sufficient to allow the Buyers to continue to operate the Business as conducted by each Seller, after the Closing Date, free from any shortage of such items.

6.3 Insurance and Maintenance of Property. From the date hereof and until the Closing Date, the Sellers shall cause all property owned or leased by it to be insured against all ordinary insurable risks and shall maintain in effect all the Insurance, and shall operate, maintain and repair all of its property in a manner consistent with past practice.

6.4 Compliance with Laws. From the date hereof and until the Closing Date, the Sellers shall comply with all applicable Laws and Orders applicable to, or binding upon, each Seller, or their respective business or properties.

6.5 Title Documents. At least thirty (30) days prior to the Closing, the Sellers, at the Sellers' expense, shall deliver to Buyers the following documents:

- (a) an abstract of title commencing with a warranty deed no later than the year 1961;
- (b) a current certified location survey, prepared by a land surveyor duly licensed by the State of New York, showing the location of all easements, rights of way (if any), encroachments (if any), and improvements affecting the Sellers' Real Estate;
- (c) a current county tax search;

- (d) current tax receipts; and
- (e) franchise tax search(es), if applicable.

Any title insurance required by Buyers shall be obtained by Buyers at Buyers' expense.

6.6 Objections to Title. If Buyers raise an objection to Sellers' title which, if valid, would render title unmarketable, Buyers shall notify Sellers in writing and Sellers shall have thirty (30) days from receipt of the notice to cure the defect(s). If Sellers are unable to convey title as required by this Agreement, Buyer shall have the option of accepting such title as Sellers are able to convey without reduction of the Purchase Price, unless the title defect(s) are encumbrances or liens in an ascertainable amount, in which event said amount may be deducted from the Purchase Price.

6.7 Fulfill Conditions. The Sellers shall use their best efforts to cause to be fulfilled on or prior to the Closing each of the conditions set forth in Article VIII hereof.

6.8 Employees. Each Seller shall terminate the employment of all of its employees as of the Closing Date. Each Seller authorizes the Buyers to hire, on or after the Closing Date, such employees of such Seller employed on the date of execution of this Agreement as the Buyers may determine.

6.9 Bankruptcy Court Approvals.

(a) Sale Procedures. (i) Promptly following the execution of this Agreement, and the delivery of evidence of corporate authority for such execution by each party (and in no event later than five (5) business days thereafter), the Sellers will file a motion (the "Sale Motion") with the Bankruptcy Court (a) requesting an order approving of the sale of Assets subject to offers by interested third parties at the hearing (the "Approval Hearing"); and (b) setting the procedures for an auction at the Approval Hearing including the time, date and location of such sale and bidding procedures and including approval of the Breakup Fee set forth in Section 6.11 herein ("Bidding Procedures Order"). The Bidding Procedures Order shall provide for an initial minimum incremental bid of \$150,000 (the "Initial Incremental Bid"). Following the Initial Incremental Bid, subsequent bids shall be in minimum increments of \$25,000.

(b) Court Approval of Sale. The Sale Motion will request entry of a Final Order which (i) approves the sale of the Assets to the Buyers on the terms and conditions set forth in this Agreement and authorizes the Sellers to proceed with this transaction subject to offers by interested third parties as provided above; (ii) includes a specific finding that Buyers are good faith purchasers of the Assets; (iii) states that the sale of the Assets to Buyers shall be free and clear of all liens, claims, interests and encumbrances (except as expressly provided in this Agreement), with an explicit discharge of all environmental, warranty and product liability claims against Sellers and Buyers; and (iv) approves the Sellers' assumption and assignment of the Executory Contracts (to the extent not already assumed) to be included among the Assets (collectively the "Section 365 Contracts") pursuant to 11 USC § 365 of the Code and orders the

Sellers to pay or arrange for the payment of any prepetition and other cure amounts payable to the other parties to the Section 365 Contracts (to the date of Closing) as a condition to such assumption and assignment. Following the filing of the Sale Motion, the Sellers shall use their best efforts to obtain entry of the Final Order. Both Buyers' and Sellers' obligations to consummate the sale and purchase of the Assets are conditioned upon the Bankruptcy Court's entry of the Final Order.

