

01-06-2004

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

12.24.03

RECORDED TR



102638996

DEPARTMENT OF COMMERCE J.S. Patent and Trademark Office

Tab settings

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

1. Name of conveying party(ies): Nationwide Furniture Rentals Sales, Inc., a Pennsylvania corp.

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

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

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other

Execution Date:

2. Name and address of receiving party(ies) Name: Mattress Giant Holding Corp. Internal a Delaware corporation

Address: Street Address:

City: State: Zip:

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

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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,176,086

Additional number(s) attached Yes No

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

Name: Lee Anne LeBlanc, Esq.

Internal Address:

Street Address: 1835 E. Hallandale Beach Blvd., Ste. 314

City: Hallandale State: FL Zip: 33009

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:

(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.

Lee Anne LeBlanc Name of Person Signing

Signature

12-19-03 Date

Total number of pages including cover sheet, attachments, and document: 2

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

01/05/2004 DBYRNE 00000167 2176086

01 FC:8521

40.00 DP

TRADEMARK REEL: 002890 FRAME: 0877

AGREEMENT AND PLAN OF MERGER

by and among

THE MG MERGER ENTITIES,

MATTRESS GIANT HOLDING CORPORATION,

MATTRESS GIANT ACQUISITION CORPORATION,

THE NATIONWIDE ENTITIES and

THE SHAREHOLDERS OF THE NATIONWIDE ENTITIES

Dated as of February 19, 1999

## AGREEMENT OF PLAN AND MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "*Agreement*") is entered into as of February 19, 1999 by and among Mattress Giant Holding Corporation, a Delaware corporation ("MGHC"), Mattress Giant Acquisition Corporation, a Delaware corporation (the "*Parent*"), MG Merger Sub No. 1, Inc., a Pennsylvania corporation ("*Sub No. 1*"), MG Merger Sub No. 2, Inc., a Pennsylvania corporation ("*Sub No. 2*"), Nationwide Furniture Rentals & Sales, Inc., a Pennsylvania corporation ("*NFR*"), Nationwide Mattress Giant, Inc., a Pennsylvania corporation ("*Nationwide*") and each of the persons listed on Exhibit A attached hereto who constitute all of the holders of all of the issued and outstanding capital stock of the Nationwide Entities, (such person are referenced to herein individually as a "*Shareholder*" and, collectively as the "*Shareholders*"). Sub No. 1 and Sub No. 2 are sometimes referred to herein individually as a "*MG Merger Entity*" and collectively as the "*MG Merger Entities*". NFR and Nationwide are sometimes referred to herein individually as a "*Nationwide Entity*" and collectively as the "*Nationwide Entities*."

### WITNESSETH

A. MGHC owns all of the issued and outstanding shares of capital stock of the Parent. The Parent owns all of the outstanding shares of capital stock of the MG Merger Entities.

B. The Board of Directors of each of the MG Merger Entities has determined that it is fair to, and in the best interests of, their respective corporations and stockholders for the MG Merger Entities to be merged with and into the Nationwide Entities upon the terms and subject to the conditions set forth herein.

C. The Board of Directors of each of the MG Merger Entities, the Parent and the Nationwide Entities have approved the Merger Transactions (as defined in Section 1.1 herein) in accordance with the General Corporation Law of the State of Delaware and the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania (the "*Pennsylvania Law*"), as applicable.

D. The Nationwide Entities are engaged in the business of operating a chain of 47 retail mattress stores, along with related warehousing, inventory and delivery services, in the States of Pennsylvania, Delaware and New Jersey (the "*Business*").

NOW THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties set forth herein, the parties hereto agree as follows:

### ARTICLE 1. THE MERGER TRANSACTION.

1.1 *Merger.* Upon the terms and subject to the conditions of this Agreement, at the Effective Time Sub No. 1 shall be merged with and into NFR ("*Merger No. 1*") and Sub No.2 shall be merged with and into Nationwide ("*Merger No. 2*"), each in accordance with the applicable provisions of the Pennsylvania Law. Merger No. 1 and Merger No. 2 are referred to herein

individually as a "Merger Transaction" and collectively as the "*Merger Transactions*." Each of the MG Merger Entities and the Nationwide Entities are herein sometimes referred to as the "*Constituent Corporations*." At the Effective Time, the identity and separate corporate existence of each respective MG Merger Entity shall cease and each of the respective Nationwide Entities shall be the surviving corporation in the Merger Transactions (sometimes hereinafter referred to as the "*Surviving Corporations*").

1.2 *Effective Time*. The Merger Transactions shall become effective on the date and at the time the Articles of Merger referred to in Section 1.9 hereof are filed with the Secretary of State of the Commonwealth of Pennsylvania in accordance with Section 1927 of the Pennsylvania Law, which filing shall be made as soon as practicable after the Closing. The time at which the Merger Transactions shall become effective as aforesaid is referred to hereinafter as the "*Effective Time*." ✓  
The Merger Transaction shall have the effect set forth in Section 1929 of the Pennsylvania Law.

1.3 *Articles of Incorporation, Bylaws, Directors and Officers, Name*.

(a) The Articles of Incorporation of each of Sub. No. 1 and Sub No. 2, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation of the respective Surviving Corporation.

(b) The Bylaws of each of Sub No. 1 and Sub No. 2, as in effect immediately prior to the Effective Time, shall be the Bylaws of the respective Surviving Corporation.

(c) The directors and officers of each of Sub No. 1 and Sub No. 2, in office immediately prior to the Effective Time, shall be the directors and officers of the respective Surviving Corporation, and each shall hold his or her respective office or offices from and after the Effective Time until his or her successor shall have been elected and shall have been qualified.

(d) The name of each respective Surviving Corporation from and after the Effective Time shall be the name of the respective Nationwide Entity, (i.e. Nationwide Furniture Rental and Sales, Inc. and Nationwide Mattress Giant, Inc.) and the Articles of Incorporation of each of Sub No. 1 and Sub No. 2 shall be amended to reflect such name.

