

02-13-2003



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Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) 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): 1-27-03 Distributor Operations, Inc.

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

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

- Nature of conveyance: Assignment Merger Security Agreement Change of Name Other

Execution Date: 12-16-2002

2. Name and address of receiving party(ies) Name: Interstate Battery System Internal International, Inc. Address:

Street Address: 12770 Merit Dr. #400 City: Dallas State: TX Zip: 75251

- 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)

2,494,302

Additional number(s) attached Yes No

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

Name: Walter C. Holmes, III

Internal Address:

Street Address: 12770 Merit Dr. #400

City: Dallas State: TX Zip: 75251

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41): \$25.00

- 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.

Walter C. Holmes, III

Signature: Walter C Holmes III

Date: 1-9-03

ASS Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document: 1

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

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TRADEMARK REEL: 002669 FRAME: 0506

**ASSIGNMENT**

WHEREAS Distributor Operations, Inc., a Texas Corporation ("DO, INC."), doing business at 12770 Merit Drive, Suite 400, Dallas, Texas 75251, has adopted and used in its business, and is the owner of the Trade Mark/Service Mark "NATIONWIDE" and registration therefor granted on October 2, 2001 under registration #2,494,302 by the U.S. Patent and Trademark Office; AND

WHEREAS Interstate Battery System International, Inc., a Delaware Corporation ("IBSI"), doing business at 12770 Merit Drive, Suite 400, Dallas, Texas 75251, is desirous of acquiring said Trade Mark/Service Mark.

NOW, THEREFORE, to all whom it may concern:

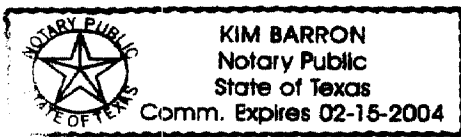
Be it known that for and in consideration of the sum of \$1.00, and other good and valuable consideration to it in hand paid, the receipt of which is hereby acknowledged, said DO, INC. by these presents, effective December 16, 2002, does sell, assign and transfer unto the said IBSI the entire right, title and interest in and to the said Trade Mark and registration thereof, together with the good will of the business connected with the use of and symbolized by the Trade Mark.

ASSIGNOR – DISTRIBUTOR OPERATIONS, INC.

By: Walter C Holmes III  
Walter C. Holmes, III  
Vice President, Secretary and General Counsel

STATE OF TEXAS \*  
COUNTY OF DALLAS \*

Personally appeared before me the said Walter C. Holmes, III, who executed the foregoing assignment in my presence and testified that he had the authority to execute the same on behalf of Distributor Operations, Inc.



Kim Barron  
Notary Public in and for the State of Texas

My Commission Expires: 2-15-04

# STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT (this "**Agreement**"), dated as of June 30, 2002, is made by and among Distributor Operations, Inc., a Texas corporation (the "**Company**"), Carlos M. Sepulveda and Leonard C. Ruby (each individually, a "**Seller**" and collectively, "**Sellers**"), and Interstate Battery System International, Inc., a Delaware corporation ("**Buyer**").

## RECITALS

1. The Company operates a wholesale electric battery distributorship business with headquarters located in Dallas, Texas (the "**Business**").
2. Sellers own in the aggregate all the outstanding shares of Common Stock, \$0.01 par value per share, of the Company (the "**Shares**"), which constitute all of the issued and outstanding capital stock of the Company.
3. Sellers desire to sell to Buyer, and Buyer desires to purchase from Sellers, the Shares.
4. The Company desires to join in the execution of this Agreement for the purpose of evidencing its consent to the consummation of the foregoing transaction and for the purpose of making certain representations and warranties to and covenants and agreements with Buyer.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Company, Sellers, and Buyer hereby agree as follows:

## AGREEMENT

### ARTICLE I TERMS OF THE TRANSACTION

1.1. Agreement to Sell and to Purchase Shares. At the Closing, and on the terms and subject to the conditions set forth in this Agreement, Sellers shall sell and deliver to Buyer, and Buyer shall purchase and accept from Sellers, the Shares.

1.2. Purchase Price and Payment. In consideration of the sale of the Shares to Buyer, Buyer shall pay to Sellers in the manner described below the aggregate purchase price of \$1,200,000 (the "**Purchase Price**"), payable in cash or immediately available funds as follows:

- (a) \$300,000 to each Seller on June 30, 2002; and
- (b) \$300,000 to each Seller on January 2, 2003.

ARTICLE II  
CLOSING

The closing of the transactions contemplated hereby (the "**Closing**") shall take place (i) at the offices of Buyer, 12770 Merit Drive, Suite 1000, Dallas, Texas 75251, at 10:00 a.m., local time, on June 30, 2002, or (ii) at such other time or place or on such other date as the parties hereto shall agree. The date on which the Closing is required to take place is herein referred to as the "**Closing Date**". All Closing transactions shall be deemed to have occurred simultaneously.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF SELLERS AND THE COMPANY

Sellers hereby, severally and not jointly and only as to Sellers, make the representations and warranties set forth in Sections 3.5, 3.6, 3.10, 3.32, 3.34 and 3.35 to the Buyer, and the Company hereby represents and warrants to the Buyer as follows:

3.1. Organization. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas and has all requisite corporate power and corporate authority to own, lease, and operate its properties and to carry on its business as now being conducted. No actions or proceedings to dissolve the Company are pending or, to the best knowledge of Sellers or the Company, threatened.

3.2. Qualification. The Company is duly qualified or licensed to do business as a foreign corporation and is in good standing in each of the jurisdictions set forth on Schedule 3.2, which are all the jurisdictions in which it owns, leases, or operates property or in which such qualification or licensing is required for the conduct of its business.

3.3. Charter and Bylaws. The Company has delivered to Buyer accurate and complete copies of (i) the Certificate of Incorporation and Bylaws of the Company as currently in effect, (ii) the stock records of the Company, and (iii) the minutes of all meetings of the Company's Board of Directors, any committees of such Board, and the Company's stockholders (and all consents in lieu of such meetings). Such records, minutes, and consents accurately reflect the stock ownership of the Company and all actions taken by the Company's Board, any committees of such Board, and the Company's stockholders. The Company is not in violation of any provision of its Certificate of Incorporation or Bylaws, other than violations which, individually or in the aggregate, do not and will not have a Material Adverse Effect.

3.4. Capitalization of the Company. The authorized capital stock of the Company consists of 1,000,000 shares of Common Stock, \$0.01 par value per share, of which, as of the date hereof, 100,000 shares are outstanding and no shares are held in the Company's treasury. All outstanding shares of capital stock of the Company have been validly issued and are fully paid and nonassessable, and no shares of capital stock of the Company are subject to, nor have any been issued in violation of, preemptive or similar rights. All issuances, sales, and repurchases by the Company of shares of its capital stock have been effected in compliance with all Applicable Laws, including without limitation applicable federal and state securities laws. The Shares constitute (and

at the Closing will constitute) all the outstanding shares of capital stock of the Company. Except as set forth above in this Section, there are (and as of the Closing Date there will be) outstanding (i) no shares of capital stock or other voting securities of the Company, (ii) no securities of the Company convertible into or exchangeable for shares of capital stock or other voting securities of the Company, (iii) no options or other rights to acquire from the Company, and no obligation of the Company to issue or sell, any shares of capital stock or other voting securities of the Company or any securities of the Company convertible into or exchangeable for such capital stock or voting securities, and (iv) no equity equivalents, interests in the ownership or earnings, or other similar rights of or with respect to the Company. There are (and as of the Closing Date there will be) no outstanding obligations of the Company to repurchase, redeem, or otherwise acquire any of the foregoing shares, securities, options, equity equivalents, interests, or rights. The Company is not a party to, and is not aware of, any voting agreement, voting trust, or similar agreement or arrangement relating to any class or series of its capital stock.

