

12/16/03

12-19-2003

Form PTO-1594

(Rev. 10/02)

OMB No. 0651-0027 (exp. 6/30/2005)

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

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

1. Name of conveying party(ies):

Harris Trust and Savings Bank

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation-State -- **Illinois**
☐ Other _____

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

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☒ Other Release of Security Interest

Execution Date: October 17, 2001

2. Name and address of receiving party(ies):

Name: **Foster & Gallagher, Inc.**

Internal

Address: _____

Street Address: 6523 North Galena RoadCity: Peoria State: IL Zip: 61632

- ☐ Individual(s) citizenship _____
☐ Association _____
☐ General Partnership _____
☐ Limited Partnership _____
☒ Corporation-State Illinois
☐ 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)

2619278Additional number(s) attached ☐ Yes ☒ No

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

Name: Robert E. Burwell, Esq.Internal Address: Latham & Watkins LLPStreet Address: 701 B Street, Suite 2100City: San Diego State: CA Zip: 92101

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

500524 (For additional fees, if any)

(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.

Gregory B. Phillips

Senior IP Paralegal

Name of Person Signing

DBYRNE 00000265 2619278

Signature

December 16, 2003

Date

Total number of pages including cover sheet, attachments, and document: 93

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

OC647252.1

TRADEMARK
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
MBC GREENHOUSE CO., et al.,¹) Case No. 01-02178 (RRM)
) (Jointly Administered)
)
Debtors.)

ENTERED:
AS A TRUE COPY:
ATTEST:

DAVID D. BIRD, CLERK
U.S. BANKRUPTCY COURT
By: *Michelle Barkshire*
Clerk 10/18/01

**AMENDED ORDER PURSUANT TO SECTIONS 105(a), 363, 365 AND 1146(c) OF
THE BANKRUPTCY CODE (I) AUTHORIZING THE SALE OF THE DEBTORS' GIFT
GROUP ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND
INTERESTS AND (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS, LICENSES AND UNEXPIRED LEASES IN
CONNECTION WITH SUCH SALE [RE DOCKET NO. 320]**

Upon the motion (the "Motion")² of the Debtors seeking, among other things,
entry of an order pursuant to sections 105(a), 363, 365 and 1146(c) of title 11 of the United
States Code (the "Bankruptcy Code") (i) authorizing the sale of certain assets of the Gift Group
free and clear of liens, claims, encumbrances and interests and (ii) authorizing the assumption
and assignment of certain executory contracts, licenses and unexpired leases in connection with
the sale of certain of the Debtors' Gift Group assets; and the Court having entered an order on
August 23, 2001, (the "Bidding Procedures Order") approving the Bidding Procedures, the Bid
Protection, and the form of the Asset Purchase Agreement; and the Auction having been held on

¹ The following entities are Debtors: MBC Greenhouse Co., Drake Acquisition Company, Flower of the Month Company, Foster & Gallagher, Inc., Gurney Seed & Nursery Corp., Health Group, Inc., HearthSong, Inc., Henry Field Seed & Nursery Company, Home Marketplace, Inc., Learn & Play, Inc., Magic Cabin Dolls, Inc., Michigan Bulb Company, mySEASONS.com, Inc., mySEASONS Holdings, Inc., New Holland Bulb Co., NEWCO Holdings, Inc., Sand Lake Realty, Co., Spring Hill Nurseries Company, Stark Bro.'s Wholesale Co., Stark Brothers Nurseries and Orchards Company, Stark Nursery Co. (d/b/a Agri Sun), and Vermont Wildflower Farm, Inc.

² Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Motion and the Asset Purchase Agreement.

September 11, 2001; and Brecon Capital Company, LLC (together with any designee thereof, the "Successful Bidder") having been determined by the Debtors, after consultation with the Agent and the Committee, to have submitted the highest and best bid at the Auction for the assets; and the Sale Hearing having been held on September 19, 2001; and the Debtors having submitted into evidence the transcript of the Auction at the Sale Hearing; and all interested parties having been afforded an opportunity to be heard with respect to the Motion; and the Court having reviewed and considered (i) the Motion, (ii) the objections thereto, if any, and (iii) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that the Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and it appearing that the relief requested in the Motion and approval of the sale of the assets identified in the Asset Purchase Agreement attached hereto as Exhibit X (the assets, "Gift Group Assets", the sale of the Gift Group Assets and all transactions related thereto are collectively the "Sale") and the assumption and assignment of some or all of the list of executory contracts, licenses and unexpired leases attached hereto as Exhibit Y (the "Agreements" and the Agreements that are assumed by the Debtors and assigned to the Successful Bidder by the Debtors, in consultation with the Successful Bidder are the "Assigned Agreements") and the assumption of the liability for the

payment of any cure amounts associated with the Assigned Agreements (the "Cure Amounts") listed in Exhibit Y, any other liabilities assumed by the Successful Bidder pursuant to the Assigned Agreements and any other liabilities assumed by the Successful Bidder pursuant to the terms of this Sale Order (the "Assumed Obligations") is in the best interests of the Debtors, their estates, creditors, and other parties in interest; and upon the record of the Sale Hearing, the Auction and these cases and after due deliberation and sufficient cause appearing therefor, it is hereby:

FOUND AND DETERMINED AS FOLLOWS:³

1. The statutory predicates for the relief sought in the Motion are sections 363, 365 and 1146(c) of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004, 6006 and 9014.
2. As evidenced by the affidavit of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing, the Sale, the assumption and assignment to the Successful Bidder of the Assigned Agreements through the Cure Notice and the identity of the Successful Bidder through the Successful Bid Notice has been provided in accordance with sections 102(l), 363, and 365 of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004, 6006 and 9014; (ii) such notice was reasonable, sufficient, and appropriate under the circumstances; and (iii) no other or further notice of the Motion, the Auction, Sale Hearing, the

³Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

assumption and assignment of the Assigned Agreements or the identity of the Successful Bidder is or shall be required. The Debtors did not select a Second Best Bidder or Second Best Bid.

3. A reasonable opportunity to object or be heard with respect to the Motion, the identity of the Successful Bidder, the assumption and assignment of the Assigned Agreements and the relief requested in the Motion has been afforded to all interested persons and entities.

4. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors have adequately marketed the Gift Group Assets and the Assigned Agreements and conducted the sale process in compliance with the Bidding Procedures Order.

5. Each Debtor (i) has full corporate power and authority to execute the Asset Purchase Agreement and all other documents contemplated thereby for the Sale, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Asset Purchase Agreement, (iii) expects to take all corporate action necessary to authorize and approve the Asset Purchase Agreement and the consummation by such Debtor of the transactions contemplated thereby.

6. The Debtors have demonstrated sound business justifications for the Sale pursuant to section 363(b) of the Bankruptcy Code prior to, and outside the context of, a plan of reorganization in that, among other things, their Gift Group Assets are deteriorating in value and the Debtors are unable to restructure or reorganize their operations.

7. The Debtors have acknowledged that the Lenders have a perfected security interest in substantially all of the Debtors' assets, including substantially all of the Gift Group Assets.

8. The Debtors and the Successful Bidder negotiated, proposed and entered into the Asset Purchase Agreement without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtors nor the Successful Bidder have engaged in any conduct that would cause or permit the Asset Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code. The Successful Bidder is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

9. The consideration provided by the Successful Bidder for the Gift Group Assets pursuant to the Asset Purchase Agreement (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Gift Group Assets, (iii) will provide a greater recovery for the Debtors' creditors and other interested parties than would be provided by any other practical available alternative and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including, but not limited to, statutes governing fraudulent conveyance and fraudulent transfer).

10. The transfer of the Gift Group Assets to the Successful Bidder will be a legal, valid, and effective transfer of the Gift Group Assets, and will vest the Successful Bidder with all rights, title and interest of the Debtors in the Gift Group Assets, free and clear of all liens, claims,

encumbrances, pledges, mortgages, security interests, charges, options, and other interests (collectively, the "Interests") other than the Assumed Obligations, including, but not limited to, those (i) that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtors' or the Successful Bidder's interest in the Gift Group Assets, or any similar rights, and (ii) relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Debtors' businesses prior to the date (the "Closing Date") of the consummation of the Asset Purchase Agreement (the "Closing").

11. The Successful Bidder may not have entered into the Asset Purchase Agreement and may not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their estates, and their creditors, if the sale of the Gift Group Assets to such Successful Bidder is not free and clear of all Interests other than the Assumed Obligations, or if the Successful Bidder would, or in the future could, be liable for any of the Interests and if the assignment of the Assigned Agreements could not be made under section 365 of the Bankruptcy Code.

12. The Debtors may sell the Gift Group Assets free and clear of all Interests of any kind or nature whatsoever (other than the Assumed Obligations) because one or more of the standards set forth in section 363(f) of the Bankruptcy Code have been satisfied. Those (i) holders of Interests and (ii) non-debtor parties to Agreements who did not object or who withdrew their objections, to the Sale or the Motion are deemed to have consented pursuant to

section 363(f)(2) of the Bankruptcy Code. Those (i) holders of Interests and (ii) non-debtor parties to Agreements who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Interests, if any, attach to the proceeds of the Sale ultimately attributable to the property against or in which they claim or may claim an Interest.

13. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume Assigned Agreements and assign them to the Successful Bidder and the assumption and assignment of the Assigned Agreements is in the best interests of the Debtors, their estates, and their creditors. The Assigned Agreements being assigned to, and the liabilities being assumed by, the Successful Bidder are an integral part of the Gift Group Assets being purchased by the Successful Bidder. Accordingly, such assumptions and assignments of Assigned Agreements and the Assumed Obligations are reasonable, enhance the value of the Debtors' estates and do not constitute unfair discrimination.

14. The Debtors and the Successful Bidder (i) have provided adequate assurance of the Successful Bidder's future performance under the Assigned Agreements, within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code, (ii) will cure, or have provided adequate assurance of cure, of any default existing prior to the date hereof under any of the Assigned Agreements within the meaning of section 365(b)(1)(A) of the Bankruptcy Code and (iii) will provide compensation or adequate assurance of compensation to any party for any

actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assigned Agreements, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code.

15. Approval of the Asset Purchase Agreement and the assumption and assignment of the Assigned Agreements and the consummation of the Sale at this time is in the best interests of the Debtors, their creditors, their estates and other parties in interest.

16. The Cure Amounts are the true and correct amounts necessary to cure any existing defaults under the Assigned Agreements and the Successful Bidder shall be liable for payment of all such Cure Amounts (or for the payment of such lower amount as it may agree with any non-debtor party to any Assigned Agreement).

Now, therefore, based upon the foregoing findings of fact, it is hereby:

ORDERED that the Motion is granted as further described herein; and it is further

ORDERED that, except as provided in the subsequent ordered paragraph, all objections to the Motion or the relief requested therein, that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits; and it is further

ORDERED that the objections of the parties to executory contracts, licenses and unexpired leases not listed as Agreements in Exhibit Y are preserved to the extent that the Successful Bidder seeks to acquire such executory contracts, licenses or unexpired leases; and it is further

ORDERED that, pursuant to section 363(b) of the Bankruptcy Code, the Debtors

are authorized and directed to consummate the Sale pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement; and it is further

ORDERED that the Debtors are authorized and directed to execute and deliver, and are empowered to perform under, consummate and implement, the Asset Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement, and to take all further actions as may be requested by the Successful Bidder for the purpose of assembling, assigning, transferring, granting, conveying and conferring to the Successful Bidder or reducing to possession, the Gift Group Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Asset Purchase Agreement; and it is further

ORDERED that, except as expressly permitted or otherwise specifically provided for in the Asset Purchase Agreement or this Sale Order, pursuant to sections 105(a), 363(b) and 363(f) of the Bankruptcy Code, the Gift Group Assets shall be transferred to the Successful Bidder as contemplated by the Asset Purchase Agreement and, as of the Closing Date, shall be free and clear of Interests of any kind or nature whatsoever (except for the Assumed Obligations), with all such Interests of any kind or nature whatsoever (except for the Assumed Obligations) to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Gift Group Assets, subject to any claims and defenses the Debtors may possess with respect thereto; and it is further

ORDERED that, except as expressly permitted or otherwise specifically provided

for in the Asset Purchase Agreement or this Sale Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors holding Interests of any kind or nature whatsoever against or in the Debtors or the Gift Group Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated, known or unknown), arising under or out of, in connection with, or in any way relating to, the Debtors, the Gift Group Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Gift Group Assets to the Successful Bidder, hereby are forever barred, estopped, and permanently enjoined from asserting against the Successful Bidder, its successors or assigns, its property, or the Gift Group Assets, such persons' or entities' Interests other than the Assumed Obligations; and it is further

ORDERED that the transfer of the Gift Group Assets to the Successful Bidder pursuant to the Asset Purchase Agreement shall constitute a legal, valid and effective transfer of the Gift Group Assets, and shall vest the Successful Bidder with all right, title and interest of the Debtors in and to the Gift Group Assets, free and clear of all Interests of any kind or nature whatsoever, other than the Assumed Obligations; and it is further

ORDERED that, on the Closing Date of the Sale, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Gift Group Assets, if any, as such Interests may have been recorded or may otherwise exist; and it is further

ORDERED that, if any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing interests in the Gift Group Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Debtors or the Gift Group Assets or otherwise, then (a) the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Gift Group Assets and (b) the Successful Bidder is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all interests in the Gift Group Assets of any kind or nature whatsoever other than the Assumed Obligations; and it is further

ORDERED that, pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing of the Sale, the Debtors' assumption of and assignment to the Successful Bidder, and the Successful Bidder's assumption on the terms set forth in the Asset Purchase Agreement, of the Assigned Agreements is hereby approved, and the requirements of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code with respect thereto are hereby deemed satisfied; and it is further

ORDERED that the Debtors are hereby authorized, but not directed, in accordance with sections 105(a) and 365 of the Bankruptcy Code, to (a) assume and assign to the

Successful Bidder, effective upon the Closing of the Sale, the Assigned Agreements free and clear of all Interests of any kind or nature whatsoever except for the Assumed Obligations (provided, however, that nothing herein shall defeat any right which a party to an Assigned Agreement may have under section 365 of the Bankruptcy Code provided, further, that this Sale Order shall constitute a full and final adjudication of any such party's rights under section 365 of the Bankruptcy Code) and (b) execute and deliver to the Successful Bidder such documents or other instruments as may be necessary to assign and transfer the Assigned Agreements to the Successful Bidder; and it is further

ORDERED that the Assigned Agreements shall be transferred to, and remain in full force and effect for the benefit of, the Successful Bidder in accordance with their respective terms, notwithstanding any provision in any such Assigned Agreements (including those of the type described in sections 365(b)(2) and 365(f)(1) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors and their estates shall be relieved from any liability for any breach of any Assigned Agreements that occurs or arises after such assignment to and assumption by the Successful Bidder on the Closing Date; and it is further

ORDERED that the Cure Amounts are the only amounts necessary to cure any monetary default under the Assigned Agreements pursuant to section 365(b)(1) of the Bankruptcy Code pursuant to the assumption by the Debtors and assignment to the Successful Bidder of such Assigned Agreements and such Cure Amounts shall not be subject to further

dispute or audit based on performance prior to the time of assumption and assignment, irrespective of whether such assumed executory contract or unexpired lease contains an audit clause; and it is further

ORDERED that the Successful Bidder is assuming all liability for the payment of the Cure Amounts without prejudice to the right of the Successful Bidder to agree with any non-debtor party to the Assigned Agreements to pay a lesser amount in satisfaction of such Cure Amounts, provided that such agreement does not create or increase liability of the Debtors or their estates; and it is further

ORDERED that the Successful Bidder shall assume all obligations of the Debtors under any Assigned Agreement first arising from and after the Closing, and shall not assume or bear responsibility for any obligation under any Assigned Agreement accruing thereunder prior to the Closing other than the Cure Amounts or any Assumed Obligations; and it is further

ORDERED that the Successful Bidder is not liable for the payment of any cure amounts for any Agreements other than the Cure Amounts, which are solely related to the assumption and assignment of the Assigned Agreements; and it is further

ORDERED that, provided that this paragraph shall not operate to bar or enjoin the Debtors from raising or asserting against the Successful Bidder or its affiliates claims relating to the Successful Bidder's obligations under the terms of this Sale Order, the Asset Purchase Agreement and the Sale, all non-debtor parties to the Agreements are forever barred and enjoined from raising or asserting against the Successful Bidder or the Successful Bidder's

affiliates (as they exist immediately following Closing) any assignment fee, default or breach under, or any claim or pecuniary loss, or condition to assignment, arising under or related to the Agreements that exist as of the Closing or arising by reason of the Closing; and it is further

ORDERED that, except as provided to the contrary in this Sale Order, all rights and remedies of any non-debtor party or the Successful Bidder under any of the Assigned Agreements (the "Rights and Remedies") are fully preserved and shall be fully enforceable after the Closing against the Successful Bidder or the non-debtor party unless such Rights and Remedies are or were expressly waived in a separate agreement or on the record at the Auction or Sale Hearing; and it is further