6.10 Documents of Transfer. On the Closing Date, the Sellers shall duly execute and deliver to the applicable Buyer (i) an Assignment, Assumption and Bill of Sale in form and substance reasonably satisfactory to the Buyers and the Sellers, (ii) certificates of title sufficiently endorsed to transfer the motor vehicles to the Buyers and (iii) Warranty Deeds in form and substance reasonably satisfactory to the Buyers and the Sellers, together with any required transfer declaration or tax form. The transfer fee shall be paid by the Sellers at the Closing. In addition, the Sellers shall execute and deliver to the Buyers at the Closing, in form and substance reasonably satisfactory to counsel for the Buyers, assignments assigning to the Buyers any of the following that the Buyers may designate:

- (a) All intellectual property rights, including trademarks, trade names, slogans, patents, inventions, patent applications, copyrights and copyright applications;
- (b) All Contracts;
- (c) All assignable insurance policies then in effect; and
- (d) All Licenses.

6.11 Breakup Fee. In the event that the transactions contemplated hereby do not close pursuant to this agreement due to any reason other than default of the Buyers, including but not limited to the entering into a transaction with a third party or a plan of reorganization or liquidation is confirmed that prevents the transactions contemplated hereby from closing (in each case assuming no fault of the Buyers), then Buyers shall be entitled to a breakup fee, as a joint and several obligation of the Sellers, in the amount of \$150,000 (the "Breakup Fee"), payable as an administrative expense upon closing of such other transaction or confirmation of such a plan of reorganization, or if such other transaction fails to close, no later than the date on which the administrative claims against the Sellers are paid.

6.12 Other Deliveries. On the Closing Date, the Sellers shall deliver to the Buyers the following:

- (a) The resolutions of the Sellers' respective shareholders and Board of Directors authorizing and approving the execution, delivery and performance of this Agreement and the transactions contemplated hereby, certified by the secretary or the president of the applicable Seller;

- (b) All consents for the assignment of material Contracts and Licenses, which are necessary in order for said Contracts and Licenses to be assigned to the Buyers upon their present terms (each such material Contract and License is identified as such on the schedules hereto) and the Sellers shall pay all fees, charges and other costs that are required or imposed in connection with obtaining any such consent;
- (c) An affidavit that each Seller is not a “foreign person” within the meaning of Section 1445 of the Code, and stating such Seller’s or Shareholder’s federal taxpayer identification number, in form and substance acceptable to counsel for the Buyers;
- (d) A certified copy of the Final Order; and
- (e) All other documents reasonably requested by counsel for the Buyers to consummate the transactions herein contemplated.

6.13 Collection of the Receivables. The Buyers shall have full power and authority to collect for its account all Receivables, and to endorse, without recourse to the Sellers, in the name of the Sellers, any checks or other instruments of payment received on account of payment of any such Receivables; provided, further, that if the Sellers receive any payment on account of any such Receivables, the Sellers shall transfer and deliver such payment (endorsed where necessary) to the Buyers, promptly after receipt.

6.14 Compliance with Environmental Investigation/Disclosure Laws. At least thirty (30) days prior to the Closing Date, the Sellers shall perform and prepare such inspections and reports and shall deliver and file the same as required under any applicable environmental investigation and/or disclosure Laws.

6.15 Transfer Taxes. The Sellers shall pay all sales and other transfer taxes, resulting from the transactions contemplated by this Agreement.

6.16 Certificates of Existence and Good Standing. At the Closing, the Sellers shall deliver to the Buyers current certificates of existence relative to each Seller recently certified by the applicable State of incorporation and certificates of good standing relative to the Sellers recently certified by the Secretary of State of each state or jurisdiction in which the Sellers are qualified.

6.17 Name Changes Each Seller, and MacKenzie-Childs of California, Ltd. and MacKenzie-Childs of Canada, Ltd., shall take all steps necessary to change its corporate name to a name dissimilar and distinguishable from its existing name.

