

09-24-2002

Form PTO-1594

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

Tab settings



102230754

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):

A BETTER WAY OF LEARNING, INC.☐ Individual(s)☐ Association☐ General Partnership☐ Limited Partnership☒ Corporation-State
DELAWARE

Other

9-19-02

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

3. Nature of conveyance:

☒ Assignment☐ Merger☐ Security Agreement☐ Change of Name

Other

Execution Date: **MAY 16, 2002**

2. Name and address of receiving party(ies)

Name: **IMAGINENGINE DIRECT
PUBLISHING CORPORATION**Internal
Address:Street Address: **1912 SHELL AVENUE**City: **VENICE** State: **CA** Zip: **90261**☐ Individual(s) citizenship☐ Association☐ General Partnership☐ Limited Partnership☒ Corporation-State **DELAWARE**☐ OtherIf 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) **SEE SCHEDULE A**B. Trademark Registration No.(s) **SEE SCHEDULE A**Additional number(s) attached ☒ Yes ☐ No5. Name and address of party to whom correspondence
concerning document should be mailed:Name **REX D. FRAZIER, ESQ.**

Internal Address

09/23/2002 TDIAZI 00000108 75619588

01 FC:481
02 FC:48240.00 OP
975.00 OP
PILLSBURY WINTHROP LLPStreet Address: **725 SOUTH FIGUEROA STREET**City: **LOS ANGELES** State: **CA** Zip: **90017-5406**6. Total number of applications and
registrations involved:40.....7. Total fee (37 CFR 3.41).....\$ **1,015.00**☒ Enclosed☐ Authorized to be charged to deposit account8. Deposit account number: **16-1805**(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.***REX D. FRAZIER**

Name of Person Signing

Signature

Date

9/19/02

Total number of pages including cover sheet, attachments, and document **44****TRADEMARK
REEL: 002587 FRAME: 0360**

SCHEDULE A TO TRADEMARK ASSIGNMENT

U.S. Trademark	Serial / Registration No.	Filing/Issue Date
A BETTER WAY OF LEARNING	75/619,588 2,316,452	2/8/00
A BETTER WAY OF LEARNING	75/619,099 2,318,949	2/15/00
DETECTIVE DIGIT	75/978,127 2,263,797	7/20/99
GAMES2LEARN	75/783,635 2,426,431	2/6/01
THE PHONICS GAME A BETTER WAY OF LEARNING	75/619,654 2,505,031	11/6/01
18-HOUR PHONICS	75/976,592	9/30/96
18-HOUR PHONICS	75/321,599	7/9/97
18-HOUR PHONICS	75/173,509	9/30/96
18-HOUR PHONICS	75/130,754	7/8/96
18-HOUR PHONICS	75/321,599	7/9/97
DETECTIVE DIGIT	75/978,126	11/13/96
DETECTIVE DIGIT	75/197,463	11/13/96
ED (and design)	75/977,223	11/13/96
ED (and design)	75/197,431	11/13/96
G2L	75/815,873	10/5/99
G2L	75/814,925	10/5/99
GAMES2LEARN	75/767,413	8/4/99
GAMES2LEARN.COM	75/815,845	10/5/99
GET A CLUE	75/976,820	10/23/96
GET A CLUE	75/185,901	10/23/96
GET A CLUE	75/173,694	9/30/96
JUNIOR PHONICS	75/976,591	9/30/96
JUNIOR PHONICS	75/321,397	7/9/97
JUNIOR PHONICS	75/173,510	9/30/96
Q-UP: THE INTELLIGENCE GAME	75/197,465	11/13/96

SCHEDULE A-1

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TRADEMARK
REEL: 002587 FRAME: 0361

U.S. Trademark	Serial / Registration No.	Filing/Issue Date
Q-UP: THE INTELLIGENCE GAME	75/197,464	11/13/96
SMART-N-UP	75/359,692	9/19/97
THE MATH GAME A BETTER WAY OF LEARNING	75/619,316	1/12/99
THE MATH GAME A BETTER WAY OF LEARNING	75/618,925	1/12/99
THE MATH GAME JUNIOR A BETTER WAY OF LEARNING	75/619,468	1/12/99
THE MATH GAME JUNIOR A BETTER WAY OF LEARNING	75/619,467	1/12/99
THE PHONIC GAME JUNIOR A BETTER WAY OF LEARNING	75/618,929	1/12/99
THE PHONIC GAME JUNIOR A BETTER WAY OF LEARNING	75/618,927	1/12/99
THE PHONICS GAME	75/977,097	10/23/96
THE PHONICS GAME	75/976,871	10/23/96
THE PHONICS GAME (Stylized Letters)	75/185,957	10/23/96
THE PHONICS GAME	75/185,900	10/23/96
THE PHONICS GAME	75/173,508	9/30/96
THE PHONICS GAME	75/131,118	7/8/96
THE PHONICS GAME A BETTER WAY OF LEARNING	75/619,578	1/12/99

SCHEDULE A-2

UNITED STATES BANKRUPTCY COURT
Central District of California

I hereby attest and certify that on 5-28-02 the
attached reproduction(s), containing 40 pages, is a
full, true and correct copy of the complete document entitled:

Order approving Re: SACCO-14075JR
Case Name: A Better Way of
Learning entered on: 5-16-02

which includes: ☐ Exhibits ☒ Attachments

on file in my office and in my legal custody at the marked location:

☐ 300 North Los Angeles Street
Los Angeles, CA 90012

☐ 3420 Twelfth Street, Suite 125
Riverside, CA 92501-3819

☒ 411 West 4th Street, Suite 2074
Santa Ana, CA 92701-4593

☐ 1415 State Street
Santa Barbara, CA 93101-2511

☐ 21041 Burbank Boulevard
Woodland Hills, CA 91367

Jon D. Ceretto, Clerk of Court

By: _____

Deputy Clerk

**THIS CERTIFICATION IS VALID ONLY WITH THE
UNITED STATES BANKRUPTCY COURT SEAL.**

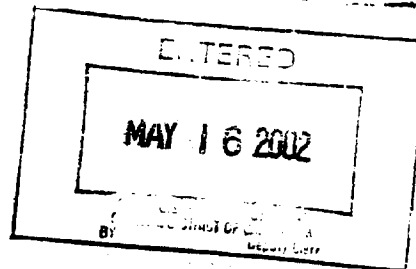
ORIGINAL

U.S. BANKRUPTCY COURT
FILED

MAY 15 2002

U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Santa Ana, CA

1 **ALBERT, WEILAND & GOLDEN, LLP**
Michael J. Weiland, State Bar No. 96672
2 Kyra E. Andrassy, State Bar No. 207959
650 Town Center Drive, Suite 950
3 Costa Mesa, California 92626
Telephone: (714) 966-1000
4 Facsimile: (714) 966-1002
5 Attorneys for ImagineEngine Corp.



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

In re

A BETTER WAY OF LEARNING, INC., dba
Games 2 Learn, a Delaware corporation,

Debtor.

Case No. SA 00-14075 JR

Chapter 11

~~PROPOSED~~ ORDER APPROVING:
(1) THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTOR'S ASSETS FREE
AND CLEAR OF LIENS, CLAIMS AND
INTERESTS PURSUANT TO 11 U.S.C.
§ 363;
(2) ASSUMPTION AND ASSIGNMENT
OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND
(3) BIDDING PROCEDURE

DATE: April 29, 2002
TIME: 11:00 a.m.
CTRM.: 5A

At the above date and time, a hearing was held on the motion ("Motion") of
A Better Way of Learning, Inc. ("Debtor") for an order approving: (1) the sale of
substantially all of Debtor's assets free and clear of liens, claims and interests pursuant
to 11 U.S.C. § 363; (2) the assumption and assignment of executory contracts and
unexpired leases; (3) the consideration of potential overbids; and (4) the approval of a
topping fee. Appearances were as noted on the record.

Having considered the arguments of counsel and the facts set forth in the

1 pleadings of record in this case, and finding that appropriate and sufficient notice of the
2 hearing on the Motion was given, and good cause appearing therefore:

3 THE COURT FINDS THAT:

4 A. Debtor properly noticed the Motion to all creditors and all parties in interest
5 entitled to such notice;

6 B. Notice of the Motion and the opportunity to overbid was adequate and
7 proper and no further notice of the Motion is necessary;

8 C. The offer that Debtor received from ImaginEngine Corp., a California
9 corporation ("ImaginEngine") was the highest and best offer;

10 D. The Asset Purchase Agreement ("Sale Agreement") dated April 29, 2002,
11 a copy of which is attached hereto as Exhibit 1, between Debtor and ImaginEngine, is
12 approved as being fair and reasonable and was negotiated at arm's length and in good
13 faith;

14 E. The Letter of Intent ("Term Sheet") dated April 1, 2002, a copy of which is
15 attached hereto as Exhibit 2, between Debtor, ImaginEngine and Wells Fargo Bank
16 National Association ("Bank") is approved as being fair and reasonable and was
17 negotiated at arm's length and in good faith;

18 F. The sale and conveyance of the Assets, as the term is defined in Article 4
19 of the Sale Agreement, to ImaginEngine, pursuant to the Sale Agreement, is approved,
20 including without limitation the right of ImaginEngine pursuant to the Sale Agreement to
21 designate another vestee to take title to the property at the closing;

22 G. Debtor, ImaginEngine and Bank entered into the Term Sheet, Debtor and
23 ImaginEngine entered into the Sale Agreement, and Debtor is selling and ImaginEngine
24 is purchasing the Assets, all in good faith within the meaning of 11 U.S.C. § 363(m), and
25 said parties are entitled to all protections afforded by 11 U.S.C. § 363(m);

26 H. There is sound, adequate business justification to proceed with the sale of
27 the Assets to ImaginEngine or its designee, including that the value of the Assets is
28 declining, the sale will minimize administrative expenses, and ImaginEngine is paying

1 fair value for the Assets;

2 I. Conditioned on the curing of any defaults thereunder, the assumption of the
3 Assumed Agreements, as that term is defined in Section 4.2 of the Sale Agreement, by
4 the Debtor and the assignment of the Assumed Agreements to ImaginEngine or its
5 designee pursuant to 11 U.S.C. § 365(a) and (f) is in the best interests of Debtor,
6 Debtor's chapter 11 bankruptcy estate ("Estate"), and creditors and parties in interest.
7 ImaginEngine has provided adequate assurance of future performance of the Assumed
8 Agreements.