1.4 *Assets and Liabilities*. At the Effective Time, the Surviving Corporations shall possess all the rights, privileges, powers and franchises of a public as well as of a private nature, and be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations; and all the rights, privileges, powers and franchises of each of the Constituent Corporations, and all property, real, personal and mixed, and all debts due to any of the Constituent Corporations on whatever account shall be vested in each respective Surviving Corporation of each Merger Transaction; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of each respective Surviving Corporation as they were of the several and respective Constituent Corporations; but all rights of creditors and all

liens upon any property of any of the Constituent Corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective Constituent Corporations shall thenceforth attach to the appropriate Surviving Corporation of each Merger Transaction, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

1.5 Further Assurances. If, at any time after the Effective Time, the Surviving Corporations shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper (i) to vest, perfect or confirm, of record or otherwise, in the respective Surviving Corporation of each Merger Transaction, its right, title or interest in, to or under any of the rights, properties or assets of the respective Constituent Corporation acquired or to be acquired as a result of the Merger Transactions, or (ii) otherwise to carry out the purposes of this Agreement, the affected Surviving Corporation and its proper officers and directors or their designees shall be authorized to execute and deliver, in the name and on behalf of the Constituent Corporations, all such deeds, bills of sale, assignments and assurances and do, in the name and on behalf of the Constituent Corporations, all such other acts and things necessary, desirable or proper to vest, perfect or confirm its right, title or interest in, to or under any of the rights, properties or assets of the Constituent Corporations acquired or to be acquired as a result of the Merger Transactions and otherwise to carry out the purposes of this Agreement.

1.6 Conversion of Securities.

(a) By virtue of the Merger Transactions and without any action on the part of the holder thereof, at the Effective Time, all of the shares of capital stock of the Nationwide Entities in the aggregate issued and outstanding immediately prior to the Effective Time (the "*Nationwide Stock*") shall be converted into the right to receive, and become exchangeable for \$2,450 per share, or an aggregate of \$24,500,000 (the "*Merger Consideration*") to be paid in cash to each Shareholder based on and in proportion to their holdings of the capital stock of the Nationwide Entities as set forth on Exhibit B.

(b) Notwithstanding subsection (a) to the contrary, the Shareholders shall have the right in the aggregate to receive, in lieu of up to \$4,500,000 in cash, shares of common stock of MGHC ("*MGHC Stock*") at a price of \$50 per share, subject to the following conditions: (i) any Shareholder electing to receive a portion of the Merger Consideration payable to him in MGHC Stock must give MGHC and the Parent written notice of his decision ("*Election Notice*") specifying the dollar amount of the Merger Consideration to be paid by shares of MGHC Stock, together with a completed and executed Investment Representation Letter and a Consent to Shareholders Agreement in the form of Exhibits C and D, respectively, at least ten (10) days prior to the Closing; and (ii) if the Shareholders elect to receive in the aggregate more than \$4,500,000 of the Merger Consideration in MGHC Stock, then each Shareholder giving an Election Notice shall be entitled to and shall receive that number of MGHC Stock specified in his Election Notice multiplied by a percentage equal to the percentage provided by the product of \$4,500,000 divided by the

aggregate amount of Merger Consideration specified to be converted in all of the Election Notices properly delivered hereunder.

(c) By virtue of the Merger Transactions and without any action on the part of the holder thereof, at the Effective Time, each share of capital stock held by any of the Nationwide Entities as a treasury share immediately prior to the Effective Time shall be canceled and no payment of any consideration shall be made with respect thereto.

(d) By virtue of the Merger Transactions and without any action on the part of the holder thereof, at the Effective Time, each share of common stock of each of the MG Merger Entities that is issued and outstanding immediately prior to the Effective Time shall be converted into one newly issued share of Common Stock of the respective Surviving Corporation.

1.7 Exchange of Shares. At the Closing each Shareholder shall deliver to the Parent all certificates representing all of the Nationwide Stock owned by him.

1.8 Payment of Merger Consideration.

(a) At the Closing, but in no event later than the Effective Time, MGHC and Parent shall jointly and severally pay and make available to, and each Shareholder will be entitled to receive, upon surrender to the Parent of one or more certificates representing his shares of Nationwide Stock for cancellation in accordance with the procedures set forth in Section 1.8(b) hereof, the Merger Consideration into which the outstanding Nationwide Stock are converted in the Merger. The MGHC Stock into which the shares of Nationwide Stock are converted, if any, shall be deemed to be issued at the Effective Time.

(b) At the Closing, or at such later time that a Shareholder shall surrender certificate(s) evidencing his Nationwide Stock to Parent pursuant to the same method as provided by the giving of notices hereunder, Parent and MGHC shall jointly and severally pay and deliver the Merger Consideration to the Shareholders who have so surrendered certificates of Nationwide Stock by (i) with respect to cash consideration, a wire transfer to an account set forth on Exhibit B as to each such Shareholder or as otherwise specified in subsequent written notice from Shareholder to Parent; and (ii) with respect to MGHC Stock, a certificate representing that number of shares of MGHC Stock to which the Shareholder is entitled to receive pursuant to the terms hereof and issued in the name of such Shareholder. Until surrendered as contemplated by this Section, each certificate shall be deemed at any time after the Effective Time to represent only the right to receive, upon such surrender, the Merger Consideration.

(c) As of the date hereof, the stock transfer books of the Nationwide Entities shall be closed and no transfer of shares of Nationwide Stock shall thereafter be made. If after the Closing, certificates representing such shares of Nationwide Stock are presented to the

Surviving Corporation, they shall be cancelled and exchanged for the Merger Consideration in accordance with the terms of this Agreement.

(d) All shares of MGHC Stock to be issued in accordance with the terms of this Agreement, if any, shall be "restricted securities" as that term is defined pursuant to the Securities Act of 1933, as amended, and the rules and regulations promulgated thereon ("1933 Act"). Certificates representing MGHC Stock, when issued, shall contain a restrictive legend to the effect that the MGHC Stock have not been registered pursuant to the 1933 Act and may not be sold, transferred or otherwise disposed of except in compliance with the 1933 Act or unless MGHC receives an opinion of counsel that an exemption from registration is available.

(e) If any certificate representing Nationwide Stock is lost, stolen or destroyed and cannot be delivered at the Closing by the Shareholder, upon the making of an affidavit of the fact by the Shareholder claiming such certificate to be lost, stolen and destroyed and, if required by the Surviving Corporation, the posting by such person of a bond in such reasonable amount as the Surviving Corporation may direct as indemnity against any claim that may be made against it with respect to such certificate, Parent and MGHC shall issue in exchange for such lost, stolen or destroyed certificate, the Merger Consideration pursuant to this Agreement.

(f) Notwithstanding any provision in this Section to the contrary, a portion of the Merger Consideration payable in cash to each Shareholder hereunder shall be paid into escrow pursuant to Section 1.12(b) and 9.2(a) hereto in an amount equal to 1.02% and 8%, respectively, of the Merger Consideration payable to such Shareholder.

1.9 Requisite Shareholder Approval. Each of the Nationwide Entities will take all action necessary in accordance with applicable law and their Articles of Incorporation and Bylaws to convene a special meeting of the Shareholders to consider and vote upon, or solicit the written consent of the Shareholders for, the approval of the Merger Transactions and adoption of this Agreement. Each of the Nationwide Entities hereby represents and warrants to the Parent that the approval of the Merger Transactions and the adoption of this Agreement will require, under the Pennsylvania Law and the Articles of Incorporation of each of the Nationwide Entities, the approval of the holders of a majority of the outstanding shares of common stock.