### 3.5. Authority Relative to This Agreement.

(a) The Company has full corporate power and corporate authority to execute, deliver, and perform this Agreement and the Ancillary Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery, and performance by the Company of this Agreement and the Ancillary Documents to which it is a party, and the consummation by it of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action of the Company. This Agreement has been duly executed and delivered by the Company and constitutes, and each Ancillary Document executed or to be executed by the Company has been, or when executed will be, duly executed and delivered by the Company and constitutes, or when executed and delivered will constitute, a valid and legally binding obligation of the Company, enforceable against the Company in accordance with their respective terms, except that such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting creditors' rights generally and (ii) equitable principles which may limit the availability of certain equitable remedies (such as specific performance) in certain instances.

(b) Each Seller has full legal right, power, and authority to execute, deliver, and perform this Agreement and the Ancillary Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by each Seller and constitutes, and each Ancillary Document executed or to be executed by such Seller has been, or when executed will be, duly executed and delivered by such Seller and constitutes, or when executed and delivered will constitute, a valid and legally binding obligation of each Seller, enforceable against such Seller in accordance with their respective terms, except that such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting creditors' rights generally and (ii) equitable principles which may limit the availability of certain equitable remedies (such as specific performance) in certain instances.

### 3.6. Noncontravention.

(a) The execution, delivery, and performance by the Company of this Agreement and the Ancillary Documents to which it is a party and the consummation by it of the transactions contemplated hereby and thereby do not and will not (i) conflict with or result in a violation of any provision of the charter or bylaws of the Company, (ii) conflict with or result in a violation of any provision of, or constitute (with or without the giving of notice or the passage of time or both) a default under, or give rise (with or without the giving of notice or the passage of time or both) to any right of termination, cancellation, or acceleration under, or require any consent, approval, authorization, or waiver of, or notice to, any party to, any bond, debenture, note, mortgage, indenture, lease, contract, agreement, or other instrument or obligation to which the Company is a party or by which the Company or any of its respective properties may be bound or any Permit held by the Company, (iii) result in the creation or imposition of any Encumbrance upon the properties of the Company, or (iv) assuming compliance with the matters referred to in Section 3.7, violate any Applicable Law binding upon the Company except, in the case of clause (ii) above, for such consents, approvals, authorizations, and waivers that have been obtained and are unconditional and in full force and effect and such notices that have been duly given.

(b) The execution, delivery, and performance by Sellers of this Agreement and the Ancillary Documents to which they are a party and the consummation by Sellers of the transactions contemplated hereby and thereby do not and will not (i) conflict with or result in a violation of any provision of, or constitute (with or without the giving of notice or the passage of time or both) a default under, or give rise (with or without the giving of notice or the passage of time or both) to any right of termination, cancellation, or acceleration under, or require any consent, approval, authorization, or waiver of, or notice to, any party to, any contract, agreement, instrument, or obligation to which such Seller is a party or by which such Seller or any of such Seller's properties may be bound, (ii) result in the creation or imposition of any Encumbrance upon the properties of any Seller, or (iii) assuming compliance with the matters referred to in Section 3.7, violate any Applicable Law binding upon any Seller.

3.7. Governmental Approvals. No consent, approval, order, or authorization of, or declaration, filing, or registration with, any Governmental Entity is required to be obtained or made by Sellers or the Company in connection with the execution, delivery, or performance by any Seller or the Company of this Agreement or the consummation by any Seller or the Company of the transactions contemplated hereby.

3.8. Exclusive Operation of Business. The Company does not have any direct or indirect equity or ownership interest in any corporation, partnership, joint venture, or other entity which is involved, directly or indirectly, in the conduct of the Business, and the Business is conducted solely and exclusively by Company. The Company is not, and during the periods covered by the Financial Statements was not, engaged in any business or activities other than the Business.

3.9. Subsidiaries. The Company has subsidiaries as identified in Schedule 3.9 and does not own, directly or indirectly, any capital stock or securities of any corporation or have any direct or indirect equity or ownership interest in any other person other than as identified in Schedule 3.9.

3.10. Shares. Sellers are (and at the Closing will be) all of the record and beneficial owners of, and upon consummation of the transactions contemplated hereby Buyer will acquire good, valid, and marketable title to the Shares, free and clear of all Encumbrances, other than (i) those that may arise by virtue of any actions taken by or on behalf of Buyer or its affiliates or (ii) restrictions on transfer that may be imposed by federal or state securities laws.

3.11. Financial Statements. The Company has delivered to Buyer accurate and complete copies of (i) the Company's audited financial statements as of April 30, 2001 (the "**Audited Financial Statements**"), and (ii) the Company's unaudited balance sheet as April 30, 2002 (the "**Latest Balance Sheet**"), and the related unaudited statements of income, stockholders' equity, and cash flows for the six-month period then ended, certified by the Company's chief financial officer (collectively, the "**Unaudited Financial Statements**") (and together with the Audited Financial Statements, the "**Financial Statements**"). The Financial Statements (i) represent actual bona fide transactions, (ii) have been prepared from the books and records of the Company in conformity with GAAP applied on a basis consistent with preceding years throughout the periods involved, other textual disclosure required by generally accepted accounting principles, and (iii) accurately, completely, and fairly present the Company's financial position as of the respective dates thereof and its results of operations and cash flows for the periods then ended. The statements of income included in the Financial Statements do not contain any items of special or nonrecurring income, and the balance sheets included in the Financial Statements do not reflect any write-up or revaluation increasing the book value of any assets, nor have there been any transactions since April 30, 2002 giving rise to special or nonrecurring income or any such write-up or revaluation.

3.12. Absence of Undisclosed Liabilities and Discharge of Liabilities.

(a) The Company has no liabilities or obligations (whether accrued, absolute, contingent, unliquidated, or otherwise, whether or not known to the Company, and whether due or to become due), except (i) liabilities reflected on the Latest Balance Sheet, (ii) liabilities which have arisen since the date of the Latest Balance Sheet in the ordinary course of business (none of which is a material liability for breach of contract, breach of warranty, tort, or infringement), (iii) liabilities arising under executory contracts entered into in the ordinary course of business (none of which is a material liability for breach of contract), (iv) other liabilities which, in the aggregate, are not material to the Company.

(b) The Company has fully paid and discharged all liabilities reflected on the Latest Balance Sheet, except for those liabilities listed in subsection 3.12.(a)(ii)-(iv).

3.13. Adverse Changes. There have been no changes after the date of the Latest Balance Sheet in the Business, assets, property, liabilities, financial condition, results of operations or affairs of the Company which, in the good faith judgment of the Company, constitute a Material Adverse Effect on the Business.

3.14. Tax Matters.

(a) The Company has duly and timely filed (after taking into account all applicable extensions of time for such filings) all federal, state, local and foreign Tax Returns required to be filed on or before the date hereof by or with respect to it with the IRS or other applicable taxing authorities, and no extensions with respect to such Tax Returns have been requested or granted and all such Tax Returns are true, complete and correct in all respects and were prepared and filed in accordance with applicable law;

(b) The Company has timely paid, or reserved against in the Financial Statements (without regard to deferred tax assets and liabilities), all Taxes for which the Company is liable, whether or not shown to be due on the Tax Returns referred to in Section 3.14.(a);

(c) There has been no issue raised or adjustment proposed (and none is pending or expected by the Company) by the IRS or any other taxing authority with respect to liabilities for Taxes;

(d) There are no Encumbrances with respect to Taxes upon any of the assets or properties of the Company;

(e) The Company has duly and timely withheld from salaries, wages, and other compensation and paid over to the appropriate Taxing authorities all Taxes required to be so withheld and paid over in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party;

(f) The Company has made all deposits required with respect to Taxes relating to the operation of the Business;

(g) No waiver or extension of any statute of limitation as to any federal, state, local, or foreign Tax matter relating to the operation of the Business has been given by or requested from the Company;

(h) The Company is not a party to any Tax allocation or sharing agreement. The Company has not been a member of an affiliated group filing a consolidated federal income Tax Return and does not have any liability for the Taxes of any person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise; and

(i) The Company has never filed an election to be an S corporation under Section 1362 of the Code.