9 **IT IS THEREFORE ORDERED that:**

10 1. The Motion is granted and any oppositions to the Motion that were not
11 withdrawn at the hearing are overruled;

12 2. Subject to all other provisions of this Order, Debtor is authorized to sell the
13 Assets to ImaginEngine or another person designated by ImaginEngine pursuant to the
14 Sale Agreement, for the consideration described in Section 4.6 of the Sale Agreement,
15 as described in the Motion and pursuant to the terms, conditions and provisions of the
16 Term Sheet and Sale Agreement, which terms, conditions, and provisions are approved;

17 3. Except as otherwise set forth in the Term Sheet and Sale Agreement, the
18 sale of the Assets to ImaginEngine or its designee is free and clear of all liens, claims,
19 and interests, including but not limited to the lien of Bank, pursuant to 11 U.S.C. § 363(f);

20 4. Debtor is authorized, and is hereby deemed, effective as of the Closing,
21 as that term is defined in the Sale Agreement, to assume the Assumed Agreements
22 pursuant to 11 U.S.C. § 365(a), and the Assumed Agreements are hereby assigned,
23 effective as of the Closing, to ImaginEngine or ImaginEngine's designee pursuant to
24 11 U.S.C. § 365(f). If there exists any default under the Assumed Agreements as of the
25 Closing, then such default(s) will be cured as of the Closing;

26 5. Except as set forth in Section 4.2 of the Sale Agreement, neither
27 ImaginEngine nor its designee will have any liability or responsibility for any liability or
28 obligation of Debtor or the Estate. Neither ImaginEngine, nor any person designated by

1 ImaginEngine pursuant to the Sale Agreement to take title to the property, will be
2 deemed as the result of any transactions contemplated by the Motion, Term Sheet or
3 Sale Agreement, to: (a) be the successor of Debtor or the Estate; (b) have de facto or
4 otherwise merged with or into Debtor or the Estate; (c) be a continuation of Debtor or the
5 Estate; or (d) be responsible for any liability other than the liabilities, if any, expressly
6 assumed pursuant to the Sale Agreement;

7 6. Debtor is authorized to take all actions and execute all documents
8 necessary to effectuate the sale and transfer of the Assets to ImaginEngine, to effectuate
9 the assumption and assignment of the Assumed Agreements, and to take all other
10 actions or execute all other documents contemplated under the Term Sheet and under
11 the Sale Agreement;

12 7. This Court will retain jurisdiction to implement and enforce the terms of the
13 Sale Agreement and any documents executed to effectuate or implement the Sale
14 Agreement and this Order;

15 8. The failure to specifically include in this Order any particular provision of the
16 Sale Agreement will not diminish or impair the effect of such provision;

17 9. The terms of the Term Sheet and the Sale Agreement, together with the
18 terms and provisions of this Order, will be binding in all respects upon all entities,
19 including, but not limited to, Debtor and its successors, creditors, employees, and
20 shareholders;

21 10. The Term Sheet and the Sale Agreement may be modified, amended, or
22 supplemented by the parties thereto in accordance with the terms thereof without further
23 order of the Court, provided that any such modification, amendment, or supplement has
24 no material adverse effect on the Debtor's estate or its creditors; and

25 11. As provided by Federal Rules of Bankruptcy Procedure 7062, 6004(g), and

26 \\\

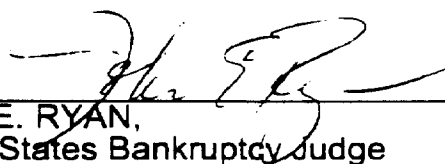
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1 6006(d), this Order will be effective and enforceable immediately upon its entry.

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3 DATED:

4 MAY 15 2002


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JOHN E. RYAN,
United States Bankruptcy Judge

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("**Agreement**") is made, executed and entered into as of April 29, 2002 ("**Execution Date**"), by and between the following Persons, each of whom is a "**Party**" and both of whom are the "**Parties**":

ImagineEngine Corp., a California corporation ("**Buyer**"); and

A Better Way of Learning, Inc., dba Games 2 Learn, a Delaware corporation ("**Seller**");

with regard to the following facts, circumstances and beliefs (collectively, "**Recitals**"):

R E C I T A L S:

- A. Seller is engaged in the business of developing and marketing children's educational games, books, toys and software, and other products.
- B. Seller commenced a case ("**Bankruptcy Case**") pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. Sections 101 et. seq. ("**Bankruptcy Code**") on May 19, 2000 ("**Petition Date**") by filing a voluntary petition with the United States Bankruptcy Court for the Central District of California, Santa Ana Division ("**Bankruptcy Court**") as Case No. SA 00-14075 JR.
- C. Seller is the owner of the assets (collectively "**Property**") described in Section 4.1.
- D. Wells Fargo Bank, N.A. ("**Bank**") has asserted that Bank has a lien against some or all of the Property, to secure indebtedness of approximately \$2,300,000.00 allegedly owed by Seller to Bank.
- E. The sale of the Property is subject to approval by the Bankruptcy Court.
- F. Buyer, Seller and Bank, negotiated and entered into a letter of understanding ("**Term Sheet**") dated April 1, 2002, outlining the conditions pursuant to which Bank would consent to a sale of its collateral free and clear of Liens, Claims and Interests, except the new lien in favor of Bank to secure the \$1,300,000.00 Note. A copy of the Term Sheet is attached as Exhibit "A". The Term Sheet provides, among other things, that:
 - (1) Buyer will form two new entities; one, referred to in the Term Sheet as "**AAC**", to purchase the Property, and one, referred to in the Term Sheet as "**NPIPHC**", to develop and market certain types of products pursuant to a distribution agreement between AAC and NPIPHC. AAC and NPIPHC will be structured and capitalized as set forth in the Term Sheet; and

SELLER'S INITIALS:

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BUYER'S INITIALS:

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EXHIBIT 1 PAGE 6

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- (2) Bank will receive: (a) a new promissory note executed by AAC in favor of Bank in the original principal amount of \$1,300,000.00, secured as set forth in the Term Sheet; (b) three percent (3.00%) of the common stock of AAC; (c) twenty-five percent (25%) of the common stock of NPIPHC; and (d) certain other rights and interests as set forth in the Term Sheet.
- G. Seller filed with the Bankruptcy Court a Notice of Motion and Motion for Order Approving: (1) the Sale of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims and Interests Pursuant to 11 U.S.C. Section 363; (2) Assumption and Assignment of Executory Contracts and Unexpired Leases; and (3) Consideration of Potential Overbids and Approval of Topping Fee ("**Sale Motion**").
- H. Pursuant to an Order Shortening Time for Motion Approving: (1) the Sale of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims and Interests Pursuant to 11 U.S.C. Section 363; (2) Assumption and Assignment of Executory Contracts and Unexpired Leases; and (3) Consideration of Potential Overbids and Approval of Topping Fee; entered by the Bankruptcy Court on April 8, 2002, the Sale Motion was set for hearing ("**Sale Hearing**") before the Bankruptcy Court on April 29, 2002 ("**Sale Hearing Date**").
- I. At the April 29, 2002, Sale Hearing, the Bankruptcy Court approved the sale of the Property to Buyer consistent with the terms and provisions of the Term Sheet and this Agreement.
- J. Pursuant to this Agreement and 11 U.S.C. Section 363(f), Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer, free and clear of Liens, Claims and Interests, except for the new lien in favor of Bank described in Section 4.6(a).

Pursuant to the Recitals, in consideration of the representations, warranties, covenants, agreements and declarations of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions of this Agreement, the Parties, intending to be legally bound by this Agreement, hereby represent, warrant, covenant, agree, and declare as follows:

ARTICLE 1.

DEFINED TERMS

1.1. **Use of Defined Terms.** Capitalized words and phrases will have the meaning assigned to them in this Agreement when used in this Agreement or any document delivered pursuant to this Agreement, unless the context in which such capitalized word or phrase is used reasonably prohibits the application of such meaning.

SELLER'S INITIALS:

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BUYER'S INITIALS:

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EXHIBIT 1 PAGE 7

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1.2. **Location of Defined Terms.** The following capitalized words and phrases are defined in the following Sections of this Agreement:

- (a) **"AAC"** is defined in Recital "F(1)".
- (b) **"Affiliate"** will mean, with respect to any Person, any other Person that:
(1) directly or indirectly controls, is controlled by, or is under common control with the Person; (2) has two percent (2%) or more of its outstanding voting securities under the direct or indirect beneficial ownership or control of the Person; (3) beneficially owns or controls, directly or indirectly, two percent (2%) or more of the outstanding voting securities of the Person; (4) is an officer, director or partner of the Person; (5) is, if the Person is an officer, director or partner, any corporation, partnership or other entity for which the Person acts in any such capacity; or (6) is legally related to the Person by birth, adoption or marriage within three or fewer degrees of separation.
- (c) **"Agreement"** is defined in the Introductory Paragraph.
- (d) **"Appeal"** is defined in Section 2.1.
- (e) **"Approval Order"** is defined in Section 2.1.
- (f) **"Assumed Agreements"** is defined in Section 4.2.
- (g) **"Assumed Executory Contracts"** is defined in Section 4.2.
- (h) **"Assumed Liabilities"** is defined in Section 4.3.
- (i) **"Assumed Personal Property Leases"** is defined in Section 4.2.
- (j) **"Assumed Real Property Leases"** is defined in Section 4.2.
- (k) **"Bank"** is defined in Recital "D".
- (l) **"Bank Lien"** is defined in Recital "D".
- (m) **"Bankruptcy Case"** is defined in Recital "B".
- (n) **"Bankruptcy Code"** is defined in Recital "B".
- (o) **"Bankruptcy Court"** is defined in Recital "B".
- (p) [Intentionally Deleted].

