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Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings ⇨⇨⇨ ▼

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Rapid Service Company (the Delinquent Publishing Co., Inc.)

- Individual(s) Association General Partnership Limited Partnership Corporation-State Ohio Other

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other Assets Purchase Agreement

Execution Date: Feb. 21, 2001

2. Name and address of receiving party(ies)

Name: Alloy, Inc. (via Alloy Online Inc)

Internal Address:

Street Address: 151 W. 26th Street, 11th Fl.

City: Ny State: Ny Zip: 10001

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Delaware Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2234362

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Gallit Schuller, Esq.

Internal Address:

Street Address: 140 Riverside Dr. #4C

City: Ny State: Ny Zip: 10024

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

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.

Gallit Schuller

Name of Person Signing

[Signature]

Signature

Jan. 31 2002

Date

04/11/2002 DBYRNE 00000218 2234362

Total number of pages including cover sheet, attachments, and document: 55

01 FC:481

40.00 DP

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

ASSETS PURCHASE AGREEMENT

This Assets Purchase Agreement is entered into as of the 21st day of February, 2001 by and among Alloy Online, Inc. ("Parent"), Strength Publishing, Inc. ("Buyer"), a Delaware corporation and wholly-owned subsidiary of Parent, and Rapid Service Company, an Ohio corporation ("Seller").

RECITALS

WHEREAS, Seller is, through its Strength magazine division, engaged in the business of publishing and distributing "Strength" magazine, a skateboarding and snowboarding lifestyle publication, operating the related StrengthMag.com website and distributing the Strength Presents Subtext recording (the "Business");

WHEREAS, Buyer wishes to purchase, and Seller wishes to sell to Buyer, all of the assets used in or related to, or intended to be used by Seller in or related to, the Business, and Buyer has agreed to assume from Seller certain specified liabilities associated with the Business.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Acquired Assets" means, collectively, (i) the Assets of Seller to be sold, assigned, transferred and conveyed to Buyer pursuant to Section 2.01 and (ii) the Shared Assets of Seller listed on Schedule 2.02.

"Action" means any claim, action, suit, arbitration, mediation, inquiry, proceeding or litigation by or before any Governmental Authority (or arbitrator or mediator, as the case may be), whether at law or in equity.

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

"Agreement" or "this Agreement" means this Asset Purchase Agreement, as amended, modified or supplemented from time to time in accordance with the provisions

hereof.

“Ancillary Agreements” means the Assumption Agreement, the Bill of Sale, the Investment Representation and Lock-up Agreement, the Non-competition Agreement, the Escrow Agreement, the Registration Rights Agreement, the Employee Nondisclosure and Invention Assignment Agreement, the Strike Employment Agreement and all other agreements entered into by the parties in connection with the transactions contemplated hereby.

“Assumption Agreement” means the Assumption Agreement substantially in the form of Exhibit A attached hereto to be entered into between Seller and Buyer on the Closing Date.

“Assumed Liabilities” has the meaning specified in Section 2.04.

“Bill of Sale and Assignment” means the Bill of Sale and Assignment substantially in the form of Exhibit B attached hereto to be entered into between Seller and Buyer on the Closing Date.

“Business” has the meaning specified in the recitals to this Agreement.

“Charter Documents” means, in the case of Seller, its [articles] of incorporation and bylaws, and, in the case of a Buyer or Parent, the certificate of incorporation and bylaws of such entity.

“Claims” means all actions, causes of action, suits, debts, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, executions, claims, Liabilities, investigations, prosecutions and demands whatsoever, in law or equity, regardless of when made or asserted and regardless of whether fixed or contingent.

“Closing” has the meaning specified in Section 2.06.

“Closing Date” has the meaning specified in Section 2.06.

“Code” has the meaning specified in Section 2.05.

“Computer Programs” means computer applications, files, tools, utilities, software, firmware, systems and programs, including, without limitation, all versions and releases thereof, and all data, data bases and documentation, whether electronically or physically manifested, used by or useful in connection with the operation or development of such applications, files, tools, utilities, software, firmware, systems and programs, which in any case are (i) owned or used under license with a right to sublicense by Seller and (ii) used by

Seller (whether or not under a license or other similar agreement) in connection with the operation of the Business.

"Contracts" means all contracts, agreements, leases, bids, purchase or sale orders, licenses and commitments of the Business to which Seller or any of its Affiliates is a party, in any case which are used in the Business, are bound, but excluding, unless otherwise specifically listed on Schedule 2.01(d), (i) all employment contracts, and all compensation, retirement, employee health, benefit or insurance, and other similar agreements between Seller and the individuals employed or otherwise retained by Seller in connection with, the operation of the Business and (ii) all leases, easements or other agreements under which Seller or any of its Affiliates is lessee, owner, user or occupant of any land, building, or any other interest in real property or has any right to acquire any interest in any land, building or other real property.

"Control" (including the terms "controlled by" and "under common control with") means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including, without limitation, the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

"Damages" means any and all costs, losses, Claims, Liabilities, fines, penalties, damages and expenses (including interest which may be imposed in connection therewith), court costs, and reasonable fees and expenses of counsel, consultants and expert witnesses, incurred by a party hereto.

"Disclosure Schedule" means the Disclosure Schedule attached hereto and comprised of the Schedules enumerated herein, which is a part of, and is incorporated by reference into, this Agreement.

"Effective Time" means 5:00 p.m. local New York City time on the Closing Date.

"Employee Nondisclosure and Invention Assignment Agreement" means the Employee Nondisclosure and Invention Assignment Agreement substantially in the form of Exhibit C attached hereto to be entered into by and among Seller and each employee of Seller prior to the Closing Date.

"Environmental Laws" means any federal, state or local law, including any statute, rule, regulation, ordinance, code or rule of common law, as in effect on the date hereof, and any judicial or administrative interpretation thereof, including any judicial or administrative

order, consent decree or judgment, relating to the environment, health, safety or Hazardous Materials.

“Environmental Permits” means all permits, approvals, registrations, identification numbers, licenses and other authorizations and filings required under any applicable Environmental Law.

“ERISA” has the meaning specified in Section 3.16.

“Escrow Agreement” means the Escrow Agreement substantially in the form of Exhibit D attached hereto to be entered into by Seller, Parent, and the escrow agent named therein on the Closing Date.

“Excluded Assets” has the meaning specified in Section 2.03.

“Excluded Liabilities” has the meaning specified in Section 2.04.

“Financial Statements” has the meaning specified in Section 3.04.

“Form 10-Q” has the meaning specified in Section 4.05.

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

“Governmental Authority” means any United States federal, state or local or any foreign government, governmental, regulatory or administrative authority, or commission or any court, tribunal or agency.

“Hazardous Materials” means any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances,” “toxic pollutants,” “contaminants” or “pollutants,” or words of similar import, under any applicable Environmental Law.

“Intellectual Property” means (i) trademarks, service marks, trade dress, logos, trade names and corporate names and registrations and applications for registration thereof together with all goodwill therein, (ii) inventions, ideas, conceptions of potentially patentable subject matter and patent disclosures, whether or not reduced to practice and whether or not yet made the subject of a pending patent application or applications, (iii) Internet URLs, domain name registrations and applications (and any interests therein), (iv) statutory invention registrations, patents, patent registrations and patent applications and all improvements thereto, (v) copyrights (registered or otherwise) and registrations and applications for registration thereof, (vi) computer software, data, databases and any related documentation, (vii) trade secrets and confidential business information, technology

(including know-how and show-how), copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, (viii) copies and tangible embodiments of all the foregoing, in whatever form or medium, (ix) all rights to register trademarks and copyrights and to obtain rights to apply for patents, and (x) all rights to sue for present and past infringement of any of the foregoing Intellectual Property.

“Inventories” means all inventory, merchandise, goods, raw materials, work-in-process, finished goods, packaging and supplies owned by Seller and other inventoried items that are (i) owned by Seller and (ii) held by Seller for sale, use or consumption in connection with its operation of the Business.

“Investment Representation and Lock-up Agreement” means the Investment Representation and Lock-Up Agreement substantially in the form of Exhibit E attached hereto to be entered into between Parent and Seller.

“Liabilities” means liabilities, debts or obligations, whether accrued, absolute, contingent or otherwise, known or unknown.

“Lien or Other Encumbrance” means any mortgage, lien, pledge, security interest, Claim, lease, easement, charge, option, right of first refusal, restrictive covenant or other encumbrance, restriction or limitation, other than Permitted Encumbrances.

“Material Adverse Change” means a material adverse change in the business, affairs, operations, assets, liabilities, prospects, results of operations or the condition (financial or otherwise) of the Business or any of the Acquired Assets.

“Material Adverse Effect” means any circumstance, change in or effect on Seller or the Business that, individually or in the aggregate with any other circumstances, changes in or effects on Seller or the Business (i) is materially adverse to the business, affairs, operations, assets, liabilities, prospects, results of operations or the condition (financial or otherwise) of the Business or any of the Acquired Assets, or (ii) likely would materially adversely affect the ability of Buyer to own the Acquired Assets or to operate and conduct the Business in the Ordinary Course of Business from and after the Closing Date.

“Material Contracts” has the meaning specified in Section 3.21.

“Non-competition Agreement” means the Non-competition Agreement substantially in the form of Exhibit F attached hereto to be entered into among Seller, Buyer and Parent on the Closing Date.

“Order” means any order, writ, judgment, injunction, decree, demand letter,

stipulation, determination or award issued or entered by or agreed to with any Governmental Authority.

"Ordinary Course of Business" means the operation of the Business in the ordinary course of business ~~consistent with Seller's usual and customary practices in managing and~~ operating the Business as such practices existed on December 31, 2000 without regard to the transactions contemplated hereby.

"Parent SEC Documents" has the meaning specified in Section 4.06.

"Parent Shares" means the shares of Parent's common stock, par value \$.01 per share, to be issued to Seller pursuant to Section 2.04.

"Permits" has the meaning specified in Section 3.13.

"Permitted Encumbrances" means such of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced: (i) liens for taxes, assessments and governmental charges or levies in the nature of taxes or user fees not yet due and payable in the Ordinary Course of Business; (ii) Encumbrances imposed by law, such as materialmen's, mechanics', carriers', workmen's and repairmen's liens and other similar liens arising in the Ordinary Course of Business securing obligations that (a) are not overdue for a period of more than 30 days and (b) are not in excess of \$2,000 in the case of a single property or \$10,000 in the aggregate at any time; and (iii) pledges or deposits to secure obligations under workers' compensation laws or similar legislation or to secure public or statutory obligations.

"Person" means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other governmental or non-governmental entity.

"Personal Property" means machinery, equipment, furniture, fixtures, replacement and spare parts, operating supplies and other similar items of personal property, other than Inventory, in any case that is (i) owned by Seller and (ii) held by Seller for use in connection with the operation of the Business.

"Receivables" means all accounts receivable, notes and other amounts receivable from third parties, including (without limitation) customers and employees, arising from the conduct of the Business prior to the Closing Date, whether or not in the ordinary course, together with all unpaid financing charges accrued thereon.

"Registration Rights Agreement" means the Registration Rights Agreement substantially in the form of Exhibit F attached hereto to be entered into among Buyer and

Seller on the Closing Date.

“Right” means any right or benefit of any nature whatsoever.

“Seller Employees” has the meaning specified in Section 3.15.

“Shared Asset” means any asset which is used by Seller in the Business but which is primarily used by Seller in one or more of its other businesses, including, but not limited to, the postage meter, fax machine, copiers and similar equipment.

“Stipulated Price” means \$11.01, which is the average closing price for the Parent Shares as quoted on the NASDAQ National Market System for the fifteen (15) trading days ending on the second trading day prior to the Closing Date.

“Strength Intellectual Property” means all Intellectual Property which is owned by, controlled by, licensed by third parties to or registered in the name of Seller or any of its Affiliates, which in any case is required for, or which is used in connection with, the operation of the Business.

“Strike Employment Agreement” means an Employment Agreement, in substantially the form of Exhibit G hereto, pursuant to which Christian Strike shall be employed by Buyer, all on the terms and conditions set forth therein.

“Subsidiary” means, with respect to any Person, any other Person of which a majority of the capital stock or other ownership interests are at the time directly or indirectly owned or controlled by such Person.

“Tangible Personal Property” has the meaning specified in Section 3.17.

“Tax” or “Taxes” means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any government or taxing authority, including, without limitation: taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers’ compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added, or gains taxes; license, registration and documentation fees; and customs’ duties, tariffs, and similar charges.