3.15. Compliance With Laws. The Company is in compliance with all Applicable Laws and the Company has not received any written notice, which has not been dismissed or otherwise disposed of, that the Company has not so complied. The Company has not been charged or, to the



best knowledge of the Company, threatened with or under investigation with respect to, any violation of any Applicable Law.

3.16. Legal Proceedings. There are no Proceedings pending or, to the best knowledge of the Company, threatened against or involving the Company which might affect the financial condition, business, or property of the Company. No judgment, order writ, injunction, or decree of any Governmental Entity has been issued or entered against the Company or its affiliates which continues to be in effect with respect to or affecting the operation of the Business. There are no Proceedings pending, to the best knowledge of the Company, threatened seeking to restrain, prohibit, or obtain damages or other relief in connection with this Agreement or the transactions contemplated hereby.

3.17. Title to Properties. The Company has good and marketable title, and in the case of real property insurable title, to all properties (real, personal, and mixed, tangible and intangible) it owns or purports to own, including without limitation the properties reflected in its books and records and in the Latest Balance Sheet of the Company, other than those disposed of after the date of such balance sheet in the ordinary course of business consistent with past practice, free and clear of all Encumbrances, other than materialmen's, mechanics, repairman's, landlord's, and other similar liens arising in connection with the ordinary course of business securing payments not yet due and payable or liens for taxes not yet due. No financing statement (or other instrument sufficient or effective as a financing statement) under the Uniform Commercial Code with respect to any of the properties of the Company has been filed and is effective in any jurisdiction, and the Company has not signed any such financing statement (or other instrument) or any mortgage or security agreement granting any mortgage or security interest authorizing any secured party thereunder to file any such mortgage or financing statement (or other instrument).

3.18. Sufficiency and Condition of Properties. The properties owned, leased, or used by the Company are (i) in the case of tangible properties, in good operating condition and repair and have been maintained in accordance with standard industry practice, (ii) suitable for the purposes used, and (iii) adequate and sufficient for the normal operation of the business, as presently conducted. Such properties and their uses conform to all Applicable Laws, and Sellers and the Company have not received any notice to the contrary. All such tangible properties are in the Company's possession or under its control. No properties of Sellers or any of their respective affiliates (other than the Company) are used or held for use in the conduct of the Business.

3.19. Real Property.

(a) Set forth on Schedule 3.19 is a list, by street address and (in the case of owned real property) deed reference, of all real property owned by the Company (for purposes of this Section, the "**Real Property**"), a list of all rights-of-way, easements, and other Encumbrances of any kind to which the Real Property is subject, a brief description of the principal facilities and structures (if any) located thereon. There are no persons (other than the Company) in possession of any portion of the Real Property as lessees, tenants at sufferance, or trespassers, nor does any person (other than the Company) have a lease, tenancy, or other right of occupancy or use of any portion of the Real Property.

(b) All buildings, improvements, and fixtures situated on the Real Property conform in all material respects to all Applicable Laws. All the Real Property is zoned for the various purposes for which such Real Property is being used, and there exists no pending or, to the best knowledge of Sellers, threatened Proceeding which might adversely affect the validity of such zoning.

(c) Neither the whole nor any part of the Real Property is subject to any pending Proceeding for condemnation or other taking by any Governmental Entity, and, to the best knowledge of Sellers, no such condemnation or other taking is contemplated or threatened.

(d) There are no unpaid charges, debts, liabilities, claims, or obligations arising from the construction, occupancy, ownership, use, or operation of the Real Property, or the buildings, improvements, or fixtures situated thereon, or the business operated thereon, which could give rise to any mechanic's or materialmen's or other statutory lien against the Real Property, or the buildings, improvements, or fixtures situated thereon, or any part thereof, or for which the Company will be responsible.

### 3.20. Intentionally Omitted.

3.21. Leased Property. Set forth on Schedule 3.21 is a list of all leases under which the Company is the lessee of real or personal property used or held for use in connection with the operation of the Business. The Company has good and valid leasehold interests in all such properties held by it under lease. The Company has been in peaceable possession (or remedied any claims relating thereto) of the property covered by each such lease since the commencement of the original term of such lease. No waiver, indulgence, or postponement of the Company's obligations under any such lease has been granted by the lessor or of the lessor's obligations thereunder by the Company. The Company is not in breach of or in default under, nor has any event occurred which (with or without the giving of notice or the passage of time or both) would constitute a default by the Company under, any of such leases, and the Company has not received any notice from, or given any notice to, any lessor indicating that the Company or such lessor is in breach of or in default under any of such leases. To the best knowledge of the Company, none of the lessors under any of such leases is in breach thereof or in default thereunder. The Company has full right and power to occupy or possess, as the case may be, all the property covered by each such lease.

3.22. Inventory. All inventory, merchandise, stock-in-trade and related supplies reflected on the Latest Balance Sheet or thereafter acquired and not disposed of in the ordinary course of business is in good condition and is merchantable for sale in the Company's ordinary course of business as first quality goods at normal mark-ups.

3.23. Receivables. All receivables (including accounts and notes receivable, employee advances, and accrued interest receivables) of the Company as reflected on the Latest Balance Sheet or arising since the date thereof are valid obligations of the respective makers thereof, have arisen in the ordinary course of business for goods or services delivered or rendered, are not subject to any valid defenses, counterclaims, or set offs, and have been collected or are collectible in full at their recorded amounts in the ordinary course of business without resort to litigation or other extraordinary

collection efforts, net of all cash discounts and doubtful accounts as reflected on the Latest Balance Sheet (in the case of receivables so reflected) or on the books of the Company (in the case of receivables arising since the date thereof). The allowances for doubtful accounts reflected on the Latest Balance Sheet and on the books of the Company were determined in accordance with GAAP and were and are reasonable in light of historical data and other relevant information.

3.24. Intellectual Property. Except for the trademarks, service marks, and trade names set forth on Schedule 3.24, the Company does not own, hold, use, or have pending any intellectual property. The Company owns or has rights to use all such trademarks, service marks, and trade names, free from burdensome restrictions, that are necessary for the operation of its Business as presently conducted. The Company has not received any written notice or claim of any infringement, violation, misuse, or misappropriation by the Company of any intellectual property owned or purported to be owned by any other person.

3.25. Permits. All the Permits necessary or required for the conduct of the Business, except for Permits the absence of which do not and will not have a Material Adverse Effect have been obtained by the Company. Each of such Permits is in full force and effect, the Company is in compliance with all its obligations with respect thereto, and, to the best knowledge of Sellers and the Company, no event has occurred which permits, or with or without the giving of notice or the passage of time or both would permit, the revocation or termination of any thereof. No notice has been issued by any Governmental Entity and no Proceeding is pending or, to the best knowledge of Sellers and the Company, threatened with respect to any alleged failure by the Company to have any Permit the absence of which would have a Material Adverse Effect.

3.26. Agreements.

(a) The Company has delivered to Buyer accurate and complete copies of all agreements, arrangements, and understandings of any nature (written or oral, formal or informal) (collectively, for purposes of this Section, "**agreements**") to which the Company is a party or by which the Company or any of its properties is otherwise bound, regardless of amount or subject matter, that are material to the Business, assets, results of operations, condition (financial or otherwise), or prospects of the Company. Each of such agreements is a valid and binding agreement of the parties thereto enforceable against them in accordance with its terms. No breach or default exists with respect to any of such agreements, and no event has occurred which, after the giving of notice or the passage of time or otherwise, will result in any such breach or default.

(b) Neither Sellers nor the Company has received notice of any plan or intention of any other party to any agreement to exercise any right of offset with respect to, or any right to cancel or terminate, any agreement, and neither Sellers nor the Company knows of any fact or circumstance that would justify the exercise by any such other party of such a right other than the automatic termination of such agreement in accordance with its terms. Neither Sellers nor the Company currently contemplates, or has reason to believe any other person currently contemplates, any amendment or change to any agreement, which amendment or change could have a Material Adverse Effect.