SELLER'S INITIALS:

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- 3 -

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BUYER'S INITIALS:

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EXHIBIT 1 PAGE 8

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- (q) **"Business Day"** will mean any day other than a Saturday or Sunday upon which a majority of federally insured banks are open for business in California.
- (r) **"Buyer"** is defined in the Introductory Paragraph.
- (s) **"Buyer's Agents"** is defined in Section 3.1.
- (t) **"Buyer's Representations"** is defined in Section 5.1.
- (u) **"Claim"** will mean any demand, allegation, indebtedness, obligation, duty, action, cause of action, damage, injury, cost, expense, charge, lien, judgment, order, liability, or other claim.
- (v) **"Closing"** is defined in Section 4.12.
- (w) **"Closing Location"** is defined in Section 4.9.
- (x) **"Closing Performance Date"** is defined in Section 4.8.
- (y) [Intentionally Deleted].
- (z) **"Conveyance Instruments"** is defined in Section 4.7.
- (aa) **"Debtor"**, if used in this Agreement, will mean Seller.
- (ab) **"Dollars"** and **"\$"** will mean the currency of the United States of America, unless otherwise specifically provided.
- (ac) **"Execution Date"** is defined in the Introductory Paragraph.
- (ad) **"FRBP"** is defined in Section 2.1.
- (ae) **"Government Entity"** will mean any (1) federal, state, county, city, municipal, local or foreign government; (2) governmental or quasi-governmental authority of any kind, including any governmental agency, branch, department, official, court, tribunal or entity; or (3) body exercising or entitled to exercise any executive, legislative, judicial, administrative, police, regulatory or taxing authority or power.
- (af) **"Inspections"** is defined in Section 3.2.
- (ag) **"Interest"** will mean any right, title, ownership, claim of possession, indicia of title, indicia of ownership, or other interest.

SELLER'S INITIALS:

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- 4 -

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BUYER'S INITIALS:

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EXHIBIT 1 PAGE 9

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- (ah) "Law" will mean any federal, state, county, city, municipal, local or foreign statute, code, ordinance, regulation, rule, principal of common law, or order or judgment enacted by any Governmental Entity, or other law.
- (ai) "Lien" will mean any security interest, pledge, hypothecation, encumbrance, mortgage, deed of trust, charge, claim, or other lien.
- (aj) "Material Adverse Effect" will mean any material damage, injury or adverse effect to the Property which could be reasonably expect to: (1) delay the Closing; or (2) reduce the quality, condition or value of the Property.
- (ak) "Note" is defined in Section 4.6.
- (al) "Notice" will mean any notice, consent, approval, disapproval, waiver or other communication of any kind given pursuant to this Agreement.
- (am) "NPIPHC" is defined in Recital "F(1).
- (an) "Party" or "Parties" is defined in the Introductory Paragraph.
- (ao) "Person" will mean any individual, trust, estate, agency, general partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, labor union, Government Entity, or other entity.
- (ap) "Petition Date" is defined in Recital "B".
- (aq) "Property" is defined in Recital "C" and described in Section 4.1.
- (ar) "Purchase Price" is defined in Section 4.6.
- (as) "Recitals" is defined in the Introductory Paragraph.
- (at) "Sale Hearing" is defined in Recital "I".
- (au) "Sale Hearing Date" is defined in Recital "I".
- (av) "Sale Motion" is defined in Recital "H".
- (aw) "Seller" is defined in the Introductory Paragraph.
- (ax) "Seller's Representations" is defined in Section 5.2.
- (ay) "Specifically Excluded Asset" is defined in Section 4.4.
- (az) "Stay" is defined in Section 2.1.

SELLER'S INITIALS:

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- 5 -

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BUYER'S INITIALS:

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EXHIBIT 1 PAGE 10

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(ba) "Tax" will mean any federal, state, county, local, foreign or other tax or levy, or any penalty, interest or charge thereon or relating thereto, with respect to the income, profit, gain, net worth, sales, use, gross receipts, ad valorem, business, occupation, franchise, license, estimation, stamp, custom duty, personal property, real property, capital stock, excise, value added, payroll, employee, social security, income withholding, unemployment, and other property or acts of Seller.

(bb) "Term Sheet" is defined in Recital "F".

(bc) "Transaction" is defined in Section 2.1.

1.3. **Conventions.** This Agreement assumes the following conventions:

(a) The words "include", "includes" or "including" will be deemed to be followed by the words "without limitation".

(b) Words or phrases denoting gender will include all genders including the masculine, feminine and neuter.

(c) Words or phrases denoting the singular will be deemed to include the plural and words or phrases denoting the plural will be deemed to include the singular, unless such convention would be contrary to the obvious intent of this Agreement.

(d) A reference to any Party, or any party to any other agreement or document, will include such Person's successors and permitted assigns.

(e) A reference to any legislation or to any provision of any legislation will include any replacement, substitution, modification or re-enactment of such legislation, and all rules, regulations and statutory instruments issued pursuant to such legislation.

(f) All financial and accounting terms will be defined in accordance with United States Generally Accepted Accounting Principals, unless otherwise specifically provided.

ARTICLE 2.

BANKRUPTCY COURT APPROVAL OF THIS AGREEMENT

2.1. **Binding Effect; Entry of Approval Order.** Article 1, Article 2 and Article 5 are effective upon the Execution Date. Except for Article 1, Article 2 and Article 5, this Agreement will become effective only upon the entry by the Bankruptcy Court in the Bankruptcy Case of a final binding order ("**Approval Order**") approving this Agreement and the sale of the Property to Buyer pursuant to this Agreement (the "**Transaction**"), free of liens, claims and interests pursuant to 11 U.S.C. Section 363(f), and with a finding that Buyer is a good faith purchaser pursuant to 11 U.S.C. Section 363(m). If an appeal of the Approval Order or a motion for reconsideration of the Approval Order

SELLER'S INITIALS:

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- 6 -

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BUYER'S INITIALS:

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PAGE 11

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REEL: 002587 FRAME: 0374

(either, an "Appeal") is timely filed pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 8002, and no stay ("Stay") of the execution of the Approval Order is issued pursuant to FRBP 7062 pending resolution of the Appeal, or if no Appeal of the Approval Order is timely filed pursuant to FRBP 8002, then the Parties will proceed with the Transaction. However, if an Appeal of the Approval Order is timely filed pursuant to FRBP 8002, and a Stay of the execution of the Approval Order is issued pursuant to FRBP 7062 pending resolution of the Appeal, then any Party not in default of this Agreement may terminate this Agreement as provided for in Section 6.1.

2.2. Obligation to Seek Approval Order. Each Party will in good faith exercise all reasonable efforts required of such Party to obtain the entry of the Approval Order, including promptly executing and delivering any motions, declarations or items of support reasonably required in connection therewith. Each Party will appear at the Sale Hearing and any subsequent hearings relating to such approval including hearings on any Appeal of any action by the Bankruptcy Court relating to this Agreement or the Transaction. If, however, despite the good faith efforts of the Parties, the Approval Order is not entered by May 15, 2002, then any Party not in default of this Agreement may terminate this Agreement pursuant to Section 5.1(g). If an Appeal of the Approval Order is timely filed, then the Parties will exercise their good faith best efforts to have the Appeal dismissed or overruled and to have any Stay of the Approval Order dissolved or vacated.

2.3. [Intentionally Deleted].

2.4. [Intentionally Deleted].

2.5. No Inconsistent Actions. No Party will take any action inconsistent with this Agreement pending either the Closing or the termination of this Agreement.

ARTICLE 3. **DUE DILIGENCE EVALUATION BY BUYER**

3.1. Covenant of Confidentiality. The Parties reasonably contemplate that in connection with the performance by Buyer of its due diligence relating to the Transaction, Buyer and the employees, representatives and consultants of Buyer ("**Buyer's Agents**") will receive or discover information that is highly confidential and proprietary in nature, concerning the value, quality and condition of the Property, which would not be received or discovered by Buyer absent this Agreement. Therefore, absent the prior approval of Seller, and except as set forth in this Agreement: (a) Buyer will keep all such information confidential; (b) Buyer will not disclose any such information to any third party; and (c) Buyer will ensure that any Buyer's Agent who receives or has access to any such information is contractually bound by this covenant of confidentiality. Neither Buyer nor any of Buyer's Agents will reproduce or disclose any such information, except to the extent necessary to comply with the law or to enforce the provisions of this Agreement. If Buyer does not purchase the Property, then Buyer will cause all such information to be promptly returned to Seller and will continue to keep such information confidential.

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- 7 -

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EXHIBIT 1 PAGE 12

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However, if Buyer does purchase the Property, then following the Closing, Buyer may keep, retain and utilize any such information.

3.2. Inspection of Property. After reasonable prior notice by Buyer to Seller, Seller will provide Buyer and Buyer's Agents with reasonable and prompt access to the Property and all books, records, reports, surveys, inspections and other documents and information relating to the Property for the purpose of conducting such financial, forensic, physical, technical, mechanical, electrical, environmental, and other inspections, surveys and investigations (collectively, "**Inspections**") of the Property as Buyer may desire, provided that: (a) Buyer will pay any costs incurred by Buyer in connection with the Inspections; (b) Buyer and Buyer's Agents will comply with all laws and ordinances relating to the performance of the Inspections; and (c) Buyer and Buyer's Agents will not create a nuisance or unreasonably interfere with the use of the Property by Seller during the performance of the Inspections. Seller will fully cooperate with the Inspections and promptly provide Buyer with any information relating to the Property requested by Buyer.