ORDERED that any party that may have had the right to consent to the assumption and assignment of an Assigned Agreement to which it is a party is deemed to have consented to such assignment for purposes of section 365(e)(2)(A)(ii) of the Bankruptcy Code or otherwise if it failed to object to the assumption and assignment prior to the objection deadline provided by the Successful Bid Notice; and it is further

ORDERED that the consideration provided by the Successful Bidder for the Gift Group Assets under the Asset Purchase Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia; and it is further

ORDERED that this Sale Order (a) shall be effective as a determination that, on the Closing Date, all Interests of any kind or nature whatsoever (other than Assumed

Obligations) existing as to the Debtors or the Gift Group Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Gift Group Assets; and it is further

ORDERED that each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement; and it is further

ORDERED that all entities who are presently, or on the Closing Date may be, in possession of some or all of the Gift Group Assets are hereby directed to surrender possession of the Gift Group Assets to the Successful Bidder on the Closing Date; and it is further

ORDERED that, except as expressly permitted or otherwise specifically provided for in the Asset Purchase Agreement or this Sale Order, the Successful Bidder shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or

related to the Gift Group Assets except for the Assumed Obligations; and it is further

ORDERED that, without limiting the generality of the foregoing, and except as expressly permitted or otherwise specifically provided for in the Asset Purchase Agreement or this Sale Order, the Successful Bidder is not a successor in interest to and shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and the Successful Bidder shall have no successor, transferee or vicarious liabilities of any kind or character whether known or unknown and whether arising under federal or state law or otherwise as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' businesses prior to the Closing Date; and it is further

ORDERED that the Successful Bidder shall not be deemed a joint employer or co-employer with or successor employer to the Debtors and shall have no obligation to pay wages, severance pay, WARN Act claims, benefits or any other payment to employees of the Debtors, except that the Successful Bidder shall be liable for the payment of all accrued vacation pay to employees of the Gift Group as provided for in the Asset Purchase Agreement; and it is further

ORDERED that, by entering into the Asset Purchase Agreement, the Successful Bidder has not assumed or otherwise become obligated for any of the Debtors' liabilities other

than as expressly set forth in the Asset Purchase Agreement; and it is further

ORDERED that this Court retains jurisdiction to enforce and implement the terms and provisions of the Asset Purchase Agreement, all amendments thereto and any waivers and consents thereunder, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Gift Group Assets to the Successful Bidder, (b) compel delivery of the purchase price or performance of other obligations owed to the Debtors, (c) resolve any disputes arising under or related to the Asset Purchase Agreement, except as otherwise provided therein, (d) protect the Successful Bidder against any liability other than those expressly assumed by the Successful Bidder pursuant to the Asset Purchase Agreement, this Sale Order or the Sale and (e) interpret, implement, and enforce the provisions of the Asset Purchase Agreement and this Sale Order; and it is further

ORDERED that the transactions contemplated by the Asset Purchase Agreement are undertaken by the Successful Bidder in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to the Successful Bidder, unless such authorization is duly stayed pending such appeal prior to the Closing. The Successful Bidder is a purchaser in good faith of the Gift Group Assets, and the Successful Bidder is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code; and it is further

ORDERED that, the terms and provisions of the Asset Purchase Agreement and

this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, the Successful Bidder, and its respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting interests in the Gift Group Assets to be sold to the Successful Bidder pursuant to the Asset Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding; and it is further

ORDERED that the failure specifically to include any particular provisions of the Asset Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Asset Purchase Agreement be authorized and approved in its entirety for the Sale; and it is further

ORDERED that the Asset Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates; and it is further

ORDERED that, except as provided in the Asset Purchase Agreement, this Sale Order, or other order of this Court, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Obligations and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their

successors or assigns, their property or the Gift Group Assets; and it is further

ORDERED that all net proceeds from the Sale shall be deposited in the Collateral Collection Account held by the Agent in accordance with the provisions of the Cash Management Order and the Interim Cash Collateral Order (and subject to the right of the Committee and other parties to challenge under paragraph 19 of the Interim Cash Collateral Order); and it is further

ORDERED that the transfer of the Gift Group Assets (including, without limitation, the Assigned Agreements, all real property, all personal property, all intellectual property and other forms of property comprising the Gift Group Assets) to the Successful Bidder does not and will not subject the Debtors or the Successful Bidder, its affiliates or its designees to any liability for a stamp tax or similar tax, including, without limitation, any transfer tax, or pursuant to any so called "bulk sale" law, to the fullest extent permitted by section 1146(c) of the Bankruptcy Code; and it is further

ORDERED that the 10-day stay periods under Fed. R. Bankr. P. 6004(g) and Fed. R. Bankr. P. 6006(d) (collectively, the "Stay Period") are hereby waived in connection with the Sale, provided, however, that, if an objection to the Sale is filed, the Stay Period shall be reduced to the minimum amount of time needed by the objecting party to file its appeal in order to permit the Sale to close as provided under the Asset Purchase Agreement; and it is further

ORDERED that the provisions of this Sale Order are nonseverable and mutually dependent; and it is further

ORDERED that nothing contained in any chapter 11 plan confirmed in these cases or the order confirming such plan or any other order of the Court shall, in any material way, conflict with or deviate from the terms, conditions and provisions of the Asset Purchase Agreement or any related agreements or the terms of this Sale Order.

Dated: 10/17, 2001

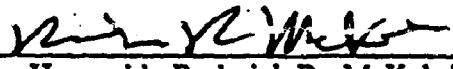

The Honorable Roderick R. McKelvie
United States District Judge

EXHIBIT X

EXHIBIT X

[The Asset Purchase Agreement]

ASSET PURCHASE AGREEMENT

dated as of September 7, 2001

among

BRECON CAPITAL COMPANY, LLC OR ITS DESIGNEE

as Purchaser

and

**FOSTER & GALLAGHER, INC.,
DRAKE ACQUISITION COMPANY**

and

HOME MARKETPLACE, INC.

as Sellers

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of September 7, 2001, is entered into by and among Brecon Capital Company, LLC, a Delaware limited liability company, or its designee ("Purchaser"), Foster & Gallagher, Inc., an Illinois corporation ("F&G"), Drake Acquisition Company, a Colorado corporation ("Drake"), and Home Marketplace, Inc., an Illinois corporation ("Home Marketplace"). Each of F&G, Drake and Home Marketplace (each, a "Seller" and collectively, the "Sellers") is a debtor and a debtor in possession under Chapter 11 Case No. 01-2175 (RRM) (jointly administered) pending in the United States District Court for the District of Delaware.

In consideration of the mutual covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. Unless otherwise defined herein, terms used herein shall have the meanings set forth below:

"Access Period" shall have the meaning set forth in Section 7.2(b) hereof.

"Accrued Employee Liabilities" shall have the meaning set forth in Section 2.2 hereof.

"Acquired Assets" shall have the meaning set forth in Section 2.1 hereof.

"Acquisition Proposal" means a proposal relating to any merger, consolidation, business combination, sale or other disposition of 50% or more of the Acquired Assets pursuant to one or more transactions, the sale of 50% or more of the outstanding shares of capital stock of any Seller (including, without limitation, by way of a tender offer) or a similar transaction involving one or more Third Parties and any Seller.

"Adelman" shall have the meaning set forth in Section 4.9 hereof.

"Affiliate" shall have the meaning set forth in Rule 405 promulgated under the Securities Act of 1933, as amended.

"Agreement" means this Asset Purchase Agreement, including all Exhibits and Schedules hereto, as the same may be amended from time to time in accordance with its terms.

"Allocation" shall have the meaning set forth in Section 13.11(b) hereof.

"Alternative Transaction" means an Acquisition Proposal made in writing by a Third Party.

"Ancillary Documents" shall have the meaning set forth in Section 13.8 hereof.

"Assignment and Assumption" shall have the meaning set forth in Section 10.2 hereof.

"Assumed Contracts" means all Contracts identified in Schedule 2.2.1 hereto, other than those excluded by Purchaser from the Acquired Assets pursuant to Section 2.5(b).

"Assumed Equipment Leases" means all Equipment Leases identified in Schedule 2.2.2 hereto, other than those excluded by Purchaser from the Acquired Assets pursuant to Section 2.5(b).

"Assumed Facility Leases" means all Facility Leases identified in Schedule 2.2.3 hereto, other than those excluded by Purchaser from the Acquired Assets pursuant to Section 2.5(b).

"Assumed Facility" means a Facility leased by any Seller under an Assumed Facility Lease.

"Assumed Leases" means the Assumed Equipment Leases and the Assumed Facility Leases set forth in Schedules 2.1.2 and 2.1.3 hereto, other than those excluded by Purchaser from the Acquired Assets pursuant to Section 2.5(b).

"Assumed Obligations" shall have the meaning set forth in Section 2.2 hereof.

"Avoidance Action" shall have the meaning set forth in Section 2.3(a) hereof.

"Bankruptcy Code" means title 11 of the United States Code.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware, having jurisdiction over Sellers and their assets.

"Bidding Procedures" means the procedures set forth in the Bidding Procedures Order pursuant to which Acquisition Proposals may be solicited, made and accepted.

"Bidding Procedures Order" means the order of the Bankruptcy Court, dated as of August __, 2001, (i) approving (among other things) the form of this Agreement pending the Sale Hearing, (ii) setting a deadline for the filing of objections to the entry of the Sale Order, (iii) scheduling the Sale Hearing and (iv) approving the Bidding Procedures.

"Books and Records" means (a) all records and lists of any Seller pertaining to the Acquired Assets, (b) all records and lists pertaining to the Business (including, without limitation, merchandise and post-season analysis reports, marketing analysis reports, merge purge documentation and creative material) or customers, suppliers or personnel of any Seller (including, without limitation, customer lists, mailing lists, e-mail address lists, recipient lists,

sales records, correspondence with customers, customer files and account histories, supply lists and records of purchases from and correspondence with suppliers), (c) all product, business and marketing plans of any Seller related to or used in connection with the Business and (d) all books, ledgers, files, reports, plans, drawings and operating records of every kind maintained by any Seller related to or used in connection with the Business, but excluding the originals of the minute books, stock books and tax returns of any Seller.

"Business" means the business conducted utilizing those operating assets and operations of Sellers for the purpose of direct marketing consumer products (it being understood that for purposes of this definition, the parties intend for the Business to consist of the assets of Sellers required to engage in the Business as currently operated by Sellers primarily out of Colorado Springs, Colorado, and other assets primarily used in connection with the operation of the business commonly referred to as the "Gift Group," other than with respect to certain information systems currently provided by F&G).

"Chapter 11 Case" means, collectively, the pending jointly administered cases commenced by Sellers on July 2, 2001 under chapter 11 of the Bankruptcy Code in the Bankruptcy Court under docket no. 01-2175 (RRM).

"Children's Group" shall have the meaning set forth in Section 7.5 hereof.

"Children's Group Transition Support Agreement" shall have the meaning set forth in Section 7.5 hereof.

"Claim" shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

"Closing" means the consummation of the transactions contemplated herein in accordance with Article X hereof.

"Closing Date" shall have the meaning set forth in Section 10.1 hereof.

"Closing Statement" shall have the meaning set forth in Section 3.3(a) hereof.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Confidentiality Agreement" means the Confidentiality Agreement, dated August 24, 2001, between Purchaser and F&G.

"Contaminant" means any substance regulated under any Environmental Law, or any substance defined as or included in the statutory or regulatory definitions of pollutant, hazardous substance, hazardous or toxic waste, hazardous material or "toxic substance" under any Environmental Law.

"Contract" means any agreement, contract, commitment or other binding arrangement or understanding primarily related to the Business, whether written or oral, to which any Seller is a party and which any Seller is capable of assuming and assigning.

"Deposit" shall have the meaning set forth in Section 3.1(a)(i) hereof.

"Designated Firm" shall have the meaning set forth in Section 3.2 hereof.

"Dollars" or "\$" means dollars of the United States of America.

"Drake" shall have the meaning set forth in the Preamble hereto.

"Environmental Law" means any Regulation that relates to or otherwise imposes liability or standards of conduct concerning discharges, releases or threatened releases of noxious odors or any Contaminants into ambient air, water or land, or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Contaminants.

"Environmental Costs and Liabilities" means all losses by a Person from any Claim, whether based on contract, tort, implied or express warranty, strict liability, criminal or civil statute, including under any Remedial Action, any Environmental Law, any Permit required by or pursuant to any applicable Environmental Law, any Lien in favor of any authority for Environmental Costs and Liabilities, any Order or agreement with any authority, arising from environmental, health or safety conditions, or the Release of a Contaminant into the environment to the extent incurred at the Facilities prior to the Closing Date or resulting from operations at the Facilities prior to the Closing Date.

"Equipment" means Owned Equipment and Leased Equipment.

"Equipment Leases" means the leases set forth in Schedule 2.1.2 hereto, pursuant to which any Seller leases, as the lessee, certain equipment and machinery used in the Business.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and all regulations issued thereunder.

"Escrow Agent" means _____.

"Escrow Agreement" means the Escrow Agreement, dated as of September 7, 2001, between Purchaser, F&G and Escrow Agent.

"Excluded Assets" shall have the meaning set forth in Section 2.3 hereof.

"Excluded Contracts" shall have the meaning set forth in Section 2.3(b) hereof.

"Excluded Leases" shall have the meaning set forth in Section 2.3(b) hereof.

"Excluded Receivables" shall have the meaning set forth in Section 2.3(c) hereof.

"Exhibits" means the exhibits hereto.

"Expense Reimbursement" shall have the meaning set forth in Section 11.2 hereof.

"F&G" shall have the meaning set forth in the Preamble hereto.

"Facilities" means the premises in the United States at which Sellers conduct the Business, including, without limitation, the premises located in Colorado Springs, Colorado.

"Facility Leases" means the leases set forth in Schedule 4.7 hereto, pursuant to which any Seller leases, as the lessee, premises used by such Seller in the conduct of the Business.

"Final Closing Statement" shall have the meaning set forth in Section 3.3(d) hereof.

"Final Order" means an Order as to which the time to file an appeal, a motion for rehearing or reconsideration or a petition for writ of certiorari has expired and no such appeal, motion or petition is pending.

"Home Marketplace" shall have the meaning set forth in the Preamble hereto.

"Indebtedness" with respect to any Person means any obligation of such Person for borrowed money, and in any event shall include (a) any obligation incurred for all or any part of the purchase price of property or other assets or for the cost of property or other assets constructed or of improvements thereto, other than accounts payable included in current liabilities and incurred in respect of property purchased in the Ordinary Course of Business, (b) the face amount of all letters of credit issued for the account of such Person, (c) obligations (whether or not such Person has assumed or become liable for the payment of such obligation) secured by Liens, (d) capitalized lease obligations, (e) all guarantees of such Person, (f) all accrued interest, fees and charges in respect of any Indebtedness and (g) all prepayment premiums and penalties, and any other fees, expenses, indemnities and other amounts payable as a result of the prepayment or discharge of any Indebtedness.

"Intellectual Property" means (a) patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions and reexaminations thereof, (b) trademarks, service marks, trade dress, logos, trade names, internet domain names and corporate names, together with all goodwill associated therewith, and applications, registrations and renewals in connection therewith, (c) copyrights, mask works and copyrightable works, and applications, registrations and renewals in connection therewith, (d) trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, designs, drawings and specifications), (e) proprietary computer software (including data) and (f) copies and tangible embodiments of any of the foregoing in whatever form or medium.

"Inventory" means all inventory held by any Seller for resale in the ordinary course of the Business and all raw materials, work in process, finished products, wrapping, supply and packaging items and similar items with respect to such inventory, in each case wherever the same may be located.

"June Statement" shall have the meaning set forth in Section 3.3(a) hereof.

"Leased Equipment" means all leased machinery, equipment, computers, tools, vehicles, furniture, furnishings, goods and leasehold improvements used in the Business and leased by any Seller under Equipment Leases (other than the MAPICS/AS 400 system leased by F&G).

"Leased Facilities" means all leased non-residential real property at which any Seller conducts the Business and which is leased under Facility Leases.

"Leases" means the Equipment Leases and the Facility Leases.

"Legal Proceeding" means any judicial, administrative, regulatory or arbitral suit or proceeding, investigation or inquiry or administrative charge or complaint pending at law or in equity before any court or other governmental authority.

"Lien" shall have the meaning set forth in Section 2.1(b) hereof.

"Management Transition" shall have the meaning set forth in Section 7.4 hereof.

"Material Adverse Change" or **"Material Adverse Effect"** means, any event, change, condition or matter that individually or in the aggregate results in or would reasonably be expected to result in a material adverse effect or change on the results of operations or condition (financial or otherwise) of the Business or the Acquired Assets (taken as a whole), or the ability of Purchaser to operate the Business after the Closing in substantially the same manner conducted by Sellers prior to the Closing (excluding any such effect or change to the extent resulting from or arising in connection with (i) the filing of the Chapter 11 Case or the continuation thereof, (ii) macroeconomic changes or general market-related changes unless the Business is affected by such changes in a manner that is substantially disproportionate compared with competitive or peer businesses or (iii) this Agreement or the transactions contemplated hereby or the announcement hereof).