3.27. ERISA.

(a) Set forth on Schedule 3.27 is a list identifying each "**employee benefit plan**", as defined in Section 3(3) of ERISA, (i) which is subject to any provision of ERISA, (ii) which is maintained, administered, or contributed to by the Company or any affiliate of the Company, and (iii) which covers any employee or former employee of the Company or any affiliate of the Company or under which the Company or any affiliate of the Company has any liability. The Company has delivered to Buyer accurate and complete copies of such plans (and, if applicable, the related trust agreements) and all amendments thereto and written interpretations thereof, together with (i) the three most recent annual reports (Form 5500 including, if applicable, Schedule B thereto) prepared in connection with any such plan and (ii) the most recent actuarial valuation report prepared in connection with any such plan. Such plans are referred to in this Section as the "**Employee Plans**". For purposes of this Section only, an "**affiliate**" of any person means any other person which, together with such person, would be treated as a single employer under Section 414 of the Code. The only Employee Plans which individually or collectively would constitute an "**employee pension benefit plan**" as defined in Section 3(2) of ERISA are identified as such on Schedule 3.27.

(b) Except as otherwise identified on Schedule 3.27, (i) no Employee Plan constitutes a "**multiemployer plan**", as defined in Section 3(37) of ERISA (for purposes of this Section, a "**Multiemployer Plan**"), (ii) no Employee Plan is maintained in connection with any trust described in Section 501(c)(9) of the Code, (iii) no Employee Plan is subject to Title IV of ERISA or to the minimum funding standards of ERISA and the Code, and (iv) during the past five years, neither the Company nor any of its affiliates have made or been required to make contributions to any Multiemployer Plan. There are no accumulated funding deficiencies as defined in Section 412 of the Code (whether or not waived) with respect to any Employee Plan. The fair market value of the assets held with respect to each Employee Plan which is an employee pension benefit plan, as defined in Section 3(2) of ERISA, exceeds the actuarially determined present value of all benefit liabilities accrued under such Employee Plan (whether or not vested) determined using reasonable actuarial assumptions. Neither the Company nor any affiliate of the Company has incurred any material liability under Title IV of ERISA arising in connection with the termination of, or complete or partial withdrawal from, any plan covered or previously covered by Title IV of ERISA. The Company and all of the affiliates of the Company have paid and discharged promptly when due all liabilities and obligations arising under ERISA or the Code of a character which if unpaid or unperformed might result in the imposition of a lien against any of the assets of the Company. Nothing done or omitted to be done and no transaction or holding of any asset under or in connection with any Employee Plan has or will make the Company or any director or officer of the Company subject to any liability under Title I of ERISA or liable for any Tax pursuant to Section 4975 of the Code that could have a Material Adverse Effect. There are no threatened or pending claims by or on behalf of the Employee Plans, or by any participant therein, alleging a breach or breaches of fiduciary duties or violations of Applicable Laws which could result in liability on the part of the Company, its officers or directors, or such Employee Plans, under ERISA or any other Applicable Law and there is no basis for any such claim.

(c) Each Employee Plan which is intended to be qualified under Section 401(a) of the Code is so qualified and has been so qualified since the date of its adoption, and each trust

forming a part thereof is exempt from Tax pursuant to Section 501(a) of the Code. Set forth on Schedule 3.27 is a list of the most recent IRS determination letters with respect to any such Plans, accurate and complete copies of which letters have been delivered to Buyer. Each Employee Plan has been maintained in compliance with its terms and with the requirements prescribed by all Applicable Laws, including but not limited to ERISA and the Code, which are applicable to such Plans.

(j) To the extent not listed on Schedule 3.27, there is set forth on Schedule 3.27 a list of each employment, severance, or other similar contract, arrangement, or policy and each plan or arrangement (written or oral) providing for insurance coverage (including any self-insured arrangements), workers' compensation, disability benefits, supplemental unemployment benefits, vacation benefits, retirement benefits, deferred compensation, profit-sharing, bonuses, stock options, stock appreciation rights, or other forms of incentive compensation or post-retirement insurance, compensation, or benefits which (i) is not an Employee Plan, (ii) is entered into, maintained, or contributed to, as the case may be, by the Company or any affiliate of the Company, and (iii) covers any employee or former employee of the Company or any affiliate of the Company or under which the Company or any affiliate of the Company has any liability. Such contracts, plans, and arrangements as are described in the preceding sentence are referred to for purposes of this Section as the "**Benefit Arrangements**". Each Benefit Arrangement has been maintained in substantial compliance with its terms and with the requirements prescribed by Applicable Laws.

(k) Neither the Company nor any affiliate of the Company has performed any act or failed to perform any act, and there is no contract, agreement, plan, or arrangement covering any employee or former employee of the Company or any affiliate of the Company, that, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to the terms of Section 162(a)(1) or 280G of the Code, or could give rise to any penalty or excise Tax pursuant to Section 4980B or 4999 of the Code.

(l) Except as disclosed on Schedule 3.27, there has been no amendment, written interpretation, or announcement (whether or not written) by the Company or any affiliate of the Company of or relating to, or change in employee participation or coverage under, any Employee Plan or Benefit Arrangement which would increase materially the expense of maintaining such Employee Plan or Benefit Arrangement above the level of the expense incurred in respect thereof for the fiscal year ended April 30, 2002.

### 3.28. Environmental Matters.

(a) The Company has obtained all permits, licenses, and other authorizations which are required to be held or obtained by it under all applicable Environmental Laws. The Company is in full compliance in all material respects with all terms and conditions of such required permits, licenses, and authorizations, and is also in full compliance in all material respects with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables contained in the Environmental Laws.

(b) There is no pending or threatened civil or criminal litigation, notice of violation, or administrative proceeding relating in any way to the Environmental Laws (including notices, demand letters, or claims under the Resource Conservation and Recovery Act of 1976, as amended ("**RCRA**"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**Superfund**"), and similar state or local laws) involving the Company or any of its assets or properties, nor do Sellers or the Company have any indication or reason to believe that any such action is threatened or imminent. To the best knowledge of Sellers and the Company, there have not been and there are not any events, conditions, circumstances, activities, practices, incidents, actions, or plans which may interfere with or prevent continued compliance, or which may give rise to any common law or legal liability, or otherwise form the basis of any claim, action, suit, proceeding, hearing, study, or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling, or the emission, discharge, release, or threatened release into the environment, of any pollutant, contaminant, or chemical, or any industrial, hazardous, or toxic material or waste, including, without limitation, any liability arising, or any claim, action, demand, suit, proceeding, hearing, study, or investigation which may be brought, under RCRA, Superfund, or similar state or local laws.

### 3.29. Labor Relations.

(a) There are (i) no collective bargaining agreements or other labor union contracts applicable to any employees of the Company to or by which the Company is a party or is bound, no such agreement or contract has been requested by any employee or group of employees of the Company, and no discussions have occurred with respect thereto by management of the Company with any such employees; (ii) no employees of the Business are represented by any labor organization, collective bargaining representative, or group of employees; (iii) no labor organization, collective bargaining representative, or group of employees claims to represent a majority of the employees of the Company; (iv) the Company is not aware of or involved with any representational campaign or other organizing activities by any union or other organization or group seeking to become the collective bargaining representative of any of the employees of the Company; (v) the Company is not obligated to bargain collectively with respect to wages, hours, and other terms and conditions of employment with any recognized or certified labor organization, collective bargaining representative, or group of employees representing employees of the Company; and (vi) the Company is not aware of any strikes, work stoppages, work slowdowns, or lockouts or any threats thereof by or with respect to any employees of the Company, and there have been no labor disputes, strikes, work stoppages, work slowdowns, lockouts, or similar matters involving any such employees.