3.3. Due Diligence Review and Approval by Buyer. Buyer will have until the last Business Day prior to the Sale Hearing Date in which to conduct its Inspections of the Property and make a determination of whether to proceed with the Transaction. Pursuant to Section 5.1(g), Buyer may terminate this Agreement at any time prior to the last Business Day before the Sale Hearing Date if Buyer, in Buyer's sole and absolute discretion, disapproves the quality or condition of the Property.

ARTICLE 4. **PURCHASE AND SALE TERMS**

4.1. Description of Property. The Property to be sold and conveyed by Seller and purchased and acquired by Buyer pursuant to this Agreement will consist of any and all assets of Seller of any kind, except for those items described in Section 4.4 below. The Property will include the following:

- (a) All furniture, furnishings, fixtures, trade fixtures, lighting, floor coverings and window coverings, wherever located;
- (b) All equipment, machinery, dies, molds, masters, tools, tooling, motors, pumps, filters, supplies, parts and spare parts, wherever located;
- (c) All automobiles, trucks, fork lifts and other vehicles, wherever located;
- (d) All materials, supplies, work in progress, finished goods, custom orders, inventory, shipments in route, goods held for sale or lease, goods to be furnished pursuant to a service contract, packing materials, shipping materials and labeling materials, wherever located;

SELLER'S INITIALS:

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- 8 -

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BUYER'S INITIALS:

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EXHIBIT 1 PAGE 13

TRADEMARK
REEL: 002587 FRAME: 0376

- (e) All computer hardware, software, programs, databases, tapes, disks, drives, data, data storage devices, on-site and off-site data storage facilities, power sources, work stations, cables, connections, conduits, utilities and technology, and other items which relate to the operation of computers, wherever located;
- (f) All accounts, accounts receivable, contract rights and other rights, claims and interests of any kind, including any accounts, accounts receivable, contract rights and other rights, claims and interests which arise from the sale or lease of goods or the performance or rendition of services, wherever located;
- (g) All foreign and domestic currency, certificates of deposit, deposit accounts, checking accounts, savings accounts, stocks, shares, bonds, notes, investments, notes receivable and monies, wherever located;
- (h) All patents, trademarks, logos, trade names, service marks, blueprints, schematics, diagrams, drawings, source code, internet and ftp passwords, art, video, audio and pc files, product content and other intellectual property, wherever located;
- (i) All rights, interests and claims under purchase orders or sale orders;
- (j) All goodwill, customer lists, route lists, supplier lists and proprietary information, and all rights to any 800 or 888 area code telephone numbers held by Seller;
- (k) All claims, actions, causes of action, interests in legal proceedings and defenses;
- (l) All warranties, representations, guaranties, assurances, waivers, disclaimers, covenants, promises and contract rights which are enforceable by Seller or which may be enforced for the benefit of Seller;
- (m) All prepayments of any kind and all rights, claims and interests in tax refunds, insurance premium refunds, pension funds and other refunds and rebates;
- (n) All tangibles, general intangibles and other personal property, wherever located;
- (o) All rights, title and interests of Seller under any Leases or Executory Contracts assumed by Buyer pursuant to Section 4.2.
- (p) All certificates, bills of sale, deeds, licenses, documents of title, certificates of ownership, policies and certificates of insurance, and other documents and instruments of any kind which represent or evidence any of the foregoing; and
- (q) All proceeds of any kind from any of the foregoing, including sale proceeds, insurance proceeds, condemnation proceeds, settlement proceeds, and proceeds resulting from the obtaining of judgments or orders or other enforcement remedies.

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- 9 -

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EXHIBIT 1 PAGE 14

TRADEMARK

REEL: 002587 FRAME: 0377

4.2. Assumed Agreements. Seller will assume and assign to Buyer at the Closing, as part of the Property, all of Seller's right, title and interest in and to:

- (a) the real property leases ("**Assumed Real Property Leases**"), if any, described on the attached **Schedule 4.2(a)**;
- (b) the personal property leases ("**Assumed Personal Property Leases**"), if any, described on the attached **Schedule 4.2(b)**; and
- (c) the executory contracts ("**Assumed Executory Contracts**"), if any, described on the attached **Schedule 4.2(c)**;

(all of which are collectively, the "**Assumed Agreements**"). Any such assignment to Buyer will be free and clear of all breaches and defaults, and all obligations which by their terms became due, owing or payable prior to the date and time of the Closing.

4.3. Assumed Liabilities. The duties, obligations and liabilities of Seller ("**Assumed Liabilities**") to be assumed by Buyer pursuant to this Agreement, if any, are specifically set forth on the attached **Schedule 4.3**, and will be assumed by Buyer only upon the Closing. Except as may be otherwise specifically set forth in this Agreement or other written agreement executed by Buyer, Buyer will not assume or be deemed to have assumed any duties, obligations or liabilities of Seller or any other Person. In no event will Buyer have any successor liability with respect to the business, operations or activities of Seller.

4.4. Specifically Excluded Items. The Property does not include (and Seller is not selling, conveying or assigning to Buyer, and Buyer is not purchasing, accepting or assuming from Seller) any of the following:

- (a) any duties, obligations or liabilities of Seller, or any representations, warranties or guaranties made by Seller, other than the Assumed Liabilities, if any, set forth on the attached **Schedule 4.3**;
- (b) any successor liability regarding any business, activity or operation of Seller; or
- (c) any asset or item ("**Specifically Excluded Asset**") identified on the attached **Schedule 4.4**; provided, however, that if any item identified on the attached **Schedule 4.4** as a Specifically Excluded Asset appears within the list of items described in Section 4.1, then Section 4.1 is hereby deemed to be revised to delete such Specifically Excluded Asset from the description of Property to be sold and conveyed to Buyer pursuant to this Agreement.

4.5. Purchase and Sale Obligation. Seller will sell the Property to Buyer and Buyer will purchase the Property from Seller in accordance with this Agreement.

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- 10 -

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PAGE 15

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REEL: 002587 FRAME: 0378

4.6. **Purchase Price.** The purchase price ("**Purchase Price**") for the Property, and the manner in which Buyer will pay the Purchase Price, will be as follows:

- (a) At Closing, Buyer will execute and deliver to Bank in accordance with the Term Sheet a secured promissory note ("**Note**") in form attached as Exhibit "B", payable to Bank in the original principal face amount of \$1,300,000.00; and
- (b) At Closing, Buyer will issue and convey to Bank in accordance with the Term Sheet: (1) membership in Buyer constituting a three percent (3.00%) ownership of Buyer, (2) membership in NPIPHC constituting a twenty-five percent (25.00%) ownership of NPIPHC, and (3) other rights as set forth in the Term Sheet.

4.7. **Conveyance Instruments.** Prior to the Closing Performance Date, the Parties will cause to be prepared and circulated for review in form and content acceptable to Buyer, such deeds, bills of sale, assignments and other instruments (collectively, "**Conveyance Instruments**") as may be reasonably required by Buyer to convey the Property to Buyer at the Closing, free of all Liens, Claims or Interests, except new liens securing the Note in accordance with the Term Sheet.

4.8. **Closing Date.** Each Party will perform all acts required of such Party pursuant to this Agreement to enable the Closing to occur within three (3) Business Days of the date upon which the Approval Order becomes final and no longer subject to Appeal, or if a Stay is issued in connection with any Appeal of the Approval Order, then within three (3) Business Days following the date of the removal of the Stay or resolution of the Appeal in favor of allowing the Transaction to proceed. The expiration of any such three (3) Business Day period is referred to as the "**Closing Performance Date**".

4.9. **Closing Location.** The Parties will cause the Closing to occur at the offices of Buyer's legal counsel, as identified in Section 7.22 ("**Closing Location**"), on or before the Closing Performance Date.

4.10. **Buyer's Closing Obligations.** On or before the Closing Performance Date and at the Closing, Buyer will:

- (a) Perform or cause to be performed all acts required of Buyer pursuant to the Term Sheet, to enable the Closing to occur; and
- (b) Cause Buyer's Representations to be true and correct in all material respects;
- (c) Perform all other acts required of Buyer pursuant to this Agreement to enable the Closing to occur.

4.11. **Seller's Closing Obligations.** On or before the Closing Performance Date and at the Closing, Seller will:

SELLER'S INITIALS:

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- 11 -

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BUYER'S INITIALS:

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EXHIBIT 1 PAGE 16

TRADEMARK

REEL: 002587 FRAME: 0379

- (a) Execute the Conveyance Documents and any corporate resolutions and other documents required of Seller to enable the Closing to occur; and
- (b) Cause Seller's Representations to be true and correct in all material respects;
- (c) Perform all other acts required of Seller pursuant to this Agreement to enable the Closing to occur.

4.12. Closing. The "Closing" will consist of all of the following events, which the Parties will cause to occur concurrently pursuant to this Agreement:

- (a) Delivery of the executed Conveyance Documents to Buyer;
- (b) Delivery of the Property to Buyer; and
- (c) Delivery of the Purchase Price to Seller, or to Bank on behalf of Seller, in accordance with this Agreement and the Term Sheet, as adjusted by any debits, credits, offsets, prorations or other payments required pursuant to this Agreement or the Term Sheet.

4.13. Tax Prorations. Liabilities for Taxes on the Property will be prorated as of the Closing. Buyer will have no liability for Taxes for any period prior to the Closing, and Seller will have no liability for Taxes for any period subsequent to the Closing other than Taxes owed by reason of the non-payment of Taxes payable prior to the Closing.

4.14. Allocation of Purchase Price. Within sixty (60) days following the Closing, the Parties will allocate the Purchase Price among the Property in accordance with Treasury Regulation 1.1060-1T and the Law. Any disputes among the Parties regarding the allocation will be submitted for resolution by an independent accounting firm selected by the Parties, or the Bankruptcy Court if the Parties cannot agree upon its selection.

ARTICLE 5.