"Material Contracts" shall have the meaning set forth in Section 4.6 hereof.

"Order" means any decree, order, injunction, rule, judgment, consent of or by any court or governmental authority.

"Ordinary Course of Business" means the operation of the Business by Sellers in the usual and ordinary course in a manner substantially similar to the manner in which Sellers operated prior to the commencement of the Chapter 11 Case.

"Overbid Protection" shall have the meaning set forth in Section 8.9 hereof.

"Owned Equipment" means all machinery, equipment, computers, tools, vehicles, furniture, furnishings, goods and leasehold improvements used in connection with the Business and owned by any Seller.

"Owned Real Property" means that real property described as Lot 1 in Block 1 in Drake Subdivision Filing No. 5, in the City of Colorado Springs, El Paso County, Colorado, and commonly known as 4150 Edison Drive, Colorado Springs, Colorado 80915, owned in fee by Drake, including, without limitation, all rights, easements and privileges appurtenant or relating thereto, all buildings, fixtures and improvements located thereon and all Facilities thereon.

"Permits" means all transferable licenses, permits, approvals, certificates of occupancy, authorizations, operating permits, registrations, plans and the like relating exclusively to the conduct of the Business for which consent is obtained.

"Person" means any corporation, partnership, joint venture, limited liability company, organization, entity, authority or natural person.

"Prepaid and Accrued Expenses" shall have the meaning set forth in Section 3.2 hereof.

"Purchaser" shall have the meaning set forth in the Preamble hereto.

"Purchase Price" shall have the meaning set forth in Section 3.1(a) hereof.

"Regulation" means any law, statute, regulation, ruling, rule or Order of, administered or enforced by or on behalf of, any court or governmental authority.

"Release" means any release, spill, emission, leaking, pumping, disposal, discharge, dispersal or migration of any Contaminant into the indoor or outdoor environment or into or out of any property or assets (including the Acquired Assets) owned or leased by any Seller, including the movement of Contaminants through or in the air, soil, surface water, groundwater or property.

"Remedial Action" means all actions required under any applicable Environmental Law to (a) clean up, remove, treat or in any other way address Contaminants in the indoor or outdoor environment; (b) prevent the Release or threat of Release or minimize the further Release of Contaminants so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

"Retained Businesses" shall have the meaning set forth in Section 7.4 hereof.

"Sale Hearing" means the hearing of the Bankruptcy Court to approve the transactions contemplated by this Agreement.

"Sale Order" means the order of the Bankruptcy Court, in form and substance reasonably satisfactory to Purchaser and Sellers, to be issued by the Bankruptcy Court pursuant to sections 363 and 365, and to the extent possible section 1146(c), of the Bankruptcy Code (i) approving this Agreement and the transactions contemplated hereby, (ii) approving the sale of the Acquired Assets to Purchaser free and clear of all liens, Claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code, (iii) approving the assumption and assignment to Purchaser of the Assumed Leases and Assumed Contracts and (iv) finding that Purchaser is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

"Schedules" means the schedules hereto.

"Seller" shall have the meaning set forth in the Preamble hereto.

"Tax" and, with correlative meaning, **"Taxes"** means with respect to any Person (a) all federal, state, local, county, foreign and other taxes, assessments or other government charges, including, without limitation, any income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, registration, recording, documentary, conveyancing, gains, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom duty or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest, penalty, addition to tax or additional amount imposed by any governmental authority (a **"Taxing Authority"**) responsible for the imposition of any such tax (domestic or foreign) or (b) liability for the payment of any amounts of the type described in clause (a) above relating to any other Person as a result of being party to any agreement to indemnify such other Person, being a successor or transferee of such other Person, or being a member of the same affiliated consolidated, combined, unitary or other group with such other Person.

"Tax Return" means any report, return or other information required to be supplied by any Seller to a taxing authority in connection with Taxes.

"Third Party" means any Person other than Sellers, Purchaser or any of their respective Affiliates.

"Transition Support Agreement" shall have the meaning set forth in Section 8.11 hereof.

"Unassumed Liabilities" shall have the meaning set forth in Section 2.4 hereof.

"Working Capital" as of any date shall mean the difference as of such date between the Current Assets and the Current Liabilities, in each case determined in a manner consistent with the past practice of Sellers in preparing their financial statements. **"Current Assets"** means the current assets included in the Acquired Assets, including, but not limited to,

(i) accounts receivable, (ii) Inventory, (iii) prepaid catalog costs and (iv) other prepaid expenses; provided, however, that for purposes of calculating Current Assets no adjustment or reserve shall be made for stale, slow-moving, obsolete or otherwise unusable Inventory, and no adjustment or reserve shall be made for uncollectable or slow accounts receivable. "Current Liabilities" means the current liabilities included in the Assumed Obligations, including, but not limited to, (i) accounts payable (net of disputed accounts), (ii) accrued expenses, (iii) customer deposits and (iv) accruals for Accrued Employee Liabilities (to the extent not covered by insurance).

"Working Capital Adjustment" shall have the meaning set forth in Section 3.3(d) hereof.

"Working Capital Holdback Amount" means an amount equal to Five Hundred Thousand Dollars (\$500,000), which Purchaser shall retain pending the final determination of the Working Capital Adjustment as set forth in Section 3.3.

"Working Capital Resolution Period" shall have the meaning set forth in Section 3.3(b) hereof.

1.2 Rules of Construction. Unless the context otherwise clearly indicates, in this Agreement:

- (a) the singular includes the plural;
- (b) "includes" and "including" are not limiting;
- (c) "may not" is prohibitive and not permissive; and
- (d) "or" is not exclusive.

ARTICLE II PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

2.1 Purchase and Sale of Assets.

(a) Subject to the terms and conditions set forth in this Agreement, at the Closing, Sellers shall sell, assign, transfer and deliver to Purchaser, and Purchaser shall purchase, acquire and take assignment and delivery of, for the consideration specified in Section 3.1, all of the right, title and interest of Sellers in and to the assets identified on Schedule 2.1 hereto, but not including those assets specifically excluded by Sections 2.3 and 2.5(b) (all of the assets to be sold, assigned, transferred and delivered to Purchaser hereunder herein called the "Acquired Assets").

(b) All of the Acquired Assets shall be sold, assigned, transferred, conveyed and delivered to Purchaser free and clear of all liens (including liens for taxes), encumbrances (including, without limitation, any leasehold interests, licenses or other rights, in favor of a Third Party or a Seller, to use any portion of the Acquired Assets), Claims, security interests, of whatever kind or nature, mortgages, pledges, restrictions, charges, instruments, licenses,

encroachments, options, rights of recovery, judgments, orders and decrees of any court or foreign or domestic governmental authority, interest, products and tax (including foreign, federal, state and local taxes), in each case of any kind or nature, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown, and including all claims based on any theory that Purchaser is a successor, transferee or continuation of Sellers or the Business, in each case, other than the Assumed Obligations expressly assumed herein (each a "Lien" and collectively the "Liens"), whether arising prior to or subsequent to the date of the filing of the Chapter 11 petitions of Sellers, and in accordance with the terms of the Sale Order and sections 363(f) and 365 of the Bankruptcy Code.

2.2 Assignment and Assumption of Liabilities.

(a) Subject to the terms and conditions set forth in this Agreement, Purchaser shall assume from Sellers and thereafter pay, perform or discharge in accordance with their terms, the following liabilities and obligations of Sellers (all such liabilities and obligations herein called the "Assumed Obligations"): (i) accounts payable and other current liabilities arising after July 2, 2001 (the date on which the Sellers and certain of their Affiliates filed petitions for bankruptcy in the Bankruptcy Court) of the type that would be recordable in the categories set forth in the "Current Liabilities" portion of Schedule 3.3 attached hereto and which accounts payable and other current liabilities are determined on a basis consistent with the methods, principles, practices and policies employed by Sellers in the preparation and presentation of Schedule 3.3, (ii) liabilities in respect of "open" purchase orders for Inventory, catalog materials and other items as of the Closing Date, to the extent such items constitute Acquired Assets, (iii) liabilities in respect of customer orders and deposits, (iv) executory obligations accruing after the Closing under (A) the Assumed Facility Leases, (B) the Assumed Equipment Leases and (C) the Assumed Contracts, each of which shall be deemed included in the term "Acquired Assets" as used herein, (v) liabilities for existing and future claims by customers for product refunds, exchanges and/or chargebacks and product guarantees and warranties, (vi) Purchaser's share of prorated liabilities of Sellers pursuant to Section 3.2 hereof and (vii) all accrued payroll obligations and vacation liabilities for all of the employees employed by Drake or Home Marketplace at the time of Closing (the "Accrued Employee Liabilities"). Such assumption of the Accrued Employee Liabilities shall not have an impact adverse to Sellers in the calculation of the Working Capital Adjustment. In addition, Purchaser shall be responsible for all cure payments required to be made in connection with the assignment to Purchaser of all Assumed Contracts, if any, and Assumed Leases, if any, and such cure payments shall not result in corresponding reductions in the Purchase Price and shall not have an impact adverse to Sellers in the calculation of the Working Capital Adjustment.

(b) The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any third party against Purchaser or Sellers as compared to the rights and remedies which such third party would have had against Sellers absent the Chapter 11 Case, had Purchaser not assumed such Assumed Obligations.

2.3 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the following assets of Sellers shall be retained by Sellers and are not being sold or

assigned to Purchaser hereunder (all of the following are referred to collectively as the "Excluded Assets");

(a) any and all rights under this Agreement, Claims, counterclaims, demands and causes of action of Sellers, including, without limitation, avoidance claims or causes of action arising under the Bankruptcy Code or applicable state law, including, without limitation, all rights and avoidance claims of Sellers arising under chapter 5 of the Bankruptcy Code (an "Avoidance Action" and collectively the "Avoidance Actions");

(b) all Leases other than the Assumed Leases (the "Excluded Leases") and all Contracts other than the Assumed Contracts (the "Excluded Contracts");

(c) any and all tax refunds and bank accounts (collectively, the "Excluded Receivables");

(d) any and all cash and cash equivalents, including the Purchase Price;

(e) all rights (i) under insurance policies of any Seller relating to any Inventory, Equipment, Facility or the Business (including health insurance, worker's compensation insurance and life insurance), and any right to refunds due with respect to such insurance policies, and (ii) under or pursuant to all warranties (express or implied), representations and guarantees made by Third Parties relating to any Excluded Assets; and

(f) any asset that Purchaser elects in writing to exclude from the Acquired Assets at any time on or before one (1) day prior to the Closing Date, provided that such exclusion shall not serve to reduce or otherwise affect the amount of the Purchase Price.

2.4 No Other Liabilities Assumed. Each Seller acknowledges and agrees that pursuant to the terms and provisions of this Agreement and under any Contract or Lease, Purchaser will not assume any obligation of any Seller, other than the Assumed Leases, the Assumed Contracts and the other Assumed Obligations. In furtherance and not in limitation of the foregoing, neither Purchaser nor any of its Affiliates shall assume, and shall not be deemed to have assumed, any debt, Claim, obligation or other liability of any Seller or any of their respective Affiliates whatsoever (other than the Assumed Obligations), including, but not limited to the following (collectively, the "Unassumed Liabilities");

(a) all obligations or liabilities of Sellers or any predecessor(s) or Affiliate(s) of Sellers that relate to any of the Excluded Assets;

(b) any Environmental Costs and Liabilities arising from the operation of the Business prior to the Closing Date, including, without limitation, all Environmental Costs and Liabilities of any Seller relating in any manner to the direct or indirect handling, transportation or disposal of any Contaminants by any Seller;

(c) all obligations or liabilities of Sellers or any predecessor(s) or Affiliate(s) of Sellers or for which Sellers or any predecessor(s) or Affiliates of Sellers could be liable

relating to Taxes (including with respect to the Acquired Assets or otherwise) for all periods, or portions thereof, ending on or prior to the Closing Date;

(d) all obligations or liabilities for any legal, accounting, investment banking, brokerage or similar fees or expenses incurred by any Seller in connection with, resulting from or attributable to the transactions contemplated by this Agreement or otherwise;

(e) all Indebtedness of any Seller or any predecessor(s) or Affiliate(s) of any Seller;

(f) all obligations of Sellers related to the right to or issuance of any capital stock or other equity interest of Sellers, including, without limitation, any stock options or warrants;

(g) except as set forth in Section 2.2, all liabilities and obligations from Sellers or any predecessor(s) or Affiliate(s) of Sellers resulting from, caused by or arising out of, or which relate to, directly or indirectly, the conduct of the Business or ownership or lease of any properties or assets or any properties or assets previously used by Sellers at any time prior to or on the Closing Date, or other actions, omissions or events occurring prior to the Closing, including, without limitation, any amounts due or which may become due or owing under the Assumed Leases or the Assumed Contracts with respect to the period prior to Closing (other than all cure payments payable in accordance with the terms of this Agreement), whether known or unknown on the date hereof;

(h) all obligations and liabilities of Sellers or any predecessor(s) or Affiliate(s) of Sellers resulting from, caused by or arising out of, or which relate to, directly or indirectly, the conduct of the Business or ownership or lease of any properties or assets or any properties or assets previously used by Sellers at any time prior to or on the Closing Date, or other actions, omissions or events occurring prior to the Closing and which (i) constitute, may constitute or are alleged to constitute a tort, breach of contract or violation of any law or (ii) relate to any and all Claims, disputes, demands, actions, liabilities, damages, suits in equity, administrative proceedings, accounts, costs, expenses, setoffs, contributions, attorneys' fees and/or causes of action of whatever kind or character against Sellers or any predecessor(s) or Affiliate(s) of Sellers, whether past, present, future, known or unknown, liquidated or unliquidated, accrued or unaccrued;

(i) except as set forth in Section 2.2 with respect to the Accrued Employee Liabilities, all obligations or liabilities (whether known or unknown) with respect to the employees of any Seller arising from the operation of the Business prior to the Closing Date, including, without limitation, any pension, health insurance Claims, profit sharing or any other employee benefit plans, compensation or retiree medical and other benefits and obligations;

(j) except as set forth in Section 2.2, all accounts payable arising prior to July 2, 2001 (the date on which Sellers and certain of their Affiliates filed petitions for bankruptcy in the Bankruptcy Court); and

(k) all intercompany liabilities of Drake and/or Home Marketplace to F&G and/or any of its direct or indirect subsidiaries.

The parties acknowledge and agree that disclosure of any obligation or liability on any Schedule to this Agreement shall not create an Assumed Obligation or other liability of Purchaser, except where such disclosed obligation has been expressly assumed by Purchaser as an Assumed Obligation in accordance with the provisions of Section 2.2 hereof.

2.5 Exclusion of Certain Leases and Contracts.

(a) Purchaser shall be obligated to take assignment of and assume from Sellers, and Sellers shall be obligated to assign to Purchaser, only those (i) Contracts which are listed on Schedule 2.2.1 hereto and which are not excluded from the Acquired Assets prior to the Closing Date pursuant to paragraph (b) below, (ii) Equipment Leases which are listed on Schedule 2.2.2 hereto and which are not excluded from the Acquired Assets prior to the Closing Date pursuant to paragraph (b) below and (iii) Facility Leases which are listed on Schedule 2.2.3 hereto and which are not excluded from the Acquired Assets prior to the Closing Date pursuant to paragraph (b) below. Leases which are so excluded pursuant to paragraph (b) below shall constitute "Excluded Leases" and Contracts which are so excluded pursuant to paragraph (b) below shall constitute "Excluded Contracts."

(b) Purchaser shall have the right, in its discretion at any time prior to the Closing, to exclude from the Leases and Contracts to be assigned to it pursuant hereto such Leases and Contracts as it shall specify by written notice provided to Sellers pursuant to Section 13.4 hereof, whereupon such Leases and Contracts shall cease to be "Acquired Assets" hereunder and shall become "Excluded Leases" and "Excluded Contracts," respectively, and thereby be excluded from the Acquired Assets; provided that such exclusions shall not result in a Purchase Price adjustment. Purchaser shall give notice in writing to Sellers of Purchaser's determination to exclude a Contract from Schedule 2.2.1 hereto or a Lease from Schedule 2.2.2 or Schedule 2.2.3 hereto as soon as reasonably practicable after Purchaser has made any such determination, but in any event no later than one (1) day prior to the Closing.

2.6 Deemed Consents and Cures. For all purposes of this Agreement (including all representations and warranties of Sellers contained herein), Sellers shall be deemed to have obtained all required consents in respect of the assignment of any Assumed Contract or Assumed Lease and to have cured all defaults thereunder if, and to the extent that, pursuant to the Sale Order, Sellers are authorized to assume and assign Assumed Contracts and/or Assumed Leases to Purchaser pursuant to section 365 of the Bankruptcy Code.