“Transaction Documents” means this Agreement, the Ancillary Agreements, and all certificates, instruments, financial statements, reports or other documents delivered pursuant to this Agreement, any Ancillary Agreement or the transactions contemplated hereby or thereby.

SECTION 1.02 **Singular/Plural**. Unless the context otherwise requires, words defined herein in the singular include the plural and words defined herein in the plural include the singular.

SECTION 1.03 **Accounting Terms**. Any accounting terms used in this Agreement that are not specifically defined shall have the meanings customarily given them in accordance with GAAP.

SECTION 1.04 **Gender**. The use of the masculine or any other pronoun herein when referring to any Person is for convenience only and shall be deemed to refer to the particular Person intended regardless of the actual gender of such Person or whether such Person is a corporate or other entity.

ARTICLE II

PURCHASE AND SALE OF THE ACQUIRED ASSETS

SECTION 2.01 **Transfer of Acquired Assets to Buyer**. Upon the terms and subject to the conditions set forth in this Agreement, Seller shall, on the Closing Date, sell, assign and transfer to Buyer, free and clear of all Liens and Other Encumbrances, all of the assets, properties, goodwill and rights owned by Seller or in which Seller has any right or interest of every type and description, real, personal and mixed, tangible and intangible, in each case belonging or related to or used or intended to be used in the Business, wherever located, other than the Shared and Excluded Assets, including, without limitation, the following:

(a) All Personal Property, wherever located, that existed on the date of this Agreement, and all additions thereto made by Seller prior to the Closing Date, except to the extent such Personal Property has been sold or otherwise disposed of by Seller prior to the Closing Date in the Ordinary Course of Business, including, without limitation, all of the Personal Property described on Schedule 2.01(a);

(b) All Inventory, wherever located, that existed on the date of this Agreement, and all additions thereto made by Seller prior to the Closing Date, except to the extent such Inventory has been sold, consumed or otherwise disposed of by Seller prior to the Closing Date in the Ordinary Course of Business, including, without limitation, all of the Inventory described on Schedule 2.01(b);

(c) All of the Strength Intellectual Property, including, without limitation, the Intellectual Property listed on Schedule 2.01(c), together with all claims for profits and Damages against third parties by reason of the past Infringement of any of the Strength Intellectual Property together with the right to sue for, and collect the same, or to sue for injunctive relief, for Buyer's own use and benefit, and for the use and benefit of its successors, assigns or other legal representatives, whether in the possession of Seller or any employee, consultant or independent contractor of Seller;

(d) All of Seller's Rights (including deposits related thereto) under the Contracts listed on Schedule 2.1(d) (the "Transferred Contracts");

(e) All accounts receivable of Seller relating to the Business that exist on the Closing Date (the "Receivables");

(f) All Rights of Seller under any and all confidentiality agreements or confidentiality provisions of other agreements with Seller's present or past employees, agents, consultants, contractors, suppliers, customers, partners, joint venturers or other Persons to the extent such Rights relate to the Business and/or the Strength Intellectual Property (the "Confidentiality Rights");

(g) All books, documents and records of Seller to the extent they pertain to the Business or any of the Acquired Assets, wherever located and whether maintained in electronic or physical form, including, without limitation, all accounting, credit and environmental records and customer lists; provided, however, Seller may retain copies of such materials to the extent necessary for Seller to fulfill its obligations under this Agreement or under laws, regulations or other understandings or agreements by which it is bound or for the conduct of its other businesses;

(h) the goodwill of Seller relating to the Business; and

(i) all of Seller's right, title and interest in, to and under all other assets, rights and claims of every kind and nature primarily relating to or used by Seller in connection with the operation of the Business.

SECTION 2.02 Excluded Assets. The Acquired Assets shall exclude the following assets owned by Seller (the "Excluded Assets");

(a) all rights of Seller under this Agreement, the Ancillary Agreements and any other Transaction Document;

(b) all cash, negotiable securities, certificates of deposit, bonds, bank

accounts, lock boxes, letters of credit and other cash equivalents, other than any of the foregoing securing any Contract in the Transferred Contracts or any other Acquired Asset;

(c) all real property owned or leased by Seller and all plants, buildings and improvements thereon;

(d) assets constituting any pension or other funds for the benefit of Seller's employees including, without limitation, Seller's 401(k) plan; and

(e) assets specifically identified as "Excluded Assets" on Schedule 2.03(e).

SECTION 2.03 Assumption and Exclusion of Liabilities. (a) In connection with its acquisition of the Acquired Assets, Buyer shall assume those obligations and Liabilities of Seller, and only those obligations and Liabilities, specifically identified below (the "Assumed Liabilities"):

(i) except only as set forth on Schedule 2.04(a), all Liabilities of Seller in respect of the Transferred Contracts, except to the extent, in respect of each Transferred Contract, the representations of Seller contained in Section 3.21(b) in respect of such Transferred Contract are untrue in any material respect at the Closing; provided, that Buyer shall not assume, and does not hereby agree to pay, discharge or perform, any Damages which arise out of any breach or alleged breach by Seller of any such Transferred Contract prior to the Closing whether asserted before or after the Closing; and

(ii) the accrued expenses of Seller, if any, which have been incurred in the Ordinary Course of Business prior to the Closing Date in amounts consistent with past practice and which are properly reflected in the books of account of Seller (other than the Excluded Liabilities.)

(b) Except for Liabilities assumed in accordance with Section 2.04(a), Seller shall retain, and shall be responsible for paying, performing and discharging when due, all Liabilities and obligations of Seller or any of its Affiliates relating to the operation or conduct of the Business or ownership of the Acquired Assets prior to the Closing Date and all Liabilities of Seller arising after the Closing Date (collectively, the "Excluded Liabilities"), including, without limitation:

(i) all Taxes imposed on or with respect to income now or hereafter owed by Seller or attributable to the Business or the Acquired Assets,

relating to any period, or any portion of any period, ending on or prior to the Closing Date;

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

(iii) all costs and expenses, including, without limitation, professional fees and expenses incurred by Seller relating to the transactions contemplated by this Agreement and the Ancillary Agreements;

(iv) all Liabilities based upon or arising out of a violation or asserted violation of any law, rule or regulation by Seller on or prior to the Closing Date including, without limitation, any violation of any federal or state securities laws except to the extent such violations arise as a direct result of the actions or inaction of Buyer or Parent in connection with the issuance of the Parent Shares;

(v) any Damages arising out of any Claim of a third party, including, without limitation, any Liabilities arising out of (i) any violation by Seller of any rights of third parties in respect of any Intellectual Property, (ii) any violation by Seller of any other Intellectual Property rights of any third parties in connection with Seller's operation of the Business, and (iii) any express or implied representation, warranty, agreement or guarantee made by Seller, or which is imposed by operation of law, in connection with any products or goods sold by Seller or any of its Affiliates or any services performed by Seller or any of its Affiliates, including, without limitation, any claim of a third party relating to the repair or replacement of any such product or seeking recovery for tort claims, property damage, consequential Damages, loss, lost revenue or income or personal injury;

(vi) all Liabilities for any advances, loans, notes or other obligations (including interest incurred on such advances, loans, notes and other obligations); and

(vii) all Liabilities for any pension, payroll, severance and other employee benefits or obligations with respect to any of Seller's employees.

(c) Continuing Liabilities. Notwithstanding anything contained herein to the contrary, to the extent that any Assumed Liability assumed by Buyer pursuant to Section 2.04(a), or any Damages imposed on Buyer by operation of law or otherwise in connection with, or which otherwise arises out of or in relation to, the transactions contemplated hereby (other than Buyer's assumption of the Assumed Liabilities assumed by it pursuant to Section 2.04), results from or arises out of an event or condition which is continuing or continuous in

nature, Buyer shall assume and discharge only that portion of such Assumed Liability or Damage that results from or arises out of that part of the event which occurs or condition that exists after the Closing, without, however, releasing Seller from its obligation to discharge that portion of such Assumed Liability or Damage that results from that part of the event which occurs or condition which exists prior to the Closing; provided, however, that Seller shall discharge all of such continuing or continuous Assumed Liabilities or Damages, including, without limitation, those Assumed Liabilities assumed by Buyer pursuant to Section 2.04 to the extent they result from a breach by Seller of any of its representations, warranties or covenants contained herein or in any of the other Transaction Documents.

SECTION 2.04 **Acquisition Consideration.** (a) In consideration of the sale of the Acquired Assets to Buyer, at the Closing, Buyer shall issue to Seller that number of Parent Shares, the aggregated Stipulated Price of which shall equal \$1,100,000 (the "Acquisition Consideration"), payable as hereinafter set forth. At the Closing Buyer shall:

(i) deliver to the Seller a certificate or certificates for Parent Shares registered in the name of Seller in an amount equal to eighty percent (80%) of the Acquisition Consideration; and

(ii) deliver to State Street Bank and Trust Company, as escrow agent (the "Escrow Agent") a certificate for Parent Shares in an amount equal to twenty percent (20%) of the Acquisition Consideration (the "Escrow Shares") to be held by the Escrow Agent pursuant to and in accordance with the Escrow Agreement to be executed by the Escrow Agent and the other parties hereto substantially in the form of Exhibit E hereto.

The parties acknowledge that the Acquisition Consideration is based upon a presumed net working capital of the Business as of the Closing Date of not less than \$50,000 (net of a \$30,000 reserve for uncollectible accounts receivable) (the "Presumed Working Capital"), and that such Acquisition Consideration is subject to adjustment as provided herein.

On the Closing Date, Seller shall calculate the aggregate working capital of the Business as of the Closing Date (the "Actual Working Capital") and shall deliver to Parent a certificate (the "Closing Financial Certificate"), setting forth its calculation of the Actual Working Capital. The parties acknowledge and agree that for purposes of determining the Actual Working Capital, the assets of the Business shall not, without the prior written consent of Parent, include any increase in intangible assets (including without limitation goodwill, franchises and intellectual property) from the values therefor as shown on the Interim Financial Statements (as defined herein. If the Actual Working Capital (as shown in the Closing Financial Certificate) is less than the Presumed Working Capital, then the Acquisition Consideration shall be reduced by an amount of Parent Shares (the "Working

Capital Adjustment Factor") as is equal to the nearest whole number obtained by dividing (A) the difference of Presumed Working Capital minus Actual Working Capital by (B) the Stipulated Price. The amount of reduction to be applied hereunder shall be set forth in a writing signed by Seller, and the resulting amounts shall be the Acquisition Consideration for all purposes hereunder.

(b) In consideration for the transfer of the Acquired Assets, upon the terms and subject to the conditions set forth in this Agreement, Buyer shall, on the Closing Date, assume the Assumed Liabilities pursuant to the Assumption Agreement.

(c) The parties hereby agree that the Acquisition Consideration for the Acquired Assets (including the amount of the Assumed Liabilities) will be allocated among the Acquired Assets and the Assumed Liabilities as may be agreed by the parties promptly after the Closing Date, and each of Parent, Buyer and Seller agree to be bound by such allocation. Such allocation shall comply with Section 1060 of the Internal Revenue Code of 1986, as amended (the "Code"), and Treasury Regulations promulgated thereunder. Subject to the requirements of any applicable tax law, all Tax returns and reports including, without limitation, Internal Revenue Service form 8594, filed by Buyer and Seller shall be prepared consistently with such allocation and neither Parent, Buyer nor Seller shall take a position contrary thereto.

(d) Net Income. As soon as reasonably practicable following the end of each quarter of Fiscal 2001, beginning with the fiscal quarter starting February 1, 2001 and ending with the fiscal quarter starting November 1, 2001, Parent will determine the amount of Net Income of Buyer for such fiscal quarter and, if such Net Income is positive and exceeds, with respect to such quarter, the Net Income targets set forth below, issue and deliver to Seller additional shares of Parent Common Stock (the "Performance Stock Payments") as could be purchased for \$100,000 at the Stipulated Price:

<u>Quarter</u>	<u>Net Income</u>
1 st quarter	\$0
2 nd quarter	\$50,000
3 rd quarter	\$75,000
4 th quarter	\$100,000

For purposes hereof, "Net Income" shall be determined in accordance with GAAP, shall be pretax, and shall incorporate allocated direct expenses ("Allocated Expenses") which shall include, but not be limited to, expense allocation for art directors, sales staff, designers, editors, photographers, illustrators, typesetting, proof readers, art supplies, copyright, clearances, rent, facility costs and other expenses related to the Business. In addition, included in the Allocated Expenses will be a corporate allocation to cover insurance,

financial administration, legal, accounting and other management costs (the "Corporate Allocation"). For each fiscal quarter the Corporate Allocation shall be \$18,750; provided, however the Corporate Allocation for the first fiscal quarter shall be reduced by \$206.04 for each day after February 1, 2001 until the Closing Date. In addition, the Corporate Allocation shall include, for each of the last three fiscal quarters, an additional allocation equal to eight percent (8%) of the aggregate amount of media sales effected by Parent or any of its subsidiaries on behalf of Buyer.