1.10 Consummation of Merger. As soon as practicable after satisfaction of the conditions set forth in Article 6 hereof, each of the Nationwide Entities and the MG Merger Entities shall execute and deliver to the Secretary of State of Pennsylvania, duly executed and verified Articles of Merger in the form of Exhibit E attached hereto (the "*Articles of Merger*").

1.11 Time and Place of Closing. The closing of the Merger Transactions and other transactions contemplated or provided for in this Agreement (herein called the "*Closing*") shall be held at the offices of Kane, Russell, Coleman & Logan, P.C., 3700 Thanksgiving Tower, 1601 Elm

Street, Dallas, Texas 75201, on March 22, 1999 (the "*Closing Date*") or at such other place or earlier or later date or time as may be fixed by mutual agreement of the Parent and the Shareholders.

1.12 *Closing Equity.*

(a) The Merger Consideration has been calculated and agreed to based on the representation and warranty that the total stockholders' equity of all Nationwide Entities as of December 31, 1998 as set forth in the 1998 Balance Sheet (as defined below) will equal at least \$186,000 (the "*1998 Agreed Equity*"). As the Closing Date shall occur after December 31, 1998, the Shareholders agree, jointly and severally, that they shall not make or declare any dividends or distributions of any nature based on and in respect of the equity of the Nationwide Entities, except as expressly provided in this Agreement.

(b) In the event the actual total stockholder's equity of the Nationwide Entities as of December 31, 1998 (the "*1998 Actual Equity*") exceeds the 1998 Agreed Equity by an amount in excess of \$50,000, the Parent will pay to the Shareholders, in proportion to their holding of the common stock of the Nationwide Entities as set forth on Exhibit "B", an aggregate amount equal to the difference between (i) the 1998 Actual Equity and (ii) the 1998 Agreed Equity plus \$50,000. In the event the 1998 Actual Equity is less than the 1998 Agreed Equity by an amount in excess of \$50,000, the Shareholders, in proportion to their holding of the common stock of the Nationwide Entities as set forth on Exhibit "B", agree to pay to the Parent an amount equal to the difference between (i) the 1998 Actual Equity plus \$50,000 and (ii) the 1998 Agreed Equity. Furthermore, the Shareholders agree to escrow at the Closing, in proportion to their holding of the common stock of the Nationwide Entities as set forth on Exhibit B, an aggregate of \$250,000 of the Merger Consideration (the "*Escrow Deposit*") pursuant to an Escrow Agreement substantially in the form attached hereto as Exhibit F, such escrow to guarantee the performance of the Shareholders as contemplated in the prior sentence. The term "total stockholder's equity" as utilized in subsection 1.12(a) and this subsection 1.12(b) shall mean total assets less total liabilities of the Nationwide Entities and shall be calculated in accordance with generally accepted accounting principles applied consistent with the total stockholders' equity set forth in the audited combined balance sheets of December 31, 1997 as audited by Stockton & Bates in their report dated October 22, 1998. The obligations of the Shareholders pursuant to this Section shall be defined as a Parent Indemnifiable Loss under Section 9.1 hereof but shall not apply or be counted against the Minimum Threshold under Section 9.2 hereof.

(c) The Nationwide Entities, acting through the Shareholders' Representative (as defined in Section 1.13 hereof), will cause Stockton & Bates (the "*Nationwide Accountants*") to commence reviewing the books and records of each of the Nationwide Entities as of December 31, 1998 and in connection therewith prepare an audited combined balance sheet of the Nationwide Entities as of such date based on generally accepted accounting principles, consistently applied (herein, collectively, the "*1998 Balance Sheet*") and related audited statements of income, stockholders equity and cash flow. If the Nationwide Accountants



have not completed and delivered the audited 1998 Balance Sheet prior to the Closing, the Parent and MGHC shall request the Nationwide Accountants to promptly complete the audit of the 1998 Balance Sheet as soon as reasonably practicable after the Closing. The party to whom the Nationwide Accountants shall deliver the 1998 Balance Sheet (the "*Sender*") will promptly deliver to all other parties (the "*Recipient*") a copy of the 1998 Balance Sheet and such audit shall be deemed accepted by the Recipient (in the case the Recipients are the Shareholders, then they shall act through the Representative) unless the Sender (in the case the Sender is the Shareholders, then they shall act through the Representative) shall have received, within thirty (30) days after delivery thereof, a written notice from the Recipient of the Recipient's objections to the 1998 Balance Sheet. In the event the Recipient timely objects to the 1998 Balance Sheet, the Recipient shall have the right to retain independent accountants of their selection and at their expense, during the ninety (90) day period following expiration of the thirty (30) day period above, to review the books and records of the Nationwide Entities and the work papers of the Nationwide Accountants to ascertain whether there are any discrepancies in the preparation of the 1998 Balance Sheet. The Recipient shall supply to the Sender a copy of any report generated by the Recipient's independent accountants. Until the audit and subsequent reviews contemplated by this subsection 1.12(c) are completed, the Shareholders' Representative, his agents and accountants and the Nationwide Accountants shall have full and complete access to the books and records of the Nationwide Entities. The Parent agrees to keep the books and records of the Nationwide Entities in Philadelphia, Pennsylvania through April 15, 1999.

(d) In the event there shall continue to remain any dispute regarding the 1998 Actual Equity following the examination by the Recipient's independent accountants, such dispute shall be submitted for arbitration by the American Arbitration Association (the "AAA") in Philadelphia, Pennsylvania, the expense of which shall be shared equally by the Parent and the Shareholders, provided that each party shall bear its own expenses. The parties shall request the AAA to appoint three arbitrators for such dispute whose decision shall be final.

(e) Any amounts due pursuant to subsection 1.12(b) shall be paid within ten days of (i) the Recipient's acceptance or deemed acceptance of the 1998 Balance Sheet, (ii) agreement among the parties as to the amount due under subsection 1.12(b), or (iii) the arbitrators' decision as contemplated in subsection 1.12(d).

(f) Notwithstanding anything to the contrary contained herein, in the event (i) the 1998 Balance Sheet reflects total stockholders' equity of the Nationwide Entities of less than \$136,000 and (ii) such 1998 Balance Sheet is delivered to the Nationwide Entities prior to the Closing Date, the Shareholders may terminate this Agreement pursuant to Article 7 hereof.