2.7 Obligations in Respect of Required Consents.

(a) Sellers shall not be required to incur any liability for any expenses, costs or obligations on account of consents required from any Third Party in connection with this Agreement or the transactions contemplated hereby, other than the professional fees incurred by Sellers in connection with the negotiation and preparation of this Agreement and the applications for the Bidding Procedures Order and the Sale Order. Purchaser shall cooperate with the efforts of Sellers to obtain any such required consents. Failure to obtain any required consent with

respect to any Assumed Contract or Assumed Lease shall not entitle Purchaser to terminate this Agreement or to decline to purchase the Acquired Assets if such failure is due to Purchaser's inability to satisfy conditions customarily imposed by the licensor or other counterparty under any such Assumed Contract or Assumed Lease to the extent such conditions are required to be satisfied notwithstanding the pendency of the Chapter 11 Case or the operation of the Bankruptcy Code or any Order of the Bankruptcy Court.

(b) Sellers shall not be required to incur any liability for any expense, cost or obligation in order to satisfy any governmental requirement except for the payment of filing fees.

ARTICLE III PURCHASE PRICE AND PAYMENT

3.1 Payment of Purchase Price.

(a) The aggregate purchase price for the Acquired Assets shall be the sum of Fifteen Million Dollars (\$15,000,000) (the "Purchase Price"), subject however to the adjustment set forth in Section 3.3. The Purchase Price shall consist of and be payable as follows:

(i) The earnest money deposit in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) (the "Deposit") to be paid by Purchaser on the execution of this Agreement by Sellers and to be deposited into an interest-bearing escrow account pursuant to the Escrow Agreement; plus

(ii) The sum of Thirteen Million Dollars (\$13,000,000) in immediately available funds to be paid by Purchaser at Closing; plus

(iii) The Working Capital Holdback Amount plus or minus, as the case may be, the Working Capital Adjustment, to be paid pursuant to and in accordance with Section 3.3 hereof.

(b) To the extent that Sellers have any rights in the Deposit or the Purchase Price, such amounts shall be remitted to Sellers' cash collateral account for payment to the lenders of Sellers pursuant to the Bidding Procedures Order.

(c) The Purchase Price shall be allocated in accordance with Section 13.11(b).

3.2 Prorations. Prepaid rentals, prepaid utility charges, real property taxes, personal property taxes, similar assessments and other similar periodic charges and accruals payable in respect of any of the Acquired Assets (the "Prepaid and Accrued Expenses") applicable to periods both prior to and after Closing, shall be prorated as of the Closing Date. The estimated net amounts of such prorations shall be subtracted from the cash portion of the Purchase Price if Purchaser is entitled to a credit therefor, or added to the Purchase Price if Sellers are entitled to a credit therefor. Purchaser and Sellers shall use their reasonable best efforts to calculate all prorations and the Prepaid and Accrued Expenses at or prior to the Closing and, at or about the Closing, Purchaser and Sellers shall take readings or other measurements of gas, water, electricity and other utilities. Absent manifest error, such readings and measurements

shall be binding, conclusive and used for purposes of the apportionment provided herein. In the event that such proration cannot be agreed to by Purchaser and Sellers, a final determination of such proration shall be referred to any "Big Five" accounting firm designated jointly by Purchaser and Sellers (the "Designated Firm"), whose determination shall be binding upon the parties.

3.3 Working Capital Adjustment

(a) Within thirty (30) days after Closing, Purchaser shall prepare and deliver to Sellers a statement (the "Closing Statement") of Working Capital as of the Closing Date. The Closing Statement shall be prepared by Purchaser in good faith on a basis consistent in all material respects with the methods, principles, practices and policies employed in the preparation and presentation of the balance sheets of Drake and Home Marketplace as of June 30, 2001 (the "June Statement").

(b) After receipt of the Closing Statement, Sellers (including their advisors), shall have fifteen (15) business days to review such Closing Statement together with the work papers used in the preparation thereof. Unless Sellers deliver written notice to Purchaser on or prior to the fifteenth business day after the receipt of the Closing Statement by Sellers stating that Sellers have objections thereto, Sellers shall be deemed to have accepted and agreed to the Closing Statement. If, however, Sellers notify Purchaser of objections to the Closing Statement on or prior to the fifteenth business day after the receipt of the Closing Statement by Sellers, the parties shall in good faith attempt to resolve their differences with respect to such objections within ten (10) business days (or such longer period as the parties may agree to in writing) following such notice (the "Working Capital Resolution Period"), and any mutually agreed resolution by them as to any disputed amounts shall be final, binding and conclusive. In so doing, the parties (sharing any fees and expenses equally) may engage the Designated Firm to assist such resolution by acting as a non-binding mediator. Sellers shall not object to any method, principle, practice or policy employed in the preparation of the Closing Statement if such method, principle, practice or policy is consistent in all material respects with that employed in the preparation and presentation of the June Statement.

(c) Amounts relating to any working capital and other accounts set forth in the Closing Statement remaining in dispute at the conclusion of the Working Capital Resolution Period shall be promptly submitted to the Bankruptcy Court for determination.

(d) Once the Closing Statement has been finalized in accordance with this Section 3.3 (the "Final Closing Statement"), the Working Capital Adjustment shall be calculated pursuant to this Section 3.3(d) no later than two (2) business days following such finalization. The "Working Capital Adjustment" shall be equal to the difference between the Working Capital as of the Closing Date and the Working Capital as of June 30, 2001. The parties hereby acknowledge and agree that the Working Capital as of June 30, 2001 is \$7,803,075, as set forth and calculated on Schedule 3.3(d) hereto. If the Working Capital Adjustment results in a negative number, the Working Capital Holdback Amount shall be decreased by the amount of the Working Capital Adjustment. If the Working Capital Adjustment results in a positive number, the Working Capital Holdback Amount shall be increased by the amount of the Working Capital Adjustment. In either case, the Working Capital Holdback Amount, as adjusted

by the Working Capital Adjustment, shall be paid by Purchaser to Sellers no later than three (3) business days following the calculation of the Final Closing Statement; provided, however, if the Working Capital Adjustment results in a negative number that is greater than the Working Capital Holdback Amount, Sellers, jointly and severally, shall pay to Purchaser no later than three (3) business days following the calculation of the Final Closing Statement an amount of cash equal to the amount by which the Working Capital Adjustment exceeds the Working Capital Holdback Amount.

(e) During the preparation of the Closing Statement and the period of any review or dispute within the contemplation of this Section 3.3, each of Sellers and Purchaser shall (i) provide the other and their authorized representatives (including their respective auditors) with reasonable access at reasonable times, and in a manner so as not to interfere in any material respect with normal business operations, to all relevant books, records, work papers, information and employees, and (ii) cooperate fully for the preparation, calculation and reviews of the Closing Statement or for the resolution of any dispute relating thereto.

3.4 Further Assurances. From time to time after the Closing and without further consideration, (i) Sellers, upon the request of Purchaser and at Purchaser's expense, shall execute and deliver such documents and instruments of conveyance and transfer as Purchaser may reasonably request in order to consummate more effectively the purchase and sale of the Acquired Assets as contemplated hereby and to vest in Purchaser title to the Acquired Assets transferred hereunder, provided that (x) Sellers shall not be required to execute or deliver any document or instrument pursuant to this Section 3.4 that includes any provisions that impose obligations upon Sellers that are different or greater than those imposed upon Sellers under the other provisions of this Agreement or the documents executed pursuant hereto and (y) in no event shall Sellers be required to incur any cost or expense in the performance of their obligations under this Section 3.4, Section 6.1 or Section 6.2 (it being understood that notwithstanding the foregoing, Purchaser shall in any event be entitled to require Sellers to take such action as Sellers would otherwise be required to take pursuant to this Section 3.4, Section 6.1 or Section 6.2 but for the cost thereof by paying to Sellers the actual out-of-pocket expenses incurred by Sellers in taking such action), and (ii) Purchaser, upon the request of Sellers and at the expense of Sellers, shall execute and deliver such documents and instruments of contract or lease assumption as Sellers may reasonably request in order to confirm Purchaser's liability for the obligations assumed hereunder or otherwise more fully consummate the transactions contemplated by this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers represent and warrant to Purchaser as of the date of this Agreement and the Closing Date (except where such representation or warranty is made as of a specific date), as follows:

4.1 Due Incorporation; Valid Existence; Authority. Each Seller is a corporation duly organized, in good standing and validly existing under the laws of the state of its incorporation. Subject to the entry of the Sale Order, each Seller has all necessary corporate power and authority to own its properties and to carry on its portion of the Business as it is now

being conducted and to enter into and perform its obligations under this Agreement and the transactions contemplated hereby. Each of Drake and Home Marketplace is qualified as a foreign corporation in the jurisdictions set forth in Schedule 4.1 attached hereto. Each of Drake and Home Marketplace is a wholly owned subsidiary of F&G. F&G owns of record and beneficially all of the issued and outstanding capital or other stock of each of Drake and Home Marketplace. There are no options, warrants or other rights or agreements outstanding to purchase any of the authorized capital or other stock of Drake or Home Marketplace.

4.2 Authority Relative to this Agreement. Subject to the provisions of the Bankruptcy Code and the entry and effectiveness of the Sale Order, this Agreement has been duly and validly authorized, executed and delivered by each Seller and (assuming this Agreement constitutes a valid and binding obligation of Purchaser) constitutes a valid and binding agreement of each Seller, enforceable against such Seller in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights generally from time to time in effect, and to general equitable principles.

4.3 Consents and Approvals. No consent, approval or authorization of, or declaration, filing or registration with, any United States federal or state governmental or regulatory authority, or any foreign governmental or regulatory authority, is required to be made or obtained by any Seller in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, except for consents, approvals or authorizations of, or declarations or filings with, the Bankruptcy Court, as applicable.

4.4 Transfer of Property. Sellers will have on the Closing the right to sell, convey, transfer, assign and deliver to Purchaser the Acquired Assets on the terms set forth in the Sale Order and in this Agreement.

4.5 Assets.

(a) (i) Each Seller is the sole and exclusive legal and equitable owner of, and has title to, or has a valid leasehold interest in, all of the Acquired Assets of such Seller, free and clear of any and all Liens.

(ii) On the Closing Date, Purchaser will acquire title to, or a valid leasehold interest in, as applicable, all of each Seller's right, title and interest in the Acquired Assets of such Seller, free and clear of any and all Liens.

(b) The Acquired Assets are in reasonably good repair and operating condition (subject to normal wear and tear) and, except as disclosed on Schedule 4.5(b) attached hereto, to the knowledge of Sellers there are no facts or conditions affecting the Acquired Assets which could, individually or in the aggregate, interfere in any material respect with the use, occupancy or operation thereof as currently used, occupied or operated other than (i) the Chapter 11 Case and restrictions normally incident to cases under chapter 11 of the Bankruptcy Code or (ii) circumstances that, individually or in the aggregate, cannot reasonably be expected to have a Material Adverse Effect.

(c) The Acquired Assets constitute all or substantially all of the assets, rights and interests necessary to operate the Business in the manner and to the extent presently conducted by Sellers.

4.6 Contracts. Schedule 4.6 of this Agreement contains a complete and accurate list of all material contracts relating to the operation of the Business ("Material Contracts"). True and complete copies of each such written Material Contract (or written summaries of the terms of any such oral contract) have been made available to Purchaser. Except for defaults with respect to Assumed Contracts or Assumed Leases (i) that will be cured through cure payments or (ii) arising solely as a consequence of the commencement of the Chapter 11 Case, neither any Seller nor any other party thereto is in default or breach in any material respect under the terms of any Material Contract and, to the knowledge of Sellers, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute a default or breach thereunder.

4.7 Leases/Real Property. Schedule 4.7 of this Agreement contains a complete and accurate list of all Leases of real property and Owned Real Property necessary for the operation of the Business in the jurisdictions in which the Acquired Assets are located. True and complete copies of each written Lease have been made available to Purchaser. Schedule 4.7 contains accurate and complete copies of preliminary title reports for each parcel of Owned Real Property.

4.8 Intellectual Property Rights. Schedule 4.8 attached hereto sets forth all of the following that are owned by any Seller and used or useful in connection with the Business: (i) patents and patent applications; (ii) registered trademarks and applications to register trademarks and Internet domain names; and (iii) registered copyrights. No Seller is a defendant in any action, suit or proceeding relating to, or has received any written claim alleging that such Seller is infringing upon, the Intellectual Property of others in connection with the operation of the Business. To the knowledge of Sellers, no other Person is infringing upon any Intellectual Property owned by any Seller and used in connection with the operation of the Business and no Seller is infringing upon the Intellectual Property of any other Person in connection with the operation of the Business. No Intellectual Property owned by any Seller and used in connection with the operation of the Business is subject to any outstanding judgment, injunction, Order, decree or agreement restricting the use thereof by such Seller with respect to the Business or restricting the licensing thereof by such Seller to any Person.

4.9 Brokers. Sellers have incurred no liability to any broker, finder or agent with respect to the payment of any commission regarding the consummation of the transactions contemplated hereby, except for certain fees and commissions payable to Lawrence M. Adelman ("Adelman"), which fees and commissions shall be disbursed by Sellers to Adelman from the Purchase Price (subject to Bankruptcy Court approval) and which shall not be the obligation of Purchaser.

4.10 Insurance. Schedule 4.10 sets forth a list of all insurance policies (specifying the insurer, the amount of coverage, the type of insurance and the annual premium)

presently maintained by any Seller with respect to the Business. Except as disclosed on Schedule 4.10, such policies are owned solely by Sellers and such policies (or their replacements or extensions) will be outstanding and in effect until the Closing, except where such failure to be outstanding or in effect would not reasonably be expected to have a Material Adverse Effect.

4.11 Labor. No Seller is a party to any collective bargaining agreement or other contract or understanding with a labor union relating to the employees of such Seller.

4.12 Legal Proceedings. Except for the Chapter 11 Case and except as set forth in Schedule 4.12, as of the date of this Agreement (i) there are no Legal Proceedings pending or, to the knowledge of Sellers, threatened against any Seller which relate to the Business or the Acquired Assets or the transactions contemplated by this Agreement and (ii) there are no decrees, injunctions or Orders of any court or governmental authority outstanding against any Seller with respect to the Business or the Acquired Assets.

4.13 Compliance with Laws: Permits. Each Seller, with respect to the conduct of the Business, is in compliance with all Regulations and Orders relating to the Acquired Assets or the Business, except where the failure to so comply, individually or in the aggregate, would not have a Material Adverse Effect. No Seller has received any notice to the effect that, or otherwise been advised that, it is not in compliance with any such Regulations or Orders. Schedule 4.13 sets forth a complete list of all Permits used in the operation of the Business. The Business has all licenses and Permits necessary for the conduct of the Business as currently conducted, other than licenses and Permits the absence of which would not have a Material Adverse Effect.

4.14 No Violations. Neither the execution, delivery or performance of this Agreement by each Seller, nor the consummation by such Seller of the transactions contemplated hereby, nor compliance by such Seller with any of the provisions hereof, will: (a) conflict with or result in any breach of any provisions of the articles or certificate of incorporation of such Seller, as the case may be, or the bylaws of such Seller; (b) violate any Order, writ, injunction, decree, statute, rule or regulation applicable to such Seller or the Acquired Assets of such Seller; or (c) result in the creation or imposition of any Lien or encumbrance on such Seller's portion of the Acquired Assets.

4.15 Taxes. All Tax Returns required to be filed with respect to the Business have been, or will be, timely filed and all such Tax Returns were correct and complete in all material respects. There are no waivers or extensions of statutes of limitations in effect with respect to any such Taxes.

4.16 Exclusivity of Representations. The representations and warranties made by Sellers in this Agreement are in lieu of and are exclusive of all other representations and warranties, including, without limitation, any implied warranties. Sellers hereby disclaim any such other or implied representations or warranties notwithstanding the delivery or disclosure to Purchaser or its officers, directors, employees, agents, or representatives of any documentation or other information (including any financial projections or other supplemental data). Sellers hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular

purpose as to any Acquired Asset. Except as otherwise expressly provided for herein, all Acquired Assets are being sold to Purchaser on an "AS IS" and "WHERE IS" basis. Notwithstanding any other provision to the contrary, Sellers make no representation or warranty with respect to the Excluded Assets.

As used herein, the term "to the knowledge of Sellers" and similar terms shall mean and refer to the actual knowledge of Jon Medved, James Gaston, Timothy Littleton and Pat Buxton.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Sellers as follows:

5.1 Organization. Purchaser is a limited liability company validly existing and in good standing under the laws of its jurisdiction of incorporation or formation and has the full power and authority to execute, deliver and perform this Agreement and to consummate all transactions contemplated hereby.

5.2 Authority. The execution, delivery and performance by Purchaser of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Purchaser and do not and will not violate any provisions of its organizational documents, any applicable Regulation or any Contract or Order binding upon it. This Agreement constitutes a valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights generally from time to time in effect, and to general equitable principles.

5.3 Consents. No notice to, filing with, authorization of, exemption by, or consent of any authority is required in order for Purchaser to consummate the transactions contemplated hereby.