6.18 Disclosure; Notice. Within five (5) business days from the date of this Agreement, the Sellers shall deliver the Schedules to this Agreement to the buyers. The Buyers shall then have three (3) business days in which to accept or reject the Schedules. Promptly from time to time after the date hereof and until the Closing Date, the Sellers shall inform the Buyers in writing of all information, events, actions or omissions which (i) if this Agreement were signed on the Closing

Date, would be required to be disclosed on disclosure schedules in order to make the Sellers' representations and warranties contained herein true and not misleading, (ii) causes or constitutes a breach of any such representation or warranty contained in Article IV, or would constitute a breach of any representation or warranty if again made at the time the fact or condition arises; (iii) constitutes a breach of any covenant contained in Article VI; and (iv) makes the satisfaction of the conditions contained in Article VIII impossible or unlikely. The delivery of any such notice by the Sellers shall not absolve the Sellers from liability for breach of any representation or warranty which was untrue when made.

ARTICLE VII

COVENANTS OF THE BUYERS

The Buyers covenant and agree with the Sellers as follows:

7.1 Certified Resolutions. On the Closing Date, the Buyers shall deliver to the Sellers a copy of the resolutions of each Buyer's Board of Directors, authorizing and approving the execution of this Agreement and the performance by the Buyers of the transactions contemplated hereby, certified by the secretary or the president of each Buyer.

7.2 COBRA Coverage. On and after the Closing Date, Buyers shall provide health plan continuation coverage, if any, required pursuant to Section 4980B of the Code to those individuals set forth on Schedule 7.2, provided, however, that such coverage shall be provided only to the extent that no entity which is a part of a controlled group of corporations or a group of trades or businesses under common control with either Seller is required and is able to provide such health plan continuation coverage.

ARTICLE VIII

CONDITIONS OF BUYERS' OBLIGATION TO CLOSE

The obligation of the Buyers to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction and fulfillment, prior to and on the Closing Date, of each of the following express conditions precedent (any of which may be waived by the Buyers in whole or in part):

8.1 Representation and Warranties. The representations and warranties in this Agreement made by the Sellers shall be true and correct in all respects as of and at the Closing Date with the same force and effect as though said representations and warranties had been again made on the Closing Date, and the Buyers shall have been furnished a certificate signed by the president of each Seller to that effect.

8.2 Delivery of Agreements. The Sellers shall have executed and delivered to the Buyers (i) the Escrow Agreements; (ii) the Assignment, Assumption and Bill of Sale; and (iii) the Warranty Deeds.

8.3 Performance of Covenants and Obligations. The Sellers shall have performed and complied with all of their covenants and obligations under this Agreement which are to be performed or complied with by them prior to or on the Closing Date, and the Buyers shall have been furnished a certificate signed by the president of each Seller to that effect.

8.4 Proceedings and Instruments Satisfactory. All proceedings, corporate or otherwise, to be taken in connection with the transactions contemplated by this Agreement, and all documents incident thereto, shall be satisfactory in form and substance to the Buyers; and, the Sellers shall have made available to the Buyers for examination the originals or true and correct copies of all documents which the Buyers reasonably may request in connection with the transaction contemplated by this Agreement.

8.5 Adverse Change. From and after the date of this Agreement and until the Closing Date, the Buyers (in their sole and absolute discretion) shall have determined that there has been no material adverse change in the Business, the Purchased Assets, or the Business prospects from that disclosed to the Buyers in this Agreement, other than changes in the Ordinary Course, nor shall there have been any material casualty to the Purchased Assets, in an amount exceeding \$100,000, as a result of any loss, taking, destruction or physical damage, whether or not covered by insurance, occasioned by fire, flood, explosion, earthquake, act of God or the public enemy, or otherwise.

8.6 No Litigation. No investigation, suit, action or other proceeding shall be threatened or pending before any Governmental Authority (a) in which it is sought to restrain, prohibit or obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with the transactions contemplated hereby.

8.7 Consents. All necessary consents and Licenses with respect to the transaction contemplated hereby, including, without limitation, the transfer of the Purchased Assets to the Buyers, the absence of which would have a material and adverse effect on the Buyers' rights under this Agreement, or which would constitute a breach pursuant to the provision of, or which would result in the termination or loss of any right under, any Contract or License or without which the Buyers would be precluded or materially impeded from conducting the Business or obtaining the benefit of the Purchased Assets, shall have been received by the Buyers on or before the Closing Date.

8.8 Opinion of Counsel. On the Closing Date, the Sellers shall have delivered to the Buyers the legal opinion of Hancock & Estabrook, LLP, the Sellers' counsel, containing customary items and in form and substance reasonably acceptable to the Buyers.