The parties hereto agree that Parent's independent auditing firm (currently Arthur Andersen) shall make the initial determination of Net Income in accordance with generally accepted accounting principles consistently applied ("GAAP") and this Agreement, and shall deliver a copy of such determination to Parent and Seller. If Seller objects to such determination, it shall notify Parent in writing within 15 days after its receipt thereof (an "Income Dispute Notice"). Parent and Seller shall meet within 15 days after Parent's receipt of any Income Dispute Notice in order to attempt to resolve any dispute referenced therein. Any dispute not able to be resolved within 15 days after Parent's receipt of any Income Dispute Notice shall be resolved pursuant to the dispute resolution provisions of Section 2.05(b) hereof. Parent shall issue the full amount of additional shares of Parent Common Stock, if any, due to Seller pursuant to this Section 2.05(d) within 30 days after determination by Parent of the amount of Net Income for each of the fiscal quarters of fiscal year 2001.

SECTION 2.06 Closing. Subject to the satisfaction or waiver of each of the conditions set forth in Article VIII of this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Thompson Fine & Flory, 312 Walnut Street, Suite 1400, Cincinnati, Ohio 45202 at 10:00a.m. on February 21, 2001, or such other location, date and time as may be agreed upon by the parties (such date and time being called the "Closing Date"). At the Closing, Seller shall deliver or cause to be delivered to Buyer (i) the executed Bill of Sale transferring the Acquired Assets to Buyer, (ii) the executed Assumption Agreement and (iii) all other assignments or other instruments of transfer requested by Buyer to effect legally the transfer of any the Acquired Assets from Seller to Buyer, in form and substance satisfactory to Buyer. All books, data, documents, instruments, and other records relating to the Business, the Acquired Assets and the Assumed Liabilities (other than those relating exclusively to Excluded Assets or Excluded Liabilities) shall be delivered to Buyer at Cincinnati, Ohio. At the Closing, the parties shall also deliver or cause to be delivered to the other parties the certificates, opinions and Ancillary Agreements required to be delivered by the parties pursuant to Article VIII and Buyer shall deliver the Parent Shares in accordance with Section 2.05(a) above. All of the transactions contemplated hereby shall be effective from and after 5:00 p.m. local New York, New York time on the Closing Date (the "Effective Time").

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SELLER

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller hereby represents and warrants to Buyer and Parent as follows:

SECTION 3.01 Organization and Qualification. Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Ohio and is duly licensed or qualified to transact business as a foreign corporation and is in good standing in the jurisdictions listed on Schedule 3.01, which are the only other jurisdictions in which the ownership or leasing of its assets or properties relating to the Business or conduct of the Business requires it to be so licensed or qualified.

SECTION 3.02 Corporate Power and Authority; Validity. Seller has the corporate power and authority (i) to own and hold its assets and properties and to carry on the Business and (ii) to execute, deliver and perform this Agreement and the other Transaction Documents to which it is a party. The execution, delivery and performance of this Agreement and such other Transaction Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized and approved by all necessary corporate action on the part of Seller. This Agreement has been, and each of the other Transaction Documents to be executed and delivered by Seller will be, when executed and delivered by Seller, duly executed and delivered by Seller. This Agreement constitutes, and each other Transaction Document when so duly executed and delivered by Seller will constitute, the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its and their respective terms.

SECTION 3.03 No Conflict. Neither the execution and delivery by Seller of this Agreement and the other Transaction Documents to which it is a party, the consummation by Seller of the transactions contemplated hereby or thereby, nor the performance by Seller of this Agreement and such other Transaction Documents in compliance with the terms and conditions hereof and thereof, will (i) violate, conflict with or result in any breach of Seller's Charter Documents, (ii) require by or on behalf of Seller any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority or any other Person (except as disclosed on Schedule 3.03(i) hereto), (iii) violate, conflict with or result in a breach in any material respect, or default or termination (or give rise to any right of termination, cancellation or acceleration of the maturity of any payment date of any of the obligations of Seller or increase or otherwise affect the obligations of Seller) under any law, rule, regulation or any governmental permit,

license or Order or any of the terms, conditions or provisions of any mortgage, indenture, note, license, agreement or other instrument or obligation to which Seller is a party or by which Seller any of its assets are subject or affected or (iv) result in the creation of any Lien or Other Encumbrance upon any of the Acquired Assets.

SECTION 3.04 **Financial Statements.** Seller has previously delivered to ~~Seller~~ **Buyer** true and complete copies of the (i) unaudited balance sheet of the Business as of December 31, 1999 and the related profit and loss statement (together, the "1999 Financial Statements"), (ii) unaudited balance sheet of Seller as of December 31, 2000 and the related profit and loss statement (together, the "2000 Financial Statements"). All such financial statements (together, the "Financial Statements") have been prepared in accordance with GAAP consistently applied and were prepared from the books and records of Seller. The Financial Statements present fairly the financial position of Seller as of the dates thereof and the results of its operation of the Business for the periods ended on the dates thereof. The 2000 Financial Statements reflect reserves appropriate and adequate for all known material Liabilities of Seller in relation to the Business and reasonably anticipated losses and disclosure of all contingent Liabilities of Seller in relation to the Business in each case in accordance with GAAP. All such Financial Statements have been prepared by Seller for its own use in the Ordinary Course of Business. Seller has made available to Buyer or its representatives all of its books of account and documents of original entry, including all worksheets, notes and schedules related to such financial statements, and representatives of Buyer have examined the same.

SECTION 3.05 **Absence of Undisclosed Liabilities.** Except as and to the extent of the amounts specifically reflected on or reserved against in the 2000 Financial Statements, or as otherwise disclosed on Schedule 3.05 hereto, there are no Liabilities or obligations of Seller relating to the Business of any nature whatsoever, due or to become due, accrued, absolute, contingent or otherwise, except for current Liabilities incurred in the Ordinary Course of Business and consistent with past practice that, individually or in the aggregate, have not had or could not be expected to have a Material Adverse Effect.

SECTION 3.06 **Absence of Material Adverse Change.** (a) Since the date of the 2000 Financial Statements, there has been no Material Adverse Change, and there is no condition or development or contingency of any kind existing or in prospect (other than (i) changes in the Ordinary Course of Business consistent with prior practice and (ii) activities of competitors in the ordinary course of their respective businesses) which could be expected to have or result in any Material Adverse Change. Seller is not bound by any agreement, or subject to any charter or other corporate restriction or any legal requirement, which has, or would be expected to have, a Material Adverse Effect, except as disclosed on Schedule 3.06(a) hereto.

(b) Since the date of the 2000 Financial Statements, Seller has not, except as described on Schedule 3.06(b) hereto:

(i) incurred any indebtedness for borrowed money:

(ii) except in the Ordinary Course of Business, entered into any lease (as lessor or lessee) for any Personal Property; sold, abandoned or made any other disposition of any of its assets or properties used in connection with the operation of the Business; granted or suffered any Liens or Other Encumbrances on any of its assets or properties used in connection with the operation of the Business; entered into or amended any Transferred Contract or other material agreement to which it is a party and which relates to the Business, or by or to which it or its assets or properties used in connection with the operation of the Business are bound or subject, or pursuant to which it agrees to indemnify any party or to refrain from competing with any party:

(iii) except for inventory or equipment acquired in the Ordinary Course of Business, made any acquisition of all or any part of the assets, properties, capital stock or business of any other Person which are included as part of the Acquired Assets; or

(iv) made any change in its accounting methods or practices, credit practices or collection policies, in each case as they relate to its operation of the Business.

SECTION 3.07 Inventories. The Inventories of the Business are at normal and adequate levels, and of a type and quality, necessary for the continuation of the Business in the Ordinary Course of Business.

SECTION 3.08 Receivables. All Receivables reflected on the 2000 Financial Statements and all Receivables arising subsequent to the date of the 2000 Financial Statements have arisen in the Ordinary Course of Business of Seller, represent valid and enforceable obligations due to Seller, have been and are subject to no set-off or counter-claim, and should be collectible in the Ordinary Course of Business of Seller in the aggregate recorded amounts thereof in accordance with their terms. Seller has no Receivables from any person, firm or corporation which is affiliated with Seller or from any director, officer or employee of Seller.

SECTION 3.09 Taxes. (a) None of the Acquired Assets is tax-exempt use property within the meaning of Section 168(h) of the Code. None of the Acquired Assets is property that is or will be required to be treated as being owned by another person pursuant to the provisions of Section 168(f)(8) of the Internal Revenue Code of 1954, as amended and in effect immediately prior to the enactment of the Tax Reform Act of 1986.

(b) All Federal, State and local Tax returns required to be filed by or with respect to Seller or its assets have been properly prepared and duly and timely filed with the appropriate taxing authorities in all jurisdictions in which such Tax returns are required to be filed, and all such Tax returns are true, complete and correct in all material respects. Seller has duly and timely paid all Taxes that are due, or claimed or asserted by any taxing authority to be due, from or with respect to it for periods covered by such Tax returns, except as set forth on Schedule 3.09(b).

(c) Seller has duly and timely withheld from employee salaries, wages and other compensation and has paid over to the appropriate taxing authorities all amounts required to be so withheld and paid over for all periods under all applicable laws.

(d) There are no outstanding agreements, waivers or arrangements extending the statutory period of limitation applicable to any claim for, or the period for the collection or assessment of, Taxes due from or with respect to Seller for any taxable period.

(e) All deficiencies asserted or assessments made as a result of any examinations by any taxing authority of the Tax returns of or covering or including Seller have been fully paid, and there are no other audits or investigations by any taxing authority in progress, nor has Seller received any notice from any taxing authority that it intends to conduct such an audit or investigation, except as disclosed on Schedule 3.09(e) hereto.

(f) Seller is not a foreign person within the meaning of Section 1445 of the Code, nor has Seller been a United States real property holding corporation within the meaning of Section 897(c)(2) during the applicable period specified in Section 897(c)(1)(A)(ii).

(g) No claim has been made by a taxing authority in a jurisdiction where Seller does not file Tax returns such that it is or may be subject to taxation by that jurisdiction.

(h) Seller is not party to any tax sharing or similar agreement or arrangement (whether or not written) pursuant to which it will have obligation to make any payments after the Closing.

(i) There are no liens with respect to Taxes upon any of the Acquired Assets.

(j) Seller has no liability for the taxes of any Person under Regulation 1.1502-6 (or any similar provision of state, local or foreign law) as a transferee or successor, by contract, or otherwise.

SECTION 3.10 **Litigation.** Except as set forth on Schedule 3.10 attached hereto, there is no Action pending or, to the knowledge of Seller, threatened against, contemplated or affecting Seller, any of its Affiliates, the Business or the transactions contemplated hereby (whether or not Seller is a party or prospective party thereto) that if adversely determined could have a Material Adverse Effect or that involves the validity of this Agreement or any Ancillary Agreement. There are no outstanding Orders involving or affecting Seller, the Business or the transactions contemplated hereby. There is no Action by Seller pending or threatened against others with respect to or relating in any way to the Business or the Acquired Assets.

SECTION 3.11 **Certain Practices.** Based upon the information currently available to and known by Seller, neither Seller nor any of Seller's officers, employees or agents has, directly or indirectly, given or agreed to give any significant rebate, gift or similar benefit to any supplier, customer, governmental employee or other person who was, is or may be in a position to help or hinder Seller or the Business (or assist in connection with any actual or proposed transaction) which (i) could subject Seller, any of the Acquired Assets or Buyer to any damage or penalty in any civil, criminal or governmental Action, or (ii) if not continued in the future, could result in a Material Adverse Effect.

SECTION 3.12 **Compliance with Law.** Seller has, prior to the Closing Date, complied with all laws, ordinances, legal requirements, rules, regulations and Orders applicable to it, its operations, properties, assets, products and services, each as they relate to the Business, and Seller is not in violation of or in default under any such law, ordinance, legal requirement, rule, regulation or Order, which default could have a Material Adverse Effect.