5.4 Brokers. Purchaser has incurred no liability to any broker, finder or agent with respect to the payment of any commission regarding the consummation of the transactions contemplated hereby. Purchaser agrees that if any Claims for commissions, fees or other compensation, including, without limitation, brokerage fees, finder's fees, or commissions are ever asserted against Purchaser or Sellers in connection with this transaction, all such Claims shall be handled and paid by the party whose actions form the basis of such Claim and such party shall indemnify (with counsel reasonably satisfactory to the party(ies) entitled to indemnification) and hold the other harmless from and against any and all such Claims or demands asserted by any person, firm or corporation in connection with the transaction contemplated hereby.

5.5 "AS IS" "WHERE IS" Purchase. Except for the representations and warranties of Sellers contained in Article IV above, (i) Sellers have not made, and Purchaser has not relied, and will not rely, on any representations or warranties whatsoever, express or implied,

with respect to any matter relating to the Acquired Assets and (ii) Purchaser shall accept the Acquired Assets on an "AS IS" and "WHERE IS" basis.

5.6 Sufficient Funds. On the Closing Date Purchaser will have sufficient funds to pay the Purchase Price and satisfy its other obligations under this Agreement. If so requested by Sellers, Purchaser shall deliver to Sellers evidence establishing its compliance with this Section 5.6, including copies of any credit agreements or commitment letters pursuant to which Purchaser proposes to fund its obligations under this Agreement.

The foregoing representations and warranties shall not survive the Closing.

ARTICLE VI COVENANTS OF SELLERS; OTHER AGREEMENTS

6.1 Consents and Approvals. Subject to the provisions of Section 3.4 above, Sellers shall use commercially reasonable efforts (i) to obtain all necessary consents and approvals, as reasonably requested by Purchaser, to consummate the purchase and sale of the Acquired Assets and the assignment of the Assumed Obligations, together with any other necessary consents and approvals to consummate the transactions contemplated hereby, including, without limitation, obtaining the Sale Order, (ii) to make, as reasonably requested by Purchaser, all filings, applications, statements and reports to all authorities that are required to be made prior to the Closing Date by or on behalf of Sellers or any of their Affiliates pursuant to any applicable Regulation in connection with this Agreement and the transactions contemplated hereby and (iii) to obtain, as reasonably requested by Purchaser, all required consents and approvals (if any) necessary to assign and transfer the Permits to Purchaser at Closing and, to the extent that one or more of the Permits are not transferable, to assist Purchaser in obtaining replacements therefor; provided that Sellers shall not be required to make any filing (except for filing the motion to approve the Sale Order and the Sale Order) in connection with the transfer of a Permit or to take any other action required by this sentence unless Purchaser pays any and all fees and other charges imposed by any applicable authority in connection with such filing, transfer or other requested action. Subject to the provisions of Section 3.4 above, in the event that certain Permits are not transferable or replacements therefor are not obtainable on or before the Closing, but such Permits are transferable or replacements therefor are obtainable after the Closing, Sellers shall continue to use such commercially reasonable efforts in cooperation with Purchaser after the Closing as may be required to obtain all required consents and approvals to transfer, or obtain replacements for, such Permits after Closing and shall do all things reasonably necessary to give Purchaser the benefits that would be obtained under such Permits; provided, however, Sellers shall in no event be required to make any filing in connection with the transfer of a Permit or take any other action required by this sentence unless Purchaser pays any and all fees and other charges imposed by any applicable authority in connection with such filing, transfer or other requested action.

6.2 Access to Information and Facilities: Physical Inventory.

(a) Sellers agree that, prior to the Closing Date, Purchaser shall, upon reasonable notice and so long as such access does not unreasonably interfere with the business operations of any Seller, through its authorized officers, employees, agents and representatives

(including, without limitation, its counsel and accountants), have reasonable access during normal business hours to all Facilities and shall be entitled to make such reasonable investigation of the properties, businesses and operations of Sellers relating to the Business and such examination of the books, records and financial condition of Sellers relating to the Business as it reasonably requests and, at Purchaser's expense, to make extracts and copies to the extent necessary of such books and records; provided that Purchaser shall be bound by and shall comply with the terms of the Confidentiality Agreement with respect to Purchaser's ability to use or disclose any such information; and provided further that no investigation pursuant to this Section 6.2 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the transactions contemplated by this Agreement.

(b) Sellers agree that, prior to the Closing Date, Purchaser and Purchaser's lenders shall, upon reasonable notice and so long as such access does not unreasonably interfere with the business operations of any Seller, through its authorized officers, employees, agents and representatives, have reasonable access during normal business hours to all Facilities for the purposes of permitting Purchaser's lenders (or a third party service provider selected by Purchaser's lenders) to conduct a physical inventory of the Inventory. The cost of any such physical inventory shall be the responsibility of Purchaser or Purchaser's lenders.

6.3 Conduct of the Business Pending the Closing. Subject to any obligations as a debtor in possession under the Bankruptcy Code and except as otherwise expressly contemplated by this Agreement or the Orders of the Bankruptcy Court or with the prior written consent of Purchaser (which consent shall not be unreasonably withheld or delayed) or except as described on Schedule 6.3 hereto, from the date hereof until the Closing Date, Sellers shall (i) conduct the Business in the Ordinary Course of Business (including with respect to the payment of accounts payable), (ii) maintain their assets in good working condition (wear and tear excepted), (iii) maintain at current levels all insurance related to the Acquired Assets and the Business, (iv) use their commercially reasonable efforts to preserve intact the Business, to keep available the services of the present employees of the Business and to maintain appropriate levels of Inventory and (v) not take any action inconsistent with this Agreement or with the consummation of the Closing. Without limiting the generality of the foregoing, subject to any obligations as a debtor in possession under the Bankruptcy Code and except as otherwise expressly contemplated by this Agreement or the Orders of the Bankruptcy Court or with the prior written consent of Purchaser (which consent shall not be unreasonably withheld or delayed) or except as described on Schedule 6.3 hereto, from the date hereof until the Closing Date, Sellers will not:

(a) acquire a material amount of assets from any other Person other than Inventory or prepaid expenses in the Ordinary Course of Business or enter into any material transaction with respect to the Business other than in the Ordinary Course of Business;

(b) sell, assign, transfer, convey, pledge, mortgage, lease, license or otherwise dispose of or encumber any of the Acquired Assets, or any interests therein, other than in the Ordinary Course of Business or pursuant to the contracts listed in Schedule 6.3(b) hereto;

(c) make any material change in its methods of management, marketing, accounting or operating (or practices relating to payments);

(d) grant any increase in the compensation or benefits of any employee who is employed exclusively by the Business (other than pursuant to the terms of any employee retention, incentive or severance plan approved by the Bankruptcy Court, the obligations of which shall not be assumed by Purchaser);

(e) amend, cancel or terminate any material contract or commitment of the Business that is an Acquired Asset and that Purchaser has not elected to exclude from the Acquired Assets; or

(f) agree or commit to do any of the foregoing.

Sellers will not (i) take or agree or commit to take any action that would make any representation and warranty of Sellers hereunder inaccurate in any material respect at, or as of any time prior to, the Closing Date or (ii) omit or agree to omit to take any action necessary to prevent any such representation or warranty from being inaccurate in any material respect at any such time.

6.4 Notification of Certain Matters: Schedules.

(a) Sellers shall give notice to Purchaser of (i) the occurrence or nonoccurrence of any event that would be likely to cause either (A) any representation or warranty of Sellers contained in this Agreement, or in connection with the transactions contemplated hereunder, to be untrue or inaccurate in any material respect at any time from the date hereof to the Closing or (B) directly or indirectly, any Material Adverse Effect on any of Sellers, or (ii) any material failure of Sellers to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by them hereunder. Notwithstanding the foregoing, the delivery of any notice pursuant to this Section 6.4(a) shall not (x) be deemed to amend or supplement any of the Schedules contemplated hereby, (y) be deemed to cure any breach of any representation, warranty covenant or agreement or to satisfy any condition or (y) limit or otherwise affect the remedies available hereunder to the party receiving such notice.

(b) Purchaser and Sellers acknowledge that certain of the representations and warranties of Sellers affirmatively require that Sellers list certain factual information on the Schedules attached hereto. Sellers shall be permitted to update such Schedules on or prior to the Closing Date but only with respect to events or circumstances arising between the date hereof and the Closing Date.

6.5 Commercially Reasonable Efforts: Transfer of Assets. Sellers will use commercially reasonable efforts to obtain the Sale Order and any other consent required for the consummation of the transactions contemplated by this Agreement.

6.6 Bankruptcy Actions. Sellers will provide Purchaser with a reasonable opportunity to review and comment upon all motions, applications and supporting papers prepared by Sellers relating to this Agreement (including forms of Orders and notices to interested parties) prior to the filing thereof in the Chapter 11 Case. All motions, applications

and supporting papers prepared by Sellers relating to the approval of this Agreement (including forms of Orders and notices to interested parties) to be filed on behalf of Sellers after the date hereof must be acceptable in form and substance to Purchaser, in its reasonable discretion.

6.7 Further Assurances. Sellers shall execute such documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and the transactions contemplated hereby; provided, however, that Sellers shall not be obligated to incur or be liable for any expense, cost or obligation in connection therewith. Sellers shall use commercially reasonable efforts to fulfill or obtain the fulfillment of the conditions set forth in Article VIII of this Agreement.

6.8 Purchaser's Investigation. Purchaser acknowledges that prior to executing this Agreement Purchaser has conducted due diligence regarding, inter alia, the Business and the operations, assets and liabilities of Sellers with respect thereto. Immediately upon the execution and delivery of this Agreement by Sellers, Sellers shall continue to provide Purchaser (or its designated representatives) full and complete access to the employees, books and records, corporate offices and other facilities of Sellers for the purpose of conducting such additional investigation as Purchaser reasonably deems appropriate or necessary, in its discretion, in order to facilitate Purchaser's efforts to consummate the transactions provided for herein. Sellers hereby covenant and agree to cooperate with Purchaser in this regard in all material respects. As of the date hereof, Purchaser acknowledges that Purchaser has no knowledge of any Material Adverse Change since June 30, 2001.

6.9 No Shop. From the date of the issuance of the Sale Order and until the Closing Date and provided that Purchaser is proceeding in good faith to consummate the transactions contemplated hereby in a timely manner, no Seller or its Affiliates shall discuss, negotiate or consummate any transaction involving (i) the issuance, redemption, sale or exchange or other disposition of any equity interest in any Seller or (ii) the sale, exchange or other disposition of all or any part of the Acquired Assets.

6.10 Risk of Loss. From the date hereof through the Closing Date, all risk of loss or damage to the property included in the Acquired Assets shall be borne by Sellers. If all or a portion of the Acquired Assets is destroyed or damaged in an amount estimated by Sellers to exceed \$100,000 by fire or any other cause on or prior to the Closing Date, Sellers shall give written notice to Purchaser as soon as practicable after, but in any event within two (2) calendar days of, discovery of such damage or destruction, the amount of insurance, if any, covering such Acquired Assets and the amount, if any, which Sellers are otherwise entitled to receive as a consequence thereof. Purchaser shall have the option of (a) accepting such Acquired Assets in their destroyed or damaged condition, in which event Purchaser shall be entitled to proceeds of any insurance or other proceeds payable with respect to such loss having a value no greater than the value of the destroyed or damaged asset(s), and the Purchase Price shall be reduced by an appropriate amount for any uninsured or under insured portion of the loss, (b) excluding such Acquired Assets from this Agreement, in which event the Purchase Price shall be reduced by an appropriate amount allocated to such Acquired Assets or (c) terminating this Agreement in accordance with Section 11.1 hereof. If Purchaser accepts such Acquired Assets, then after the Closing, any insurance or other proceeds payable under this Section 6.9 shall belong, and shall be assigned to, Purchaser.

Other than the covenants set forth in the last sentence of Section 6.1, the covenants set forth in Section 6.7 and the covenants set forth in Article XII (that shall survive the Closing), all covenants of Sellers set forth in this Article VI shall lapse at, and be of no further force or effect following, the Closing.

ARTICLE VII COVENANTS OF PURCHASER.

7.1 Assumed Obligations. Subsequent to the Closing, Purchaser agrees to pay and perform the Assumed Obligations and shall indemnify and hold Sellers harmless with respect to the Assumed Obligations.

7.2 Reasonable Access to Records and Certain Personnel. Following consummation of the Closing, so long as the Chapter 11 Case is pending and so long as such access does not unreasonably interfere with Purchaser's business operations, Purchaser shall permit counsel to Sellers and any other professionals employed in the Chapter 11 Case reasonable access to Purchaser's employees and any books and records constituting a portion of the Acquired Assets and that relate to all or any portion of the Acquired Assets, the Assumed Obligations or the Business (whether in documentary or data form) for the purpose of (i) the continuing administration of the Chapter 11 Case (including, without limitation, the pursuit of any Avoidance Action by Sellers), (ii) the preparation of any Tax Returns required to be filed by Sellers or (iii) the defense of any audit, examination, administrative appeal or litigation of any Tax Return in which any of Sellers is included. Such access shall include the right of such professionals to copy, at the expense of Sellers, such documents and records as they may request in furtherance of the purposes described above. If Purchaser moves any such documents or records, Sellers shall have the right to require Purchaser to copy and deliver to Sellers or their professionals such documents and records as they may request, but only to the extent Sellers or any such professional (x) furnishes Purchaser with reasonably detailed written descriptions of the materials to be so copied and (y) reimburses Purchaser for the costs and expenses thereof. The parties acknowledge that Sellers shall have the right to retain any documents and records provided pursuant to this Section 7.2, provided that Sellers enter into a confidentiality agreement in customary form with respect to such documents and records.

7.3 Further Assurances. Purchaser shall execute such documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and the transactions contemplated hereby. Purchaser shall use commercially reasonable efforts to fulfill or obtain the fulfillment of the conditions set forth in Article IX of this Agreement.

7.4 Management Transition. Purchaser acknowledges that F&G conducts business and operations other than the Business (the "Retained Businesses") and that in conducting the Retained Businesses, F&G may desire to change the members of the management of the Retained Businesses (the "Management Transition"). Purchaser agrees that it will not oppose such Management Transition; provided that no such Management Transition shall have an adverse effect on the existing management of Drake or Home Marketplace.

7.5 Provision of Services to the Children's Group. Purchaser acknowledges that one of Drake or Home Marketplace currently provides call center services pursuant to that certain Transition Support Agreement, dated as of June 8, 2001 (the "Children's Group Transition Support Agreement"), by and among F&G, certain of F&G's subsidiaries, 1-800-Flowers.com and The Children's Group, Inc. (the "Children's Group"). At the option of F&G and with the consent of the Children's Group, Purchaser will agree to continue to provide such call center services to the Children's Group in accordance with the terms and conditions of the Children's Group Transition Support Agreement (including with respect to the consideration paid by the Children's Group for such services and the indemnification to be provided by the Children's Group for the benefit of Purchaser).

All of Purchaser's covenants set forth in this Article VII and under Article XII shall survive the Closing.

ARTICLE VIII CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser under this Agreement are, at the option of Purchaser, subject to satisfaction of the following conditions precedent on or before the Closing Date.

8.1 Warranties True as of Both Present Date and Closing Date: Covenants.

(a) Each of the representations and warranties of Sellers contained herein shall be true and correct in all material respects (except for such changes as are contemplated by the terms of this Agreement) on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date in all material respects) with the same force and effect as though made on and as of the Closing Date.

(b) Sellers shall have performed and complied, in all material respects, with the obligations and covenants required by this Agreement to be performed or complied with by Sellers on or prior to the Closing Date.

(c) Purchaser shall have been furnished a certificate (dated the Closing Date and in form and substance reasonably satisfactory to Purchaser) executed by each Seller certifying as to the fulfillment of the conditions set forth in this Section 8.1 and stating that the representations and warranties do not survive the Closing; provided that the representations and warranties in such certificate shall not survive the Closing.

8.2 Bankruptcy Condition.

(a) The Sale Order shall have been entered by the Bankruptcy Court and such Order shall be in form and substance reasonably satisfactory to Purchaser and shall be a Final Order. The Sale Order shall (i) approve this Agreement and the transactions contemplated hereby, (ii) provide that the Acquired Assets are being sold to Purchaser free and clear of all liens, Claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code, (iii) approve the assumption and assignment to Purchaser of the Assumed Leases and Assumed Contracts, (iv) find that Purchaser is a good faith purchaser entitled to the protection of section 363(m) of

the Bankruptcy Code and (v) exempt transfers contemplated hereby from any stamp tax, transfer tax or similar tax pursuant to section 1146(c) of the Bankruptcy Code.

(b) Notwithstanding Section 8.2(a), nothing in this Agreement shall preclude Purchaser or Sellers from consummating the transactions contemplated herein if Purchaser, in its sole discretion, waives the requirement that the Sale Order or any other Order shall have become Final Orders. No notice of such waiver of this or any other condition to Closing need be given except to Sellers, it being the intention of the parties hereto that Purchaser shall be entitled to, and is not waiving, the protection of section 363(m) of the Bankruptcy Code, the mootness doctrine and any similar statute or body of law if the Closing occurs in the absence of final orders.