8.9 Due Diligence. The Buyers shall have conducted a due diligence investigation and review of the Purchased Assets, the Business and all matters pertaining thereto that the Buyers deem

relevant and the results of such investigation and review shall be satisfactory to the Buyers in their sole discretion.

8.10 Environmental Assessment. The Buyers shall have received an environmental site assessment report acceptable to the Buyers from an independent environmental consultant selected by the Buyers, which report shall evidence that: (i) the Sellers' Real Estate -complies with all Environmental Laws; (ii) no improvements are reasonably required to maintain compliance with any and all Environmental Laws; (iii) there are no material contingent liabilities affecting the Sellers' Real Estate arising under any Environmental Laws; (iv) there are no Hazardous Substances on or under the Sellers' Real Estate; and (v) recommending no further investigation.

8.11 Building Inspection. The Buyers shall have received an inspection report on the condition of the Sellers' Real Estate evidencing that it complies, from an inspector, contractor or engineer of the Buyers' choice, which indicates no defects, deferred maintenance or similar conditions affecting the use of the Sellers' Real Estate which, in the aggregate, would cost in excess of \$10,000 to remedy, in the opinion of such inspector, contractor or engineer.

8.12 Approval of Bankruptcy Court. The Bankruptcy Court shall have entered the Final Order, which shall have become final and nonappealable.

8.13 Lease of Bean Plant. The Buyers shall have entered into a lease or other agreement for occupancy and use of the property commonly known as the "Bean Plant" on terms and conditions satisfactory to the Buyers.

8.14 Genoa School Property. The applicable Buyer shall have entered into a lease or other agreement for occupancy and use of the real estate described on Schedule 8.14 and known as Genoa School Property or other property in the near vicinity on terms and conditions satisfactory to the Buyers.

8.15 Name Change. Each of the Sellers, and MacKenzie-Childs of California, Ltd. and MacKenzie-Childs of Canada, Ltd., shall have changed their respective corporate names, to names dissimilar and distinguishable from their present names.

8.16 Title Insurance. The Buyers shall have received a commitment to issue title insurance with respect to the Sellers' Real Estate in form and in amounts acceptable to Buyers and subject only to those exceptions acceptable to Buyers.

8.17 Surveys. The Buyers shall have received surveys of each the Sellers' Real Estate in form and detail acceptable to the Buyers. The surveys shall be prepared by, and certified to the applicable Buyer by, a surveyor licensed by the State of New York not more than sixty (60) days prior to the Closing Date, and shall show only those encumbrances and defects of title acceptable to Buyers.

8.18 Further Assurances. The Sellers shall have delivered to the Buyers such other written documents, instruments, releases or otherwise, as the Buyers reasonably may require to effectuate the provisions of this Agreement.

ARTICLE IX

CONDITIONS TO SELLER'S OBLIGATION TO CLOSE

The obligation of the Sellers to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction and fulfillment, prior to and on the Closing Date, of the following express conditions precedent (any of which may be waived by the Sellers, in whole or in part):

9.1 Representations and Warranties. The representations and warranties in this Agreement made by the Buyers shall be true and correct in all respects as of and at the Closing Date with the same force and effect as though said representations and warranties had been again made on the Closing Date, and the Sellers shall have been furnished a certificate signed by the president of each Buyer to that effect.

9.2 Performance of Covenants and Obligations. The Buyers shall have performed and complied with all of their covenants and obligations under this Agreement which are to be performed or complied with by it prior to or on the Closing Date, and the Sellers shall have been furnished a certificate signed by the president of each Buyer to that effect.

9.3 Proceedings and Instruments Satisfactory. All proceedings, corporate or otherwise, to be taken in connection with the transactions contemplated by this Agreement, and all documents incident thereto, shall be reasonably satisfactory in form and substance to the Sellers; and, the Buyers shall have made available to the Sellers for examination the originals or true and correct copies of all documents which the Buyers reasonably may request in connection with the transactions contemplated by this Agreement.

9.4 Payment of Purchase Price. The Buyers shall have made the payment as described in Section 2.2 hereof.

9.5 Approval of Bankruptcy Court. The Bankruptcy Court shall have entered the Final Order, which shall have become final and nonappealable.

