

03-10-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

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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): LENNY'S SALES, INC.

2-24-03

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 4/12/00

2. Name and address of receiving party(ies)

Name: Jimmy's Gift Shop, Inc.

Internal Address:

Address:

Street Address: 1394 North Nova Road

City: Daytona Beach State: FL Zip: 32117

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Florida 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) 1,710,281

Additional number(s) attached Yes No

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

Name: Lori T. Milvain, Esq.

Internal Address: Gronek & Latham, LLP

Suite 600

Street Address: 390 North Orange Avenue

City: Orlando State: FL Zip: 32801

6. Total number of applications and registrations involved: 1

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

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Lori T. Milvain

Name of Person Signing

Signature: Lori T. Milvain

Date: 2/21/03

Total number of pages including cover sheet, attachments, and document: 10

03/07/2003 DBYRNE 00000141 1710281

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40.00 DP

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

TRADEMARK REEL: 002686 FRAME: 0784

# AGREEMENT AND PLAN OF ASSET PURCHASE

This Agreement and Plan of Asset Purchase, dated the 12<sup>th</sup> day of APRIL, 2000, by and between JIMMY'S GIFT SHOP, INC., a Florida corporation with its principal offices located at 144 South Beach Street, Daytona Beach, Florida ("Buyer") and LENNY'S SALES, INC., a Florida corporation with its principal offices located at 19 Evergreen Drive, Lake Wales, Florida 33853 ("Seller").

## RECITALS

WHEREAS, Buyer desires to acquire certain assets of Seller, all as more particularly set forth herein (the "Acquisition"); and

WHEREAS, the board of directors of each of the parties to this Agreement has determined that the proposed transaction is advisable and for the general welfare and advantage of their respective corporations and shareholders and have recommended to their respective shareholders that the proposed transaction be consummated; and

WHEREAS, the Sale of Assets shall be consummated pursuant to and in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth in this Agreement, the parties agree as follows:

### SECTION 1. Purchase and Sale of the Assets.

1.1 Transfer of Assets. Subject to the terms and conditions of this Agreement, Seller shall sell, transfer, convey, assign, and deliver to Buyer, and Buyer shall purchase, accept, and pay for all right, title, and interest in and to the assets described on Schedule 1.1 (the "Assets"). (The ownership and operation of the assets in the conduct of a Florida souvenir and specialty items business and all activities necessary and incident thereto are sometimes referred to as the "Business".)

1.2 Purchase Price. The total purchase price payable by Buyer to Seller for the Assets ("Purchase Price"), subject to reduction as set forth below, if applicable, shall be \$112,000.00, to be paid as follows:

Deposit paid to Seller .....	\$40,000.00
Deferred Balance .....	<u>\$72,000.00</u>
Total: .....	\$112,000.00

The deferred balance shall be represented by a promissory note and paid in twelve (12) equal monthly installments of \$6,000.00 each, plus interest at the rate of 10% per annum, beginning thirty (30) days from the closing date. The note shall provide for a five (5%) percent late payment in the event any payment is received more than ten (10) days after it is due. The promissory note shall be personally guaranteed by Bernard Edelman and Elizabeth A. Edelman.

*Third*

The promissory note shall be secured by a ~~second~~ mortgage on property owned by Bernard Edelman and Elizabeth A. Edelman located at 144 South Beach Street, Daytona Beach, Florida. The Buyer represents that the property has an approximate value of \$185,000.00 and is subject to an existing mortgage in favor of Fidelity Bank of Florida with a current principal balance of \$101,342.87.

The property is legally described as:

*The South 1/2 of Lot 1, Block 1, and the South 3 feet of the North 1/2 of Lot 10, Block 1, Assessor's Subdivision of Block 6, Hodgman's Daytona, according to the plat thereof recorded in Map Book 3, at page 125, of the Public Records of Volusia County, Florida.*

Buyer agrees to provide Seller with a mortgagee title insurance policy insuring the lien of the Seller's second mortgage in the amount of \$72,000.00, and to pay all costs associated with this second mortgage.

Additionally, the Buyer shall execute and deliver at closing a security agreement and UCC-1 covering all inventory and equipment. Buyer shall be responsible for all costs associated with the Seller financing.