WARRANTIES AND REPRESENTATIONS

5.1. Representations and Warranties by Buyer. Buyer hereby makes the following representations and warranties ("Buyer's Representations") to Seller:

- (a) **Legal Capacity of Buyer.** Subject to the execution and timely performance by Bank of its obligations under the Term Sheet and the provisions of this Agreement relating to the entry of the Approval Order: (1) Buyer has the requisite power, authority and legal capacity to make, execute, enter into and deliver this Agreement and to perform its obligations under this Agreement, (2) any Person executing and delivering this Agreement on behalf of Buyer is duly authorized and empowered to do so; and (3) neither this Agreement nor the performance by Buyer of any obligation under this Agreement will violate any provision of any article,

SELLER'S INITIALS:

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- 12 -

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EXHIBIT 1 PAGE 12

TRADEMARK

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by-law, operating agreement, partnership agreement or governing charter of Buyer or any agreement, contract, covenant, condition, restriction, injunction or order by which Buyer is bound.

- (b) **No Undisclosed Inducements to Buyer.** Buyer entered into this Agreement in reliance solely upon its own independent investigation and analysis of the facts and circumstances, and that no representations, warranties or promises other than those set forth in this Agreement were made by Seller or any agent, employee or counsel of Seller to induce Buyer to execute or enter into this Agreement.
- (c) **Buyer Represented by Legal Counsel.** Buyer acted pursuant to the advice of legal counsel of its own independent choosing in connection with the negotiation, preparation and execution of this Agreement, or was advised to obtain the advice of such legal counsel, had fair and ample opportunity to obtain the advice of such legal counsel and willfully declined to obtain the advice of such legal counsel.
- (d) **Brokerage Commissions - Indemnification by Buyer.** Unless previously disclosed by Buyer to Seller in writing, Buyer has not engaged or utilized the services of any broker, salesperson, agent or finder in connection with the Transaction and no commission or fee will be due or payable to any broker, salesperson, agent or finder in connection with the Transaction as the result of any conduct by or on behalf of Buyer. Buyer will indemnify, defend and hold Seller harmless from and against any claims or liability for any commissions or fees by any broker, salesperson, agent or finder which result from the conduct of Buyer in connection with the Transaction, and from any attorneys' fees and other costs of litigation, arbitration and/or settlement relating thereto.

5.2. **Representations and Warranties by Seller.** Seller hereby makes the following representations and warranties ("**Seller's Representations**") to Buyer:

- (a) **Legal Capacity of Seller.** Subject to the execution and timely performance by Buyer of its obligations under the Term Sheet and the provisions of this Agreement relating to the entry of the Approval Order: (1) Seller has the requisite power, authority and legal capacity to make, execute, enter into and deliver this Agreement and to perform its obligations under this Agreement, (2) any Person executing and delivering this Agreement on behalf of Seller is duly authorized and empowered to do so; and (3) neither this Agreement nor the performance by Seller of any obligation under this Agreement will violate any provision of any article, by-law, operating agreement, partnership agreement or governing charter of Seller or any agreement, contract, covenant, condition, restriction, injunction or order by which Seller is bound.
- (b) **No Undisclosed Inducements to Seller.** Seller entered into this Agreement in reliance solely upon its own independent investigation and analysis of the facts and circumstances, and that no representations, warranties or promises other than

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- 13 -

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1/8

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those set forth in this Agreement were made by Buyer or any agent, employee or counsel of Buyer to induce Seller to execute or enter into this Agreement.

- (c) **Seller Represented by Legal Counsel.** Seller acted pursuant to the advice of legal counsel of its own independent choosing in connection with the negotiation, preparation and execution of this Agreement, or was advised to obtain the advice of such legal counsel, had fair and ample opportunity to obtain the advice of such legal counsel and willfully declined to obtain the advice of such legal counsel.
- (d) **Brokerage Commissions - Indemnification by Seller.** Unless previously disclosed by Seller to Buyer in writing, Seller has not engaged or utilized the services of any broker, salesperson, agent or finder in connection with the Transaction and no commission or fee will be due or payable to any broker, salesperson, agent or finder in connection with the Transaction as the result of any conduct by or on behalf of Seller. Seller will indemnify, defend and hold Buyer harmless from and against any claims or liability for any commissions or fees by any broker, salesperson, agent or finder which result from the conduct of Seller in connection with the Transaction, and from any attorneys' fees and other costs of litigation, arbitration and/or settlement relating thereto.
- (e) **Notice to Creditors.** Seller has given, or prior to the Sale Hearing Date, will give valid notice of this Agreement and the proposed Transaction to all creditors of Seller and all other interested persons in the Bankruptcy Case. Furthermore, following entry of the Approval Order but prior to the Closing Performance Date, Seller will give valid notice of the Approval Order to all creditors of Seller and all other interested persons in the Bankruptcy Case.
- (f) **Cash and Cash Equivalent Assets.** The cash and cash equivalent assets that will be conveyed by Seller to Buyer at Closing pursuant to Section 4.1(g) will, for each category set forth on the attached **Schedule 6.2(f)**, be not less than the amount set forth on the attached **Schedule 6.2(f)**. Immediately prior to the Closing, Seller will provide Buyer with proof reasonably satisfactory to Buyer of the true and accuracy of this representation and that such cash or cash equivalent will be delivered to Buyer at the Closing.
- (g) **Accessible Data.** All data identified on the attached **Schedule 6.2(g)** will be delivered to Buyer at the Closing in usable, functioning and accessible data files maintained either in legible hard copy or on functioning computer systems included within the Property being conveyed to Buyer pursuant to this Agreement. Seller will provide all passwords and other information required or requested by Buyer to reasonably access such information. Furthermore, Seller will provide Buyer with prompt access to such data throughout the course of the Inspections.
- (h) **Right to Negotiate and Contract With Seller's Lessors and Others.** Buyer may negotiate and contract with any Persons having a business or trade relationship

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- 14 -

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377 / PAGE 19

TRADEMARK

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with Seller, including lessors, vendors, suppliers and independent contractors, prior to the Closing, provided, however, that any agreements reached by Buyer with any of such Persons relating to the Property or any leases, contracts or other agreements to which Seller is a party, will be effective only upon the Closing and will not be binding upon Seller. Seller will in good faith exercise its reasonable and good faith best efforts, to cooperate with and assist Buyer in such negotiations. Seller is not aware of any contract, covenant, restriction, collective bargaining agreement or other agreement that would prohibit or adversely impact Buyer from negotiating or contracting with any party to any lease or agreement with Seller.

- (i) **Right to Hire or Retain Seller's Employees and Agents.** Seller is not aware of any contract, covenant, restriction, agreement or collective bargaining agreement that would prohibit or adversely impact Buyer from hiring or contracting with any former, present or future employee or agent. Buyer may freely negotiate with any of such Persons prior to the Closing, and may freely hire or retain any of such Persons following the Closing, or prior to the Closing conditional upon the Closing. Seller waives any and all present or future claims against Buyer relating thereto. Nothing in this Agreement will impose any restriction on Buyer with respect to any such negotiations or agreements.
- (j) **Disclosures Regarding Location and Nature of Intellectual Property.** Seller will in good faith and exercising its best efforts to assist Buyer in identifying, locating, marshalling and obtaining effective possession of all patents, patent applications, trademarks, trademark applications, copyrights, copyright applications and other intellectual property included within the Property to be conveyed to Buyer pursuant to this Agreement.
- (k) **No Adverse Actions.** Seller will not commit or allow any Material Adverse Effect to occur with respect to any of the Property. Seller will immediately notify Buyer should any such Material Adverse Effect occur prior to the Closing.

5.3. **Waiver of Representations or Warranties.** The Buyer's Representations set forth in Section 5.1 are for the sole and exclusive benefit of Seller and may be waived only by Seller. The Seller's Representations set forth in Section 5.2 are for the sole and exclusive benefit of Buyer and may be waived only by Buyer. A waiver of a Representation will be effective only if made in writing by the Party entitled to waive the Representation, in accordance with the notice requirements set forth in Section 7.22.

5.4. **Truth and Accuracy.** Each warranty and representation set forth in this Agreement will be true and accurate, and the Party making the same will cause the same to be true and accurate, on the Execution Date and as of the Closing.

5.5. **Survival.** Each statement, certification, representation, warranty, covenant, disclosure, disclaimer, waiver, release and agreement contained in this Agreement will survive the execution and delivery of this Agreement and the Closing.

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- 15 -

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REEL: 002587 FRAME: 0383

ARTICLE 6.
TERMINATION

6.1. Termination of Agreement. This Agreement may be terminated and the Transaction abandoned at any time prior to the Closing, by:

- (a) mutual written agreement of the Parties;
- (b) any Party not in default of this Agreement, upon a material breach and default of this Agreement by the other Party which breach and default remains uncured for a period of three (3) Business Days following the date upon which Notice of the breach and default is given by the non-defaulting Party to the defaulting Party;
- (c) any Party not in default of this Agreement, if the Approval Order is not entered by May 15, 2002;
- (d) any Party not in default of this Agreement, if the Closing has not occurred by May 30, 2002;
- (e) any Party not in default of this Agreement, if an Appeal of the Approval Order is timely filed pursuant to FRBP 8002 and a Stay of execution of the Approval Order is issued pursuant to FRBP 7062 pending the resolution of the Appeal;
- (f) Buyer, if Seller fails to complete and deliver to Buyer prior to the Sale Hearing Date all Schedules referenced in this Agreement;
- (g) Buyer, if Buyer for any reason, in Buyer's sole and absolute discretion, disapproves any Schedule referenced in this Agreement within three (3) Business Days following the date of the delivery of the Schedule by Seller to Buyer;
- (h) Buyer, if Seller sells or disposes of any material item of Property without prior approval by Buyer, or if there is a material decline in the value or quality of the Property prior to the Closing;
- (i) [Intentionally Deleted].
- (j) any Party not in default of this Agreement, if prior to Closing any Law or regulation makes the consummation of the Transaction illegal or otherwise prohibited, or if the consummation of the Transaction would violate any nonappealable order or any stay order in effect pending the resolution of any order on appeal;
- (k) Buyer, if as of the time of the Closing, Bank has not executed and entered into any loan agreements or other agreements relating to the new \$1,300,000.00 Note, the operating agreements for AAC and NPIPHC as described in the Term Sheet, or any other agreements contemplated by the Term Sheet, or Bank is otherwise

SELLER'S INITIALS:

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- 16 -

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EXHIBIT 1 PAGE 21

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REEL: 002587 FRAME: 0384

in default of any obligation of Bank contemplated by the Term Sheet; regardless of whether Bank is contractually bound by the provisions of the Term Sheet;

- (l) Buyer, if as of the time of the Closing any Seller Representation is untrue, unless waived by Buyer pursuant to Section 5.3;
- (m) Seller, if as of the time of the Closing any Buyer Representation is untrue, unless waived by Seller pursuant to Section 5.3;
- (n) Buyer, if Seller fails to timely satisfy any material obligation of Seller pursuant to this Agreement required to be satisfied prior to or at the Closing;
- (o) Seller, if Buyer fails to timely satisfy any material obligation of Buyer pursuant to this Agreement required to be satisfied prior to or at the Closing;

6.2. No Obligation to Terminate. Except as may be otherwise set forth in this Agreement, no Party having a right to terminate this Agreement pursuant to Section 9.1 will be required to exercise such right, or otherwise be prohibited from enforcing this Agreement by reason of having any such unexercised right to terminate this Agreement.