9.6 No Litigation. No investigation, suit, action or other proceeding shall be threatened or pending before any Governmental Authority (a) in which it is sought to restrain, prohibit or obtain damages or other relief in connection with this Agreement or the transactions contemplated hereby, or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with this Agreement or the transactions contemplated hereby.

9.7 Opinion of Counsel. On the Closing Date, the Buyers shall have delivered to the Sellers the legal opinion of Michael Best & Friedrich LLP, the Buyers' counsel, containing customary items and in form and substance reasonably satisfactory to the Sellers.

ARTICLE X

INDEMNIFICATION

10.1 Indemnification by the Sellers. Regardless of any investigation made by, or on behalf of, the Buyers or any information known to the Buyers, the Sellers, jointly and severally, indemnify and save the Buyers, their shareholders, officers, directors, employees, agents and representatives (collectively, the “Buyers” as used in Article X) harmless from and against any and all losses, claims, damages, liabilities, costs, expenses or deficiencies including, but not limited to, reasonable attorneys’ fees and other costs and expenses reasonably incident to proceedings or investigations or the defense or settlement of any claim or claims, incurred by the Buyers or the Purchased Assets arising out of or resulting from any of the following:

(a) Representations or Warranties. The inaccuracy or breach of any representation or warranty of the Sellers given in or pursuant to this Agreement;

(b) Covenants. The breach or default in the performance by the Sellers of any of their covenants, obligations or agreements in or pursuant to this Agreement;

(c) Liabilities Not Expressly Assumed. Any liability or obligation of the Sellers not expressly assumed by the Buyers pursuant to this Agreement; or

(d) Pre-Closing Operations. The operation or conduct of the Business or the ownership or use of the Sellers’ assets at any time prior to the Closing (including, without limitation, any duty to warn claim), and liability arising out of the manufacture, distribution or sale of any products, or the performance of services, by the Sellers prior to the Closing, or any incident, occurrence, condition or claim existing, arising or accruing prior to the Closing and relating to the operation or conduct of the Business or the ownership or use of the Purchased Assets, other than any liability or obligation of the Sellers expressly assumed by the Buyer pursuant to this Agreement.

10.2 Indemnification by Buyers. Regardless of any investigation made by, or on behalf of, the Sellers, the Buyers, subject to the terms and conditions of this Article X, indemnifies and saves the Sellers harmless from and against any and all losses, claims, damages, liabilities, costs, expenses or deficiencies including, but not limited to, reasonable attorneys’ fees and other costs and expenses reasonably incident to proceedings or investigations or the defense or settlement of any claim or claims, incurred by the Sellers due to or resulting from any of the following:

(a) Representations and Warranties. The inaccuracy or breach of any representation or warranty of the Buyers given in or pursuant to this Agreement; or

(b) Covenants. The breach or default in the performance by the Buyer of any of its covenants, obligations or agreements in or pursuant to this Agreement.

10.3 Survival of Indemnification. A party’s obligation to pay damages arising out of claims described in Sections 10.1(a) or 10.2(a) hereof shall terminate at the Closing

10.4 Offset. The Buyers shall be entitled to offset against any other obligations owed by the Buyer to the Sellers the sum of all damages that the Buyers are entitled to pursuant to Section 10.1 hereof.

ARTICLE XI

TERMINATION

11.1 Rights to Terminate. This Agreement may be terminated at any time prior to the Closing only as follows:

- (a) by mutual written consent of the Sellers and the Buyers;
- (b) by the Sellers by giving written notice to the Buyers if the Buyers are in material breach of any material representation, warranty or covenant under this Agreement (and the Sellers are not then in breach of any material representation, warranty or covenant);
- (c) by the Buyers if they are not satisfied in their sole discretion with the contents of the Schedules to this Agreement delivered pursuant to Section 6.18;
- (d) by the Buyers by giving written notice to the Sellers if the Sellers are in breach of any material representation, warranty or covenant under this Agreement (and the Buyer is not then in material breach of any material representation, warranty or covenant); or
- (e) by either the Buyers or the Sellers by giving written notice to the other parties if the Closing shall not have occurred on or before June 15, 2001.

Each party's right to termination hereunder is in addition to any of the rights it may have hereunder or otherwise.