1.3 Allocation of Purchase Price. The purchase price shall be allocated as follows:

Trademarks and Copyrights	\$ 8,250.00
Machines and Equipment	26,400.00
Boxes and Displays	67,809.00
Orange Blossom Perfume Formula and Inventory	6,777.00
Others - for Buckets and Mesh Items	<u>2,764.00</u>
Total	\$112,000.00

Note: The purchase price shall be adjusted using wholesale prices to reflect additional inventory acquired in the ordinary course of business which remains on hand on the Closing date.

1.4 Instruments of Conveyance and Transfer. At the closing, Seller shall deliver to Buyer such deeds, bills of sale, endorsements, assignments, and other good and sufficient instruments of transfer, conveyance, and assignment satisfactory to Buyer and its counsel as shall be effective to vest in and warrant to Buyer good and marketable title to the Assets, free and clear of all mortgages, security agreements, pledges, charges, claims, liens, and encumbrances other than noted above, and to transfer to Buyer all of Seller's rights and obligations under the Assumed Contracts. Simultaneously with such delivery, Seller shall take all steps as may be required to put Buyer in actual possession and operating control of the Assets and the Business.

1.5 Further Assurances. Seller shall from time to time at the request of Buyer and without further consideration, execute and deliver such instruments of transfer, conveyance, and assignment in addition to those delivered under Section 1.4 and take such other action as Buyer may reasonably request to more effectively transfer, convey, and assign to and vest in Buyer, and to put Buyer in possession of, all or any portion of the Assets.

**SECTION 2. Closing.**

Subject to the terms and conditions of this Agreement, the Closing (the "Closing") shall take place on or before April 28, 2000, at the offices of Bradley Johnson Law Firm, PA, or at such other time, date, and/or place as the parties may mutually agree upon. The date on which the closing occurs is referred to as the "Closing Date."

**SECTION 3. Representations and Warranties of Seller.**

3.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer as follows:

3.1.1 Organization and Good Standing.

Seller is a corporation duly organized, validly existing, and in good standing under the law of the state of Florida, having all requisite corporate power and authority to own its assets and carry on its business as presently conducted.

3.1.2 Authorization, Validity. The execution, delivery, and performance of this Agreement by Seller has been duly and validly authorized by all requisite corporate action. This Agreement has been duly and validly executed and delivered by Seller, and is the legal, valid, and binding obligation of Seller, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, moratorium, reorganization, and other laws of general application affecting the enforcement of creditors' rights and by the availability of equitable remedies.

3.1.3 Consents. No approval, consent, waiver, or authorization of or filing or registration with any governmental authority or third party is required for the execution, delivery, or performance by Seller of the transactions contemplated by this Agreement.

3.1.4 Violations. The execution, delivery, or performance of this Agreement does not and will not (i) with or without the giving of notice or the passage of time, or both, constitute a default, result in breach of, result in the termination of, result in the acceleration of performance of, require any consent, approval, or waiver, or result in the imposition of any lien or other encumbrance upon any property or assets of Seller, under any agreement, lease, or other instrument to which Seller is a party or by which any of the property or assets of Seller is bound; (ii) violate any permit, license, or approval required by Seller to own its assets and operate its business; (iii) violate any law, statute, or regulation or any judgment, order, ruling, or other decision of any governmental authority, court, or arbitrator; or (iv) violate any provision of Seller's Articles of Incorporation or Bylaws.

No representation, warranty, or covenant contained in this Agreement or in any Schedule or Exhibit furnished under it or in connection with the transactions contemplated by it, contains any untrue statement of a material fact or omits to state any fact necessary to make the statements contained in it not misleading, in light of the circumstances under which they are made, and all representations, warranties, certificates, Exhibits, and Schedules are correct on and as of this date and will be correct on the Closing Date.

3.2 Survival of Representations and Warranties. Each of the representations and warranties in Section 3.1 shall be deemed renewed and made again by Seller at the closing as if made at the time, and shall survive the closing until the expiration of all applicable statute of limitation periods.

**SECTION 4. Representations and Warranties of Buyer.**

4.1 Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows:

UG-06-01 02-100 111 1111

4.1.1 Organization and Good Standing: Buyer is a corporation duly organized, validly existing, and in good standing under the law of the state of Florida, having all requisite corporate power and authority to own its assets and carry on its business as presently conducted.