(b) The Company is in compliance with all Applicable Laws pertaining to employment and employment practices and wages, hours, and other terms and conditions of employment in respect of the employees of the Company and has no accrued liability for any arrears of wages or any Taxes or penalties for failure to comply with any thereof. The Company is not, in respect of the Company or the employees thereof, engaged in any unfair labor practices or unlawful employment practices. There is no pending or, to the best knowledge of the Company, threatened Proceeding against or involving the Company by or before, and the Company is not subject to any judgment, order, writ, injunction, or decree of or inquiry from, the National Labor Relations Board,

the Equal Employment Opportunity Commission, the Department of Labor, or any other Governmental Entity in connection with any current, former, or prospective employee of the Company.

(c) The Company believes that its relations with the employees of the Company are satisfactory.

3.30. Insurance. The Company maintains with sound and reputable insurers, duly licensed in accordance with all Applicable Laws, and there are currently in full force and effect, policies of insurance with respect to the Business against such casualties and contingencies of such types and in such amounts as are customary for corporations of similar size engaged in similar lines of business. All premiums due and payable with respect to such policies have been timely paid. No notice of cancellation of, or indication of an intention not to renew, any such policy has been received by the Company.

3.31. Books and Records. All the books and records of the Company relating to the Business from its inception through the date hereof, including all personnel files, employee data, and other materials relating to current employees of the Company, are substantially complete and correct in all material respects, have been in all material respects maintained in accordance with good business practice and all Applicable Laws, and, in the case of the books of account, have been in all material respects prepared and maintained in accordance with GAAP consistently applied. Such books and records accurately and fairly reflect, in reasonable detail, all material transactions, revenues, expenses, assets, and liabilities of the Company with respect to the Business.

3.32. Brokerage Fees. Neither Sellers nor the Company have employed any broker, finder, consultant or intermediary in connection with the transactions contemplated by this Agreement who would be entitled to a broker's, finder's or similar fee or commission in connection therewith or upon the consummation thereof, or if the Closing does not occur. Sellers and the Company agree to indemnify Buyer from and against any and all liabilities and obligations as set forth in Section 6.4.

3.33. Bank Accounts. The Company has delivered to the Buyer (i) the name and address of each bank, brokerage or other financial institution with which the Company has an account or safe deposit box or vault, the account and safe deposit box and vault numbers thereof, the purpose of each thereof, the names of all persons authorized to draw thereon or to have access thereto, the balance of each such account and the contents of each such safe deposit box, and (ii) the names of all persons authorized to borrow funds on behalf of the Company and the names and addresses of all entities from which they are authorized to borrow funds.

3.34. Disclosure. No representation or warranty made by Sellers or the Company in this Agreement, and no statement of Sellers or the Company contained in any document, certificate, or other writing furnished or to be furnished by any of them pursuant hereto or in connection herewith, contains or will contain, at the time of delivery, any untrue statement of a material fact or, to the best knowledge of Sellers or any of the Company, omits or will omit, at the time of delivery, to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which they are made, not misleading. Neither Sellers nor the Company knows

of any matter that has not been disclosed to Buyer pursuant to this Agreement that has or will have a Material Adverse Effect. Sellers and the Company have delivered or made available to Buyer accurate and complete copies of all agreements, documents, and other writings referred to herein or listed in any Schedule hereto.

3.35. Representations and Warranties on Closing Date. The representations and warranties made in this Article III will be true and correct in all material respects on and as of the date of this Agreement and shall survive the Closing Date with the same force and effect as if such representations and warranties had been made on and as of the Closing Date, except that any such representations and warranties which expressly relate only to an earlier date shall be true and correct on the Closing Date as of such earlier date.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers and the Company as follows:

4.1. Organization. Buyer is a corporation duly organized and validly existing under the laws of the State of Delaware and has all requisite power and authority to own its properties and conduct its business as it is currently conducted.

4.2. Authority Relative to This Agreement. Buyer has full power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance by Buyer of this Agreement and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all necessary action of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except that such enforceability may be limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting creditors' rights generally and (b) equitable principles which may limit the availability of certain equitable remedies (such as specific performance) in certain instances.

4.3. Noncontravention. The execution, delivery, and performance by Buyer of this Agreement and the Ancillary Documents to which it is a party and the consummation by it of the transactions contemplated hereby and thereby do not and will not (i) conflict with or result in a violation of any provision of the charter or bylaws of Buyer, (ii) conflict with or result in a violation of any provision of, or constitute (with or without the giving of notice or the passage of time or both) a default under, or give rise (with or without the giving of notice or the passage of time or both) to any right of termination, cancellation, or acceleration under, or require any consent, approval, authorization, or waiver of any party to, any bond, debenture, note, mortgage, indenture, lease, contract, agreement, or other instrument or obligation to which Buyer is a party or by which Buyer or any of its properties may be bound or any Permit held by Buyer, (iii) result in the creation or imposition of any Encumbrance upon the properties of Buyer, or (iv) violate any Applicable Law binding upon Buyer.



4.4. Investment Intent. Buyer is acquiring the Shares for its own account for investment and not with a view to, or for sale or other disposition in connection with, any distribution of all or any part thereof, except in compliance with applicable federal and state securities laws.

4.5. Representations and Warranties on Closing Date. The representations and warranties made in this Article IV will be true and correct in all material respects on and as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of the Closing Date, except that any such representations and warranties which expressly relate only to an earlier date shall be true and correct on the Closing Date as of such earlier date.

## ARTICLE V CONDUCT OF COMPANY PENDING CLOSING

Sellers and the Company hereby covenant and agree with Buyer as follows:

5.1. Conduct and Preservation of Business. Except as expressly provided in this Agreement, during the period from the date hereof to the Closing, the Company shall, and Sellers shall cause the Company to (a) conduct the Business in the ordinary and usual course without unusual commitments, in compliance with all applicable laws, rules and regulations, (b) maintain its assets and properties in a good and workable condition and operate them in a good, workmanlike, and prudent manner, (c) use its best efforts to preserve the goodwill of all persons dealing with respect to such assets and properties, (d) maintain in full force and effect all insurance now in effect covering any of such assets and properties of the Company, and (e) cooperate fully with Buyer so as to arrange for the transfer of the Shares to Buyer in an orderly fashion.

5.2. Restrictions on Certain Actions. Without limiting the generality of the foregoing, and except as otherwise expressly provided in this Agreement, prior to the Closing, the Company shall not, and Sellers shall not permit the company to, without the prior written consent of Buyer:

- (a) make any changes in its capital structure;
- (b) incur any liability or obligation other than current liabilities incurred in the ordinary and usual course of business;
- (c) incur any indebtedness for borrowed money;
- (d) make any loans or advances other than advances to employees in the ordinary and usual course of business;
- (e) declare or pay any dividend or make any other distribution with respect to its capital stock;
- (f) issue, sell, or deliver or purchase or otherwise acquire for value any of its stock or other securities;

- (g) mortgage, pledge, or subject to encumbrance any of its assets or properties;
- (h) sell or transfer any of its assets or properties except in the ordinary and usual course of business;
- (i) make any investment of a capital nature;
- (j) adopt or amend in any respect any employee benefit plan; or
- (k) enter into any contract, agreement, or other commitment which is material to the business, assets, properties, or financial position of the Company.

ARTICLE VI  
ADDITIONAL AGREEMENTS

6.1. Access to Information; Confidentiality.

(a) Between the date hereof and the Closing, the Company (i) shall give Buyer and its authorized representatives reasonable access to all employees, all buildings, warehouses, and other facilities, and all books and records, including work papers and other materials prepared by the Company's independent public accountants, of the Company relating to the Business, (ii) shall permit Buyer and its authorized representatives to make such inspections of the Business as they may reasonably require, and (iii) shall cause the Company's officers to furnish Buyer and its authorized representatives with such financial and operating data and other information with respect to the Business as Buyer may from time to time reasonably request; provided, however, that no investigation pursuant to this Section shall affect any representation or warranty of Sellers or the Company contained in this Agreement or in any agreement, instrument, or document delivered pursuant hereto or in connection herewith.