1.13 Shareholders' Representative.

(a) By the execution and delivery of this Agreement, each Shareholder, for himself, his heirs, executors, legal representatives and successors and assigns, hereby irrevocably constitutes and appoints Kenneth F. Mazda as his or her true and lawful agent and attorney-in-fact referred to as (the "*Representative*"), with full power of substitution to act in his, her or its name, place and stead with respect to all transactions contemplated by and all terms and provisions of this Agreement, and to act on his, her or its behalf in any dispute, litigation or arbitration involving matters arising as a result of and after the Closing under this Agreement, the Escrow Agreement referred to in Section 1.12(b), the Deposit Agreement referred to in Section 10.10, and the Indemnity Escrow Agreement referenced to in Section 9.2(a) and to take all actions on behalf of the Shareholders in connection therewith.

(b) The appointment of the Representative shall be deemed coupled with an interest and shall be irrevocable, and the Parent and any other person may conclusively and absolutely rely, without inquiry, upon any action of each Representative on behalf of the Shareholders in all matters in which he has been granted authority pursuant to Section 1.13(a). The Representative shall act for the Shareholders on all of the matters set forth in this Agreement in the manner the Representative believes to be in the best interest of the Shareholders whom he represents and consistent with his obligations under this Agreement, but the Representative shall not be responsible to the Shareholders for any loss or damages the Shareholders may suffer by reason of the performance by the Representative of his duties under this Agreement, other than loss or damage arising from fraud in the performance of his duties under this Agreement.

(c) All actions, decisions and instructions of the Representative taken, made or given pursuant to the authority granted to such Representative pursuant to subsection 1.12(a) above shall be final, conclusive and binding upon all Shareholders and all actions, decisions and instructions of the Representative taken, made or given pursuant to the authority granted to such Representative pursuant to subsection 1.13(a) above shall be conclusive and binding upon all individual Shareholders. The Parent, the MG Merger Entities, their officers, directors, employees, agents and affiliates shall be able to rely exclusively on the instructions, decisions and actions of the Representative.

(d) The provisions of this Section 1.13 are independent and severable, shall constitute an irrevocable power of attorney, coupled with an interest and surviving death or dissolutions, granted by the Shareholders to the Representative and shall be binding upon the executors, heirs, legal representatives, successors and assigns of each such Shareholder.

(e) Each of the Shareholders, jointly and severally, hereby agrees to indemnify and hold harmless the Representative of and from any and all losses, liabilities, obligations, damages, deficiencies, actions, suits, proceedings, demands, assessment, orders judgments,

finances, penalties, costs and expenses of any kind or nature whatsoever (each, a "Representative Loss") sustained, suffered or incurred by Representative arising out of his actions as the Representative unless such Representative Loss is caused by the fraud of the Representative.

(f) The Representative, in his capacity as such, shall have no liability to the Parent or MGHC for any failure to perform any of his obligations hereunder; and any failure of the Representative to respond or answer shall be deemed a rejection or negative response of the Representative. If Kenneth F. Mazda dies or otherwise becomes incapacitated and is unable to serve as the Representative, then and in such event all references herein to the Representative shall be deemed to be the Shareholders.

1.14 Allocation. The Shareholders, the Nationwide Entities, the Parent and the MG Merger Entities agree to establish a purchase price allocation as set forth on Exhibit G attached hereto. The parties agree to file all tax returns and information reports for tax reporting purposes in a manner consistent with such allocation.

1.15 HSR Filing. The Parent and MGHC have agreed with the Shareholders that no filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, based on the representation and warranty of the Nationwide Entities and the Shareholders that the total assets of the Nationwide Entities as of December 31, 1998 was less than Ten Million Dollars (\$10,000,000).

1.16 Conduct of Closing.

(a) At or prior to the Closing, the Nationwide Entities and the Shareholders shall deliver to Parent:

(i) Articles of Merger in the form of Exhibit E hereto ("*Articles of Merger*") duly executed by the Nationwide Entities;

(ii) The certificates required by Section 6.1(a) and 6.1(k) hereof;

(iii) The Escrow Agreement and Indemnity Escrow Agreement duly executed by the Shareholders;

(iv) The Non-Compete Agreements duly executed by the Shareholders;

(v) Amendments to the Leases for the warehouse facilities in the forms set forth collectively in Exhibit H hereto;

(vi) The opinion of counsel referred to in Section 6.1(h);

(vii) A resignation of each of the Shareholders as an officer and director of the Nationwide Entities;

(viii) A Warranty and Maintenance Agreement in the form of Exhibit I duly executed by the Shareholders; and

(ix) Any other documents and certificates contemplated by Section 6.1 hereof.

(b) At or prior to the Closing, MGHC and the Parent shall deliver to the Shareholders:

(i) Articles of Merger duly executed by the MGHC Merger Entities;

(ii) The Merger Consideration to the Shareholders who have tendered their certificates for their Nationwide Stock;

(iii) The Escrow Agreement and Indemnity Escrow Agreement duly executed by Parent; and

(iv) The certificates and opinion of counsel referred to in Section 6.2 hereof.

(c) Notwithstanding the foregoing, the Nationwide Entities and the Shareholders shall not be liable for a breach of this Agreement due to the failure of any Shareholder to deliver any of the amendments and instruments set forth above in Section 1.16(a); provided, however, MGHC and Parent, in any such event, may terminate this Agreement.

## **ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF THE NATIONWIDE ENTITIES AND THE SHAREHOLDERS.**

2.1 *Making of Representations and Warranties.* As a material inducement to MGHC, the Parent and the MG Merger Entities to enter into this Agreement and to consummate the transactions contemplated hereby each of the Nationwide Entities and each of the Shareholders, jointly and severally, hereby make to MGHC, the Parent and the MG Merger Entities the representations and warranties contained in this Article 2 as of the date hereof; provided that the representations and warranties in subsections 2.4 and 2.5(b) and (c) are only made by each Shareholder with respect to itself or himself and not with respect to any other Shareholder. All representations and warranties made in this Article 2 shall survive for a period of twelve (12) months after the Closing Date; save and except the representations and warranties made in Section 2.4 and Section 2.8 which shall survive for a period of forty-eight (48) months after the Closing Date.

2.2 Organization and Qualifications of the Company. Each of the Nationwide Entities is a corporation duly organized, validly existing and in good standing under the laws of the state set forth in Schedule 2.2 with full corporate power and authority to own or lease its properties and to conduct its business in the manner and in the places where such properties are owned or leased and where such business is currently conducted or proposed to be conducted. The copies of each Nationwide Entity's articles of incorporation, as amended to date, and of each Nationwide Entity's by-laws, as amended to date, and heretofore delivered to the Parent's counsel, are complete and correct, and no amendments thereto are pending. Each of the Nationwide Entities is duly qualified to do business as a foreign corporation in those states listed on Schedule 2.2, and neither is required to be licensed or qualified to conduct its business or own its property in any other jurisdiction in which the failure to be so qualified would have a material adverse effect on the such entities' properties, assets, prospects, financial condition or business or on the Business as a whole. The copies of the minute books and stock records of each Nationwide Entity heretofore delivered to the Parent's counsel are complete and correct copies of all such records maintained by the Nationwide Entities.