11.2 Effects of Termination. Notwithstanding any other provision of this Agreement, no termination of this Agreement shall release (i) the Sellers from their obligation under Section 6.11, (ii) any party of any liabilities arising hereunder for any pre-termination breaches hereof or misrepresentations made herein, or (iii) the obligation of the Deposit Agent to return the Deposit pursuant to Section 2.2(a).

ARTICLE XII

DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

"Approval Hearing" shall have the meaning set forth in Section 6.9(a).

“Assumed Liabilities” shall have the meaning set forth in Section 3.1.

“Balance Sheet Date” shall mean January 28, 2001.

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

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

“Benefit Plans” shall have the meaning set forth in Section 4.25(a).

“Bidding Procedures Order” shall have the meaning set forth in Section 6.9(a).

“Breakup Fee” shall have the meaning set forth in Section 6.11.

“Business” shall have the meaning set forth in the recitals.

“Buyer” shall mean, each, MCL Acquisition Corp. and MCNY Acquisition Corp.

“Buyers” shall mean, collectively, MCL Acquisition Corp. and MCNY Acquisition Corp.

“Chapter 11 Case” shall have the meaning set forth in the recitals.

“Closing” shall have the meaning set forth in Section 1.3.

“Closing Date” shall be a date within ten (10) business days following the date on which the Final Order is entered by the Bankruptcy Court, or such other date as may be mutually agreed to by the Buyers and the Sellers, but in any event no later than June 15, 2001.

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

“Contracts” shall have the meaning set forth in Section 1.1(f).

“Deposit” shall have the meaning assigned in Section 2.2(a).

“Deposit” shall have the meaning assigned in Section 2.2(a).

“Environmental Laws” shall mean, collectively, the federal Clean Air Act, the federal Clean Water Act, the federal Resource Conservation and Recovery Act, the federal Comprehensive Environmental Response, Compensation and Liability Act, the federal Toxic Substances Control Act (and any state law counterparts of each the foregoing), principles of common law and any other federal, state or local laws, including rules and regulations thereunder, regulating or otherwise affecting or relating to human health or the environment.

“Environmental Materials” shall mean, collectively, any material, substance, chemical, waste, contaminant or pollutant which is regulated, listed, defined as or determined to be

hazardous, extremely hazardous, toxic, dangerous, restricted or a nuisance, or otherwise harmful to human health or the environment, under any Environmental Laws.

“Equipment” shall have the meaning set forth in Section 1.4(e).

“ERISA” shall have the meaning set forth in Section 4.25(a).

“Final Order” shall mean the bankruptcy court shall have entered all appropriate orders under Sections 363 and 365 (and all other appropriate sections) of the Bankruptcy Code (including explicit discharge of Seller’s liability with respect to product liability, warranty and environmental matters), authorizing the Sellers to convey the purchase assets free and clear of liens and security interest and to complete the transactions contemplated hereby and execute all agreements called for herein, and all such orders have become final and nonappealable.

“Financial Statements” shall mean, collectively, those financial statements attached on Schedule 4.8.

“Governmental Authority” shall mean the government of the United States or any foreign jurisdiction, any state, county, municipality or other governmental or quasi governmental unit, or any agency, board, bureau, instrumentality, department or commission (including any court or other tribunal) of any of the foregoing.

“Hazardous Substances” means hazardous substances as defined under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. and the Wisconsin Hazardous Substances Spills Law, § 144.76 et seq., Wis. Stats., and all regulations promulgated thereunder.

“Initial Incremental Bid” shall have the meaning set forth in Section 6.9.

“Insurance” shall have the meaning set forth in Section 4.15(a).

“Intellectual Property” means all intellectual property, including, without limitation, (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, all trademarks, service marks, trade dress, logos, trade names, brand names and corporate names (including, without limitation, the name “MacKenzie-Childs”, and all derivatives thereof), together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (ii) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith, (iii) all mask works and all applications, registrations, and renewals in connection therewith, (iv) all designs, surface designs, artwork, patterns, techniques, illustrations, graphics and visual imagery, (v) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, vendors and sources, all

books, records, journals, all blueprints, engineering data, pricing and cost information, and business and marketing plans and proposals, (vi) all computer software (including data and related documentation), (vii) all other proprietary rights, (viii) all web sites, web pages, URLs, domain names, directory names, other computer addresses, Internet files, HTML files, image files, such as, jpeg files, gif files, and java code, links, hyperlinks, and other files, pages, sites, names or addresses located on an on-line global computer network, and (ix) all copies and tangible embodiments thereof (in whatever form or medium).