6.3. Notice of Termination. Any Party terminating this Agreement pursuant to Section 9.1 will give immediate Notice of such termination to the other Party, specifying in the Notice the provision of this Agreement pursuant to which the termination is made.

6.4. Effect of Exercising Right of Termination. In the event of the exercise by any Party of any right to terminate this Agreement pursuant to Section 9.1:

- (a) [Intentionally Deleted].
- (b) Except as set forth in Section 9.4(a), each Party will promptly return to the other Party any monies, documents or other property of the other Party in its possession or control received pursuant to or in contemplation of this Agreement; and
- (c) Except as set forth in Sections 9.4(a) and 9.4(b), and as may be required to enforce those Sections, upon such Notice of termination, this Agreement will terminate and be of no further force or effect, and each Party will have no further obligation or liability to the other by reason of this Agreement.

6.5. No Termination Following Closing. In no event may this Agreement be terminated following the Closing absent the mutual written consent of the Parties.

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- 17 -

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EXHIBIT 1 PAGE 22

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ARTICLE 7.
GENERAL PROVISIONS:

7.1. **Integration.** This Agreement is the sole and entire agreement between the Parties regarding the Transaction. All prior and contemporaneous negotiations and agreements between the Parties, oral or written, regarding the Transaction, are hereby superseded. No Person has the authority to orally modify this Agreement, or to make any oral representation or oral agreement regarding this Agreement or the Transaction.

7.2. **Amendment.** No modification of, deletion from, or addition to this Agreement will be effective unless made in writing and executed by each Party.

7.3. **Construction.** The provisions of this Agreement will be liberally construed to effectuate the Transaction. Article and Section headings are for convenience only and will not be given undue consideration in resolving questions of construction or interpretation. Each Party will be deemed to have had equal bargaining strength in the negotiation of this Agreement and equal responsibility for the preparation of this document and any exhibits or schedules hereto, such that neither this document, nor any exhibit or schedule hereto, nor uncertainty or ambiguity in this document or any such exhibit or schedule, will be arbitrarily construed or resolved against any Party pursuant to California Civil Code Section 1654 or any other similar authority or rule of construction to the effect that ambiguities in documents are to be construed against the drafter.

7.4. **Further Assurances.** Each Party will promptly execute all documents and take all actions, including the payment of money, reasonably required to effectuate the Transaction and perform its duties pursuant to this Agreement.

7.5. **Right of Buyer to Designate Alternate Vestee.** At any time prior to the Closing, Buyer may designate another Person to accept title to the Property upon the Closing, by providing written notice of the designation to Seller, provided that: (a) the same will not release Buyer from any obligation under this Agreement, (b) the designee assumes the obligations of Buyer under this Agreement pursuant to a written assignment and assumption agreement executed by assignor and assignee and delivered to Seller in form and content reasonably acceptable to Seller, and (c) the assignee or vestee is not an Affiliate of Seller except as may be otherwise disclosed in this Agreement or the motion seeking entry of the Approval Order. Upon any such designation, Buyer will provide Seller with all information regarding the designee required to facilitate the Transaction, and the Parties will cause the Conveyance Instruments to be revised to substitute the designee as the grantee and recipient for the conveyance of the Property.

7.6. **No Obligations to Third Parties.** This Agreement will not confer any rights upon any third party or otherwise obligate any Party to any Person who is not a Party. However, this Section will not limit or restrict the binding effect of the Approval Order on Persons who are not a Party to this Agreement.

SELLER'S INITIALS:

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- 18 -

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EXHIBIT 1 PAGE 23

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7.7. **Time is of the Essence.** With respect to all dates and time periods set forth or referred to in this Agreement, time is of the essence, such that each Party will perform all acts required of such Party pursuant to this Agreement by the date or within the time period required pursuant to this Agreement.

7.8. **Performance Dates.** If the date by which or upon which any obligation otherwise must be performed pursuant to this Agreement, or any Notice otherwise must be given pursuant to this Agreement, occurs on a day other than a Business Day, then the date by which or upon which such obligation must be performed or such Notice must be given will be deemed automatically extended until the next Business Day.

7.9. **Governing Law.** This Agreement is made under and will be construed in accordance with and governed by the Bankruptcy Code and the substantive laws of the State of California, without giving effect to the principles of conflicts of law.

7.10. **Jurisdiction and Venue.** The Parties hereby acknowledge and consent to the exclusive jurisdiction of the Bankruptcy Court and to venue in Orange County, California, for the purpose of resolving any claim, controversy or disagreement which may arise among the Parties with respect to this Agreement, the Transaction or the Property. It will be a material breach of this Agreement to seek to resolve any such claim, controversy or disagreement in any other court or forum. However, nothing in this Section will constitute a waiver by any Party of the right to appeal any decision or action of the Bankruptcy Court.

7.11. **Enforcement.** Subject to the provisions of this Agreement including those which relate to venue, jurisdiction and the limitation of remedies or damages, each Party will have the right to enforce by proceedings at law or in equity all of the provisions of this Agreement, including the right to prosecute proceedings at law or in equity against any Person who violates or attempts to violate any of such provisions, to enjoin any such Person from doing so, to cause such violation to be remedied, and to recover damages for such violation.

7.12. **Waiver of Right to Trial by Jury.** Each Party waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or the Transaction, and this Agreement will constitute a statutory written waiver of the right to trial by jury.

7.13. **Waiver of Contract Provisions.** The failure by any Party to enforce any provision of this Agreement will not constitute a waiver of the right to enforce the same provision, or any other provision, thereafter. No waiver by any Party of any provision of this Agreement will be deemed or constitute a waiver of any other provision of this Agreement, whether or not similar, nor will any such waiver constitute a continuing waiver unless otherwise expressly provided in writing.

7.14. **Severability.** In the event that any provision of this Agreement is held by any court of competent jurisdiction to be illegal, invalid or unenforceable for any reason,

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- 19 -
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BUYER'S INITIALS:
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1 PAGE 24

TRADEMARK
REEL: 002587 FRAME: 0387

then the remaining portions of this Agreement will nonetheless remain in full force and effect, unless the portion of this Agreement found to be illegal, invalid or unenforceable is so material and so central to the overall Transaction intended by this Agreement that its deletion would violate the obvious primary purpose and intent of the Parties.

7.15. Litigation Costs and Attorneys' Fees. If any Party commences legal proceedings against any other Party to enforce the provisions of this Agreement or to declare any rights or obligations under this Agreement, then the prevailing Party will recover from the losing Party its costs of suit, including reasonable attorneys' fees, as will be determined by the court in such proceeding.

7.16. Expenses of Negotiation, Documentation and Performance. Regardless of whether the Transaction is consummated, each Party will bear all costs and expenses incurred by such Party in connection with the negotiation and documentation of this Agreement and in the performance of its obligations under this Agreement.

7.17. Internal Revenue Service Reporting. The Tax Reform Act of 1986 and other laws may require reporting to the Internal Revenue Service certain information regarding the sale of the Property and other transactions. This information may include among other items, the Seller's social security number and/or taxpayer identification number and address, and the sales price, if any, paid for the Property. The Parties will cooperate in the preparation and submission of any such reports required by reason of the Transaction.

7.18. Offer and Acceptance. The execution of this Agreement solely by Buyer constitutes only an offer to purchase the Property and the execution of this Agreement solely by Seller constitutes only an offer to sell the Property. Any such offer will remain effective for five (5) Business Days following the date of the offer, unless prior to such expiration: (a) the offer is accepted, in which case the Parties will be bound by this Agreement; (b) the offer is revoked, amended or superseded in a writing executed by the Party making the offer, in which event the offer will be deemed revoked, amended or superseded in accordance with such writing; (c) the offer is rejected in writing, in which event the offer will be deemed terminated; or (d) the Party receiving the offer makes a written counter-offer, in which case the offer will be deemed terminated. In any event, this Agreement will remain subject to the entry of the Approval Order as set forth herein.

7.19. Execution by Telecopy. Delivery of an executed counterpart of a signature page to this Agreement by telecopy will be as effective as manual delivery of executed counterpart of this Agreement.

7.20. Counterparts. This Agreement may be executed in any number of identical counterparts, each of which is an original, and all of which together will constitute one and the same agreement. In proving this Agreement, it will not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought.