2.3 Corporation Subsidiaries. Except as set forth in Schedule 2.3, no Nationwide Entity owns any equity interests in any other entity.

2.4 Equity.

(a) The total authorized capital stock of each Nationwide Entity is set forth in Schedule 2.4(a). Schedule 2.4(a) contains a true, correct and complete listing of the stockholders of each Nationwide Entity at the date hereof, together with the number of shares and class of capital stock owned therein by each such stockholder. Except as set forth in Schedule 2.4(a), there are no outstanding subscriptions, options, warrants, commitments, preemptive rights, agreements, arrangements or commitments of any kind for or relating to the issuance, sale, registration or voting of, or outstanding securities convertible into or exchangeable for, any shares of capital stock of any class or other equity interests of any Nationwide Entity.

(b) Each Shareholder owns beneficially and of record the number of shares of stock in each Nationwide Entity set forth opposite such Shareholder's name in Schedule 2.4(a), free and clear of all pledges, liens, security interests, restrictions, encumbrances or other claim or charge except as specifically set forth in such schedule.

2.5 Authority of the Nationwide Entities and the Shareholders.

(a) Each Nationwide Entity has full corporate right, power and authority to enter into this Agreement and each agreement, document and instrument to be executed and delivered by it pursuant to the terms of this Agreement. The execution, delivery and performance by each Nationwide Entity of this Agreement and each such other agreement, document and instrument has been duly authorized by all necessary action of each Nationwide Entity and its stockholders. This Agreement and each agreement, document and instrument to be executed and delivered by each

Nationwide Entity pursuant to, or as contemplated by, this Agreement constitute, or will when executed and delivered constitute, valid and binding obligations of each Nationwide Entity, enforceable in accordance with their respective terms. The execution, delivery and performance by each Nationwide Entity of this Agreement and each such agreement, document and instrument pursuant to, or as contemplated by, this Agreement to which it is a party:

(i) do not and will not violate any provision of the articles of incorporation or by-laws, as applicable, of each Nationwide Entity;

(ii) except as set forth on Schedule 2.5, do not and will not violate any laws of the United States, or any state or other jurisdiction applicable to any of the Nationwide Entities or require any of the Nationwide Entities to obtain any approval, consent or waiver of, or make any filing with, any person or entity (governmental or otherwise) that has not been obtained or made, and except for any other approvals, consents, waivers and filings that, if not obtained or made, individually or in the aggregate would not have an adverse effect on the properties, assets, business or condition (financial or other) of the Nationwide Entities or the Business; and

(iii) except as set forth on Schedule 2.5, do not and will not result in a breach of, constitute a default under, accelerate any obligation under, or give rise to a right of termination of any indenture or loan or credit agreement or any other agreement, contract, instrument, mortgage, deed of trust, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination or arbitration award, whether written or oral, to which any Nationwide Entity is a party or by which the property (owned or subject to a lease) of any Nationwide Entity is bound or affected, except (A) where such breach, default, acceleration or right of termination would not have an adverse effect on the properties, assets, business, or condition (financial or other) of any Nationwide Entity and would not result in the creation or imposition of any mortgage, pledge, lien, security interest or other charge or encumbrance on any of the assets of any Nationwide Entity and (B) where a waiver or consent of such breach or default has been obtained.

(b) If such Shareholder is an individual, such Shareholder has full right, authority, power and capacity to enter into this Agreement and each agreement, document and instrument to be executed and delivered by or on behalf of him pursuant to this Agreement. If such Shareholder is not an individual, such Shareholder has full right, power and authority to enter into this Agreement and each agreement, document and instrument to be executed and delivered by it pursuant to, or as contemplated by, this Agreement and to carry out the transactions contemplated hereby and thereby, including but not limited to the Merger Transactions, and the execution, delivery and performance by such Shareholder of this Agreement and each such other agreement, document and instrument has been duly authorized by all necessary corporate, trust or partnership action, as appropriate.

(c) This Agreement and each agreement, document and instrument executed and delivered by each Shareholder pursuant to, or as contemplated by, this Agreement constitute, or when executed and delivered will constitute, the valid and binding obligations of such Shareholder enforceable in accordance with their respective terms. The execution, delivery and performance by such Shareholder of this Agreement and each such agreement, document and instrument:

(i) if such Shareholder is not an individual, do not and will not violate any provision of any relevant formation document of such Shareholder;

(ii) do not and will not violate any laws of the United States, or any state or other jurisdiction applicable to such Shareholder or require such Shareholder to obtain any approval, consent or waiver of, or make any filing with, any person or entity (governmental or otherwise) that has not been obtained or made; and

(iii) do not and will not result in a breach of, constitute a default under, accelerate any obligation under or give rise to a right of termination of any indenture or loan or credit agreement or any other agreement, contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination or arbitration award to which such Shareholder is a party or by which the property of such Shareholder is bound or affected, or result in the creation or imposition of any mortgage, pledge, lien, security interest or other charge or encumbrance on any of the Shareholders' or Nationwide Entities' assets or properties.

(d) This Agreement and the consummation of all transactions contemplated hereby have been, or will be prior to Closing, approved by the Board of Directors and shareholders of each Nationwide Entity at a duly called and properly held meeting or by unanimous written consent in lieu of such meeting. No other corporate action or approval of any Nationwide Entity or the holders of any class of the equity thereof or securities convertible into or exercisable for such capital stock is required to consummate the transactions contemplated hereby other than as set forth herein.

## 2.6 Real and Personal Property.

(a) Real Property. All of the real property leased by each Nationwide Entity is identified on Schedule 2.6(a) (herein referred to as the "Leased Real Property."). Neither of the Nationwide Entities, as of the Closing Date, will own any real property.

(i) Status of Leases. All leases of Leased Real Property are identified on Schedule 2.6(a), and copies thereof have been delivered to the Parent and its counsel. The Nationwide Entities have, as against the Nationwide Entities, enforceable leasehold interests in the Leased Real Property, and, except as noted in Schedule 2.6(a), have occupied the premises comprising the Leased Real Property

since the date of inception in each lease. There are no mortgages, liens or encumbrances against such leasehold interests in the Leased Real Property. Neither the Shareholders nor any of the Nationwide Entities has received any notice of any material uncured default under any terms of said leases, nor has any event occurred which, with notice or the passage of time, or both, would give rise to such a default. To the knowledge of the Nationwide Entities and the Shareholders, the other party to each of said leases is not in default under any terms thereof and there is no event which, with notice or the passage of time, or both, would give rise to such a default.

(ii) Consents. Except as set forth in Schedule 2.6(a), no consent is required with respect to the transactions contemplated by this Agreement from the other parties to any lease of Leased Real Property.