8.3 Approvals. All authorizations, consents, filings and approvals necessary to permit Sellers to perform the transactions contemplated hereby shall have been duly obtained, made or given, shall be in form and substance reasonably satisfactory to Purchaser, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect. All terminations or expirations of waiting periods imposed by any governmental authority necessary for the transactions contemplated under this Agreement, if any, shall have occurred.

8.4 Assumption and Assignment. The Sale Order shall approve and authorize the assumption and assignment of the Assumed Contracts and the Assumed Leases.

8.5 Litigation. No Order shall have been issued restricting, prohibiting or staying the consummation of the transactions contemplated by this Agreement.

8.6 Additional Matters. Purchaser shall have received such additional documents, instruments or items of information reasonably requested by it in respect of any aspect or consequence of the transactions contemplated hereby. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the transactions contemplated by this Agreement or by the other agreements referred to herein shall be reasonably satisfactory in form and substance to Purchaser and its counsel.

8.7 Material Adverse Change. There shall not have occurred a Material Adverse Change since June 30, 2001 other than as a consequence of the filing of the Chapter 11 Case.

8.8 Employment Agreements. Key members of the management team of the Business shall have entered into employment agreements with Purchaser, in form and substance reasonably satisfactory to Purchaser.

8.9 Designation of Purchaser as First Qualified Bidder. Sellers shall have (a) designated Purchaser as the "stalking horse" or the First Qualified Bidder (as defined in the Bidding Procedures Order) pursuant to and in accordance with the Bidding Procedures Order, (b) taken all actions necessary to provide that Purchaser shall be entitled to overbid protection pursuant to and in accordance with the Bidding Procedures Order in an amount not less than five percent (5%) of the amount of the Purchase Price (the "Overbid Protection"), and (c) filed with

the Bankruptcy Court (and served on all parties to whom service of the Sale Hearing Notice (as defined in the Bidding Procedures Order) is required under the terms of the Bidding Procedures Order) notice, in form and substance reasonably satisfactory to Purchaser, disclosing the terms of the Overbid Protection and the identity of Purchaser.

8.10 Expense Reimbursement Actions. No later than September 7, 2001, Sellers shall have obtained the written agreement of their secured lenders, in form and substance reasonably satisfactory to Purchaser, to pay the amount of the Expense Reimbursement to Purchaser out of the proceeds of the sale of the Business (or any portion thereof) in the event an Alternative Transaction is approved by the Bankruptcy Court and consummated, such payment to be made prior to any payment with respect to the claims of the secured lenders.

8.11 Transition Support Agreement. F&G shall have entered into a Transition Support Agreement with Purchaser, in form and substance reasonably satisfactory to Purchaser (the "Transition Support Agreement"), pursuant to which F&G (and its subsidiaries, as necessary) shall agree to provide certain transitional support services to Purchaser for the time periods set forth therein.

8.12 Agreement with System Management Specialists. F&G shall have entered into an agreement for mainframe data processing services with System Management Specialists, Inc. that provides Purchaser with substantially the same services as currently provided by F&G to the Business, such agreement to be based on and be consistent with the letter from System Management Specialists, Inc. dated as of August 31, 2001 and attached hereto as Exhibit A; provided, however, that in no event shall the payments to be made thereunder to System Management Specialists, Inc. exceed \$131,250 per month.

8.13 Rights to Software. Purchaser and Sellers shall have entered into one or more license agreements, in form and substance reasonably satisfactory to Purchaser, with respect to the "Generic" system software, including all source code, programs and all related proprietary software and documentation developed by Sellers with respect thereto (it being understood that Sellers do not have the right to transfer certain third party licenses that are part of the "Generic" system). In addition, with respect to the MAPICS/AS 400 system Sellers shall (i) provide Purchaser with the ability to operate the MAPICS/AS 400 system in substantially the same manner as such system is currently being used by the Business through November 30, 2001 (including providing telephone connectivity, electricity, HVAC services and physical access), provided that Sellers shall have no obligation under this subsection (i) to provide support or personnel to help operate the MAPICS/AS 400 system, (ii) use their best efforts to negotiate a continuance of the underlying lease and to reduce the price thereof, (iii) assign all of their right, title and interest to any software and documentation related to the MAPICS/AS 400 system (including with respect to any modifications to the MAPICS/AS 400 software provided by the Third-Party vendor of such software) to the extent such rights are assignable or otherwise transferable. Notwithstanding the foregoing, Purchaser acknowledges and agrees that all such rights under this Section 8.13 shall be provided to Purchaser by Sellers on a non-exclusive basis.

8.14 Instruments of Conveyance and Transfer. Title. Sellers shall have delivered to Purchaser such bills of sale, deeds, endorsements, assignments, and other good and

sufficient instruments of conveyance and transfer, in form and substance reasonably satisfactory to Purchaser and its counsel, as are necessary to vest in Purchaser good and marketable title to all of the interest of Sellers in the Acquired Assets free and clear of any Liens.

8.15 Title Policy. Purchaser shall have received an ALTA owner's policy or policies of title insurance, in form and substance reasonably satisfactory to Purchaser, insuring fee title to the Owned Real Property with no exceptions other than those shown on the preliminary title report attached as Schedule 4.7 (it being understood, however, that each such title insurance policy shall also include coverage for off-record items).

8.16 Transfer of Rights to Trademark. F&G shall cause Michigan Bulb Company, a wholly owned subsidiary of F&G, to assign to Purchaser all of its right, title and interest in and to the "Home Marketplace" trademark (Registration No. 2,126,732), pursuant to an instrument of assignment in form and substance reasonably satisfactory to Purchaser.

8.17 Name Changes. Each of Drake and Home Marketplace shall have filed an amendment to their certificate or articles of incorporation, as applicable, to change the name of such entity so as not to include the words "Walter Drake" or "Home Marketplace" or any other name or mark that has such a near resemblance thereto as may be likely to cause confusion or mistake to the public, or to otherwise deceive the public. Each such amendment shall be in a form acceptable for filing with the Secretary of State of the State of Colorado in the case of Drake and with the Secretary of State of the State of Illinois in the case of Home Marketplace.

ARTICLE IX CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

The obligations of Sellers under this Agreement are, at the option of Sellers, subject to the satisfaction of the following conditions precedent on or before the Closing Date.

9.1 Warranties True as of Both Present Date and Closing Date. The representations and warranties of Purchaser contained herein shall be true and correct in all material respects (except for such changes as are contemplated by the terms of this Agreement) on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date in all material respects) with the same force and effect as though made by Purchaser on and as of the Closing Date. Purchaser shall have performed and complied, in all material respects, with the obligations and covenants required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date.

9.2 Approvals. All authorizations, consents, filings and approvals necessary to permit Purchaser to perform the transactions contemplated hereby shall have been duly obtained, made or given, shall be in form and substance reasonably satisfactory to Sellers, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect. All terminations or expirations of waiting periods imposed by any governmental authority necessary for the transactions contemplated under this Agreement, if any, shall have occurred.

9.3 Bankruptcy Condition. The Sale Order shall have been entered by the Bankruptcy Court and such orders shall be in form and substance reasonably satisfactory to Sellers. At a minimum, the Sale Order shall (i) provide that the Acquired Assets are being sold to Purchaser free and clear of all liens, Claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (ii) find that Purchaser is a good faith purchaser entitled to the protection of section 363(m) of the Bankruptcy Code. If the Sale Order shall have been appealed, no stay shall be in effect.

9.4 Payment. Purchaser shall have paid the Purchase Price in accordance with Section 3.1 hereof and shall have paid the fees and expenses of the Escrow Agent pursuant to the Escrow Agreement.

9.5 Assumption and Assignment. The Sale Order shall approve and authorize the assumption and assignment of the Assumed Contracts and the Assumed Leases.

9.6 Litigation. No Order shall have been issued restricting, prohibiting or staying the consummation of the transactions contemplated by this Agreement.

9.7 Additional Matters. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the transactions contemplated by this Agreement or by the other agreements referred to herein shall be reasonably satisfactory in form and substance to Sellers and their counsel.

ARTICLE X CLOSING

10.1 Closing. Provided that the Sale Order shall have been entered and no stay with respect thereto shall be in effect and Closing is permitted under the terms of the Sale Order, the Closing shall take place at the offices of Kirkland & Ellis, 200 East Randolph Drive, Chicago, IL 60601 and on a date and time (the "Closing Date") to be mutually agreed upon by Purchaser and Sellers, but in no event later than October 30, 2001.

10.2 Deliveries by Sellers. At the Closing, Sellers shall deliver or procure delivery to Purchaser of: (a) physical possession of all of the Acquired Assets capable of passing by delivery with the intent that title in such Acquired Assets shall pass by and upon delivery; (b) one or more deeds, in the form attached hereto as Exhibit B, conveying good and marketable fee simple title to all Owned Real Property included in the Acquired Assets to Purchaser; (c) one or more bills of sale, in the form attached hereto as Exhibit C, conveying in the aggregate all of the owned personal property of each Seller included in the Acquired Assets, duly executed by each Seller; (d) one or more assignments and assumptions of the Assumed Contracts and the Assumed Leases, in form and content mutually satisfactory to Purchaser and Sellers (collectively, the "Assignment and Assumption"), duly executed by the relevant Seller or Sellers; (e) a fully executed intellectual property assignment (including an assignment of the rights, title and interest of any Seller to the names "Walter Drake" and "Home Marketplace," and all variations thereof), in the form attached hereto as Exhibit D and in recordable form to the extent necessary to assign such rights; (f) an affidavit from each Seller stating such Seller's taxpayer identification number and that such Seller is not a foreign person pursuant to section 1445(b)(2)

of the Code; and (g) such other instruments as shall be requested by Purchaser to vest in Purchaser title in and to the Acquired Assets in accordance with the provisions hereof.

10.3 Deliveries by Purchaser. At the Closing, Purchaser will deliver the following: (a) the Purchase Price payable at Closing (less the Deposit) pursuant to and in accordance with Section 3.1; and (b) the Assignment and Assumption duly executed by Purchaser.

10.4 Security Deposit Instruction. At the Closing, Sellers and Purchaser shall deliver instructions to the Escrow Agent pursuant to the Escrow Agreement providing for the payment of the Deposit to Sellers.

10.5 Form of Instruments. To the extent that a form of any document to be delivered hereunder is not attached as an Exhibit hereto, such documents shall be in form and substance, and shall be executed and delivered in a manner, reasonably satisfactory to Purchaser and Sellers.

ARTICLE XI TERMINATION; TERMINATION PAYMENT

11.1 Termination. This Agreement may be terminated prior to the Closing as follows:

- (a) by mutual written agreement of Purchaser and Sellers;
- (b) by either Purchaser or Sellers if there shall be in effect a Final Order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;
- (c) by either Purchaser or Sellers (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein) if there shall have been a breach of any of the representations or warranties set forth in this Agreement on the part of the other party, which breach is not cured within 30 days following written notice to the party committing such breach or which breach, by its nature, cannot be cured prior to the Closing, and which breach, individually or together with all other such breaches, would have a Material Adverse Effect on the Acquired Assets or the Business, in the case of breaches by Sellers, or a Material Adverse Effect on Purchaser's ability to consummate the transactions contemplated hereby, in the case of breaches by Purchaser;
- (d) by Purchaser if it shall have reasonably determined that one or more conditions set forth in Article VIII has not been or cannot be fulfilled or satisfied prior to the date specified (i) in such condition (if such condition specifies a date by which such condition must be satisfied) or (ii) in Section 11.1(g) below;
- (e) by Sellers if they shall have reasonably determined that one or more conditions set forth in Article IX has not been or cannot be fulfilled or satisfied prior to the date specified in Section 11.1(g) below;

(f) by Purchaser or Sellers if Sellers enter into and consummate an Alternative Transaction; or

(g) by Purchaser or Sellers, if the Closing shall not have been consummated on or prior to October 30, 2001 (or by such later date as shall be mutually agreed to by Purchaser and Sellers in writing, which consent shall not be unreasonably withheld), unless the failure of such occurrence shall be due to the failure of Purchaser (if Purchaser is terminating) or Sellers (if Sellers are terminating) to perform or observe their respective agreements as set forth in this Agreement required to be performed or observed by such party on or before the Closing Date.

11.2 Expense Reimbursement. If this Agreement is terminated pursuant to Section 11.1(f), Sellers shall pay to Purchaser, within five (5) business days after such termination, Purchaser's reasonable, documented out-of-pocket expenses actually incurred in connection with this Agreement and transactions contemplated by this Agreement in an amount not to exceed the lesser of \$250,000 or three percent (3%) of the Purchase Price (such amount, the "Expense Reimbursement").

11.3 Effect of Termination. If this Agreement is terminated in accordance with Section 11.1 hereof and the transactions contemplated hereby are not consummated, this Agreement shall become null and void and of no further force and effect, except (i) for this Section 11.3, (ii) for the provisions of Sections 11.2, 11.4, 13.1, 13.2, 13.7, 13.8, 13.9, 13.10, 13.12 and 13.14 hereof, (iii) for the provisions of Section 6.2 relating to the obligation of Purchaser to keep confidential and not to use certain information and data obtained from Sellers and to return documents to Sellers and (iv) that the termination of this Agreement for any cause shall not relieve any party hereto from any liability which at the time of termination had already accrued to any other party hereto or which thereafter may accrue in respect of any act or omission of such party prior to such termination.

11.4 Deposit. If this Agreement is terminated by Sellers pursuant to Section 11.1(c), Sellers shall retain the full amount of the Deposit as liquidated damages for damages incurred by Sellers by reason of any default by Purchaser referred to in such Section 11.1(c). If this Agreement terminates for any other reason, Sellers shall promptly return the Deposit to Purchaser.

ARTICLE XII ADDITIONAL POST-CLOSING COVENANTS

12.1 Employees. Purchaser may, but shall not be required to, offer employment to or employ any employee of Drake or Home Marketplace as it shall determine in its sole discretion on such terms and conditions as Purchaser shall determine in its sole discretion. Sellers agree to use commercially reasonable efforts to cause employees who have received offers of employment from Purchaser to accept such offers of employment; provided that the foregoing shall not require Sellers to offer any compensation or other incentives to its employees to accept employment with Purchaser. In the event that Purchaser employs any employee of Drake or Home Marketplace, Sellers shall provide Purchaser with such information in respect of such individuals as Purchaser reasonably may request, including, without limitation,

personnel files and other records. Except as agreed to by the parties pursuant to this Agreement, Purchaser shall not have any liability in respect of any employees of Drake or Home Marketplace, whether employed by Purchaser or not, resulting from such employee's termination of employment with Drake or Home Marketplace under any law, including, without limitation, the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar foreign, state or local law, regulation or ordinance, or on account of bonuses or pay or incentive programs of any type, nor shall Purchaser acquire an interest in or obligation under any contract, employee benefit plan as defined by section 3(3) of ERISA, or other agreement or arrangement with respect to any such employee or former employee.

12.2 Joint Post-Closing Covenant of Purchaser and Sellers. Purchaser and Sellers jointly covenant and agree that, from and after the Closing Date, Purchaser and Sellers will each use commercially reasonable efforts to cooperate with each other in connection with any action, suit, proceeding, investigation or audit of the other relating to (a) the preparation of an audit of any Tax Return of any Seller or Purchaser for all periods prior to or including the Closing Date and (b) any audit of Purchaser and/or any audit of any Seller with respect to the sales, transfer and similar taxes imposed by the laws of any state or political subdivision thereof, relating to the transactions contemplated by this Agreement. In furtherance hereof, Purchaser and Sellers further covenant and agree to promptly respond to all reasonable inquiries related to such matters and to provide, to the extent reasonably possible, substantiation of transactions and to make available and furnish appropriate documents and personnel in connection therewith. All costs and expenses incurred in connection with this Section 12.2 referred to herein shall be borne by the party who is subject to such action.

12.3 Books and Records. For a period of six (6) years after the Closing Date (or such longer period as may be required by any governmental authority or ongoing Claim):

(a) Purchaser shall not dispose of or destroy any of the business records and files of the Business held by Purchaser and relating to the period preceding the Closing Date. If Purchaser wishes to dispose of or destroy such records and files after that time, or if any Seller wishes at any time to destroy any business records and files of the Business held by any such Seller, the party proposing such disposition or destruction shall first give 30 days' prior written notice to the other party, and such other party shall have the right, at its option and expense, upon prior written notice to the notifying party within such 30-day period, to take possession of the records and files within 15 days after the date of such notice. The parties preserving any such records shall bear the costs associated with preserving such records.

(b) Each party (the "requested party") shall allow the other party (the "requesting party") and any of its directors, officers, employees, counsel, representatives, accountants and auditors reasonable access to all files of the requested party relating to the Business for the period preceding the Closing Date which are reasonably required by the requesting party in anticipation of, or preparation for, any existing or future Legal Proceeding involving the requesting party or any of its Affiliates or tax return preparation, during regular business hours and upon reasonable notice at the requested party's principal place of business or at any location where such records are stored, and the requesting party shall have the right, at its own expense, to make copies of any such records and files; provided, however, that any such

access or copying shall be had or done in such a manner so as not to interfere with the normal conduct of the requested party's business or operations.