(b) Buyer covenants and agrees that all Confidential Information (as defined below) shall be kept confidential by Buyer and shall not be disclosed by Buyer in any manner whatsoever; provided, however, that (i) any of such Confidential Information may be disclosed to such officers, employees, and authorized representatives (including without limitation attorneys, accountants, consultants, bankers, and financial advisors) of Buyer (collectively, for purposes of this Section, "**Buyer Representatives**") as the Buyer Representatives need to know such information for the purpose of evaluating the transactions contemplated hereby (it being understood that such Buyer Representatives shall be informed by Buyer of the confidential nature of such information and shall be required to treat such information confidentially), (ii) any disclosure of Confidential Information may be made to the extent to which the Company consents in writing, and (iii) Confidential Information may be disclosed by Buyer or any Buyer Representative to the extent that Buyer or such Buyer Representative is legally compelled to do so, provided that, prior to making such disclosure, Buyer or such Buyer Representative, as the case may be, advises and consults with the Company regarding such disclosure and provided further that Buyer or such Buyer Representative, as the case may be, discloses only that portion of the Confidential Information as is legally required. Buyer covenants and agrees that none of the Confidential Information will be used for any purpose other

than in connection with the transactions contemplated hereby. The term "**Confidential Information**", as used herein, means all information, including without limitation the information received by Buyer pursuant to Section 3.11 of this Agreement, (irrespective of the form of communication) obtained by or on behalf of Buyer from the Company or its representatives pursuant to this Section and all similar information obtained from the Company or its representatives by or on behalf of Buyer prior to the date of this Agreement, other than information which (x) was or becomes generally available to the public other than as a result of disclosure by Buyer or any Buyer Representative, (y) was or becomes available to Buyer on a nonconfidential basis prior to disclosure to Buyer by the Company or its representatives, or (z) was or becomes available to Buyer from a source other than the Company and its representatives, provided that such source is not known by Buyer to be bound by a confidentiality agreement with the Company.

(c) If this Agreement is terminated, Buyer shall promptly return, and shall use its reasonable best efforts to cause all Buyer Representatives to promptly return, all Confidential Information to the Company without retaining any copies thereof, provided that such portion of the Confidential Information as consists of notes, compilations, analyses, reports, studies, or other documents prepared by Buyer or Buyer Representatives shall be destroyed.

(d) Buyer acknowledges and agrees that irreparable damage would occur in the event any Confidential Information regarding the Business were disclosed to or utilized on behalf of any person which is in competition with the Business. Accordingly, the Buyer covenants and agrees that it will not, directly or indirectly, without the prior written consent of the Company, use or disclose any of such Confidential Information, except to Buyer Representatives; provided, however, that Confidential Information shall not be deemed to include information which (i) was or becomes generally available to the public other than as a result of disclosure by the Company or its affiliates or (ii) was or becomes available to Buyer on a nonconfidential basis from a source other than the Company, provided that such source is not known by Buyer to be bound by a confidentiality agreement with respect to such Confidential Information. Notwithstanding the foregoing provisions of this paragraph, Buyer and its affiliates may disclose any Confidential Information to the extent that such person is legally compelled to do so, provided that, prior to making such disclosure, such person advises and consults with the Company regarding such disclosure and provided further that such person discloses only that portion of such Confidential Information as is legally required.

6.2. Indemnification of Brokerage. Sellers and the Company, jointly and severally, shall indemnify and hold harmless Buyer from and against any and all losses, claims, damages, and liabilities (including legal and other expenses reasonably incurred in connection with investigating or defending any claims or actions) with respect to any finder's fee, brokerage commission, or similar payment in connection with any transaction contemplated hereby asserted by any person on the basis of any act or statement made or alleged to have been made by the Company, Sellers or any of their affiliates. Buyer shall indemnify and hold harmless the Company and Sellers from and against any and all losses, claims, damages, and liabilities (including legal and other expenses reasonably incurred in connection with investigating or defending any claims or actions) with respect to any finder's fee, brokerage commission, or similar payment in connection with any transaction contemplated hereby asserted by any person on the basis of any act or statement made or alleged to have been made by Buyer or any of the affiliates of Buyer.

6.3. Notice of Litigation. Until the Closing, Sellers and the Company, upon learning of the same, shall promptly notify Buyer of any Proceeding which is commenced or threatened against Sellers and which affects this Agreement or the transactions contemplated hereby and any Proceeding which is commenced or threatened against the Company and which relates to or affects the Business.

6.4. Notification of Certain Matters. Sellers and the Company shall give prompt notice to Buyer of (a) the occurrence or nonoccurrence of any event the occurrence or nonoccurrence of which would be likely to cause any representation or warranty contained in Article III to be untrue or inaccurate in any material respect at or prior to the Closing, (b) any material failure of Sellers or the Company to comply with or satisfy any covenant, condition, or agreement to be complied with or satisfied by Sellers or the Company hereunder, and (c) any notice or other communication from any person alleging that the consent or approval of such person is or may be required in connection with the transactions contemplated by this Agreement. Buyer shall give prompt notice to Sellers and the Company of (a) the occurrence or nonoccurrence of any event the occurrence or nonoccurrence of which would be likely to cause any representation or warranty contained in Article IV to be untrue or inaccurate in any material respect at or prior to the Closing and (b) any material failure of Buyer to comply with or satisfy any covenant, condition, or agreement to be complied with or satisfied by Buyer hereunder. The delivery of any notice pursuant to this Section shall not be deemed to (x) modify the representations or warranties hereunder of the party delivering such notice, (y) modify the conditions set forth in Articles VII and VIII, or (z) limit or otherwise affect the remedies available hereunder to the party receiving such notice; provided, however, that if the Closing shall occur, then all matters disclosed pursuant to this Section at or prior to the Closing shall be waived and no party shall be entitled to make a claim thereon pursuant to the terms of this Agreement.

6.5. Fees and Expenses. Except as otherwise expressly provided in this Agreement, all fees and expenses, including fees and expenses of counsel, financial advisors, and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fee or expense, whether or not the Closing shall have occurred; provided, however, that if this Agreement shall have been terminated pursuant to Article IX as a result of the willful breach by a party of any of its representations, warranties, covenants, or agreements set forth in this Agreement, such breaching party shall pay the costs and expenses of the other party in connection with the transactions contemplated by this Agreement.

6.6. Resignation of Officers and Directors. The Company shall deliver at the Closing the written resignations of all officers and directors of the Company, effective as of the Closing Date.

6.7. Public Announcement. The parties hereto agree that neither they nor any of their respective officers, directors, employees, or agents shall disclose to any third party or publicly announce the proposed acquisition until such time as the parties agree to make such disclosure or announcement or unless otherwise required by law. Any public announcement concerning the proposed acquisition shall be approved, in advance, by the parties hereto.

6.8. Liability for Taxes, Filing Returns.

(a) Tax Returns Due Before the Closing Date. Sellers shall cause to be prepared and duly filed all Tax Returns required to be filed by or with respect to the Company before the Closing Date.

(b) Tax Returns Due After the Closing Date. Buyer shall cause to be prepared and duly filed all Tax Returns of the Company due after the Closing Date in a timely manner.

6.9. Survival of Covenants. Except for any covenant or agreement which by its terms expressly terminates as of a specific date, the covenants and agreements of the parties hereto contained in this Agreement shall survive the Closing without contractual limitation.

ARTICLE VII  
CONDITIONS TO OBLIGATIONS OF BUYER

The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of each of the following conditions:

7.1. Representations and Warranties True. All the representations and warranties of Sellers and the Company contained in this Agreement, and in any agreement, instrument, or document delivered pursuant hereto or in connection herewith on or prior to the Closing Date, shall be true and correct in all material respects as of the date made and (having been deemed to have been made again on and as of the Closing Date in the same language) shall be true and correct in all material respects on and as of the Closing Date, except as affected by transactions permitted by this Agreement and except to the extent that any such representation or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct in all material respects as of such specified date.