(iii) Condition of Leased Real Property. To the actual knowledge of any of the Shareholders, except as set forth in Schedule 2.6(a), no material portion of the Leased Real Property (involving, in each instance, an amount in excess of \$10,000) is not performing the function for which it was designed.

(iv) Compliance with the Law. Neither any of the Nationwide Entities nor any Shareholder has received any notice from any governmental authority of any violation of any law, ordinance, regulation, license or authorization issued with respect to any Leased Real Property that has not been heretofore corrected and to their knowledge, no such violation exists which could have an adverse affect on the operation or value of any Leased Real Property or the Business.

(b) Personal Property. A complete description of all depreciable machinery and equipment with a purchase price, or total remaining lease payments, of \$10,000 or more of each Nationwide Entity is contained in Schedule 2.6(b) hereto. Except as specifically disclosed in Schedule 2.6(b), each Nationwide Entity has good title to all of its personal property shown on its books and records. None of such personal property or assets owned by the Nationwide Entities is subject to any mortgage, pledge, lien, conditional sale agreement, security title, encumbrance or other charge except as specifically disclosed in Schedule 2.6(b).

## 2.7 Financial Statements.

(a) The Nationwide Entities and the Shareholders have delivered to the Parent the following financial statements:

(i) Audited balance sheets of each of the Nationwide Entities as of December 31, 1997 certified by Stockton & Bates, independent public accountants (the "Audited Balance Sheet");



(ii) Unaudited combined statement of earnings of each of the Nationwide Entities for the year ended December 31, 1997 prepared by management of the Nationwide Entities (the "1997 Statement of Earnings"); and

(iii) Unaudited balance sheet of each of the Nationwide Entities as of September 30, 1998 (the "Base Balance Sheet") and unaudited combined statement of earnings of the Nationwide Entities for the nine months then ended (collectively with the Base Balance Sheet, the "1998 Financial Statements").

Except as set forth on Schedule 2.7(a), said financial statements have been prepared in accordance with generally accepted accounting principles ("GAAP") applied consistently during the periods covered thereby (except that the 1998 Financial Statements are subject to normal year-end audit adjustments) and present fairly in all material respects the financial condition of the Nationwide Entities at the dates of said statements and the results of its operations for the periods covered thereby.

(b) As of the date hereof, the Nationwide Entities had no material liabilities of any nature, whether accrued, absolute, contingent or otherwise (including without limitation liabilities as guarantor or otherwise with respect to obligations of others, or liabilities for taxes due or then accrued or to become due or contingent or potential liabilities relating to activities of the Nationwide Entities or the conduct of its Business prior to the date hereof or the Closing, as the case may be), except liabilities (i) stated or adequately reserved against on the Base Balance Sheet or the notes thereto, (ii) reflected in the Schedules furnished to the Parent under this Agreement on the date hereof including Schedule 2.7(b), or (iii) incurred in the ordinary course of business of the Nationwide Entities consistent with the terms of this Agreement.

## 2.8 Taxes.

(a) A list of all federal, state and local income tax and information returns (other than personal property tax returns) filed with respect to the Nationwide Entities since December 31, 1996 is set forth in Schedule 2.8 attached hereto. For every taxable period of the Nationwide Entities, each Nationwide Entity has delivered to the Parent correct and complete copies of all federal and state income tax and information returns, examination reports and statements of deficiencies assessed against or agreed to by each Nationwide Entity. Schedule 2.8 attached hereto sets forth all federal tax elections under the Internal Revenue Code of 1986 (the "Code") filed since January 1, 1996 that are in effect with respect to the Nationwide Entities or for which an application by any of the Nationwide Entities is pending.

(b) There are no levies or liens on any of the assets of any Nationwide Entity that arose in connection with any failure (or alleged failure) to pay Taxes (as defined in subsection 2.8(e) below) when due. No Nationwide Entity has ever entered into a closing agreement pursuant to Section 7121 of the Internal Revenue Code.

(c) Except as set forth in Schedule 2.8, there has not been any audit of any tax return filed by the Nationwide Entities since January 1, 1996, no audit of any federal or state tax return of the Nationwide Entities is in progress, and none of the Nationwide Entities or the Shareholders has been notified by any federal or state tax authority that any such audit is contemplated or pending. Except as set forth in Schedule 2.8, no extension of time with respect to any date on which a federal or state tax return was or is to be filed by the Nationwide Entities is in force, and no waiver or agreement by the Nationwide Entities is in force for the extension of time for the assessment or payment of any Taxes. Since January 1, 1996, none of the Nationwide Entities has had a federal or state tax deficiency proposed, asserted or assessed against it, or has been delinquent in the payment or deposit of any Taxes.

(d) Except as set forth in Schedule 2.8 since January 1, 1996, all federal, state and local income tax and information returns have been filed, are true and correct in all material respects and any and all Taxes shown as due and owing thereon have been timely and fully paid, and any and all Taxes required to be withheld and deposited have been withheld and deposited.

(e) For purposes of this Agreement, the term "Taxes" shall mean all federal, state, and local taxes, including, without limitation, income taxes, estimated taxes, alternative minimum taxes, excise taxes, sales taxes, use taxes, value-added taxes, gross receipts taxes, franchise taxes, capital stock taxes, employment and payroll-related taxes, withholding taxes, stamp taxes, transfer taxes and property taxes, whether or not measured in whole or in part by net income, and all deficiencies, or other additions to tax, interest, fines and penalties.

2.9 Accounts Receivable. All accounts receivable of the Nationwide Entities reflected on the Audited Balance Sheet and the Base Balance Sheet arise out of transactions in the ordinary course of business and any reserves established therefor are calculated consistent with past practices. The Nationwide Entities have no accounts or loans receivable from the Shareholders, any person, firm or corporation which is affiliated with the Shareholders or the Nationwide Entities or from any affiliate, director, officer or employee of the Shareholders or the Nationwide Entities, except as disclosed on Schedule 2.9 attached hereto.

2.10 Inventories. The values of the inventories stated in the Audited Balance Sheet and the Base Balance Sheet were determined in accordance with GAAP subject to normal year-end audit adjustments.