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- 20 -

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BUYER'S INITIALS:

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EXHIBIT 1 PAGE

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TRADEMARK

REEL: 002587 FRAME: 0388

7.21. **Notices.** Any Notice by any Party to any other Party pursuant to this Agreement must be made in writing and delivered to the other Party at the address shown below, until written notice of a different address is given by the other Party pursuant to this Section. Payments to be made pursuant to this Agreement will be deemed made only upon actual receipt. Notices given by personal service will be deemed received upon delivery. Notices given by first class mail, postage prepaid, addressed to the address required by this Section, will be deemed received three (3) Business Days following the deposit thereof with the United States Post Office. Notices given by overnight courier service will be deemed received on the date of delivery confirmed by the courier service. Notices given by electronic facsimile transmission will be deemed received on the date upon which the recipient's facsimile machine confirms electronically the receipt of the Notice, provided that a copy of any Notice given by facsimile transmission must also be sent to the recipient by first class mail, postage prepaid, addressed to the address required by this Section. The rejection by a Party of a Notice, the refusal by a Party to accept a Notice, or the inability of another Party to deliver a Notice because of a change of address of a Party of which no Notice of change of address is given pursuant to this Agreement, will constitute delivery of the Notice. Telephone numbers and e-mail addresses, if listed, are listed for convenience purposes only and not for the purpose of giving Notice pursuant to this Agreement.

Seller:

A Better Way of Learning/Games 2 Learn
Attention: Barbara Meserve
150 Paularino Avenue - Suite 120
Costa Mesa, California 92626
Telephone: (714) 751-4263
Facsimile: (714) 751-0384
E-Mail: bmeserve@games2learn.com

A copy of any Notice to Seller must also be sent to:

Winthrop Couchot Professional Corporation
Attention: Marc J. Winthrop
3 Civic Plaza - Suite 280
Newport Beach, California 92660
Telephone: (949) 720-4100
Facsimile: (949) 720-4111
E-Mail: mwinthrop@winthropcouchot.com

Buyer:

ImaginEngine Corp.
Attention: Jon Goldman
1912 Shell Avenue
Venice, California 90271
Telephone: (310) 306-0396
Facsimile: (310) 362-8763
E-Mail: jg@ImaginEngine.com

SELLER'S INITIALS:

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- 21 -

DOC:020430IE.PSK

BUYER'S INITIALS:

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PAGE 26

TRADEMARK

REEL: 002587 FRAME: 0389

A copy of any Notice to Buyer must also be sent to:

Albert, Weiland & Golden, LLP
Attention: Michael J. Weiland
650 Town Center Drive - Suite 950
Costa Mesa, California 92660
Telephone: (714) 966-1000
Facsimile: (714) 966-1002
E-Mail: mweiland@awglawyers.com

7.22. Exhibits and Schedules. The following exhibits and schedules are attached to this Agreement and are incorporated into this Agreement by reference as though fully set forth herein; provided, however, if for any reason any of the Exhibits or Schedules identified below are not attached to this Agreement as of the Execution Date, then the Parties will thereafter cause any such missing Exhibits or Schedules to be acknowledged as the intended documents and attached, including completing in good faith consistent with this Agreement any Exhibits or Schedules not completed as of the Execution Date, by no later than the Sale Hearing Date.

- Schedule 4.2(a) - Schedule of Assumed Real Property Leases
- Schedule 4.2(b) - Schedule of Assumed Personal Property Leases
- Schedule 4.2(c) - Schedule of Assumed Executory Contracts Leases
- Schedule 4.3 - Schedule of Assumed Liabilities
- Schedule 4.4 - Schedule of Specifically Excluded Assets
- Schedule 6.2(f) - Schedule of Cash and Cash Equivalent Assets
- Schedule 6.2(g) - Schedule of Minimum Accessible Computer Data
- Exhibit "A" - Term Sheet dated April 1, 2002
- Exhibit "B" - Form of \$1,300,000 Promissory Note by Buyer to Bank

7.23. Inurement. This Agreement will inure to the benefit of and be binding upon each of the Parties and upon their respective assigns, grantees, heirs, executors, successors and trustees, including any trustee appointed in the Bankruptcy Case.

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- 22 -

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BUYER'S INITIALS:

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PAGE 27

TRADEMARK

REEL: 002587 FRAME: 0390

THE UNDERSIGNED PARTIES made, executed and entered into this Agreement on the Execution Date.

BUYER:

**ImaginEngine Corp.,
a California corporation**

By: _____
(signature)

(typed or printed name)

Its: _____
(title or capacity)

SELLER:

**A Better Way of Learning, Inc., dba Games 2 Learn,
a Delaware corporation**

By: _____
(signature)

(typed or printed name)

Its: _____
(title or capacity)

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- 23 -

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BUYER'S INITIALS:

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EXHIBIT 1 PAGE 28

TRADEMARK

REEL: 002587 FRAME: 0391

Schedules to Asset Purchase Agreement

Schedule 4.2(a). Schedule of Assumed Real Property Leases.

None, except as may be otherwise hereafter expressly set forth in an amended and restated Schedule 4.2(a) submitted by Seller and approved in writing by Buyer prior to the Closing in accordance with the Asset Purchase Agreement.

Schedule 4.2(b). Schedule of Assumed Personal Property Leases.

None, except as may be otherwise hereafter expressly set forth in an amended and restated Schedule 4.2(b) submitted by Seller and approved in writing by Buyer prior to the Closing in accordance with the Asset Purchase Agreement.

Schedule 4.2(c). Schedule of Assumed Executory Contracts Leases

None, except as may be otherwise hereafter expressly set forth in an amended and restated Schedule 4.2(c) submitted by Seller and approved in writing by Buyer prior to the Closing in accordance with the Asset Purchase Agreement.

Schedule 4.3. Schedule of Assumed Liabilities

None, except as may be otherwise hereafter expressly set forth in an amended and restated Schedule 4.3 submitted by Seller and approved in writing by Buyer prior to the Closing in accordance with the Asset Purchase Agreement.

Schedule 4.4. Schedule of Specifically Excluded Assets

The telephone switch, telephone console and telephones within Seller's offices, and causes of action arising under 11 U.S.C. Sections 544, 547, 548 and 549.

Schedule 6.2(f). Schedule of Cash and Cash Equivalent Assets

To be provided by Seller and approved or disapproved by Buyer prior to the Closing in accordance with the Asset Purchase Agreement

Schedule 6.2(g). Schedule of Minimum Accessible Computer Data

To be provided by Seller and approved or disapproved by Buyer prior to the Closing in accordance with the Asset Purchase Agreement

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- Schedules -

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BUYER'S INITIALS:

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PAGE 29

TRADEMARK

REEL: 002587 FRAME: 0392



PILLSBURY WINTHROP

650 TOWN CENTER DRIVE 7TH FLOOR COSTA MESA, CA 92626-7122 714.436.6800 F: 714.436.2800

April 1, 2002

Craig A. Barbarosh

714.436.6822

cbarbarosh@pillsburywinthrop.com

VIA FACSIMILE AND E-MAIL

Marc J. Winthrop, Esq.
Winthrop Couchot PC
3 Civic Plaza, Suite 280
Newport Beach, CA 92660

Mr. Jon Goldman
ImaginEngine, Inc.
1912 Shell Avenue
Venice, CA 90291

Re: In re A Better Way of Learning, Inc. ("Debtor");
Credit Agreement dated as of June 10, 1999 by and between Debtor, on
the one hand, and Wells Fargo Bank, N.A. ("Bank"), on the other hand, as
amended from time to time ("Loan Agreement")

Dear Marc and Jon:

This letter will outline the substance of certain material terms and conditions that the Bank would agree to in connection with a restructure of obligations owed from Debtor to Bank under the Loan Agreement pursuant to a sale under Section 363 of the Bankruptcy Code. The terms and conditions set forth below are subject to due diligence by the Bank, approval by the Bank's senior management, and legal documentation acceptable to the Bank and its counsel, in their sole and absolute discretion. Until such time as the required parties have executed this Term Sheet, this Term Sheet is neither binding on any party nor admissible as evidence pursuant to Rule 408 of the Federal Rules of Evidence.

Based upon the foregoing, the Bank would consider a transaction premised upon the following business terms:

1. ImaginEngine, Corp. ("IE") and certain existing equity holders of the Debtor will form a new California corporation or LLC ("ABWOL Acquisition Corporation" or "AAC"). By hearing date no later than April 22, 2002 ("Closing Date"), pursuant to 11 U.S.C. Section 363 the Debtor will seek and obtain bankruptcy court approval of a sale of all of the Debtor's assets to AAC (including all intranet and ftp passwords, art

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EXHIBIT 2 PAGE 30

TRADEMARK
REEL: 002587 FRAME: 0393



PILLSBURY WINTHROP

Marc J. Winthrop, Esq.
Mr. Jon Goldman
April 1, 2002
Page 2

and video files, customer databases and all intellectual and other property) for a purchase price in the amount equal to all of the Debtor's existing obligations to Bank as of the Closing Date including, without limitation, all accrued and unpaid interest, outstanding principal and Bank's attorneys' fees and costs, in the approximate amount of \$2,300,000.00 as of March 19, 2002 ("Purchase Price"). IE agrees that it will remove or waive all contingencies on or before Monday, April 8, 2002.

2. The entire Purchase Price will be paid to the Bank as follows:

- a. \$1,300,000.00 of the Purchase Price (the "Loan Component") shall be in the form of senior secured debt evidenced by a promissory note from AAC and other loan documents requested by Bank, secured by a first priority security interest in all assets of AAC. The Loan Component shall accrue interest at the rate of prime plus 250 basis points per annum. Interest only payments on the Loan Component will be paid monthly, in arrears, commencing on the 91st business day after the Closing Date ("Payment Date"). Interest shall begin to accrue on the Loan Component as of the Closing Date. The Loan Component shall mature and all outstanding principal and accrued interest and unpaid costs shall be due and payable thirty (36) months after the Closing Date.
- b. The second component of the Purchase Price shall be in the form of 3% of the common stock in AAC ("AAC Equity Component"). The AAC Equity Component shall have the following rights, the terms of which will be provided by written contract: (i) preemptive rights and a right of first offer to purchase up to the Bank's *pro rata* share of any equity securities offered by AAC, on the same price and terms and conditions as AAC offers such securities; (ii) a co-sale right providing that any major equity holder of the AAC that proposes to sell all or any portion of its equity interest in AAC to any third party must permit the Bank at its option to sell a proportionate part of the Bank's equity interest in AAC to the same proposed transferee on the same terms; (iii) a prior written consent right with respect to extraordinary transactions; (iv) customary rights to receive financial and other information about AAC on a regular basis; (v) inspection rights; and (vi) and piggy-back registration rights with respect to the Bank's equity interests in AAC or in any corporate successor of AAC.
- c. The third component of the Purchase Price shall be the Bank's equity interest in the "NPIPHC," as described below.