12.4 Certain Consents. If a consent of a Third Party which is required in order to assign any Acquired Asset (or Claim, right or benefit arising thereunder or resulting therefrom) is not obtained prior to the Closing Date, or if an attempted assignment would be ineffective or would adversely affect the ability of any Seller to convey its interest in question to Purchaser, Sellers will cooperate with Purchaser and use commercially reasonable efforts, at Purchaser's expense, in any lawful arrangement to provide that Purchaser shall receive the interests of any Seller in the benefits of such Acquired Asset. If any consent or waiver is not obtained before the Closing Date and the Closing is nevertheless consummated, each Seller agrees to continue to use commercially reasonable efforts to obtain all such consents as have not been obtained prior to such date.

ARTICLE XIII MISCELLANEOUS

13.1 Expenses. Except as provided in Section 11.2 hereof, each party hereto shall bear its own costs and expenses, including attorneys' fees, with respect to the transactions contemplated hereby. Notwithstanding the foregoing, in the event of any action or proceeding to interpret or enforce this Agreement, the prevailing party in such action or proceeding (i.e., the party who, in light of the issues contested or determined in the action or proceeding, was more successful) shall be entitled to have and recover from the non-prevailing party such costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing party may incur in the pursuit or defense thereof.

13.2 Liquidated Damages. In the event this Agreement is terminated pursuant to Section 11.1(f), Purchaser's sole remedy shall be as set forth in Section 11.2 hereof. In the event the Sellers terminate this Agreement pursuant to Section 11.1(c), the sole remedy of the Sellers shall be the retention of the full amount of the Deposit as liquidated damages; provided, however, that this limitation shall not apply in the case of any violation by Purchaser of the Bankruptcy Code or any other law as it relates to the transactions contemplated by this Agreement.

13.3 Amendment. This Agreement may not be amended, modified or supplemented except by a written instrument signed by all of the parties to this Agreement.

13.4 Notices. Any notice, request, instruction or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been given, (a) when received if given in person, (b) on the date of transmission if sent by telex, telecopy or other wire transmission (with answer back confirmation of such transmission), (c) upon delivery, if delivered by a nationally known commercial courier service providing next day delivery service (such as Federal Express), or (d) upon delivery, or refusal of delivery, if deposited in the U.S. mail, certified or registered mail, return receipt requested, postage prepaid:

If to Sellers, addressed as follows:

Lawrence M. Adelman
1849 Green Bay Road, Suite 270
Highland Park, Illinois 60035
Telephone: (847) 579-5007
Facsimile: (847) 681-1819

with a copy to

Kirkland & Ellis
200 East Randolph Drive
Chicago, Illinois 60601
Attn: Geoffrey A. Richards, Esq.
Telephone: (312) 861-2000
Facsimile: (312) 861-2200

If to Purchaser, addressed as follows:

Brecon Capital Company, LLC
451 Jackson Street
San Francisco, California 94111
Attn.: Nelson E. Matthews, Jr.
Telephone: (415) 364-0300
Facsimile: (415) 364-0333

with a copy to

Latham & Watkins
12636 High Bluff Drive, Suite 300
San Diego, California 92130-2071
Attn.: Andrew S. Greenhalgh, Esq.
Telephone: (858) 523-5400
Facsimile: (858) 523-5450

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

13.5 Waivers. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

13.6 Counterparts and Execution. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

13.7 Headings. The headings preceding the text of the Articles and Sections of this Agreement and the Schedules hereto are for convenience only and shall not be deemed part of this Agreement.

13.8 APPLICABLE LAW AND JURISDICTION. THIS AGREEMENT (AND ALL DOCUMENTS, INSTRUMENTS, AND AGREEMENTS EXECUTED AND DELIVERED PURSUANT TO THE TERMS AND PROVISIONS HEREOF (COLLECTIVELY, THE "ANCILLARY DOCUMENTS") SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE BANKRUPTCY CODE AND, TO THE EXTENT NOT INCONSISTENT WITH THE BANKRUPTCY CODE, THE LAWS OF THE STATE OF ILLINOIS APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED WHOLLY WITHIN SUCH JURISDICTION. PURCHASER AND SELLERS FURTHER AGREE THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO (A) THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT AND/OR (B) THE ACQUIRED ASSETS AND/OR ASSUMED OBLIGATIONS AND PURCHASER EXPRESSLY CONSENTS TO AND AGREES NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT REFUSES TO ACCEPT JURISDICTION OVER ANY SUCH DISPUTE, THEN ANY STATE OR FEDERAL COURT LOCATED IN ILLINOIS SHALL HAVE JURISDICTION OVER SUCH DISPUTE AND PURCHASER AND SELLERS HEREBY CONSENT TO THE JURISDICTION OF SUCH COURT IN ANY SUCH CASE.

13.9 Binding Nature: Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other parties (which shall not be unreasonably withheld or delayed); except (i) that Purchaser may assign any of its rights and obligations hereunder to any Affiliate or subsidiary of Purchaser (whether wholly owned or otherwise), (ii) Purchaser may grant a security interest in its rights and interests hereunder to its lenders, (iii) the rights and interests of Sellers hereunder may be assigned to a trustee appointed under chapter 11 or chapter 7 of the Bankruptcy Code, (iv) this Agreement may be assigned to any entity appointed as a successor to Sellers pursuant to a confirmed chapter 11 plan and (v) as otherwise provided in this Agreement. Nothing contained herein, express or implied, is intended to confer on any Person other than the parties hereto or their successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

13.10 No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to confer upon Third Parties any rights, remedies, Claims or causes of action.

13.11 Tax Matters.

(a) In the event that section 1146(c) of the Bankruptcy Code does not apply to the transactions contemplated hereby, Purchaser shall be responsible for the timely payment of all sales, use, transfer (including, without limitation, documentary transfer, stamp and like taxes) and similar taxes payable in connection with the consummation of the transactions contemplated by this Agreement and the sale and transfer of the Acquired Assets to Purchaser or its designee.

(b) Purchaser shall, within 60 days after the Closing Date, prepare and deliver to Sellers for their consent (which consent shall not be unreasonably withheld) a schedule allocating the Purchase Price (and any other items that are required to be treated as Purchase Price) among the respective Sellers and the Acquired Assets, Assumed Contracts and Assumed Leases (such schedule, the "Allocation"). If Sellers raise any objection to the Allocation, Purchaser and Sellers will negotiate in good faith to resolve such objection(s). Purchaser and Sellers shall report and file all Tax Returns (including amended Tax Returns and claims for refund) consistent with the Allocation, and shall take no position contrary thereto or inconsistent therewith (including, without limitation, in any audits or examinations by any Taxing Authority or any other proceeding). Purchaser and Sellers shall cooperate in the filing of any forms (including Form 8594 under section 1060 of the Code) with respect to such Allocation, including any amendments to such forms required pursuant to this Agreement with respect to any adjustment to the Purchase Price. If and to the extent the parties are unable to agree on such Allocation, the parties shall retain the Designated Firm to resolve such dispute. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 13.11(b) shall survive the Closing Date without limitation.

13.12 Termination of Representations, Warranties and Covenants. All representations and warranties made by Sellers in this Agreement shall terminate on the Closing Date upon the purchase of the Acquired Assets by Purchaser and Sellers shall have no liability after the Closing Date for any breach of any representation or warranty. Except as set forth in Sections 3.2, 3.3, 3.4, 13.4, 13.14, the last sentence of Article VI and Article XII, all covenants of Sellers shall lapse at, and be of no further force and effect following, the Closing.

13.13 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to this Agreement to express their mutual intent, and no rule of strict construction shall be applied against any party. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

13.14 Public Announcements. Except as required by law or in connection with the Chapter 11 Case, neither Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party(ies) hereto relating to the contents and manner of presentation and publication thereof, which approval will not be unreasonably withheld or delayed. Prior to making any public disclosure required by applicable law, the disclosing parties shall give the other party a copy of the proposed disclosure and reasonable opportunity to comment on the same.

13.15 Entire Understanding. This Agreement, the Exhibits and the Schedules hereto set forth the entire agreement and understanding of the parties hereto in respect to the transactions contemplated hereby and the Agreement, the Exhibits and the Schedules hereto supersede all prior agreements, arrangements and understandings relating to the subject matter hereof and are not intended to confer upon any other person any rights or remedies hereunder. There have been no representations or statements, oral or written, that have been relied on by any party hereto, except those expressly set forth in this Agreement, the Exhibits and the Schedules.

* * * * *

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

PURCHASER:**BRECON CAPITAL COMPANY, LLC**By: Name: Nelson C. Matthews Jr.Title: President**SELLERS:****FOSTER & GALLAGHER, INC.**

By: _____

Name: _____

Title: _____

DRAKE ACQUISITION COMPANY

By: _____

Name: _____

Title: _____

HOME MARKETPLACE, INC.

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE]

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

PURCHASER:

BRECON CAPITAL COMPANY, LLC

By: [Signature]
Name: Nelson C. Matthews Jr.
Title: President

SELLERS:

FOSTER & GALLAGHER, INC.

By: [Signature]
Name: L. M. Adams
Title: President

DRAKE ACQUISITION COMPANY

By: [Signature]
Name: L. M. Adams
Title: President

HOME MARKETPLACE, INC.

By: [Signature]
Name: L. M. Adams
Title: President

[SIGNATURE PAGE]

NED_D0054876.10 (W97)

Acquired Assets – Schedule 2.1

“Acquired Assets” means:

1. All the tangible and intangible assets and business operations used in or necessary to conduct the Business, including, but not limited to, all right, title and interest in and to all of the assets of the Business, including all of its: (a) leaseholds and subleaseholds (to the extent such leaseholds and subleaseholds are Assumed Facility Leases), improvements, fixtures and fittings thereon and easements, rights-of-way and other appurtenances thereto (such as rights appurtenant to and in public streets); (b) tangible personal property (including all Owned Equipment, Inventory (including all inventory located in Colorado Springs, Colorado and all off-site inventory located at any vendor location), purchased parts, furniture and tools); (c) Intellectual Property relating to the Business, including, without limitation, all proprietary computer software; (d) Claims, deposits, refunds, causes of action, rights of recovery and rights of set off where permitted by applicable law; (e) franchises, approvals, permits, licenses, orders, registrations, certificates, variances and similar rights obtained from governments and governmental agencies; (f) Books and Records, plats, architectural plans, drawings and specifications, creative materials, advertising and promotional materials, studies, reports and other printed or written materials; (g) the products, whether completed or in development, of the Business, including all software that comprises the products or any part of the products including source code and documentation, contracts, equipment, Inventory and other fixed assets; provided, however, the Acquired Assets shall not include (i) the corporate charter, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, blank stock certificates and other documents relating to the organization, maintenance and existence of Sellers as corporations, (ii) any of the rights of Sellers under the Agreement (or under any Ancillary Agreement), (iii) the “Generic” system and related “equipment,” as such term is used in the Information Technology Services Agreement, dated as of February 15, 2000, by and between System Management Specialists, Inc. and F&G (except to the extent set forth in Section 8.13), (iv) the MAPICS/AS 400 system (except to the extent set forth in Section 8.13), (v) rights to software that Sellers are not permitted to transfer under the terms of the instruments governing such software or (vi) the Excluded Assets.
2. Without duplication, all of the tangible and intangible assets and business operations used in or necessary to conduct the Business and located in the Drake facility in Colorado Springs, Colorado.
3. All Assumed Contracts and Assumed Leases (and all amendments thereto).
4. All Owned Real Property and Owned Equipment.
5. All right, title and interest in the names “Walter Drake” and “Home Marketplace” (whether used alone or in conjunction with other words) and all other trade names or catalog names used in the Business and all interest of Sellers in Intellectual Property

owned by any Seller and used in connection with the operation of the Business, including, without limitation, the items listed on Schedule 4.8.

6. All operating data assets and records, business plans, agreements, arrangements, contracts, leases, purchase orders, undertakings, covenants not to compete, obligations, commitments or other executory commitments to which any Seller is a party and which relate to the Business or any of such Seller's assets, whether oral or written, express or implied and other documents relating to the assets described in this Schedule 2.1.
7. All Claims, warranty rights, causes of action, subrogation rights and other similar rights arising in the conduct of the business and the ownership of the assets described in this Schedule 2.1, including, without limitation, any Claims for indemnification or offset under any acquisition agreements relating to the conduct and ownership of the assets described in this Schedule 2.1 and any Claims of Sellers under the Assumed Contracts and Assumed Leases assumed by and assigned to Purchaser pursuant to the terms of the Agreement.
8. Except as provided in Section 3.2 of the Agreement, all accounts and notes receivable (whether current or noncurrent), refunds, deposits, prepayments or prepaid expenses (other than prepaid insurance under policies not assumed by Purchaser) relating to the operation of the Business by any Seller.
9. All right, title and interest in all 800 or 8xx phone numbers utilized by any Seller in connection with the operation of the Business (to the extent transferable).
10. The businesses of Drake and Home Marketplace as going concerns, including all goodwill thereof.
11. Without duplication, all other assets of F&G any its subsidiaries utilized exclusively in connection with the Business.

Contracts – Schedule 2.2.1

1. Maintenance Service Contract dated January 17, 2001 between Pikes Peak Press Repair, Inc. and Walter Drake providing for service and maintenance of printing press equipment.
2. Maintenance Service Contract dated June 6, 2000 between Pikes Peak Press Repair, Inc. and Walter Drake providing for service and maintenance of virkoes, paper cutters, and master converters.
3. Maintenance Service Contract dated December 11, 1996 between Pikes Peak Press Repair and Walter Drake and Sons providing for service and maintenance of printing press equipment.
4. Program Maintenance Agreement undated between Hence EDP and Walter Drake & Sons, Inc. providing for service of programs. [Unsigned Contract]
5. Janitorial Services Contract dated April 25, 2000 between Walter Drake and Goodwill Industries of Colorado Springs providing for janitorial services.
6. Professional Services Agreement dated November 15, 2000 between Avaya, Inc. and Foster & Gallagher/Walter Drake regarding servicing of the Walter Drake PBX telephone system.
7. Agreement Letter dated October 15, 1997 between Periodical Products (represented by Spectra Products, Inc.) and Walter Drake regarding Inbound Telephone Magazine Promotions.
8. Customer Service Agreement dated December 20, 1999 between Lucent Technologies, Inc. and Foster & Gallagher providing for remote diagnostics and monitoring services of Foster & Gallagher's call management systems in Peoria, Illinois, Grand Rapids, Michigan, and Colorado Springs, Colorado.
9. Service Agreement undated between Mug-A-Bug Pest Control and Walter Drake providing for pest control services.
10. Service Agreement dated September 29, 1999 between American Eagle Excavating & Trucking and Walter Drake providing for snow removal services.
11. Manifest Mailing System Agreement undated between the United States Postal Service and Walter Drake and Sons, Inc. providing for mail delivery services.
12. Master Equipment Lease dated July 19, 1999 between El Camino Resources, Ltd. (GATX) and Foster & Gallagher, Inc. regarding computer equipment leases.
13. Direct Broadcast Service Agreement dated May 19, 1992 between Mood Music Systems, Inc. and Walter Drake providing for direct satellite music service.
14. Commercial Service Agreement undated between DMX Music and Walter Drake providing for DMX Digital DBS Music Service. [Unsigned Contract]
15. Esales Partnership Merchant Agreement dated April 7, 2000 between Catalog City, Inc. and Walter Drake providing for internet web site marketing on the Catalog City website.
16. Top Tier E-Commerce Agreement dated November 30, 1998 between Catalog City, Inc. and Home Marketplace providing for internet web site marketing on the Catalog City website.
17. Merchant Service Agreement undated between Commission Junction, Inc. and Walter Drake providing for affiliate marketing programs on the internet. [Unsigned Contract]

18. Product Listing Agreement dated February 1, 2001 between Store Runner Network, Inc. and Walter Drake providing for website marketing programs on the internet.
19. Product Listing Agreement dated May 11, 2001 between Store Runner Network, Inc. and The Home Marketplace providing for website marketing programs on the internet.
20. Performance Marketing Agreement dated July 1, 2001 between Performics, Inc. (f/k/a Dynamic Trade Inc.) and Foster & Gallagher, Inc.
21. Master Agreement dated May 8, 2000 between AT&T Corp. and Foster & Gallagher, Inc. representing an AT&T Contract Tariff and AT&T Tariffed Pricing Plan for long distance telecommunications services.
22. A freight management services agreement between R.R. Donnelly Logistics (f/k/a CTC) and Foster & Gallagher, Inc. providing freight management.
23. A bankcard processing service agreement between First USA Paymentech and Foster & Gallagher, Inc. providing for processing of charge card billings and related transactions.
24. A package delivery service agreement between United Parcel Services, Inc. (UPS) and Foster & Gallagher, Inc. providing for delivery of packages.
25. A mainframe data processing services agreement between Marconi (f/k/a SMS) and Foster & Gallagher, Inc. providing for mainframe data center processing services.
26. A purchasing card services agreement between First USA Financial Services, Inc. and Foster & Gallagher, Inc. providing for Visa purchase card services.
27. A Master License Agreement for MAPICS Software program modules between Baan Process Solutions (f/k/a Marcam Corp) and Foster & Gallagher, Inc. providing a license to operate the various modules of the MAPICS software programs utilized by Walter Drake.
28. A payroll processing services agreement between Automatic Data Processing, Inc. (ADP) and Foster & Gallagher, Inc. providing for processing of employee payrolls.
29. A timekeeping system annual maintenance agreement between ADI and Foster & Gallagher, Inc. providing for maintenance of timekeeping systems utilized by Walter Drake.
30. A freight management services agreement between BBC Worldwide and Foster & Gallagher, Inc. providing for freight management services.
31. A Less-than-Load Freight Delivery service agreement between Yellow Freight Systems and Foster & Gallagher, Inc. providing freight delivery services.
32. A Less-than-Load Freight Delivery service agreement between Roadway Express, Inc. and Foster & Gallagher, Inc. providing freight delivery services.