7.2. Covenants and Agreements Performed. Sellers and the Company shall have performed and complied with in all material respects all covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

7.3. Legal Proceedings. No Proceeding shall, on the Closing Date, be pending or threatened seeking to restrain, prohibit, or obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby.

7.4. Consents. All consents and approvals necessary to permit consummation of the transactions contemplated hereby under any bond, debenture, note, mortgage, indenture, lease, contract, agreement, or other instrument or obligation of the Company or Sellers and all consents and approvals required under Applicable Law shall have been obtained, and all such consents and approvals shall be in full force and effect at the time of Closing.

7.5. No Material Adverse Change. Since the date of this Agreement, there shall not have been any material adverse change in the business, assets, results of operations, condition (financial or otherwise), or prospects of the Business or any material portion thereof.

7.6. Other Documents and Items. Buyer shall have received the certificates, instruments, and documents listed below:

- (a) certificates representing the Shares;
- (b) all books and records of the Company and Sellers relating to the operation of the Business;
- (c) not more than two (2) days prior to the Closing Date, the written resignations of all officers and directors of the Company as set forth in Section 6.7;
- (d) not more than two (2) days prior to the Closing Date, the Closing Statements; and
- (e) Such other certificates, instruments, and documents as may be reasonably requested by Buyer to carry out the intent and purposes of this Agreement.

#### ARTICLE VIII TERMINATION, AMENDMENT, AND WAIVER

8.1. Termination. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing in the following manner:

- (a) by mutual written consent of Sellers and Buyer; or
- (b) by either Sellers or Buyer, if:
  - (i) the Closing shall not have occurred on or before July 31, 2002, unless such failure to close shall be due to a breach of this Agreement by the party seeking to terminate this Agreement pursuant to this clause; or
  - (ii) there shall be any statute, rule, or regulation that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or a Governmental Entity shall have issued an order, decree, or ruling or taken any other action permanently restraining, enjoining, or otherwise prohibiting the consummation of the transactions contemplated hereby, and such order, decree, ruling, or other action shall have become final and nonappealable; or
- (c) by Buyer, if (i) any of the representations and warranties of Sellers contained in this Agreement shall not be true and correct in any material respect, when made or at any time prior to the Closing as if made at and as of such time, or (ii) the Company or Sellers shall have failed to fulfill any of its obligations under this Agreement, and, in the case of each of clauses (i) and (ii),

such misrepresentation, breach of warranty, or failure (provided it can be cured) has not been cured within thirty (30) days after written notice thereof from Buyer to the Company and Sellers.

8.2. Effect of Termination. In the event of the termination of this Agreement pursuant to Section 9.1 by Sellers or Buyer, written notice thereof shall forthwith be given to the other party specifying the provision hereof pursuant to which such termination is made, and this Agreement shall become void and have no effect, except that the agreements contained in this Section and in Sections 6.1, 6.10, 9.2, 9.3, 9.4 and Article IX shall survive the termination hereof. Nothing contained in this Section shall relieve any party from liability for damages actually incurred as a result of any breach of this Agreement.

8.3. Amendment. This Agreement may not be amended except by an instrument in writing signed by or on behalf of all the parties hereto.

8.4. Waiver. Each of the Company, Sellers and Buyer may (a) waive any inaccuracies in the representations and warranties of the other contained herein or in any document, certificate, or writing delivered pursuant hereto or (b) waive compliance by the other with any of the other's agreements or fulfillment of any conditions to its own obligations contained herein. Any agreement on the part of a party hereto to any such waiver shall be valid only if set forth in an instrument in writing signed by or on behalf of such party. No failure or delay by a party hereto in exercising any right, power, or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

8.5. Remedies Not Exclusive. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law. The rights and remedies of any party based upon, arising out of, or otherwise in respect of any inaccuracy in or breach of any representation, warranty, covenant, or agreement contained in this Agreement shall in no way be limited by the fact that the act, omission, occurrence, or other state of facts upon which any claim of any such inaccuracy or breach is based may also be the subject matter of any other representation, warranty, covenant, or agreement contained in this Agreement (or in any other agreement between the parties) as to which there is no inaccuracy or breach.

## ARTICLE IX SURVIVAL OF REPRESENTATIONS; INDEMNIFICATION

9.1. Survival. The representations and warranties of the parties hereto contained in this Agreement or in any certificate, instrument, or document delivered pursuant hereto shall survive the Closing without contractual limitation, regardless of any investigation made by or on behalf of any party.

9.2. Indemnification by Sellers. Subject to the terms and conditions of this Article IX, but solely for a period of one (1) year following the Closing Date, Sellers agrees to indemnify, defend, and hold harmless Buyer, each director, officer, employee, representative and agent of Buyer, and their respective heirs, legal representatives, successors, and assigns (collectively, the "**Buyer**

**Group**"), from and against any and all claims, actions, causes of action, demands, assessments, losses, damages, liabilities, judgments, settlements, penalties, costs, and expenses (including reasonable attorneys' fees and expenses), of any nature whatsoever, whether actual or consequential (collectively, "**Damages**"), asserted against, resulting to, imposed upon, or incurred by any member of the Buyer Group, directly or indirectly, by reason of or resulting from any of the following:

(a) any inaccuracy in or breach of any representation or warranty of Sellers or the Company contained in this Agreement or in any certificate, instrument, or document delivered pursuant hereto;

(b) any breach by Sellers or the Company of any of the covenants or agreements contained in this Agreement or in any certificate, instrument, or document delivered pursuant hereto;

(c) any liability or obligation of Sellers or the Company (whether accrued, absolute, contingent, unliquidated, or otherwise, whether or not known to Sellers or the Company, and whether due or to become due);

(d) the ownership, operation, management, or use of the properties of the Company prior to the Closing Date;

(e) any products manufactured, licensed, distributed or sold by Sellers or the Company in connection with the Business on or prior to the Closing Date; and

(f) any acts or omissions of Sellers or the Company prior to the date hereof and any events or occurrences involving the operation of the Business, or the current or former employees or independent contractors of the Company taking place prior to the Closing Date.

9.3. Indemnification by Buyer. Subject to the terms and conditions of this Article IX, Buyer shall indemnify, defend, and hold harmless Sellers, and each affiliate thereof, and their respective heirs, legal representatives, successors, and assigns (collectively, the "**Seller Group**"), from and against any and all Damages asserted against, resulting to, imposed upon, or incurred by any member of Seller Group, directly or indirectly, by reason of or resulting from any breach by Buyer of any of its representations, warranties, covenants, or agreements contained in this Agreement or in any certificate, instrument, or document delivered pursuant hereto.

9.4. Procedure for Indemnification. Promptly after receipt by an indemnified party under Section 9.2 or Section 9.3 of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party under such Section, give written notice to the indemnifying party of the commencement thereof, but the failure so to notify the indemnifying party shall not relieve it of any liability that it may have to any indemnified party except to the extent the indemnifying party demonstrates that the defense of such action is prejudiced thereby. In case any such action shall be brought against an indemnified party and it shall give written notice to the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it may wish, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party. If the indemnifying party



elects to assume the defense of such action, the indemnified party shall have the right to employ separate counsel at its own expense and to participate in the defense thereof. If the indemnifying party elects not to assume (or fails to assume) the defense of such action, the indemnified party shall be entitled to assume the defense of such action with counsel of its own choice, at the expense of the indemnifying party. If the action is asserted against both the indemnifying party and the indemnified party and there is a conflict of interests which renders it inappropriate for the same counsel to represent both the indemnifying party and the indemnified party, the indemnifying party shall be responsible for paying for separate counsel for the indemnified party; provided, however, that if there is more than one indemnified party, the indemnifying party shall not be responsible for paying for more than one separate firm of attorneys to represent the indemnified parties, regardless of the number of indemnified parties. If the indemnifying party elects to assume the defense of such action, (a) no compromise or settlement thereof may be effected by the indemnifying party without the indemnified party's written consent (which shall not be unreasonably withheld) unless the sole relief provided is monetary damages that are paid in full by the indemnifying party and (b) the indemnifying party shall have no liability with respect to any compromise or settlement thereof effected without its written consent (which shall not be unreasonably withheld).