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EXHIBIT 2 PAGE 31

TRADEMARK
REEL: 002587 FRAME: 0394



Marc J. Winthrop, Esq.
 Mr. Jon Goldman
 April 1, 2002
 Page 3

3. AAC shall covenant against allowing (i) any encumbrances upon the assets of AAC other than security interests which are junior in priority to the security interest in favor of Bank, and (ii) any debt not to exceed \$100,000, individually or in the aggregate, other than ordinary trade debt, absent Bank's prior written consent.
4. Beginning as of the Closing Date and continuing on an annual basis thereafter, AAC and Bank shall agree on an annual operating budget for AAC. The budget for the first 12 months after the Closing Date shall be attached as an exhibit to the definitive legal documentation. The budget shall not include any management fees to IE or any other equity holder of AAC for the first 12 months after the Closing Date, and thereafter may only include reasonable compensation to equity holders of AAC for actual work performed. The Budget may include up to \$100,000 for product development costs to IE in any year.
5. IE will establish a new entity to develop and market certain educational products involving branded characters ("New Product Intellectual Property Holding Company" or "NPIPHC"). The NPIPHC will grant to AAC the exclusive distribution rights for all products created by or acquired by the NPIPHC ("NPIPHC Distribution Agreement"). The terms of the NPIPHC Distribution Agreement shall be subject to prior approval by the Bank and shall provide for payment of advance royalty guarantees by AAC to IE, which IE will pay in full to the NPIPHC. IE shall pay all development costs above \$100,000 for all products to be created by or acquired by the NPIPHC.
6. Bank's security interest in all assets of AAC shall include a security interest in AAC's rights in the NPIPHC Distribution Agreement. Further, the NPIPHC shall guaranty all obligations owed from AAC to Bank and will secure its guaranty with a security interest in the NPIPHC Distribution Agreement and all rights related thereto ("Guaranty"). The Guaranty shall be non-recourse to the other assets of the NPIPHC.
7. On or before the Closing Date, AAC will be capitalized with cash new value from the following entities (collectively, the "Investor Group"), in the following amounts:

<u>Investor</u>	<u>Amount</u>
IE	\$300,000
Apex	\$300,000
TBD investment	Approx. 100,000



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Marc J. Winthrop, Esq.
Mr. Jon Goldman
April 1, 2002
Page 4

8. The NPIPHC will allocate the following common equity interests to the following entities:

<u>Investor</u>	<u>Equity %</u>
IE	
Bank	25%

Apex

9. The Bank shall be granted twenty percent (25%) of the common equity in the NPIPHC, with full voting power.
10. The Debtor will file a motion to approve the transactions contemplated herein by Friday, April 5, 2002 and shall seek an expedited hearing on said motion. The Bank agrees not to solicit overbids prior to the hearing and to support the transactions described herein in the hearing on the 363 sale motion. In the event of overbids, the initial overbid must be in the amount of \$150,000 -- of which, if ImaginEngine or its designate is not the successful bidder, ImaginEngine will be paid a \$75,000 break-up fee.
11. The foregoing terms are subject to final documentation in form and substance mutually satisfactory to the Bank and the Investor Group, and contingent upon funding commitment by the Investor Group within two weeks of execution of this Term Sheet. In addition, the Bank shall approve the form and substance of the motion to sell the Debtor's assets to AAC and any supporting documents before such documents are filed with the Bankruptcy Court.



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Mr. Jon Goldman
April 1, 2002
Page 5

If you agree to the terms outlined above, please execute the attached signature page and return it to me at your earliest convenience. If you have any questions, please do not hesitate to call me.

Very truly yours,

Craig A. Barbarosh

cc: Mr. Larry Mazo (via facsimile)
Laurie Graniez, Esq. (via facsimile)
Lance Jurich, Esq. (via facsimile)
Mark D. Houle, Esq.

Marc J. Winthrop, Esq.
Mr. Jon Goldman
April 1, 2002
Page 6

The foregoing is agreed and accepted, subject to final documentation and Bankruptcy Court approval, as needed.

WELLS FARGO BANK, N.A.

By:
Its: Vice President

A BETTER WAY OF LEARNING, INC.

By: _____
Its: _____

IMAGINENGINE, Corp.

By: _____
Its: _____

Marc J. Winthrop, Esq.
Mr. Jon Goldman
April 1, 2002
Page 6

The foregoing is agreed and accepted, subject to final documentation and Bankruptcy Court approval, as needed.

WELLS FARGO BANK, N.A.,

By: _____
Its: _____

A BETTER WAY OF LEARNING, INC.

By: Barbara M. Moseley
Its: CEO A Better Way of Learning

IMAGINENGINE, Corp.

By: [Signature]
Its: Founding Partner / CEO

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To-PILLSBURY WINTHROP L Page 07

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am over the age of
4 18 and not a party to the within action; my business address is 650 Town Center Drive,
Suite 950, Costa Mesa, California 92626.

5 On May 3, 2002, I served the foregoing document described as **[PROPOSED]**
6 **ORDER APPROVING: (1) THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S**
7 **ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS PURSUANT TO 11**
8 **U.S.C. § 363; (2) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS**
AND UNEXPIRED LEASES; AND (3) BIDDING PROCEDURE on the interested parties
in this action by placing true copies thereof enclosed in sealed envelopes addressed as
follows:

9 SEE ATTACHED LIST

10 ☒ BY MAIL

11 ☐ I deposited such envelope in the mail at Costa Mesa, California. The
12 envelope was mailed with postage thereon fully prepaid.

13 ☒ I am "readily familiar" with the firm's practice of collection and processing
14 correspondence for mailing. It is deposited with U.S. postal service on that
15 same day with postage thereon fully prepaid at Costa Mesa, California in
the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in
affidavit.

16 Executed on May 3, 2002, at Costa Mesa, California.

17 ☐ (State) I declare under penalty of perjury under the laws of the State of California
18 that the above is true and correct.

19 ☒ (Federal) I declare that I am employed in the office of a member of the bar of this
20 court at whose direction the service was made.

21 Margaret Sciesinski
22 Type or print name


Signature

SERVICE LIST:

United States Trustee
Ronald Reagan Federal Building
411 W. 4th Street
Suite 9041
Santa Ana, CA 92701

Marc Winthrop, Esq.
Winthrop Couchot
Three Civic Plaza
Suite 280
Newport Beach, CA 92660
[Attorneys for Debtor]

Craig Barbarosh, Esq.
Pillsbury Winthrop, LLP
650 Town Center Drive
7th Floor
Costa Mesa, CA 92626-7122
[Attorney for Wells Fargo Bank]

Joel S. Miliband, Esq.
Rus, Miliband & Smith
2600 Michelson Drive, Suite 700
Irvine, CA 92612-1043
[Attorney for Gateway Learning Center]

Robert D. Bass, Esq.
Greenberg & Bass
16000 Ventura Blvd., Suite 1000
Encino, CA 91436
[Creditors' Committee Counsel]

Colin Holley, Esq.
Preston, Gates & Ellis, LLP
Four Park Plaza
Suite 1900
Irvine, CA 92614-5925
[Attorney for Q/Media Services]

NOTE TO THE USERS OF THIS FORM:
Physically attach this form as the last page of the proposed Order or Judgment.
Do not file this form as a separate document.

In re (Short Title) Chapter 11 Case No:
A BETTER WAY OF LEARNING, INC. SA 00-14075 JR
Debtor.

NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1,
that a judgment or order entitled (specify):

ORDER APPROVING: (1) THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS
FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS PURSUANT TO 11 U.S.C. § 363;
(2) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES;
AND (3) BIDDING PROCEDURE

was entered on (specify date): **MAY 16 2002**

I hereby certify that I mailed a copy of this notice and a true
copy of the order or judgment to the persons and entities on the attached
service list on (specify date):

MAY 16 2002

DATED: **MAY 16 2002**

JON D. CERETTO
Clerk of the Bankruptcy Court

By: 
Deputy Clerk

SERVICE LIST:

United States Trustee

Ronald Reagan Federal Building
411 W. 4th Street
Suite 9041
Santa Ana, CA 92701

Marc Winthrop, Esq.
Winthrop Couchot
Three Civic Plaza
Suite 280
Newport Beach, CA 92660
[Attorneys for Debtor]

Craig Barbarosh, Esq.
Pillsbury Winthrop, LLP
650 Town Center Drive
7th Floor
Costa Mesa, CA 92626-7122
[Attorney for Wells Fargo Bank]

Joel S. Miliband, Esq.
Rus, Miliband & Smith
2600 Michelson Drive, Suite 700
Irvine, CA 92612-1043
[Attorney for Gateway Learning Center]

Robert D. Bass, Esq.
Greenberg & Bass
16000 Ventura Blvd., Suite 1000
Encino, CA 91436
[Creditors' Committee Counsel]

Colin Holley, Esq.
Preston, Gates & Ellis, LLP
Four Park Plaza
Suite 1900
Irvine, CA 92614-5925
[Attorney for Q/Media Services]

KEA

ALBERT W. KEA & GOLDEN, LLP
650 TOWN CENTER DR. SUITE # 950
COSTA MESA, CA 92626