“Inventories” shall have the meaning set forth in Section 1.1(a).

“IRS” shall mean the Internal Revenue Service.

“Knowledge of the Sellers”, or the like, shall mean the knowledge of any Seller after making due inquiry and, if the Seller fails to make such inquiry, shall include constructive knowledge of such facts as would have been learned had such due inquiry been made.

“Latest Balance Sheet” shall mean the consolidated balance sheet of the Sellers for the period ending January 28, 2001.

“Laws” shall mean, collectively, all federal, state, local, municipal, foreign or international constitutions, laws, statutes, ordinances, rules, regulations, codes, or principles of common law.

“Leased Real Estate” shall have the meaning set forth in Section 4.9(a).

“Licenses” shall mean, collectively, governmental, regulatory, administrative and nongovernmental licenses, permits, approvals, certifications, accreditations, notices and other authorizations.

“Orders” shall mean all decisions, injunctions, writs, guidelines, orders, arbitrations, awards, judgments, subpoenas, verdicts or decrees entered, issued, made or rendered by any Governmental Authority.

“Ordinary Course” shall mean the ordinary course of the Sellers’ business, consistent with the past practices of the Sellers.

“Owned Real Estate” shall have the meaning set forth in Section 4.9(a).

“Permitted Encumbrances” shall mean municipal and zoning ordinances, recorded easements, covenants and restrictions, provided the same do not prohibit or materially interfere with the present use, or materially affect the present value, of the Owned Real Estate or Leased Real Estate, and general taxes levied on or after January 1, 2001, and not yet due or payable.

“Personal Property” shall mean all tangible and intangible personal property of the Sellers, including, without limitation, all personal property reflected on the Latest Balance Sheet and all tangible personal property acquired by the Sellers since the Balance Sheet Date.

“Prepared Expenses” shall have the meaning set forth in Section 1.1(d).

“Products Liability” shall have the meaning set forth in Section 4.26.

“Purchase Price” shall have the meaning set forth in Section 2.1.

“Purchased Assets” shall have the meaning set forth in Section 1.1.

“Real Property” shall mean, collectively, the Sellers’ Real Estate, the Owned Real Estate, Leased Real Estate, and any other real property heretofore owned or used by the Sellers in the conduct of the Sellers’ business.

“Receivables” shall have the meaning set forth in Section 1.1(b).

“Related Party” shall mean (i) any Shareholder or (with respect to any Shareholder which is a partnership, corporation, limited liability or other entity) any partner, shareholder, officer, director, member, manager or affiliate of such Shareholder, (ii) any officer or director of the Sellers, (iii) any spouse, in-law or lineal descendant of any Related Party, and (iv) any person who, directly or indirectly, controls or is controlled by or is under common control with the Sellers. For purposes of this definition, “person” shall mean an individual, partnership, corporation, limited liability company, trust, unincorporated organization or other entity; and “control,” as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by Contract or otherwise.

“Restricted Interests” shall have the meaning set forth in Section 1.4(a).

“Sale Motion” shall have the meaning set forth in Section 6.9(a).

“Section 365 Contracts” shall have the meaning set forth in Section 6.9(b).

“Seller” shall mean, each, Victoria and Richard MacKenzie-Childs, Ltd. and MacKenzie-Childs of New York, Ltd.

“Sellers” shall mean, collectively, Victoria and Richard MacKenzie-Childs, Ltd. and MacKenzie-Childs of New York, Ltd.

“Sellers’ Real Estate” shall have the meaning set forth in Section 1.1(k).

“Subsidiaries” or, individually, “Subsidiary” shall mean any entity in which the Sellers owns stock, other securities or any other ownership interest (other than ownership of less than three percent (3%) of the stock or securities of a corporation, partnership, limited liability company or other entity whose shares are listed on a nationally recognized securities exchange or are traded over-the-counter, and which stock or securities are held by the Sellers solely as an

investment) and any other investment by the Sellers in any corporation, limited liability company, joint venture, partnership or other business enterprise.