4.1.2 Authorization: Validity. The execution, delivery, and performance of this Agreement by Buyer has been duly and validly authorized by all requisite corporate action. This Agreement has been duly and validly executed and delivered by Buyer, and is the legal, valid, and binding obligation of Buyer, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, moratorium, reorganization, and other laws of general application affecting the enforcement of creditors' rights and by the availability of equitable remedies.

4.1.3 Consents. No approval, consent, waiver, or authorization of or filing or registration with any governmental authority or third party is required for the execution, delivery, or performance by Buyer of the transactions contemplated by this Agreement.

4.1.4 Violations. The execution, delivery, or performance of this Agreement does not and will not: (i) with or without the giving of notice or the passage of time, or both, constitute a default, result in breach of, result in the termination of, result in the acceleration of performance of, require any consent, approval, or waiver, or result in the imposition of any lien or other encumbrance upon any property or assets of Buyer, under any agreement, lease, or other instrument to which Buyer is a party or by which any of the property or assets of Buyer is bound; (ii) violate any permit, license, or approval required by Buyer to own its assets and operate its business; (iii) violate any law, statute, or regulation or any judgment, order, ruling, or other decision of any governmental authority, court, or arbitrator; or (iv) violate any provision of Buyer's Articles of Incorporation or Bylaws.

No representation, warranty, or covenant contained in this Agreement or in any Schedule or Exhibit furnished under it or in connection with the transactions contemplated by it, contains any untrue statement of a material fact or omits to state any fact necessary to make the statements contained in it not misleading, in light of the circumstances under which they are made, and all representations, warranties, certificates, Exhibits, and Schedules are correct on and as of this date and will be correct on the closing date.

4.2 Survival of Representations and Warranties. Each of the representations and warranties in Section 4 shall be deemed renewed and made again by Buyer at the closing as if made at the time, and shall survive the closing until the expiration of all applicable statute of limitation periods.

## SECTION 5. Covenants of Seller.

5.1 Except as may otherwise be consented to or approved in writing by Buyer, Seller agrees that from the date of this Agreement and until the Closing:

5.1.1 Conduct Pending Closing. The business of Seller shall be conducted only in the ordinary course consistent with past practices.

5.1.2 Confidentiality. Seller agrees to keep the provisions of this Agreement confidential and will not disclose its provisions to any person, excluding Seller's accountants, attorneys, and other professionals with whom Seller conducts business and to whom such disclosure is reasonably necessary; provided, however, that such persons shall be advised of the confidential nature of this Agreement at the time of such disclosure.

5.1.3 Prorations. All expenses and revenues of the Business relating to the Assets, shall be prorated as of Closing.

5.1.4 Risk of Loss. In the event that any of the assets are damaged by fire, vandalism, or other casualty before closing, the cost of any repair or restoration shall be an obligation of Seller and the closing shall proceed under the terms of this Agreement, with the cost of repair or restoration escrowed at closing. If, however, the cost of repair or restoration exceeds 50 percent (50%) of the Purchase Price, Buyer shall have the option of either (i) taking the Assets as is, together with any insurance proceeds payable by virtue of such loss or damage or (ii) cancelling this Agreement.

#### SECTION 6. Covenants of Buyer.

6.1 Confidentiality. Buyer agrees to keep the provisions of this Agreement confidential and will not disclose its provisions to any person, excluding Buyer's accountants, attorneys, and other professionals with whom Buyer conducts business and to whom such disclosure is reasonably necessary; provided, however, that such persons shall be advised of the confidential nature of this Agreement at the time of such disclosure.

SECTION 7. Conditions Precedent to Obligations of Buyer. Unless, at the closing, each of the following conditions is either satisfied or waived by Buyer in writing, Buyer shall not be obligated to effect the transactions contemplated by this Agreement:

7.1 Representations and Warranties. The representations and warranties of Seller are true and correct at the date of this Agreement and shall be true and correct as of the Closing as if each were made again at that time.

7.2 Performance of Covenants. Seller shall have performed and complied in all respects with the covenants and agreements required by this Agreement.

7.3 Items to be Delivered at Closing. Seller shall have tendered for delivery to Buyer the following:

7.3.1 Transfer Documents. Bills of sale, assignments, consents to assignments, and other instruments of transfer and consent necessary to transfer to Buyer good and marketable title in and to all of the Assets, free and clear of all liens, except as set forth in this Agreement.

7.4 No Adverse Change. There shall not have been a material adverse change in the financial condition of Seller or the business, whether or not covered by insurance; nor shall any lawsuit be pending that seeks to set aside the Agreement or the transactions contemplated by it.