SECTION 3.13 **Licenses and Permits.** Schedule 3.13 attached hereto lists all material licenses, permits, pending applications, consents, approvals and authorizations of or from any Governmental Authority, used in or otherwise necessary for the operation or conduct of the Business or the ownership or use of the Acquired Assets (collectively, the Permits). Based upon the information currently available to and known by Seller, no other licenses, permits, pending applications, consents, approvals or authorizations are required for Seller's conduct of the Business in the Ordinary Course of Business or Seller's ownership or use of the Acquired Assets and Seller has complied in all material respects with all conditions and requirements imposed by the Permits. Seller owns or has the right to use the Permits in accordance with the terms thereof, and each Permit is valid and in full force and effect.

SECTION 3.14 **Labor and Employee Relations.** Seller is not a party to or bound by any collective bargaining agreement with any labor organization, group or

association covering any of its employees, and Seller has no knowledge of any attempt to organize any of such employees by any person, unit or group seeking to act as their bargaining agent.

SECTION 3.15 **Employees.** Attached hereto as Schedule 3.15 is a true, complete and correct list of each of Seller's employees and independent contractors who perform any services for Seller in connection with the operation of the Business, together, solely with respect to those employees and contractors who Seller contemplates will be available for employment by Buyer as of the Closing Date (the "Seller Employees"), with a list of the current salary and benefits (or other compensation, with respect to Seller Employees who are independent contractors) with respect to each such person. No Seller Employee has a written employment or consulting agreement with Seller except as disclosed on Schedule 3.15 hereto. No Seller Employee has indicated to Seller that he or she intends to terminate his or her employment or independent contractor status in connection with the transactions contemplated hereby or otherwise or seek a material change in his or her duties or status in connection with the Business, except as disclosed on Schedule 3.15 hereto.

SECTION 3.16 **Employee Benefits.**

(a) **Employee Benefit Plans.** Schedule 3.16 attached hereto contains a complete and correct list of each "employee benefit plan" (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) that currently is covering any Seller Employee or any former officer, director, employee of consultant of Seller who performed any services for Seller in connection with the operation of the Business and each other material plan or arrangement providing for severance benefits, deferred compensation, fringe benefits, pension benefits, insurance benefits, profit sharing, retirement benefits, stock purchases, stock options, incentives, bonuses, vacations, disability benefits, hospitalization benefits, medical insurance, life insurance and other employee benefit plans, programs or arrangements or any similar type of benefit or compensation covering any present or former officer, director, employee of consultant of Seller covering any Seller Employee or any former officer, director, employee of consultant of Seller who performed any services for Seller in connection with the operation of the Business (an "Employee Plan"). Seller has provided Buyer with complete and correct copies of the material documents comprising each Employee Plan and (where applicable) the summary plan description for each Employee Plan. Based upon the information currently available to and known by Seller, each Employee Plan which is subject to ERISA conforms in all material respects to, and its operation and administration are in all material respects in compliance with, all applicable requirements of ERISA. There has been no prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code with respect to any Employee Plan. There are no Actions pending (other than routine claims for benefits) or, to Seller's knowledge, threatened against any Employee Plan or against the

assets of any Employee Plan.

(b) Pension Plans. Except as set forth on Schedule 3.16, Seller has not maintained or contributed to, and has not been required to maintain or contribute to, any Employee Plan which is intended to be qualified as a pension plan under Section 401(a) of the Internal Revenue Code or which is an "employee pension benefit plan" (as defined in Section 3(2) of ERISA).

SECTION 3.17 Tangible Properties. With respect to all tangible Personal Property owned by or leased to Seller and belonging or relating to or used in the Business and that is part of the Acquired Assets (the "Tangible Personal Property"), (i) Seller has good and marketable title free and clear of all Liens and Other Encumbrances (other than Permitted Encumbrances) to all Tangible Personal Property owned by Seller and (ii) all leases, conditional sale contracts, franchises or licenses relating to leased Tangible Personal Property are valid and in full force and effect, and there is no existing default or event of default or event which with notice or lapse of time or both would constitute such a default under any of such instruments, which in any case individually or in the aggregate could have a Material Adverse Effect. Based upon the information currently available to and known by Seller, the Tangible Personal Property is adequate and usable for the purposes for which it is currently used and has been properly maintained and repaired and each item of Tangible Personal Property, whether owned or leased, is in good operating condition and repair and has been properly maintained, ordinary wear and tear excepted. With respect to the Tangible Personal Property, except for the representations and warranties contained herein or in any other Transaction Document, all such Tangible Personal Property shall be sold and transferred "as is where is" and all other implied warranties existing under applicable laws with respect thereto are disclaimed by Seller.

SECTION 3.18 Owned Premises. There is no real property owned by Seller, and all buildings and other structures utilized by Seller in connection with the operation of the Business are located on property owned by American Laundry Machinery, Inc., 5050 Section Avenue, Cincinnati, Ohio 45212. Seller shall assist Buyer in arranging for a mutually agreeable month-to-month tenancy between Buyer and American Laundry Machinery, Inc. on terms and conditions equivalent to those currently in effect.

SECTION 3.19 Assets Complete. The Acquired Assets constitute all of the assets, rights and properties necessary for Buyer to operate the Business in the Ordinary Course of Business after the Closing Date.

SECTION 3.20 Environmental Matters. No event has occurred or condition exists or operating practice is being employed by Seller that could give rise to any Action or Order under any Environmental Law or Environmental Permit. Based upon the information currently available to and known by Seller, Seller is in compliance with all Environmental

SECTION 3.21 Material Contracts. (a) Schedule 3.21 attached hereto sets forth a description of the following Contracts to which Seller is a party and that relate to the "Material Contracts"):

(i) all contracts, agreements, purchase orders and other arrangements, for the purchase or sale of merchandise, supplies or other property or the furnishing of services under the terms of which Seller in the aggregate (A) has paid or received during the calendar year ended December 31, 2000 more than \$10,000 or (B) is likely to pay or receive more than \$10,000 over the remaining term of the contract;

(ii) all distributor, dealer, agency, sales promotion, market research, marketing consulting and advertising contracts and agreements to which Seller is a party and which involve payments in the aggregate in excess of \$10,000;

(iii) all management contracts or contracts with independent directors or consultants (or similar arrangements) that are not cancelable without penalty or further payment within 30 calendar days of notice of such cancellation and which involve payments in the aggregate in excess of \$10,000;

(iv) all contracts and agreements with any Governmental

(v) all contracts and agreements that limit the ability of Seller or any Affiliates to compete in any line of business or with any Person or in any area or during any period of time;

(vi) all contracts, agreements and other arrangements between or among Seller or any Affiliate Subsidiary and any officer, director or stockholder of Seller or any member of the family of any officer, director or stockholder);

(vii) all contracts, agreements and other arrangements under any Employee Plan;

(viii) all contracts, agreements, instruments or other documents

relating to Seller's indebtedness for borrowed money or obligations under any capitalized leases or guarantees; and

(ix) all other contracts, agreements and other arrangements, whether or not made in the Ordinary Course of Business, the absence of which would result in a Material Adverse Effect.

(b) There have been delivered or made available to Buyer true and complete copies of all of the Material Contracts (and all amendments, waivers or other modifications thereto). Except as set forth on Schedule 3.21, all of such Material Contracts are valid, subsisting, in full force and effect, binding upon Seller, and to the best knowledge of Seller, binding upon the other parties thereto in accordance with their terms, and Seller has paid in full or accrued all amounts now due thereunder and has satisfied in full or provided for all of its Liabilities and obligations thereunder which are presently required to be satisfied or provided for, and is not in default under any of them, nor, to the best knowledge of Seller, is any other party to any such contract or other agreement in default thereunder, nor does any condition exist that with notice or lapse of time or both would constitute a default in any material respect thereunder. Seller has paid in full or accrued all amounts now due thereunder and has satisfied in full or provided for all of its Liabilities to obligations under the Material Contracts which are presently required to be satisfied or provided for.

(c) Except as set forth on Schedule 3.21(c) hereto, each Material Contract is freely and fully assignable to Buyer.

SECTION 3.22 Intellectual Property. (a) Schedule 3.22 attached hereto sets forth a list of all Intellectual Property rights owned, controlled, licensed or used by Seller in connection with its operation of the Business. Schedule 3.22 indicates for each listed item, the applicable jurisdiction, registration number (or application number), and date issued (or date filed) of each item of Intellectual Property. Seller has delivered or made available to Buyer true and complete copies (or descriptions) of all of such Intellectual Property rights. All trademarks, service marks, Internet domain name registrations and applications (and any other interests therein), patents and copyrights listed on Schedule 3.22 are in full force, are in good standing, and Seller is entitled to the use thereof and all applications listed therein as pending have been prosecuted in good faith as required by law and are in good standing. Seller owns or possesses adequate licenses or other rights to use all Intellectual Property necessary to conduct the Business as conducted and as proposed to be conducted, except where the failure to do so would not have a Material Adverse Effect, and all such rights will be duly and validly transferred to Buyer pursuant to the terms of this Agreement, free of all Liens or Other Encumbrances.

(b) The execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the transfer of Acquired Assets to Buyer and the consummation of the other transactions contemplated hereby, will not breach, violate or conflict with any instrument or agreement governing any Intellectual Property used in the conduct of the Business, will not cause the forfeiture or termination or give rise to a right of forfeiture or termination of any Strength Intellectual Property or in any way impair the right of Buyer to use, sell, license (or sublicense), transmit, broadcast, deliver (electronically or otherwise) or dispose of, or to bring any action for the infringement of, any Strength Intellectual Property or portion thereof.

(c) Except as set forth on Schedule 3.22(c), there are no royalties, honoraria, fees or other payments payable by Seller to any person by reason of the ownership, use, license (or sublicense), transmission, broadcast, delivery (electronically or otherwise), sale, or disposition of the Strength Intellectual Property.

(d) Neither the manufacture, marketing, license (or sublicense), sale, transmission, delivery (electronically or otherwise), or use of any product or service currently or proposed to be licensed, sold, marketed, transmitted, broadcast, delivered (electronically or otherwise) or used by Seller or currently under development by Seller, in the conduct of the Business violates any license (or sublicense) or agreement of Seller with any third party or infringes any common law or statutory rights of any other party, including, without limitation, rights relating to defamation, contractual rights, Intellectual Property and rights of privacy or publicity; nor to the best knowledge of Seller, is any third party materially infringing upon, or violating any license (or sublicense), transmission, broadcast, delivery, (electronically or otherwise) or agreement with Seller relating to, any Intellectual Property; and there is no pending or overtly threatened claim or litigation contesting the validity, ownership or right to use, manufacture, sell, license (or sublicense), transmit, broadcast, deliver (electronically or otherwise) or dispose of any Intellectual Property, nor to the knowledge of Seller, is there any basis for any such claim. Seller has not received any notice asserting that any Intellectual Property used in the Business or the proposed use, manufacture, sale, license (or sublicense), transmission, broadcast, delivery (electronically or otherwise) or disposition thereof in connection of the Business conflicts or will conflict with the rights of any other party nor, to Seller's knowledge, is there any basis for any such assertion.

(e) All current and past officers, employees and consultants of or to Seller have executed and delivered to and in favor of Seller an agreement regarding the protection of confidential and proprietary information and the assignment to Seller of all Intellectual Property arising from the services performed for Seller by such persons relating to the Business (collectively, the "Invention Assignment Agreements"), and Seller's rights under such Invention Assignment Agreements are freely assignable to Buyer. Seller has taken and

will continue through the Closing Date to take all steps necessary, appropriate or desirable to safeguard and maintain the secrecy and confidentiality of, and its proprietary rights in, all Intellectual Property used in the conduct of the Business.

(f) All works that were created, prepared or delivered by consultants, independent contractors or other third parties for or on behalf of Seller (including any materials and elements created, prepared or delivered by such parties in connection therewith) (A) are "works made for hire" specially ordered or commissioned by Seller within the meaning of United States' copyright law, or (B) all right, title and interest therein (including any materials and elements created, prepared or delivered by such parties in connection therewith) have been validly assigned to Seller in writing pursuant to the Invention Assignment Agreements.

(g) No licenses or rights have been granted by Seller, nor has Seller authorized any employee, consultant, officer, director, member, agent or affiliate to grant and licenses or rights, to distribute the source code of, or to use source code to create Derivative Works, of, any product currently marketed by, commercially available from or under development by Seller for which Seller possesses the source code. As used herein, "Derivative Work" shall mean a work that is based upon one or more preexisting works, such as a revision, enhancement, modification, abridgment, condensation, expansion or any other form in which such preexisting works may be recast, transformed or adapted, and which, if prepared without authorization of the owner of the copyright in such preexisting work, would constitute a copyright infringement. For purposes herein, a "Derivative Work" shall also include any compilation that incorporates such a preexisting work as well as translations from one type of code to another.

(h) Except as set forth on Section 3.22(h), no person has any marketing rights to any of the Strength Intellectual Property.