Equipment Leases – Schedule 2.2.2

1. An equipment lease of one mail system, one 5 pound scale, and one postage meter, which said lease is dated November 24, 1998 between Neopost and Walter Drake & Sons.
2. Equipment lease dated May 4, 2000 between GATX Technology Services Corp (d/b/a El Camino Resources Ltd.) and Foster & Gallagher, Inc. (Master Lease Agreement # 4478-Schedule # 6) whereby Foster & Gallagher, Inc. leased thirteen (13) CSR Turbo Celeron 433MHZ personal computers and related peripheral equipment, which are located at Walter Drake property in Colorado Springs, Colorado

Facility Leases - Schedule 2.2.3

None.

Gift Group - Schedule 3.3
Calculation of Net Working Capital
As of June 30, 2001

<u>G/L Acct</u>	<u>Description</u>	<u>Balance</u>	
<u>Current Assets</u>			
12100	Accounts Receivable - Customers	\$ 41,621	
12500	Accounts Receivable - List Rental	192,614	
12630	Accounts Receivable - Employees	5,829	
12690	Accounts Receivable - Other	948	
12800	Accounts Receivable - Magazine Direct	32,495	
	Total Accounts Receivable	\$	273,507
13220	Inventory - Finished Goods	\$ 2,094,209	
13240	Inventory - Hardgoods Products	413,472	
13250	Inventory - Bonus Items	22,553	
13260	Inventory - Manufactured Products	192,567	
13420	Inventory - Retail Store Hardgoods	39,406	
13500	Inventory - Work In Process	33,618	
13620	Inventory - Raw Materials	1,266,346	
13630	Inventory - Cafeteria Supplies	888	
13645	Inventory - Forms Supplies	2,987	
13660	Inventory - Shipping Supplies	124,223	
	Total Inventories	\$	4,190,269
141F0	Prepaid Catalog Costs - Fall 2001 - HMP	\$ 677,733	
141M0	Prepaid Catalog Costs - Summer 2001 - H	363,148	
141S0	Prepaid Catalog Costs - Spring 2001 - HMP	2,170	
142F0	Prepaid Catalog Costs - Fall 2002 - HMP	-	
142S0	Prepaid Catalog Costs - Spring 2002 - HMP	895	
14340	Prepaid Catalog Costs - All Drake Catalogs	3,518,000	
	Total Prepaid Catalog Costs	\$	4,561,946
15200	Prepaid Maintenance Agreements	\$ 40,804	
15400	Prepaid Postage Meter - Shipping	18,859	
15500	Prepaid Rent	-	
15900	Other Prepaid Assets	140,613	
	Total Other Prepaid Assets	\$	200,276
	Total Current Assets	\$	<u>9,225,998</u>

Gift Group - Schedule 3.3
Calculation of Net Working Capital
As of June 30, 2001

<u>G/L Acct</u>	<u>Description</u>	<u>Balance</u>	
<u>Current Liabilities</u>			
20350	A/P - Inventory Recd but No Invoice Recd	\$ 139,950	
20400	A/P - Manual Checks	3,106	
20700	A/P - Refunds Due Customers	24,456	
	Total Accounts Payable		\$ 167,512
24100	Accrued Payroll	\$ 150,020	
24640	Accrued Employee Vacation Payable	170,816	
24800	Accrued Customer Returns & Allowances	457,606	
24900	Other Accrued Liabilities	189,751	
	Total Accrued Liabilities		\$ 968,193
25200	Customer Deposits - Catalog	\$ 245,717	
25450	Customer Deposits - Cash Clearing	40,189	
25500	Customer Deposits - Retail	1,312	
			\$ 287,218
	Total Current Liabilities		\$ 1,422,923
	Net Working Capital		\$ 7,803,075

Schedule 4.1 Foreign Qualifications

Walter Drake: Michigan

Home Marketplace: Michigan

Defects to Assets - Schedule 4.5(b)

1. Sellers have disclosed to Purchaser that the roof on the building located at 4510 Edison Avenue, Colorado Springs, Colorado, 80915 is in need of repair and due to the current condition of the roof, the roof frequently leaks during periods of rain.
2. On or about September 5, 2001, Foster & Gallagher, Inc. shipped various equipment to Walter Drake, which said equipment will be used by Walter Drake for processing mail orders from customers, including opening of the mail, sorting of the mail, data entry of the mail orders, and preparation of check deposits. The Sellers make no warranties nor guaranties as to the operating condition of said equipment.

Schedule 4.6 Material Contracts

1. Maintenance Service Contract dated January 17, 2001 between Pikes Peak Press Repair, Inc. and Walter Drake providing for service and maintenance of printing press equipment.
2. Maintenance Service Contract dated June 6, 2000 between Pikes Peak Press Repair, Inc. and Walter Drake providing for service and maintenance of virkoes, paper cutters, and master converters.
3. Maintenance Service Contract dated December 11, 1996 between Pikes Peak Press Repair and Walter Drake and Sons providing for service and maintenance of printing press equipment.
4. Program Maintenance Agreement undated between Hence EDP and Walter Drake & Sons, Inc. providing for service of programs. [Unsigned Contract]
5. Janitorial Services Contract dated April 25, 2000 between Walter Drake and Goodwill Industries of Colorado Springs providing for janitorial services.
6. Professional Services Agreement dated November 15, 2000 between Avaya, Inc. and Foster & Gallagher/Walter Drake regarding servicing of the Walter Drake PBX telephone system.
7. Agreement Letter dated October 15, 1997 between Periodical Products (represented by Spectra Products, Inc.) and Walter Drake regarding Inbound Telephone Magazine Promotions.
8. Customer Service Agreement dated December 20, 1999 between Lucent Technologies, Inc. and Foster & Gallagher providing for remote diagnostics and monitoring services of Foster & Gallagher's call management systems in Peoria, Illinois, Grand Rapids, Michigan, and Colorado Springs, Colorado.
9. Manifest Mailing System Agreement undated between the United States Postal Service and Walter Drake and Sons, Inc. providing for mail delivery services.
10. Master Equipment Lease dated July 19, 1999 between El Camino Resources, Ltd. (GATX) and Foster & Gallagher, Inc. regarding computer equipment leases.
11. Master Agreement dated May 8, 2000 between AT&T Corp. and Foster & Gallagher, Inc. representing an AT&T Contract Tariff and AT&T Tariffed Pricing Plan for long distance telecommunications services.
12. A freight management services agreement between R.R. Donnelly Logistics (f/k/a CTC) and Foster & Gallagher, Inc. providing freight management.
13. A bankcard processing service agreement between First USA Paymentech and Foster & Gallagher, Inc. providing for processing of charge card billings and related transactions.
14. A package delivery service agreement between United Parcel Services, Inc. (UPS) and Foster & Gallagher, Inc. providing for delivery of packages.
15. A mainframe data processing services agreement between Marconi (f/k/a SMS) and Foster & Gallagher, Inc. providing for mainframe data center processing services.
16. A purchasing card services agreement between First USA Financial Services, Inc. and Foster & Gallagher, Inc. providing for Visa purchase card services.
17. A Master License Agreement for MAPICS Software program modules between Baan Process Solutions (f/k/a Marcam Corp) and Foster & Gallagher, Inc. providing a license to operate the various modules of the MAPICS software programs utilized by Walter Drake.

18. A payroll processing services agreement between Automatic Data Processing, Inc. (ADP) and Foster & Gallagher, Inc. providing for processing of employee payrolls.
19. A timekeeping system annual maintenance agreement between ADI and Foster & Gallagher, Inc. providing for maintenance of timekeeping systems utilized by Walter Drake.
20. A freight management services agreement between BBC Worldwide and Foster & Gallagher, Inc. providing for freight management services.
21. A Less-than-Load Freight Delivery service agreement between Yellow Freight Systems and Foster & Gallagher, Inc. providing freight delivery services.
22. A Less-than-Load Freight Delivery service agreement between Roadway Express, Inc. and Foster & Gallagher, Inc. providing freight delivery services.

Schedule 4.7 Leased and Owned Real Property

1. Leased Real Property – None.

2. Owned Real Property –

Certain real property, owned improvements, buildings and structures described as Lot 1 in Block 1 in Drake Subdivision Filing Number 5, in the City of Colorado Springs, El Paso County, Colorado, and commonly known as 4510 Edison Avenue, Colorado Springs, Colorado 80915.

[Preliminary title reports to come]

Owned Intellectual Property – Schedule 4.8

1. Trademark Registrations

(a) Walter Drake

Registration Number: 909,593
Registered: 03/09/71
Renewal Date: 03/09/01
Registered Owner: Drake Acquisition Company

(b) Walter Drake

Registration Number: 895,688
Registered: 07/28/70
Renewal Date: 07/28/00
Registered Owner: Drake Acquisition Company

(c) Walter Drake

Registration Number: 1,376,289
Registered: [Data to come]
Renewal Date: [Data to come]
Registered Owner: [Data to come]

(d) Home Marketplace

Registration Number: 2,126,732
Registered: 01/06/98
Registered Owner: Michigan Bulb Company

2. Pending Trademark Registrations

a) Homewares By Walter Drake

Serial Number: 75/849,932
Notice of Allowance Date: 04/24/01
Owner: Foster & Gallagher, Inc.

3. Domain Names

<u>Name</u>	<u>Expiration Date</u>
-------------	------------------------

Wdrake.com *	
Thehomemarketplace.com *	
Thehomemarketplace.net	
Walterdrake.net	
Walterdrakecompany.com	
Walterdrakeinc.com	
Walterdrakeandsons.com	
Walter-drake.com	
Walterdrakecatalog.com	
Walterdrakeco.com	
Wdcatalog.com	

* Website in existence under this domain name.

4. Telephone Numbers

800- or 888- Prefix Telephone Numbers:

800-227-3690	HMP Fax
800-276-2910	WD Christmas Card
800-356-3876	HMP Orders
800-525-9291	WD Orders
800-858-4979	WD Fax
877-925-8373	WD Internet
888-525-9291	WD Service
888-994-8697	HMP Orders
888-258-2743	Voice Mail
888-252-8462	WD Fax
877-523-1474	England Phone #

5. License Agreements

None.

6. Patents

None.

Insurance – Schedule 4.10

Walter Drake and Home Marketplace did not have separate individual insurance policy coverages. Rather, Foster & Gallagher, Inc. provided insurance coverages for Walter Drake and for Home Marketplace through consolidated Foster & Gallagher, Inc. policies providing coverage for property and casualty, director's and officer's liability, automobile, workman's compensation, business interruption, general liability, marine cargo, media liability, errors and omissions, crime, travel accident, product liability, fiduciary liability, employment practices, and umbrella.

Legal Proceedings – Schedule 4.12

1. Although no legal action has been threatened, on or about August, 2001 a customer visited the Walter Drake Retail Store, and caught her hand in a rat trap, as the trap was allegedly set to trigger inside a box of rat traps on display. The customer has contacted Walter Drake management about the incident, but no legal action has been threatened as of September 6, 2001.
2. In February of 2001, WMF of America charged Walter Drake with false advertising relating to the sale of a ball-tip whisk (Item #12633) on Walter Drake's web site, and indicated that pending utility and design patents on the WMF whisk would soon issue. WMF demanded that Walter Drake revise the subject advertisement, which was done.
3. In July of 2001, WMF provided Walter Drake with notice of the issuance of U.S. Patents 6,264,356 and D 445,316 on the ball-tip whisk identified in Item 2 above. WMF indicated its allegation that Walter Drake had infringed such patents and demanded damages for sales of such whisk after July 24, 2001. Sellers do not have knowledge of a suit being filed, nor have Sellers responded to such allegations.

Schedule 4.13 Permits

1. City of Colorado Springs, Colorado Tax License issued April 30, 1997 to Drake Acquisition Corp/Walter Drake, Inc. for the collection and remittance of sales, use, and other miscellaneous city taxes.
2. City of Colorado Springs, Colorado Tax License issued October 28, 1997 to Home Marketplace, Inc. for the collection and remittance of sales, use, and other miscellaneous city taxes.
3. State of Colorado, County of El Paso Sales Tax License issued November 23, 1999 to Home Marketplace, Inc. for the collection and remittance of sales and use taxes.
4. State of Colorado, County of El Paso Sales Tax License issued November 23, 1999 to Drake Acquisition Corp/Walter Drake, Inc. for the collection and remittance of sales and use taxes.
5. State of Michigan Sales Tax License issued to Drake Acquisition Company for the collection and remittance of sales and use taxes. [Copy to be obtained from corporate offices]
6. State of Michigan Sales Tax License issued to Home Marketplace, Inc. for the collection and remittance of sales and use taxes. [Copy to be obtained from corporate offices]

Schedule 6.3 Conduct of Business

(v) Sellers have solicited bids and are preparing to hold an auction for the sale of certain of their assets, including all of the Acquired Assets, pursuant to the Bidding Procedures Order. Sellers anticipate that such auction shall be held on September 11, 2001. In the event that Purchaser is not selected as the winning bidder at such auction, the Acquired Assets may be sold to another bidder.

Permitted Sales – Schedule 6.3(b)

None.

EXHIBIT Y

EXHIBIT Y

[Amended Schedule 2.1(d) to the Asset Purchase Agreement with Cure Amounts]

September 19, 2001 (8:56am)
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EXHIBIT Y**WALTER DRAKE/HOME MARKETPLACE GIFT GROUP
AGREEMENTS**

<u>Contract Description</u>	<u>Parties to Contract</u>	<u>Core Amount</u>
Walter Drake Executory Contracts and License Agreements		
eSales Partnership Merchant Agreement	Catalog City, Inc.	\$0
Advertiser Service Agreement	Commission Junction, Inc.	\$0
Product Listing Agreement	StoreRunner Network, Inc.	\$313.50
Maintenance Service Contract(s)	Pikes Peak Press Repair, Inc.	\$556.97
Program Maintenance Agreement	Hence EDP	\$1,500.00
Postage Meter Lease	Neopost Leasing	\$283.93
Diagnostics and Monitoring Agreement for PBX Equipment	Lucent Technologies	\$0
Janitorial Services Agreement	Goodwill Industries of Colorado Springs	\$55,732.74
Maintenance Agreement for PBX Equipment	Avaya Communications	\$0
Inbound telephone magazine promotion Agreement	Periodical Products	\$0
Pest Control Service Agreement	Mug-A-Bug, Inc.	.4481
Snow Removal Agreement	American Eagle Excavating & Trucking	\$0
Manifest Mailing System Agreement	United States Postal Service	\$0
Lease of Music & Equipment	DMX Music	\$711.98
Home Marketplace Executory Contracts and License Agreements		
Partnership Merchant Agreement	Catalog City, Inc.	\$0
Product Listing Agreement	StoreRunner Network, Inc.	\$222.10
F&G Executory contracts and License Agreements		
Freight Management Services	R.R. Donnelly Logistics (CTC)	\$30,426.37
Inbound/Outbound Long Distance Telephone Service	AT&T Corp.	\$645,109.70

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Package Delivery Service	United Parcel Services, Inc.	\$263,667.27
Master Lease of various computer equipment, including personal computers	GATX Capital (formerly El Camino Resources)	\$18,501.54
Purchasing Card Program	First USA Financial Services, Inc.	\$55,895.87
Master License Agreement for Software Program Process (MAPICS Software)	Baan Process Solutions (formerly Marcam Corp.)	\$0
Payroll Processing Agreement	Automatic Data Processing, Inc. (ADP)	\$0
Timekeeping System Annual Maintenance	ADI	\$0
Freight Management Services Agreement	BBC Worldwide	\$213,647.02
LTL Freight Delivery Service	Yellow Freight Systems	\$57,928.18
LTL Freight Delivery Service	Roadway Express, Inc.	\$8,830.27

SCHEDULE 2.1(d)
ASSUMED CONTRACTS

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