SECTION 8. Conditions Precedent to Obligations of Seller. Unless, at the Closing, each of the following conditions is either satisfied or waived by Seller in writing, Seller shall not be obligated to effect the transactions contemplated by this Agreement.

8.1 Representations and Warranties. The representations and warranties of Buyer in this Agreement are true and correct at the date of this Agreement and as of the closing as if each were made again at that time.

8.2 Performance of Covenants. Buyer shall have performed and complied in all respects with the covenants and agreements required by this Agreement.

SECTION 9. Agreements to Indemnify.

9.1 Buyer and Bernard Edelman (collectively the "Indemnitors") agree, to the fullest extent permitted by Florida law, to indemnify, defend, and hold harmless to Seller from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties, and reasonable attorneys' fees and expenses, asserted against, related to, resulting from, imposed on, or incurred by Seller, directly or indirectly, by reason of, relating to, or resulting from (i) liabilities and obligations of, and claims against, Buyer (whether absolute, accrued, contingent, or otherwise) occurring subsequent to the date of the Closing or arising out of facts or circumstances existing on or after the date of the Closing; [or] (ii) a breach of any agreement, representation, or warranty of Buyer contained in or made under this Agreement, or any facts or circumstances constituting such a breach; [or] (iii) any tax or related claim (including, without limitation, claims for interest and penalties) asserted against Buyer or relating to the operations of Buyer after the date of the Closing.

9.2 Seller and Juliette Breseman (collectively the "Indemnitors") agree, to the fullest extent permitted by Florida law, to indemnify, defend, and hold harmless Buyer from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties, and reasonable attorneys' fees and expenses, asserted against, related to, resulting from, imposed on, or incurred by Buyer, directly or indirectly, by reason of, relating to, or resulting from (i) liabilities and obligations of, and claims against, Seller (whether absolute, accrued, contingent, or otherwise) existing as of the date of the Closing or arising out of facts or circumstances existing on or before the date of the Closing; [or] (ii) a breach of any agreement, representation, or warranty of Seller contained in or made under this Agreement, or any facts or circumstances constituting such a breach; [or] (iii) any tax or related claim (including, without limitation, claims for interest and penalties) asserted against Seller or relating to the operations of Seller through the date of the Closing.

SECTION 10. Notices.

Any notice, request, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been delivered, given, and received for all purposes if written and (i) if delivered personally, by facsimile, or by courier or delivery service, at the time of such delivery; or (ii) if directed by registered or certified United States mail, postage and charges prepaid, addressed to the intended recipient, at the address specified below, two business days after such delivery to the United States Postal Service.

If to Buyer: 144 South Beach Street  
Daytona Beach, Florida

If to Seller: 16 Evergreen Drive  
Lake Wales, Florida 33853

Any party may change the address to which notices are to be mailed by giving notice as provided herein to all other parties.

SECTION 11. Miscellaneous.

11.1 Entire Agreement. This Agreement, the Exhibits, and the Schedules, contain all of the terms and conditions agreed upon by the parties with reference to the subject matter and supersede any and all previous agreements, representations, and communications between the parties, whether written or oral. This Agreement, including its Exhibits and Schedules, may not be modified or changed except by written instrument signed by all of the parties, or their respective successors or assigns.

11.2 Assignment. This Agreement shall not be assigned or assignable by Seller or Buyer without the express written consent of the other party. This Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns.

11.3 Captions. All section, schedule, and exhibit headings are inserted for the convenience of the parties and shall not be used in any way to modify, limit, construe, or otherwise affect this Agreement.

11.4 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same instrument.

11.5 Waiver. Each of the parties may, by written notice to the other, (i) extend the time for the performance of any of the obligations or other actions of the other party; (ii) waive any inaccuracies in the representations or warranties of the other party contained in this Agreement or in any document delivered pursuant to this Agreement; (iii) waive compliance with any of the covenants of the other party contained in this Agreement; or (iv) waive, in whole or in part, performance of any of the obligations of the other party. No action taken pursuant to this Agreement, including, but not limited to, the consummation of the closing or any knowledge of or investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action, possessing such knowledge, or performing such investigation of compliance with the representations, warranties, covenants, and agreements contained herein. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or similar breach.