(i) Seller does not own and has not filed any application for patents relating to the Business. Based upon the information currently available to and known by Seller, all trademarks and copyrights relating to the Business are currently in compliance in all material respects with all legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications with respect to trademarks), are valid and enforceable, and are not subject to any maintenance fees or actions falling due within ninety (90) days after the Effective Time. No trademark relating to the Business has been or is now involved in any cancellation and no such action is threatened with respect to any of the trademarks. Except as disclosed on Schedule 3.22(i), to the knowledge of Seller, there are no potentially conflicting trademarks of any third party relating to the Business. All trademarks of Seller set forth on Schedule 3.22 have been in continuous use by Seller.

(d) Based upon the information currently available to and known by Seller, the Owned Software is free from any significant software defect, is free from any programming, documentation error or virus ("Bugs") not consistent with commercially reasonable industry standards acceptable for such Bugs, operates and runs in a reasonable and efficient business manner, conforms to the specifications thereof, and, the applications can be compiled from their associated source code without undue burden.

(e) Based upon the information currently available to and known by Seller, Seller has not altered its data, or any Software or supporting software that may in turn damage the integrity of the data, whether stored in electronic, optical or magnetic or other form. Seller has furnished Parent with all documentation in its possession in its original form relating to the use, maintenance and operation of the Software.

SECTION 3.24 Transactions With Affiliates. Except as set forth on Schedule 3.24, no manager, officer or stockholder of Seller (i) has any direct or indirect financial interest in any competitor, supplier or customer of Seller, (ii) owns, directly or indirectly, in whole or in part, any tangible or intangible property that Seller uses or has used in the conduct of the Business other than Shared Assets, or (iii) has outstanding any indebtedness to Seller related to the Business. Seller does not have any liability or obligation to any manager, officer or stockholder.

SECTION 3.25 Insurance. Schedule 3.25 sets forth a list of all policies or binders of fire, liability, product liability, workmen's compensation, vehicular, directors and officers and other insurance held by or on behalf of Seller. Such policies and binders are in full force and effect, all premiums with respect thereto are currently paid, are reasonably believed to be adequate for the Business. Seller is, and will be through the Closing Date, reasonably insured with responsible insurers against risks normally insured against by companies in similar lines of business under similar circumstances. Seller (i) has not failed to give any notice or present any claim under any such policy or binder in due and timely fashion, (ii) has not received notice of cancellation or non-renewal of any such policy or binder, (iii) is not aware of any threatened or proposed cancellation or non-renewal of any such policy or binder, (iv) has not received notice of any insurance premiums which will be materially increased in the future, and (v) is not aware of any insurance premiums which will be materially increased in the future. There are no outstanding claims under any such policy which have gone unpaid for more than 45 days, or as to which the insurer has disclaimed liability.

SECTION 3.26 Broker's Fee. No Person has or will have, as a result of the execution, delivery and performance by Seller of this Agreement or the Ancillary Agreements, any right, interest or claim against or upon Buyer or any other Person for any

commission, fee or other compensation as finder or broker or in any similar capacity.

SECTION 3.27 Investment Intent. Seller will, upon consummation of the transactions contemplated hereby, be acquiring the Parent Shares for its own account for the purpose of investment and not with a view to, or for sale in connection with, the distribution thereof, and it and they have no present intention of distributing or selling the Parent Shares. Seller understands that the Parent Shares to be delivered hereunder will not have been registered under the Securities Act of 1933, as amended (the "Securities Act"), or the securities laws of any state or other jurisdiction, and hereby agrees not to make any sale, transfer or other disposition of any thereof other than in connection with a dissolution of Seller unless either (i) such Parent Shares have been registered under the Securities Act and all applicable state and other securities laws and any such registration remains in effect or (ii) Seller shall have received an opinion of counsel from counsel, and in form and substance, satisfactory to Parent that registration is not required under the Securities Act or under applicable state securities laws.

SECTION 3.28 Opportunity to Investigate. Seller has (i) had the opportunity to ask questions of and has received satisfactory answers from the officers of Parent or persons acting on Parent's behalf concerning Parent and the terms and conditions of an investment in the Parent Shares and all such questions posed have been answered to its satisfaction; (ii) been given the opportunity to obtain any additional information it deems necessary to verify the accuracy of any information obtained concerning Parent; (iii) such knowledge and experience in financial and business matters that it is able to evaluate the merits and risks of acquiring the Parent Shares and to make an informed investment decision relating thereto; (iv) has been furnished with, and has read and reviewed, the Parent SEC Documents; (v) is aware of Parent's business affairs and financial condition and has acquired sufficient information about Parent to reach an informed and knowledgeable decision to acquire the Parent Shares to be issued to it; (vi) can afford to suffer a complete loss of its investment in such Parent Shares.

SECTION 3.29 Rule 144. Seller (i) is familiar with the provisions of Rule 144 promulgated under the Securities Act which, in substance, permits limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof, in a non-public offering subject to the satisfaction of certain circumstances which require among other things: (1) the availability of certain public information about the issuer, (2) the resale occurring not less than one year after the party has purchased, and made full payment for, within the meaning of Rule 144, the securities to be sold; and, in the case of an affiliate, or of a non-affiliate who has held the securities less than two years, the amount of securities being sold during any three month period not exceeding the specified limitations stated therein, if applicable and (3) the sale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under

the Exchange Act); (ii) understands that if all of the applicable requirements of Rule 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required prior to any sale of the Parent Shares; and that, notwithstanding the fact that Rule 144 is not exclusive, the staff of the SEC has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk; (iii) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of acquiring and holding the Parent Shares; and (iv) is an "accredited investor" within the meaning of Rule 501(a) under the Securities Act.

SECTION 3.30 **Disclosure.** All documents and schedules delivered or to be delivered by or on behalf of Seller in connection with this Agreement are true, complete and correct in all material respects. This Agreement, including, without limitation, the schedules and exhibits hereto and the certificates or other instruments or documents made or delivered in connection herewith or therewith, taken as a whole, does not contain any untrue statement of a material fact or omit any material fact necessary to make the statements contained herein or therein not misleading in view of the circumstances under which they were made.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER AND PARENT

Buyer and Parent hereby represent and warrant to Seller as follows:

SECTION 4.01 **Organization and Qualification.** Each of Parent and Buyer is duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is duly licensed or qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the ownership or leasing of its assets or properties requires it to be so licensed or qualified, except where the failure to be so licensed or qualified would not individually, or in the aggregate, have a material adverse effect on the business or operations of Parent or Buyer.

SECTION 4.02 **Corporate Power and Authority; Validity.** Each of Parent and Buyer has the corporate power and authority to (i) own and hold its properties and (ii) execute, deliver and perform this Agreement and the other Transaction Documents to which it is a party. All corporate (including stockholder, if applicable) action necessary for the execution, delivery and performance by Parent and Buyer of this Agreement and such other Transaction Documents and the consummation by Parent and Buyer of the transactions contemplated hereby and thereby has been duly taken, and any applicable preemptive rights

with respect to issuance of the Parent Shares have been waived. This Agreement has been, and each of the other Transaction Documents when executed and delivered by Parent and Buyer will be, duly executed and delivered by such party, as the case may be. This Agreement constitutes, and each such Transaction Documents when duly executed and delivered by Parent and Buyer will be, the valid and binding obligation of Parent and Buyer, enforceable against each of Parent and Buyer in accordance with its, respective terms, except as enforceability may be subject to the application of general equitable principles and to bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights.

SECTION 4.03 **No Conflict.** Neither the execution and delivery by Parent and Buyer of this Agreement and the other Transaction Documents to which either is to be a party, the consummation by Parent and Buyer of the transactions contemplated hereby or thereby, nor the performance by Parent and Buyer of this Agreement and such other Transaction Documents in compliance with the terms and conditions hereof and thereof, will (i) violate, conflict with or result in any breach of either's Certificate of Incorporation, as amended, or Bylaws, (ii) require by or on behalf of Parent and Buyer any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, other than (A) the filing with the SEC of such reports and information under the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated by the SEC thereunder, as may be required in connection with this Agreement and the transactions contemplated hereby, (B) the filing of such documents with, and the obtaining of such orders from, various state securities and blue-sky authorities as are required in connection with the transactions contemplated hereby, and (C) such other consents, waivers, authorizations, filings, approvals and registrations which if not obtained or made would materially impair the ability of Parent or Buyer to consummate the transactions contemplated by this Agreement (each of the actions reflected in clauses (A) and (B) to be taken by Parent), (iii) violate, conflict with or result in a breach, default or termination (or give rise to any right of termination, cancellation or acceleration of the maturity of any payment date of any of the obligations of Parent or Buyer or increase or otherwise affect the obligations of Parent or Buyer) under any law, rule, regulation, governmental permit, license or any Order or any of the terms, conditions or provisions of any mortgage, indenture, note, license, agreement or other instrument or obligation to which Parent or Buyer is a party or by which Parent or Buyer or any of its respective assets are bound or affected or (iv) result in the creation of any Lien or Other Encumbrance upon the assets of Parent or Buyer.

SECTION 4.04 **Broker's Fees.** No Person has or will have, as the result of the execution, delivery and performance by Parent and Buyer of this Agreement or the Ancillary Agreements, any right, interest or claim against or upon Seller or any other Person for any commission, fee or other compensation as finder, broker or in any similar capacity.

SECTION 4.05 **Capital Stock.** Parent's Quarterly Report on Form 10-Q filed with the SEC with respect to the fiscal quarter ended October 31, 2000 (the "Form 10-Q"), sets forth a true and complete description of the authorized and outstanding shares of capital stock of Parent as of such date. Parent has duly authorized and reserved for issuance the Parent Shares, and, when issued in accordance with the terms of Article II, the Parent Shares will be validly issued, fully paid and nonassessable and free of preemptive rights (other than any Parent rights which may be issued). Parent owns all the outstanding shares of capital stock of Buyer, and all of such shares are validly issued, fully paid and nonassessable and not subject to preemptive rights.

SECTION 4.06 **SEC Documents.** (i) Parent has furnished or made available to Seller a correct and complete copy of Parent's Form 10-Q and each report, schedule, registration statement and definitive proxy statement filed by Parent with the SEC on or after the date of filing of the Form 10-Q which are all the documents (other than preliminary material) that Parent was required to file (or otherwise did file) with the SEC in accordance with Sections 13, 14 and 15(d) of the Exchange Act on or after the date of filing with the SEC of the Form 10-Q (collectively, the "Parent SEC Documents"). As of their respective filing dates, or in the case of registration statements, their respective effective times, none of the Parent SEC Documents (including all exhibits and schedules thereto and documents incorporated by reference therein) contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, and the Parent SEC Documents complied when filed, or in the case of registration statements, as of their respective effective times, in all material respects with the then applicable requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations promulgated by the SEC thereunder.

(ii) The financial statements (including the notes thereto) of Parent included in the Form 10-Q for the fiscal quarter then ended, complied as to form in all material respects with the then applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP during the periods involved (except as may have been indicated in the notes thereto) and fairly present the financial position of Parent as at the dates thereof and the results of their operations, stockholders' equity and cash flows for the period then ended.

SECTION 4.07 **Compliance with Law.** Buyer and Parent each has complied in all material respects with all laws, ordinances, legal requirements, rules, regulations and Orders applicable to it, its operations, properties, assets, products and services and the Business and Seller is not in violation of or in default under any such law, ordinance, legal requirement, rule, regulation or Order, which non-compliance, violation or default would be expected to have a material adverse effect on Buyer's ability to consummate the transactions

contemplated hereby.

ARTICLE V

COVENANTS OF SELLER

In addition to the covenants contained in other sections of this Agreement, Seller hereby covenants and agrees as follows:

SECTION 5.01 Cooperation. (a) Seller shall use all commercially reasonable efforts to perform and fulfill all conditions and obligations to be fulfilled or performed by it hereunder, to the end that the transactions contemplated hereby will be fully and timely consummated. Seller shall use all commercially reasonable efforts to obtain all authorizations, consents and permits of others required to permit the consummation by it of the transactions contemplated by this Agreement, except to the extent waived by Buyer in writing. To the extent that the assignment of any lease, contract, commitment or right which is among the Acquired Assets shall require the consent of other parties thereto and Buyer has waived the receipt of such consent at the Closing, this Agreement shall not constitute an assignment thereof; provided, however, Seller shall use all commercially reasonable efforts after the Closing to obtain such consents or waivers to assure Buyer of the benefits of such leases, contracts, commitments or rights. Nothing herein shall be deemed a waiver by Buyer of its right to receive at the Closing an effective assignment of each of the Transferred Contracts or rights of Seller which are among the Acquired Assets.