## ARTICLE X MISCELLANEOUS

10.1. Notices. All notices, requests, demands, and other communications required or permitted to be given or made hereunder by any party hereto shall be in writing and shall be deemed to have been duly given or made if (a) delivered personally, (b) transmitted by first class, certified mail, postage prepaid, return receipt requested, (c) sent by prepaid overnight courier service, or (d) by facsimile transmission, answer back requested, to the parties at the following addresses (or at such other addresses as shall be specified by the parties by like notice):

If to Buyer:

Interstate Battery System International, Inc.  
12770 Merit Drive, Suite 1000  
Dallas, Texas 75251  
Fax: (972) \_\_\_\_\_  
Attn: \_\_\_\_\_

With a Copy to:

Interstate Battery System of America, Inc.  
12770 Merit Drive, Suite 1000  
Dallas, Texas 75251  
Fax: (972) 455-6552  
Attn: Walter C. Holmes, III, Vice President & General Counsel

If to the Company:

Distributor Operations, Inc.  
12770 Merit Drive, Suite 400  
Dallas, Texas 75251  
Fax: (972)455-6499  
Attn: Neal Holford, Vice President

If to Sellers:

Carlos M. Sepulveda, Jr.  
3908 Hanover  
Dallas, Texas 75225  
Fax: 972-455-6563

Leonard C. Ruby  
4131 Manorview Lane  
Dallas, Texas 75228  
Fax: 972-455-6514

Such notices, requests, demands, and other communications shall be effective (x) if delivered personally or sent by courier service, upon actual receipt by the intended recipient, (y) if mailed, upon the earlier of five days after deposit in the mail or the date of delivery as shown by the return receipt therefor, or (z) if sent by facsimile transmission, when the answer back is received.

10.2. Entire Agreement. This Agreement, together with the Schedules and other writings referred to herein or delivered pursuant hereto, constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

10.3. Binding Effect; Assignment; No Third Party Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as otherwise expressly provided in this Agreement, neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by either of the parties hereto without the prior written consent of the other party, except that Buyer may assign to any corporate affiliate of Buyer any of Buyer's rights, interests, or obligations hereunder, upon notice to Sellers, provided that no such assignment shall relieve Buyer of its obligations hereunder. Except as provided in Article X, nothing in this Agreement, express or implied, is intended to or shall confer upon any person other than the parties hereto, and their respective successors and permitted assigns, any rights, benefits, or remedies of any nature whatsoever under or by reason of this Agreement.

10.4. Severability. If any provision of this Agreement is held to be unenforceable, this Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects this Agreement shall remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof,

then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by Applicable Law.

10.5. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

10.6. Further Assurances. From time to time following the Closing, at the request of either party hereto and without further consideration, the other party hereto shall execute and deliver to such requesting party such instruments and documents and take such other action as such requesting party may reasonably request in order to consummate more fully and effectively the transactions contemplated hereby.

10.7. Descriptive Headings. The descriptive headings herein are inserted for convenience of reference only, do not constitute a part of this Agreement, and shall not affect in any manner the meaning or interpretation of this Agreement.

10.8. Gender. Pronouns in masculine, feminine, and neuter genders shall be construed to include any other gender, and words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires.

10.9. References. All references in this Agreement to Articles, Sections, and other subdivisions refer to the Articles, Sections, and other subdivisions of this Agreement unless expressly provided otherwise. The words "**this Agreement**", "**herein**", "**hereof**", "**hereby**", "**hereunder**", and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. Whenever the words "**include**", "**includes**", and "**including**" are used in this Agreement, such words shall be deemed to be followed by the words "**without limitation**". Each reference herein to a Schedule refers to the item identified separately in writing by the parties hereto as the described Schedule to this Agreement. A reference to any person shall include such person's predecessors and successors. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP. All Schedules are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

10.10. Counterparts. This Agreement may be executed by the parties hereto in any number of counterparts, each of which shall be deemed an original, each of which may be transmitted by facsimile, but all of which shall constitute one and the same agreement. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all, the parties hereto.

## ARTICLE XI DEFINITIONS

11.1. Certain Defined Terms. As used in this Agreement, each of the following terms has the meaning given it below:

"**affiliate**" means, with respect to any person, any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such person. For the purposes of this definition, "**control**", when used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise; and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Ancillary Documents**" means each agreement, instrument, and document (other than this Agreement) executed or to be executed by Sellers or Buyer in connection with the transactions contemplated by this Agreement.

"**Applicable Law**" means any statute, law, rule, or regulation or any judgment, order, writ, injunction, or decree of any Governmental Entity to which a specified person or property is subject.

"**Code**" means the Internal Revenue Code of 1986, as amended and in effect on the Closing Date.

"**Encumbrances**" means liens, charges, pledges, options, mortgages, deeds of trust, security interests, claims, restrictions, easements, and other encumbrances of every type and description, whether imposed by law, agreement, understanding, or otherwise.

"**Environmental Laws**" means all federal, state and local statutes, ordinances, and other laws relating to pollution or protection of the environment, including laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, or industrial, hazardous, or toxic materials or wastes into the environment (including, without limitation, ambient air, surface water, ground water, land surface, or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, hazardous, or toxic materials or wastes, or any regulation, rule, code, plan, order, decree, judgment, injunction, notice, or demand letter issued, entered, promulgated, or approved thereunder.

"**GAAP**" means generally accepted accounting principles in the United States of America from time to time.

"**Governmental Entity**" means any court or tribunal in any jurisdiction (domestic or foreign) or any federal, state, municipal, or other governmental body, agency, authority, department, commission, board, bureau, or instrumentality (domestic or foreign).

"**Material Adverse Effect**" means any change, development, or effect (individually or in the aggregate) which is, or is reasonably likely to be, materially adverse (a) to the business, assets, results of operations, condition (financial or otherwise), or prospects of the Business or to the ownership or operation of the Assets or any material portion thereof or (b) to the ability of Sellers to

perform on a timely basis any material obligation of Sellers under this Agreement or any agreement, instrument, or document entered into or delivered in connection herewith.

**"Permits"** means licenses, permits, franchises, consents, approvals, variances, exemptions, and other authorizations of or from Governmental Entities.

**"person"** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, enterprise, unincorporated organization, or Governmental Entity.

**"Proceedings"** means all proceedings, actions, claims, suits, investigations, and inquiries by or before any arbitrator or Governmental Entity.

**"reasonable best efforts"** means a party's reasonable best efforts in accordance with reasonable commercial practice and without the incurrence of unreasonable expense.

**"Taxes"** means any income taxes or similar assessments or any sales, excise, occupation, use, ad valorem, property, production, severance, transportation, employment, payroll, franchise, or other tax imposed by any United States federal, state, or local (or any foreign or provincial) taxing authority, including any interest, penalties, or additions attributable thereto.

**"Tax Return"** means any return or report, including any related or supporting information, with respect to Taxes.

11.2. Certain Additional Defined Terms. In addition to such terms as are defined in the opening paragraph of and the recitals to this Agreement and in Section 11.1 other terms which are defined in this Agreement have the specified meaning throughout this Agreement unless the context clearly otherwise indicates.

[The Remainder of this Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement, or caused this Agreement to be executed by their duly authorized representatives, all as of the day and year first above written.

DISTRIBUTOR OPERATIONS, INC.

By: Leonard C Ruby  
Name: Leonard C Ruby  
Title: President

SELLERS

Carlos M. Sepulveda, Jr.  
Carlos M. Sepulveda, Jr.

Leonard C. Ruby  
Leonard C. Ruby

INTERSTATE BATTERY SYSTEM INTERNATIONAL, INC.

By: R. Thomas Miller  
Name: R. Thomas Miller  
Title: President - CEO

Intellectual Property

Nationwide\*

500273 000002 Dallas Stock Purchase Agr IBSI-DO