2.11 Absence of Certain Changes. Except as disclosed in Schedule 2.11 attached hereto or any other Schedule attached hereto, since the date of the Base Balance Sheet there has not been:

(i) Any material change in the properties, assets, liabilities, business, operations or condition (financial or other) of any of the Nationwide Entities, except those arising in the ordinary course of business;

(ii) Except for the endorsement of checks in the ordinary course of business, any contingent liability incurred by any of the Nationwide Entities as guarantor;

(iii) Any mortgage, encumbrance or lien for borrowed money placed on any of the properties of either of the Nationwide Entities which will remain in existence after the Closing Date;

(iv) Any purchase, sale or other disposition, or any agreement or other arrangement for the purchase, sale or other disposition, of any individual capital asset of either of the Nationwide Entities costing more than \$10,000;

(v) Any damage, destruction or loss, whether or not covered by insurance, suffered by either of the Nationwide Entities involving an amount in excess of \$10,000;

(vi) Any declaration, setting aside or payment of any dividend by any of the Nationwide Entities, or the making of any other distribution in respect of the equity of the Nationwide Entities (except as has been consistent with past practices or is intended to result in the Nationwide Entities having the 1998 Agreed Equity), any changes in the capitalization of either of the Nationwide Entities, any direct or indirect redemption, purchase or other acquisition by either of the Nationwide Entities of its own capital stock, any issuance or sale of any securities convertible into or exchangeable for debt or equity securities of the Nationwide Entities or any grant or issuance of options, warrants, subscriptions, preemptive rights, agreements, arrangements or commitments of any kind for or relating to the issuance, sale, registration or voting of any shares of capital stock of any class, or other equity interests of any of the Nationwide Entities, as applicable;

(vii) Any claim of unfair labor practices asserted against any of the Nationwide Entities; any change in the compensation (in the form of salaries, wages, incentive arrangements or otherwise) payable or to become payable by the Nationwide Entities to any of its officers, employees or John Folz or Alan Carlitz other than normal merit increases in accordance with its usual practices, or any bonus payment or arrangement made to or with any of such officers, employees or such named independent contractors; any entering into any employment, deferred compensation or other similar agreement (or any amendment to any such existing agreement) with any officer, director or employee of the Nationwide Entities, except for any employment arrangement providing for salary or wages of less than \$40,000 per annum and any oral agreement terminable at will by the Nationwide Entities;

(viii) Any change in the officers or senior management of either of the Nationwide Entities, any grant of or any agreement to grant any severance or

termination pay to any officer or employee of the Nationwide Entities or any increase in benefits payable under any existing severance or termination pay policies or employment agreements except in accordance with past practices (which is not to exceed one week for each year of service);

(ix) Any obligation or liability incurred by either of the Nationwide Entities to any of its officers, directors, stockholders or employees which exceed, in each instance, \$2,000 per person in the aggregate, or any loans or advances made by any of the Nationwide Entities to any of its officers, directors, stockholders or employees, which exceed, in each instance, \$2,000 per person in the aggregate except compensation and expense allowances payable to officers or employees;

(x) Any change in accounting methods or practices, credit practices or collection policies used by the Nationwide Entities;

(xi) Any other transaction entered into by either of the Nationwide Entities other than transactions in the ordinary course of business or as contemplated by this Agreement; or

(xii) Any agreement or understanding whether in writing or otherwise, that would result in any of the transactions or events or require any of the Nationwide Entities to take any of the actions specified in paragraphs (i) through (xi) above.

2.12 *Banking Relations.* All of the accounts which the Nationwide Entities have with any banking institution are listed in Schedule 2.12 attached hereto, indicating with respect to each of such accounts the type of accounts maintained (such as checking account, borrowing arrangements, safe deposit box, etc.), the name of the appropriate Nationwide Entity with whom such accounts have been made and the person or persons authorized in respect thereof.

2.13 *Patents, Tradenames, Trademarks, Copyrights and Proprietary Rights.* All patents, patent applications, trade names, trademarks, trademark applications and registrations, copyrights, applications and registrations and other material proprietary rights owned by or licensed to the Nationwide Entities or used or to be used by either of the Nationwide Entities in the Business as presently conducted (the "Proprietary Rights") are listed in Schedule 2.13 attached hereto. Except as set forth in Schedule 2.13, to their knowledge, use of said patents, trade names, trademarks, copyrights or other proprietary rights in the ordinary course of the business as presently conducted does not require the consent of any other person. Except as set forth in Schedule 2.13, to their knowledge, the Nationwide Entities have sufficient title or adequate rights or licenses to use of all patent, tradename, trademark, copyright, or other proprietary rights used or to be used by the Nationwide Entities in their Business as presently conducted or contemplated, in each case free and clear of any attachments, liens, encumbrances or adverse claims and the Nationwide Entities have no reason to believe that its present or contemplated activities, products or services infringe any such

patent, trade name, trademark or other proprietary rights of others. Except as set forth in Schedule 2.13, (a) none of the patents, trade names, trademarks, copyrights or other proprietary rights listed in Schedule 2.13 is subject to any outstanding order, decree, judgment or stipulation or, to the best knowledge of the Nationwide Entities and the Shareholders, is being infringed by others, and (b) no proceeding charging the Nationwide Entities, or any of them, with infringement of any adversely held patent, trade name, trademark or copyright has been filed or, to the best knowledge of the Nationwide Entities and the Shareholders, is threatened to be filed, and neither the Nationwide Entities nor the Shareholders has received notice of any such proceeding.

2.14 Trade Secrets and Customer Lists. The Nationwide Entities have the right to use in the ordinary course of their Business as presently conducted all trade secrets and customer lists required for or incident to the marketing of all products presently sold by the Nationwide Entities. Any payments required to be made by the Nationwide Entities for the use of such trade secrets and customer lists are described in Schedule 2.14. The Nationwide Entities are not using or in any way making use of any confidential information or trade secrets of any third party, including without limitation, a former employer of any present or past employee of the Nationwide Entities or of any of the Nationwide Entities' predecessors, except where such use or the loss of the same would not have a material adverse effect on the properties, assets, business or condition (financial or other) of the Nationwide Entities or the Business.

2.15 Contracts. Except for contracts, commitments, plans, agreements and licenses listed in Schedule 2.15 (true and complete copies of those of which are in writing have been delivered to the Parent), none of the Nationwide Entities is currently a party to or subject to:

(a) any plan or contract providing for bonuses, pensions, options, stock purchases, deferred compensation, retirement payments, profit sharing, collective bargaining or the like, or any contract or agreement with any labor union;

(b) any employment contract or contract for services which requires the payment of more than \$40,000 annually in base salary or which is not terminable within 30 days by the Nationwide Entities without liability for any penalty or severance payment other than pursuant to the Nationwide Entities' severance policies referred to on Schedule 2.24;

(c) any contract or agreement for the purchase of any commodity, material or equipment other than those purchased in the ordinary course of business;

(d) except for the agreements disclosed in any schedule hereto, any other contracts or agreements creating any obligation of the Nationwide Entities of \$50,000 or more with respect to any such contract;

(e) any contract or agreement which by its terms does not terminate or is not terminable by the Nationwide Entities or any successor or assign within twelve months after the date hereof without payment of a penalty of \$10,000 or more;

(f) any contract or agreement for the sale or lease of its products not made in the ordinary course of business;

(g) any contract with any sales agent or distributor of products of either of the Nationwide Entities;