(b) If any such consent has not been obtained as of the Closing Date and Buyer and Parent nevertheless determines to proceed with the Closing, Seller shall continue to use all commercially reasonable efforts to obtain such consent after the Closing. If, in such circumstances, the Closing is held, then, until such consent or waiver has been obtained, Buyer shall use its commercially reasonable efforts to perform in Seller's name and, in respect of the incremental costs incurred by Buyer in performing in Seller's name, at Seller's expense, all of Seller's obligations with respect to each Acquired Asset for which any such consent has not been obtained; provided, however, that Buyer shall not be required to take any action in performing such obligations which, in Buyer's reasonable judgment, would subject Buyer to any Liability or an unreasonable risk of incurring any Liability.

SECTION 5.02 Key Employees; Options. (a) Parent shall have the right to discuss and secure satisfactory assurances from Christian G. Strike that he will continue to be employed by Buyer following the consummation of the transactions contemplated hereby. Christian G. Strike shall agree to enter into an employment agreement, in form and substance satisfactory Christian G. Strike and Parent (the "Employment

Agreement"), which Employment Agreements shall contain customary noncompetition and nonsolicitation provisions and other usual and customary terms.

(b) On the Closing Date, Parent shall grant to Christian G. Strike 25,000 shares of Parent Common Stock at an exercise price per share equal to the closing price of a share of Parent Common Stock on the NASDAQ for the trading day immediately preceding the Closing Date. Such options (i) shall be Incentive Stock Options to the extent possible and (ii) shall become exercisable as to 25% of the underlying shares on each anniversary of the Closing Date.

SECTION 5.03 Access to Records and Properties of Each Party:

Confidentiality. From and after the date hereof until the Effective Time or the earlier termination of this Agreement pursuant to Section 9.01 hereof (the "Executory Period"), Seller shall permit Parent and its consultants and professional advisors to conduct, and assist Parent and its consultants and professional advisors in the conduct of, a full and complete investigation of Seller's business and technology relating to the Business and a review of Seller's books and records, contracts, technology, intellectual property, inventory, equipment, technical materials, customer records and other assets, reasonable, non-exclusive access to, and communications with current and former employees of Seller (the "Investigation"). The Investigation shall be conducted during normal business hours. Under no circumstances shall any information disclosed by Seller to Parent, or otherwise in Parent's possession, on or before the Effective Time, limit or restrict in any manner any right of Parent to terminate this Agreement upon the terms and conditions herein. All such information shall be subject to the confidentiality agreements currently existing between the parties; the Investigation shall not give Parent the right to use any disclosed or discovered information beyond the scope of these provisions or agreements or any applicable license agreement.

SECTION 5.04 Operation of Business of Seller. During the

Executory Period, Seller shall operate its business as now operated and only in the normal and ordinary course and, consistent with such operation, will use its best efforts to preserve intact its business and assets, to keep available the services of its officers and employees and to maintain satisfactory relationships with persons having business dealings with it. Without limiting the generality of the foregoing, during the Executory Period, Seller shall not, without the prior written consent of Parent: (a) take any action that would result in any of the representations and warranties of Seller herein becoming untrue or in any of the conditions of the sale not being satisfied; (b) take or cause to occur any of the actions or transactions described in Section 3.06(a); (c) enter into any transaction or agreement or take any action out of the Ordinary Course of Business or enter into any transaction or make any commitment involving an expense or capital expenditure by Seller relating to the Business in excess of \$10,000, other than with respect to reasonable ordinary course print bills from unaffiliated third parties; (d) declare any dividends or distributions, grant new stock options,

accelerate any options or issue new shares of stock or other securities or rights to acquire any such options or securities, or make any commitments with respect to any of the foregoing; (e) enter into any transaction or make any contract, agreement or commitment relating to any of the Acquired Assets or the Business, except in the Ordinary Course of Business; (f) enter into any Contract (i) which cannot be performed within three months or less, or (ii) which involves the expenditure of over \$51,000, except for sales and purchase contracts entered into in the Ordinary Course of Business; or (g) extend credit to customers of the Business departing from the normal and customary trade, discount and credit policies of Seller consistent with Ordinary Course of Business, or make any efforts to collect any accounts receivable of the Business other than in the Ordinary Course of Business.

SECTION 5.05 Negotiation With Others. During the Executory Period, Seller shall not (and Seller shall not permit its employees, directors, officers, stockholders, advisors, consultants or agents to), directly or indirectly: (i) solicit, initiate or engage in any discussions or negotiations with, whether or not initiated by Seller or any such person, or provide any information to, or take any other action with the intent to facilitate the efforts of, any third party relating to any possible agreement (whether binding or in principle) or other arrangement involving (1) the acquisition of Seller (whether by way of merger, purchase of capital stock, purchase of assets or otherwise); (2) the sale, license, disposition or encumbrance of any Acquired Assets; or (3) any action or agreement that would otherwise be inconsistent with the terms of this Agreement or the Ancillary Agreements or that would prohibit the performance of Seller's obligations under this Agreement or Ancillary Agreements or that could reasonably be expected to diminish the likelihood of or render impracticable or undesirable the consummation of the transactions contemplated hereby (each, a "Prohibited Transaction"); or (ii) authorize or consummate a Prohibited Transaction. In addition, upon execution and delivery of this Agreement, Seller shall: (i) terminate any and all discussions, if any, it or he may be having regarding a Prohibited Transaction; and (ii) immediately notify Parent in writing if it or he thereafter receives any inquiries or offers from any person or entity regarding a Prohibited Transaction, which notice shall contain the identity of such person or entity, the nature of the Prohibited Transaction proposed and the material terms of the proposal, and Seller shall refuse to discuss, and immediately reject such inquiry or offer.

SECTION 5.06 Advice of Changes. During the Executory Period, Seller shall confer with Parent on a regular and frequent basis, report on operational matters and promptly advise Parent of any change, event or circumstance having, or which, insofar as can reasonably be foreseen, could have a Material Adverse Effect or which could impair (negatively or positively) its financial projections or forecasts.

SECTION 5.07 Stockholder Approval. Seller shall (a) obtain in compliance with applicable Ohio corporate law and Seller's Charter Documents, the

requisite approval, if any, of its stockholders of the transactions contemplated hereby (the "Seller Holder Action") and (b) take or cause to be taken all such other action as may be required by any other applicable law in connection with this Agreement, in each case as promptly as practicable. In connection with the Seller Holder Action, Seller's board of directors shall recommend that the stockholders of Seller consent in writing to the transactions contemplated hereby and the approval and adoption of this Agreement and shall take all reasonable actions necessary to solicit such approval.

SECTION 5.08 **Legal Conditions to Sale.** Each party hereto shall take all reasonable actions necessary to comply promptly with all legal requirements that may be imposed on such party with respect to the sale and will take all reasonable actions necessary to cooperate with and furnish information to the other party or parties, as the case may be, in connection with any such requirements imposed upon such other party or parties in connection with the sale. Each party hereto shall take all reasonable actions necessary (a) to obtain (and will take all reasonable actions necessary to promptly cooperate with the other party or parties in obtaining) any consent, authorization, order or approval of, or any exemption by, any Governmental Authority, or other third party, required to be obtained or made by such party (or by the other party or parties) in connection with the sale or the taking of any action contemplated by this Agreement, (b) to defend, lift, rescind or mitigate the effect of any lawsuit, order, injunction or other action adversely affecting the ability of such party to consummate the transactions contemplated hereby and (c) to fulfill all conditions precedent applicable to such party pursuant to this Agreement.

SECTION 5.09 **Consents.** Each party hereto shall use its best efforts, and the other parties shall reasonably cooperate with such efforts, to obtain any consents and approvals of, or effect the notification of or filing with, each person or authority, whether private or governmental, whose consent or approval is required in order to permit the consummation of the transactions contemplated hereby and to Buyer to conduct and operate the Businesses in the Ordinary Course of Business after the Closing.

SECTION 5.10 **Notice of Prospective Breach.** Each party hereto shall immediately notify the other parties in writing upon the occurrence of any act, event, circumstance or thing that is reasonably likely to cause or result in a representation or Warranty hereunder to be untrue at the Closing, the failure of a closing condition to be achieved at the Closing, or any other breach or violation hereof or default hereunder.

SECTION 5.11 **Public Announcements.** The parties hereto agree that, to the maximum extent feasible, but subject to the public disclosure and other legal obligations of Parent and regulatory obligations to which each may be subject, they shall advise and confer prior to the issuance (and provide copies to the other party prior to issuance) of any public announcement or reports or statements with respect to the transactions contemplated hereby;

provided, however, that none of Seller or any of its affiliates or representatives will issue any report, statement or release pertaining to this Agreement or any transaction contemplated hereby, without the prior written consent of the Parent.

ARTICLE VI

CERTAIN POST-CLOSING COVENANTS

In addition to the covenants contained in other sections of this Agreement, Seller hereby covenants and agrees as follows:

SECTION 6.01 **Employee Matters.**

(a) As between Seller and Buyer, Seller shall retain responsibility for and continue to pay all medical, dental, life insurance, disability, supplemental unemployment, worker's compensation and other welfare plan expenses and benefits under the employee benefit plans and arrangements in effect on or prior to the Effective Time (with respect to Seller Employees, and their covered dependents). As between Seller and Buyer, Buyer shall be responsible for and shall pay all such expenses and benefits under the employee benefit plans and arrangements in effect after the Effective Time (with respect to Seller Employees who become employed by Buyer on and after the Closing Date, and their covered dependents). For purposes of this subsection (a), a benefit shall be deemed paid for when the services that are the subject of the benefit are performed or when the event occurs which entitles the covered person or his or her dependents to such benefit.

(b) No provision of this Section 6.01 shall create any third-party beneficiary rights in any person or organization, including, without limitation, employees or former employees (including any beneficiary or dependent thereof) of Seller or any of its affiliates, and trustees, administrators, participants or beneficiaries of any employee benefit plan or arrangement, including the currently existing plans of Seller, and no provision of this Section 6.01 shall create such third-party beneficiary rights in any such person or organization in respect of any benefits that may be provided, directly or indirectly, under any such employee benefit plan or arrangement.

SECTION 6.02 **Further Assurances.** At any time and from time to time after the Closing Date, at the reasonable request of Buyer, and without further consideration to Seller, Seller shall execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation as may be reasonably requested in order to more effectively transfer, convey and assign to Buyer and to confirm Buyer's title to the Acquired Assets. In addition, at any time and from time to time after the Closing Date, at the reasonable request

of Seller, Buyer shall execute and deliver such other instruments of assumption as may be reasonably requested by Seller in order to more effectively effectuate the assumption by Buyer of all of the Assumed Liabilities.

SECTION 6.03 **Access to Records.** (a) Seller shall, in connection with the preparation by Buyer of tax and financial reporting matters and other bona fide business purposes, for a period of 5 years from the Closing Date afford to Buyer and Parent and their representatives the opportunity, upon reasonable advance notice, to examine and make copies of the books and records of Seller, or portions thereof, which relate to the Business or the Acquired Assets for any period prior to the Closing and which were not transferred to Buyer pursuant to Section 2.01, and shall maintain such records for a period of 5 years from the date hereof.

(b) Buyer shall, in connection with the preparation by Seller of tax and financial reporting matters and other bona fide business purposes, for a period of 5 years from the Closing Date afford to Seller and its representatives the opportunity, upon reasonable advance notice, to examine and make copies of the books and records of Buyer which were transferred to Buyer pursuant to Section 2.01 to the extent they relate to periods prior to the Closing, and shall maintain such records for a period of 5 years from the date hereof.

SECTION 6.04. **Insurance.** All amounts collected by Seller under casualty policies for Claims arising from the date of this Agreement through the Closing Date in respect of any of the Acquired Assets or the Business shall, if paid prior to the Closing, be held by Seller in trust for the account of Buyer and shall be paid to Buyer at the Closing. Upon such payment, Seller shall be relieved of its obligation to deliver to Buyer at the Closing those Acquired Assets in respect of which such insurance proceeds were received; provided, however, that to the extent Seller has not maintained insurance in respect of any Acquired Asset or otherwise does not collect insurance proceeds in an amount equal to the then fair market value of such Acquired Assets prior to the Closing, the Acquisition Consideration shall be reduced by an amount equal to such shortfall.