11.6 Controlling Law. This Agreement has been entered into in the state of Florida and shall be governed by, construed, and enforced in accordance with the laws of Florida.

11.7 Gender. Whenever in this Agreement the context so requires, references to the masculine shall be deemed to include the feminine and the neuter, references to the neuter shall be deemed to include the masculine and the feminine, and references to the plural shall be deemed to include the singular and the singular to include the plural.

11.8 Further Assurances. Each of the parties shall use all reasonable efforts to bring about the transactions contemplated by this Agreement as soon as practicable, including the execution and delivery of all instruments, assignments, and assurances, and shall take or cause to be taken such reasonable further or other actions necessary or desirable to carry out the intent and purposes of this Agreement.

11.9 Attorneys' Fees. In the event a lawsuit is brought to enforce or interpret any part of this Agreement or the rights or obligations of any party to this Agreement, the prevailing party shall be entitled to recover such party's costs of suit and reasonable attorneys' fees, through all appeals.

11.10 References to Agreement. The words "hereof," "herein," "hereunder," and other similar compounds of the word "here" shall mean and refer to the entire Agreement and not to any particular section, article, provision, annex, exhibit, schedule, or paragraph unless so required by the context.



11.11 Schedules and Exhibits. Schedules and Exhibits to this Agreement (and any references to any part or parts of them) shall, in each instance, include the Schedules or Exhibits (as the case may be) attached to this Agreement as well as any amendments to such Schedules or Exhibits (in each such case). All such Schedules and Exhibits shall be deemed an integral part of this Agreement, and are incorporated into this agreement by reference.

11.12 Venue. Any litigation arising under this Agreement shall be instituted only in Polk County, Florida, the place where this Agreement was executed. All parties agree that venue shall be proper in that county for all such legal or equitable proceedings.

11.13 Severability. Each section, subsection, and lesser section of this Agreement constitutes a separate and distinct undertaking, covenant, and/or provision. If any provision of this Agreement shall be determined to be unlawful, such provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

11.14 Rights in Third Parties. Except as otherwise specifically provided, nothing expressed or implied in this Agreement is intended, or shall be construed, to confer on or give any person, firm, or corporation, other than the parties and their respective shareholders, any rights or remedies under or by reason of this Agreement.

11.15 Expenses. Each party shall pay its own expenses in connection with the negotiation and consummation of the transactions contemplated by this Agreement.

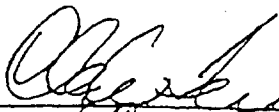
SECTION 12. Restrictive Covenant. The Seller and Juliette Breseman agree not to engage in the manufacture, sale or distribution of Florida souvenirs and other specialty items for a period of five (5) years within the State of Florida.

SECTION 13. Survival. The terms and conditions of this agreement shall survive the closing.

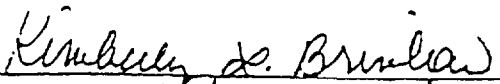
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

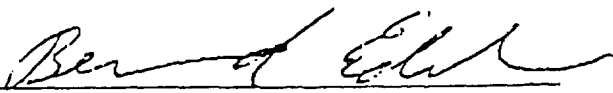
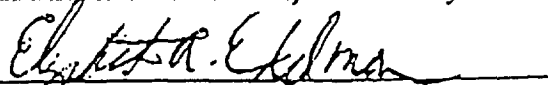
Signed, Sealed and Delivered  
in the Presence of:

JIMMY'S GIFT SHOP, INC., a Florida corporation

  
Print or Type Name: CHERYL TERRY

By:   
BERNARD EDELMAN, President

  
Print or Type Name: Kimberly S. Brimlow

  
BERNARD EDELMAN, Individually  
  
ELIZABETH A. EDELMAN, Individually

144 South Beach Street  
Daytona Beach, Florida

*Clay Terry*  
CLAY A. TERRY

Print or Type Name: CLAY A. TERRY

*Kimberly L. Brimlow*  
KIMBERLY L. BRIMLOW

Print or Type Name: KIMBERLY L. BRIMLOW

LENNY'S SALES, INC., a Florida corporation

By: *Juliette M. Breseman, President*  
JULIETTE BRESEMAN, President

*Juliette M. Breseman*  
JULIETTE BRESEMAN, Individually

16 Evergreen Drive  
Lake Wales, FL 33853

"SELLER"

Deposit Received

*\$40,000.00 Juliette M. Breseman*

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