ARTICLE XIII

MISCELLANEOUS

13.1 Further Assurances. Each party hereto from time to time hereafter, and upon request, shall execute, acknowledge and deliver such other instruments as reasonably may be required to more effectively transfer and vest in the Buyers the Purchased Assets or to otherwise carry out the terms and conditions of this Agreement.

13.2 Benefit and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, assignees, and beneficiaries in interest; provided, however, that this Agreement may not be assigned by the Sellers.

13.3 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York (regardless of such State's conflict of laws principles), and without reference to any rules of construction regarding the party responsible for the drafting hereof.

13.4 Expenses. Except as otherwise herein provided, all expenses incurred in connection with this Agreement or the transactions herein provided for shall be paid by the party incurring such expenses and costs.

13.5 Notices. Any and all notices, demands, and communications provided for herein or made hereunder shall be given in writing and shall be deemed given to a party at the earlier of (i) when actually delivered to such party, (ii) when facsimile transmitted to such party to the facsimile number indicated for such party below (or to such other facsimile number for a party as such party may have substituted by notice pursuant to this Section) or (iii) when mailed to such party by registered or certified U.S. Mail (return receipt requested) or sent by overnight courier, confirmed by receipt, and addressed to such party at the address designated below for such party (or to such other address for such party as such party may have substituted by notice pursuant to this Section):

(a) If to the Buyers: At such address as the Buyers may provide to the Sellers.

With a copy to: Rhona E. Vogel
Vogel Consulting Group, S.C.
3415 Gateway Road
Brookfield, WI 53045
Facsimile Number: (262)790-4990

With a copy to:

Tod B. Linstroth, Esq.
Michael Best & Friedrich LLP
One South Pinckney Street
P.O. Box 1806
Madison, WI 53701-1806
Facsimile Number: (608) 283-2275

(b) If to the Sellers:

MacDonell Roehm, Jr.
Victoria and Richard Mackenzie-
Childs, Ltd.
3260 State Route 90
Aurora, NY 13026
Facsimile Number: (315) 364-5190

With a copy to:

Stephen A. Donato, Esq.
Hancock & Estabrook, LLP
1500 MONY Tower
P.O. Box 4976
Syracuse, NY 13221-4976
Facsimile Number: (315) 471-3167

13.6 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that all such counterparts, in the aggregate, shall contain the signatures of all parties hereto.

13.7 Headings. All Section headings herein are inserted for convenience only and shall not modify or affect the construction or interpretation of any provision of this Agreement.

13.8 Amendment, Modification and Waiver. This Agreement may not be modified, amended or supplemented except by mutual written agreement of all the parties hereto. Any party may waive in writing any term or condition contained in this Agreement and intended to be for its benefit; provided, however, that no waiver by any party, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such term or condition. Each amendment, modification, supplement or waiver shall be in writing signed by the party or the parties to be charged.

13.9 Entire Agreement. This Agreement and the Schedules attached hereto delivered herewith represent the full and complete agreement of the parties with respect to the subject matter hereof and supersede and replace any prior understandings and agreements among the parties with respect to the subject matter hereof and no provision or document of any kind shall be included in or form a part of such agreement unless signed and delivered to the other party by the parties to be charged.

13.10 Third-Party Beneficiaries. No third parties are intended to benefit from this Agreement, and no third-party beneficiary rights shall be implied from anything contained in this Agreement.

13.11 Publicity. The Buyers and the Sellers agree that no publicity announcements or disclosures of any kind concerning the terms of this Agreement or concerning the transactions contemplated hereby shall be made without the consent of the Buyers, except to the extent that disclosure is required by legal process or to accountants, counsel, other professionals and to lenders on a “need to know” basis who similarly agree to maintain the confidentiality of the Agreement and its terms.

[SIGNATURES ON NEXT PAGE FOLLOWING]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

BUYERS:

MC ACQUISITION CORP.

By: Reasaul Portland
Its: _____

MCNY ACQUISITION CORP.

By: Reasaul Portland
Its: _____

SELLERS:

VICTORIA AND RICHARD
MACKENZIE-CHILDS, LTD.

By: [Signature]
Its: _____

MACKENZIE-CHILDS OF NEW YORK, LTD.

By: [Signature]
Its: _____