SECTION 6.04. **Litigation Cooperation.** If a party hereto shall become engaged in or participate in any investigation, Claim, litigation, arbitration, mediation, or other proceeding with any third party relating in any way to Business or any of the Acquired Assets, the other party shall cooperate in all reasonable respects with such party in connection therewith, including, without limitation, making available to such party, without cost, all relevant records and using its best efforts to make available to the other the then employees of the party who may be helpful with respect to such Claim or litigation. In addition, should any Person bring any Claim against Buyer in connection with or otherwise relating to the Acquired Assets or Buyer's or Seller's Rights, duties and obligations in respect

thereof, Seller shall consult with and coordinate its actions with, and take direction from, Buyer in respect of any such Claim, and shall otherwise cooperate in all reasonable respects with Buyer in connection therewith, including, without limitation, making available to Buyer, without cost, all relevant records of Seller and using its best efforts to make available to Buyer the then employees of Seller who may be helpful with respect to such Claim or litigation, all as Buyer reasonably may request.

ARTICLE VII

CONDITIONS TO CLOSING

SECTION 7.01 Buyer's Obligation to Close. The obligation of Buyer to deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby is subject to the satisfaction, on or before the Closing Date, of the following conditions (each of which may be waived by Buyer in its sole discretion):

(a) Consents. The consent of the parties (other than Seller) to the Contracts listed on Schedule 3.21 hereto in connection with the assignment to Buyer of such Contracts, if required.

(b) Representations and Warranties to be True and Correct. Based upon the information currently available to and known by Seller, all of the representations and warranties of Seller contained in this Agreement or any Ancillary Agreement shall be true, correct and complete in all respects on and as of the date hereof and on and as of the Closing Date, as if made on and as of the Closing Date (except to the extent any such representation or warranty speaks as of a different date, in which case such representation or warranty shall still be true, correct and complete as of such different date). On the Closing Date, Seller shall have executed and delivered to Buyer a certificate, in form and substance satisfactory to Buyer and its counsel, to such effect.

(d) Performance. Seller shall have performed and complied in all material respects with all covenants and agreements contained herein required to be performed or complied with by it prior to or at the Closing Date. On the Closing Date, Seller shall have each executed and delivered to Buyer a certificate, in form and substance satisfactory to Buyer and its counsel, to such effect and to the further effect that all of the conditions set forth in this Section 7.01 have been satisfied.

(e) Officer's Certificate. Buyer shall have received a certificate of the President of Seller, dated as of the Closing Date, certifying as to (i) the attached true and correct copies of the Charter Documents of Seller, (ii) the incumbency of the officers

executing the Transaction Documents on behalf of Seller, and (iii) the attached true and correct copies of resolutions of Seller authorizing and approving the execution, delivery and performance of this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby, and the acts of the officers of Seller in carrying out the terms and provisions hereof.

(f) No Material Adverse Change. No Material Adverse Change shall have occurred since the date hereof.

(g) Opinion of Counsel. Buyer shall have received the opinion of Thompson, Hine and Flory, counsel to Seller, in substantially the form of Exhibit G attached hereto.

(h) Ancillary Agreements. Buyer shall have received executed counterparts of each of the following Ancillary Agreements, including the:

- (i) Assumption Agreement;
- (ii) Bill of Sale and Assignment;
- (iii) Investment Representation and Lock-up Agreement;
- (iv) Noncompetition Agreement;
- (v) Escrow Agreement;
- (vi) Employee Nondisclosure and Invention Assignment Agreements; and
- (vii) Strike Employment Agreement.

(i) Approval of Buyer. All actions, proceedings, consents, instruments and documents required to be delivered by, or at the behest or direction of, Seller hereunder or incident to their respective performance hereunder, and all other related matters, shall be reasonably satisfactory as to form and substance to Buyer.

(j) Employment Offers. Christian G. Strike shall have accepted an offer of employment with Parent or Buyer on terms reasonably satisfactory to Parent and Christian G. Strike.

(k) Financial Statements. Seller shall have delivered to Buyer true and

complete copies of the unaudited balance sheet of the Business as of January 31, 2001 and the related profit and loss statement and the related profit and loss statement (the "Interim Financial Statements"), which shall have been prepared in accordance with GAAP consistently applied and from the books and records of Seller.

SECTION 7.02 **Seller's Obligation to Close.** The obligation of Seller to transfer the Acquired Assets to Buyer, the obligation of Seller to deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby is subject to the satisfaction, on or before the Closing Date, of the following conditions (each of which may be waived by Seller in its sole discretion):

(a) **Representations and Warranties to be True and Correct.** The representations and warranties of Buyer and Parent contained in this Agreement or any Ancillary Agreement shall be true, complete and correct in all material respects on and as of the date hereof and on and as of the Closing Date, as if made on and as of such date (except to the extent any such representation or warranty speaks as of a different date, in which case such representation or warranty shall still be true, correct and complete as of such different date). On the Closing Date, Buyer and Parent shall each have executed and delivered to Seller a certificate, in form and substance reasonably satisfactory to Seller, to such effect.

(b) **Performance.** Buyer and Parent shall have performed and complied with all covenants and agreements contained herein required to be performed or complied with by them prior to or at the Closing Date, and Buyer and Parent shall have each executed and delivered a certificate to Seller, in form and substance reasonably satisfactory to Seller, to such effect.

(c) **Secretary's Certificate.** Seller shall have received certificates of the Secretaries or Assistant Secretaries of Buyer and Parent, dated as of the Closing Date, certifying as to (i) the attached true and correct copies of the Certificates of Incorporation, as amended, and Bylaws of Buyer and Parent, (ii) the incumbency of the officers executing the Transaction Documents on behalf of Buyer and Parent and (iii) the attached true and correct copies of resolutions of Buyer and Parent authorizing and approving the execution, delivery and performance of this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby, and the acts of the officers of Buyer and Parent in carrying out the terms and provisions hereof.

(d) **Ancillary Agreements.** Seller shall have received executed counterparts of each of the following Ancillary Agreements:

(i) Assumption Agreement;

- (ii) Bill of Sale;
- (iii) Registration Rights Agreement;
- (iv) Escrow Agreement; and
- (v) Strike Employment Agreement.

(e) Approval of Seller. All actions, proceedings, consents, instruments and documents required to be delivered by, or at the behest or direction of, Buyer and Parent under or incident to its performance hereunder, and all other related matters, shall be reasonably satisfactory as to form and substance to Seller.

ARTICLE VIII

INDEMNIFICATION

SECTION 8.01 Survival. All representations, warranties and covenants contained in this Agreement, or in any instrument or document furnished in connection with this Agreement or the transactions contemplated hereby (regardless of whether any such representation, warranty or covenant is set forth under a heading captioned "Representations and Warranties", "Covenants" or words of similar import, or whether contained within in any covenant or other provision this Agreement or any such instrument or document), shall survive the Closing and any investigation at any time made by or on behalf of any party for a period of fifteen (15) months following the Closing Date. All such representations, warranties and covenants shall expire on the fifteen month anniversary of the Closing Date (the "Specified Anniversary"), except that (i) claims, if any, asserted in writing on or prior to the Specified Anniversary identified as a claim for indemnification pursuant to this Article VIII shall survive until finally resolved and satisfied in full, and (ii) claims, if any, that (A) are based upon fraud by any party hereto or (B) assert liability for any Taxes imposed on or with respect to income shall survive for the full period of the applicable statute of limitations, and until finally resolved and satisfied in full if asserted on or prior to such date.

SECTION 8.02 Obligation of Seller to Indemnify.

(a) Subsequent to the Effective Time, Seller shall indemnify and hold harmless Buyer, Parent and their respective directors, officers, employees, agents, affiliates and assigns (collectively, the "Buyer Indemnified Persons") from and against Damages based upon, arising out of:

(i) any inaccuracy in any representation or breach of warranty of Seller contained in this Agreement, in any Ancillary Agreement or in any of the other Transaction Documents;

(ii) any failure by Seller to perform or observe, or to have performed or observed, in full, any covenant, agreement or condition to be performed or observed by it under this Agreement, under any Ancillary Agreement to which it is a party or under any of the other Transaction Documents;

(iii) the Excluded Assets; or

(iv) the Excluded Liabilities.

(b) Subject to Section 8.02(d), no indemnification pursuant to Section 8.02(a) shall be payable after the Specified Anniversary, except with respect to claims made prior to such date but not then resolved.

(c) The obligation of Seller to indemnify Buyer Indemnified Persons pursuant to Section 8.02(a) shall first be paid from the Escrow Shares (as provided for and defined in the Escrow Agreement).

(d) The limitations on Seller to indemnify Buyer Indemnified Parties under Section 8.02(b) shall not apply, and in any way limit, impair, modify or otherwise affect the rights of Buyer Indemnified Persons (i) to bring any claim, demand, suit or cause of action otherwise available to Buyer Indemnified Persons based upon an allegation or allegations that a party hereto had an intent to defraud or made a willful, intentional or reckless misrepresentation or willful omission of a material fact in connection with this Agreement or the Ancillary Agreements and the transactions contemplated hereby or thereby, or (ii) to enforce any judgment of a court of competent jurisdiction which finds or determines that the parties hereto, or any of them, had an intent to defraud or made a willful misrepresentation or omission of a material fact in connection with this Agreement or the Ancillary Agreements and the transactions contemplated hereby or thereby.

SECTION 8.03 Obligation of Buyer and Parent to Indemnify.

(a) Subsequent to the Effective Time, Buyer and Parent shall, indemnify and hold harmless Seller and its respective managers, officers, employees, agents, stockholders, affiliates and assigns (collectively, the "Seller Indemnified Persons") from and against any Damages based upon, arising out of or otherwise in respect of:

(i) any inaccuracy in any representation or breach of warranty of

Buyer or Parent contained in this Agreement, in any Ancillary Agreement or in any of the other Transaction Documents;

(ii) any failure by Buyer or Parent to perform or observe, or to have performed or observed, in all material respects, any covenant, agreement or condition to be performed or observed by it under this Agreement or under any Ancillary Agreement to which he, she or it is a party;

(iii) the Acquired Assets; or

(iv) the Assumed Liabilities.

(b) No indemnification pursuant to Section 8.03(a) shall be payable after the date that is fifteen (15) months following the Closing Date, except with respect to claims made prior to such date but not then resolved.

(c) The limitations on Buyer and Parent to indemnify Seller Indemnified Parties under Section 8.03(b) shall not apply, and in any way limit, impair, modify or otherwise affect the rights of Seller Indemnified Persons (i) to bring any claim, demand, suit or cause of action otherwise available to Seller Persons based upon an allegation or allegations that a party hereto had an intent to defraud or made a willful, intentional or reckless misrepresentation or willful omission of a material fact in connection with this Agreement or the Ancillary Agreements and the transactions contemplated hereby or thereby, or (ii) to enforce any judgment of a court of competent jurisdiction which finds or determines that the parties hereto, or any of them, had an intent to defraud or made a willful misrepresentation or omission of a material fact in connection with this Agreement or the Ancillary Agreements and the transactions contemplated hereby or thereby.

SECTION 8.04 Notice and Defense of Claims. Promptly after receipt of notice of any claim, liability or expense for which a party seeks indemnification under this Article VIII, such party shall give written notice thereof to the indemnifying party, but such notification shall not be a condition to indemnification hereunder except to the extent of actual prejudice to the indemnifying party. The notice shall state the information then available regarding the amount and nature of such claim, liability or expense and shall specify the provision or provisions of this Agreement under which the liability or obligation is asserted. If within 30 days after receiving such notice the indemnifying party gives written notice to the indemnified party stating that it intends to defend against such claim, liability or expense at its own cost and expense, then defense of such matter, including selection of counsel (subject to the consent of the indemnified party which consent shall not be unreasonably withheld), shall be by the indemnifying party and the indemnified party shall make no payment on such claim, liability or expense as long as the indemnifying party

is conducting a good faith and diligent defense. Notwithstanding the foregoing, the indemnified party shall at all times have the right to fully participate in such defense at its own expense directly or through counsel; provided, however, if the named parties to the action or proceeding include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate under applicable standards of professional conduct, the expense to separate counsel for the indemnified party shall be paid by the indemnifying party. If no such notice of intent to dispute and defend is given by the indemnifying party, or if such diligent good faith defense is not being or ceases to be conducted, the indemnified party shall, at the expense of the indemnifying party, undertake the defense of such claim, liability or expense with counsel selected by the indemnified party, and shall have the right to compromise or settle the same exercising reasonable business judgement. The indemnified party shall make available all information and assistance that the indemnifying party may reasonably request and shall cooperate with the indemnifying party in such defense. No indemnifying party shall without the prior written consent of the indemnified party (which consent shall not be unreasonably withheld), settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action suit or proceeding.

SECTION 8.05 Potential Additional Adjustments

(a) Notwithstanding the above indemnification, the parties acknowledge and agree that as promptly as practicable following the Closing Date, Parent shall cause Arthur Andersen to review the Closing Financial Certificate to determine the accuracy of the Actual Working Capital set forth therein. If Arthur Andersen determines that the actual figure is lower than the amount set forth in the Closing Financial Certificate, Parent shall deliver a written notice (the "Financial Adjustment Notice") to Seller setting forth (i) Parent's determination of the Actual Working Capital (the "Revised Amount"), (ii) the Working Capital Adjustment Factor that would have been applicable pursuant to Section 2.01 had the Revised Amount been reflected on the Closing Financial Certificate, and (iii) the additional shares of Parent Common Stock that would have been deducted from the Acquisition Consideration had the Revised Amount been used in the calculations pursuant to Section 2.01 (the "Additional Adjustment Shares").

(b) Seller shall have 30 days from the receipt of the Financial Adjustment Notice to notify Parent if Seller dispute such Financial Adjustment Notice. If Parent has not received notice of such a dispute within such 30-day period, Parent shall be entitled to receive from Seller (which may, at Parent's sole discretion, be from the Escrow Shares) the

number of shares that is equal to the Additional Adjustment Shares. If, on the other hand, Parent has received notice of such a dispute within such 30-day period, then Parent and Seller shall mutually agree on an independent accounting firm to review the Closing Financial Certificate and the Financial Adjustment Notice (and related information) to determine the amount, if any, of Additional Adjustment Shares that should be returned to Parent. If Parent and Seller cannot agree on an independent accounting firm, Arthur Andersen shall select such independent accounting firm. The determination of such independent accounting firm shall be final and binding on the parties hereto. The costs of the independent accounting firm shall be borne by the party whose determination of Actual Working Capital at the Effective Time was furthest from the determination of the independent accounting firm, or equally by Parent and Seller if the determination by the independent accounting firm is equidistant between the determinations of the parties.

ARTICLE IX

TERMINATION

SECTION 9.01 Termination. This Agreement and the transactions contemplated hereby may be terminated or abandoned at any time before the Closing Date:

- (a) by mutual written consent of Seller, Buyer and Parent;
- (b) by Buyer, if there has been a material misrepresentation in this Agreement by Seller, or a material breach by Seller of any of its warranties or covenants set forth herein;
- (c) by Seller, if there has been a material misrepresentation in this Agreement by Buyer, or a material breach by Buyer of any of the warranties or covenants of Buyer set forth herein except with respect to those breaches by Buyer of its representations and warranties which breaches will not, either individually or in the aggregate, have a material adverse effect on Buyer's ability to deliver the Acquisition Consideration at the Closing; and
- (d) by either Seller or Buyer if the Closing Date shall not have occurred before March 31, 2001, for any reason other than the failure of the party seeking to terminate this Agreement to perform its obligations hereunder or because of a breach of such party's representations or warranties hereunder.

SECTION 9.02 Effects of Termination. If this Agreement shall be terminated pursuant to Section 9.01, no party shall have any further right, duty or obligation

to the other parties hereunder; provided, however, that this sentence shall not be deemed to limit or define in any respect the Damages which Buyer, Parent or Seller may suffer or incur as a result of any breach of any provision of this Agreement by the other.

ARTICLE X

MISCELLANEOUS

SECTION 10.01 Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be either (i) delivered by hand, (ii) made by telecopy or facsimile transmission, (iii) sent by recognized overnight courier, or (iv) sent by registered or certified mail, return receipt requested, postage prepaid:

If to Buyer or
Parent:

Alloy Online, Inc.
151 W. 26th Street
New York, NY 10001
Attn: President
Fax: (212) 244-4311

With a copy to:

Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Ave., N.W.
Washington, DC 20004
Attn: Richard M. Graf
Fax: (202) 434-7400

If to Seller:

Anthony Y. Strike
Christian G. Strike
Rapid Service Company
5050 Section Avenue
Cincinnati, OH 45212
Fax: (513) 531-1421

With a copy to:

Christopher M. Bechhold, Esq.
Thompson Hine & Flory, LLP
312 Walnut Street
Suite 1400
Cincinnati, OH 45202-4029
Fax: (513) 241-4771

All notices, requests, consents and other communications hereunder shall be deemed to have been received (i) if by hand, at the time of the delivery thereof to the receiving party at the address of such party set forth above or as so designated, (ii) if made by telecopy or facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (iii) if sent by overnight courier, on the next business day following the day such notice is delivered to the courier service or (iv) if sent by registered or certified mail, on the fifth business day following the day such mailing is made.

SECTION 10.02 Entire Agreement. The Transaction Documents collectively embody the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in the Transaction Documents shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.

SECTION 10.03 Modifications and Amendments. The terms and provisions of this Agreement may be amended, modified, supplemented or waived only by written agreement executed by all parties hereto.

SECTION 10.04 No Waiver of Rights, Powers and Remedies. No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, shall operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, shall preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto shall not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement shall entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand. The terms and provisions of this Agreement may be waived,

or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent.

SECTION 10.05 Assignment. Neither this Agreement, nor any right or obligation hereunder, may be assigned by any of the parties hereto without the prior written consent of the other parties.

SECTION 10.06 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their permitted assigns, and nothing in this Agreement, express or implied, (i) is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement or (ii) shall be construed to create any rights or obligations except among the parties hereto, and no Person shall be regarded as a third-party beneficiary of this Agreement.

SECTION 10.07 Governing Law; Jurisdiction and Service of Process. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the internal law of the State of New York, without giving effect to the conflicts of law principles thereof. Any legal action or proceeding with respect to this Agreement shall be brought in the courts of New York or Ohio or of the United States of America for the Southern District of New York or the Southern District of Ohio. By execution and delivery of this Agreement, each of the parties hereto accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Each of the parties hereto irrevocably consents to the service of process of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by certified mail, postage prepaid, to the party at its address set forth in Section 10.01 hereof.

SECTION 10.08 Severability. In the event that any court of competent jurisdiction shall finally determine that any provision, or any portion thereof, contained in this Agreement shall be void or unenforceable in any respect, then such provision shall be deemed limited to the extent that such court determines it enforceable, and as so limited shall remain in full force and effect. In the event that such court shall determine that any such provision, or portion thereof, is wholly unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

SECTION 10.09 Interpretation. The parties hereto acknowledge and agree that:
(i) each party and its counsel reviewed and negotiated the terms and provisions of this Agreement (except with respect to the Disclosure Schedule regarding the Business which is

the sole responsibility of Seller) and have contributed to its revision; (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement; and (iii) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement.

SECTION 10.10 Headings and Captions. The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and shall in no way modify, or affect, or be considered in construing or interpreting the meaning or construction of any of the terms or provisions hereof.

SECTION 10.11 Enforcement. Each of the parties hereto acknowledges and agrees that the rights acquired by each party hereunder are unique and that irreparable damage would occur in the event that any of the provisions of this Agreement to be performed by the other party were not performed in accordance with their specific terms or were otherwise breached. Accordingly, in addition to any other remedy to which the parties hereto are entitled at law or in equity, each party hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the other party and to enforce specifically the terms and provisions hereof in any federal or state court of competent jurisdiction.

SECTION 10.12 Expenses. Except as expressly provided herein or in any other Transaction Document, each of the parties hereto shall pay its own fees and expenses (including the fees of any attorneys, accountants, appraisers or others engaged by such party) in connection with this Agreement and the transactions contemplated hereby whether or not the transactions contemplated hereby are consummated.

SECTION 10.13 Publicity. No party hereto may issue any press release or otherwise make any public statement with respect to the execution of, or the transactions contemplated by, this Agreement without the prior written consent of the other parties hereto, except as may be required by applicable law. Prior to making any public disclosure so required by applicable law, the disclosing party shall give the other parties a copy of the proposed disclosure and reasonable opportunity to prescribe or limit the same.

SECTION 10.14 Confidentiality. The parties acknowledge and agree that any information or data it has acquired from the other parties, not otherwise properly in the public domain, was received in confidence. The parties agree not to divulge, communicate or disclose any such confidential information concerning the subject matter hereof, including any trade or business secrets and any technical or business materials that are treated by the disclosing party as confidential or proprietary, including without limitation information (whether in written, oral or machine-readable form) concerning: general business


operations; methods of doing business, servicing clients, client relations, and of pricing and making charge for services and products; financial information, including costs, profits and sales; marketing strategies; business forms developed; names of suppliers, personnel, customers, clients and potential clients; negotiations or other business contacts with suppliers, personnel, customers, clients and potential clients; form and content of bids, proposals and contracts; internal reporting methods; technical and business data, documentation and drawings; software programs, however embodied; inventions; diagnostic techniques; and information obtained by or given to the parties about or belonging to third parties. In the event that this Agreement is terminated and/or the Closing does not occur, the parties agree to return to the disclosing party any such confidential information it received, and shall thereafter continue to use its best efforts to maintain the confidentiality thereof.

SECTION 10.15 Counterparts. This Agreement may be executed in one or more counterparts, and by the parties hereto in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.


PARENT:

ALLOY ONLINE, INC.

By: 
Name: MATT COSMONS
Title: CEO

BUYER:

STRENGTH PUBLISHING, INC.

By: 
Name: MATT COSMONS
Title: President

SELLER:

RAPID SERVICE COMPANY

By: _____
Name:
Title:

Signature Page to the Assets Purchase Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
day and year first above written.

PARENT:

ALLOY ONLINE, INC.

By: _____

Name:

Title:

BUYER:

STRENGTH PUBLISHING, INC.

By: _____

Name:

Title:

SELLER:

RAPID SERVICE COMPANY

By: CSH

Name: CHRISTIAN STRICK

Title: VICE PRESIDENT

CS189581.5(42@505!.DOC)

Schedules

Schedule 2.01(a)

All computers, phones, office furniture, computer printers, computer scanners used exclusively by Seller in the operation of the Business per Exhibit H attached hereto.

Schedule 2.01(b)

See Exhibit A attached hereto.

Schedule 2.01(c)

See Exhibit B attached hereto.

Schedule 2.01(d)

Retail Division dated August ,1995

Graffiti Corp. dated June, 2000

St. Ives. Dated December, 1999

Network Solutions dated January, 2001

ATT Credit Corporation dated December, 1999

Publisher Management Services (oral agreement with distribution consultant for \$500 per month; agreement is terminable at will)

Schedule 2.02(e)

All personal property, inventory and Intellectual Property owned by Rapid Service Company or American Laundry Machinery Inc.

Schedule 2.03(a)

St. Ives dated December, 1999

Schedule 2.04(c)

To be mutually agreed upon between Buyer and Seller.

Schedule 3.01

Ohio

Schedule 3.03(i)

No conflicts

Schedule 3.05

No undisclosed liabilities

Schedule 3.06(a)

None.

Schedule 3.06(b)

See Exhibit C attached hereto.

Schedule 3.09(b)

None.

Schedule 3.09(e)

None.

Schedule 3.10

None.

Schedule 3.13

None.

Schedule 3.15

See Exhibit D attached hereto.

Sean Peterson (Independent Contractor)

18. Schedule 3.16

See Exhibit E attached hereto.

19. Schedule 3.21

Retail Division dated August ,1995

Graffiti Corp. dated June, 2000

St. Ives. Dated December, 1999

Network Solutions dated January, 2001

ATT Credit Corporation dated December, 1999

Publisher Management Services (oral agreement with distribution consultant for \$500 per month; agreement is terminable at will)

Agreements with the following:

- Footwear
- Distribution
- Industries
- Distribution
- Distribution
- Being
- Smiks
- clothing
- Playaz
- Clothing
- Five Soul
- ny Z.
- Star Distribution
- Inc.
- Hawaii Pacific
- Smith Optics
- Gemini Rigley
- Black Fly

Schedule 3.21(c)

None.

Schedule 3.22

See Exhibit B attached hereto.

Schedule 3.22(c)

None.

23. Schedule 3.22(h)

None.

24. Schedule 3.22(i)

None.

Schedule 3.22(j)

See Exhibit F attached hereto.

Schedule 3.23

Quark

Adobe Photo Shop

Adobe Illustrator

Microsoft Suite 2000

Goldmine

Schedule 3.24

None.

Schedule 3.25

See Exhibit G attached hereto.

297074v2

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office, that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks, and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are a part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



J. Todd Johnson

Acting Commissioner of Patents and Trademarks

EXHIBIT

B

TRADEMARK

REEL: 002482 FRAME: 0317

RECORDED: 04/01/2002