(h) any contract or agreement containing covenants limiting the freedom of any of the Nationwide Entities to compete in any line of business or territory or with any person or entity;

(i) any contract or agreement which restricts the conduct of the Business in any form or fashion which contract or agreement will survive Closing and is not terminable at will;

(j) except for obligations incurred for any new store openings from and after December 31, 1997 (each of which is listed on Schedule 2.15), any outstanding contract or agreement for the purchase of any individual fixed asset for a price in excess of \$10,000 whether or not such purchase is in the ordinary course of business;

(k) any license agreement (as licensor or licensee) which is material to the Business;

(l) any indenture, mortgage, promissory note, loan agreement, guaranty or other agreement or commitment for the borrowing of money and any related security agreement;

(m) any partnership, joint venture or other similar contract, arrangement or agreement;

(n) except as included in any leases disclosed to the Parent pursuant to Section 2.6 hereof, any contract providing for indemnification of liabilities under Environmental Laws (as defined in Section 2.26);

(o) any guaranty, suretyship agreement or other contract or agreement relating to any contingent liability or obligations of any third party; or

(p) any power of attorney, whether general, special or limited, or proxy.

All contracts, agreements, leases and instruments to which any of the Nationwide Entities is a party or by which either of the Nationwide Entities is obligated are legal, valid and binding obligations of the respective Nationwide Entity and, to the best knowledge of the Nationwide Entities and the Shareholders, the other parties thereto, enforceable in accordance with their respective terms. Neither the Nationwide Entities nor, to the best knowledge of the Nationwide Entities and the Shareholders, any other party to any contract, agreement, lease or instrument of any of the Nationwide Entities including, without limiting the generality of the foregoing, any agreement relating to continuing warranty or service obligations, is in material default in complying with any

provisions thereof, and no condition or event or facts exist which, with notice, lapse of time or both, would constitute a default thereof on the part of such Nationwide Entity or, to the best knowledge of the Nationwide Entities and the Shareholders, on the part of any other party thereto, except for any such default, condition, event or facts that, individually or in the aggregate, would not have a material adverse effect on the properties, assets, business, condition (financial or other) or prospects of the Nationwide Entities or the Business.

2.16 Litigation. Schedule 2.16 hereto lists all currently pending litigation and governmental or administrative proceedings or, to their knowledge, investigations to which any of the Nationwide Entities is a party. Except for matters described in Schedule 2.16, there is no litigation or governmental or administrative proceeding or investigation pending or, to their knowledge, threatened against any of the Nationwide Entities which may have an adverse effect on the properties, assets, condition (financial or other) of the Nationwide Entities or the Business or which would prevent or hinder the consummation of the transactions pursuant to, or as contemplated by, this Agreement.

2.17 Compliance with Laws. Except as set forth in Schedule 2.17 hereto, to their knowledge, each of the Nationwide Entities is in compliance with all applicable statutes, ordinances, orders, rules and regulations promulgated by any federal, state, municipal or other governmental authority which apply to the conduct of the Business, except for any such non-compliance or violation that, individually or in the aggregate, would not have an adverse effect on the properties, assets, business or condition (financial or other) of the Nationwide Entities or the Business, and none of the Nationwide Entities has received any written notice of a violation or alleged violation of any such statute, ordinance, order, rule or regulation.

2.18 Insurance. The physical properties, assets, business, operations, employees, officers and directors of the Nationwide Entities are insured to the extent disclosed in Schedule 2.18 attached hereto and all insurance policies and arrangements of the Nationwide Entities are disclosed in said Schedule. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will cause any of such insurance policies or arrangements by their terms to lapse or be cancelled or result in any modification under any such policies or arrangements including any increase in premiums. Said insurance policies and arrangements are in full force and effect and all premiums now due with respect thereto are currently paid. There is no outstanding claim by any of the Nationwide Entities pending under any such policies as to which coverage has been denied or disputed by the insurer, except as described on Schedule 2.18.

2.19 Finder's Fees. Neither the Nationwide Entities nor any Shareholder has incurred or become liable for any broker's commission or finder's fee relating to or in connection with the transactions contemplated by this Agreement other than as set forth on Schedule 2.19 attached hereto.

2.20 Permits. Schedule 2.20 attached hereto lists all of the Nationwide Entities' material permits, registrations, licenses, franchises, certifications and other approvals (collectively, the

"Approvals") from federal, state or local authorities with respect to the conduct of the Business. Each of the Nationwide Entities has obtained all Approvals necessary for the conduct of the Business as presently conducted, and all such Approvals are valid and in full force and effect, except where the lack of such Approval would not have an adverse effect on the properties, assets, business or condition (financial or other) of the Nationwide Entities or on the Business. Except as disclosed in Schedule 2.20, none of such Approvals is subject to termination by its express terms as a result of the execution of this Agreement by the Nationwide Entities or the consummation of the transactions contemplated hereby, and no further Approvals will be required in order to continue to conduct the Business as currently conducted by the Nationwide Entities subsequent to the Closing and consummation of the Merger Transactions, except where the termination of such Approvals or the lack of such further Approvals would not have an adverse effect on the properties, assets, business or condition (financial or other) of the Nationwide Entities.

2.21 Transactions with Interested Persons. Except as set forth in Schedule 2.21 hereto, none of the Nationwide Entities, any Shareholder, any officer or director of the Nationwide Entities nor any of their respective spouses or children or trusts established for such spouses or children owns directly or indirectly on an individual or joint basis any material interest in, or serves as an officer or director or in another similar capacity of, any competitor or supplier of any of the Nationwide Entities, or any organization which has a material contract or arrangement with any of the Nationwide Entities.

2.22 Employee Benefit Programs.

(a) Schedule 2.22 attached hereto sets forth a list of every Employee Program (as defined in subsection (f)) that has been maintained (as such term is further defined below) by any of the Nationwide Entities at any time since January 1, 1998.

(b) Except as described in Schedule 2.22, each Employee Program which has been maintained by any of the Nationwide Entities and which has at any time been intended to qualify under Code Section 401(a) or 501(c)(9) of the Code has received a favorable determination or approval letter from the Internal Revenue Service ("IRS") regarding its qualification under such section and such favorable determination or approval letter remains in force. In the case of any Employee Program maintained by any of the Nationwide Entities and intended to qualify under Code Section 401(a) or 501(c)(9) which is described in Schedule 2.22 as not having received a favorable determination letter from the IRS, no circumstances exist that would cause such Employee Program to fail to qualify under Code Section 401(a) or 501(c)(9), whichever is relevant. All required reports and descriptions, including without limitation annual reports (Form 5500), summary annual reports and summary plan descriptions, have been filed and distributed.

(c) There has not been any failure of either of the Nationwide Entities to substantially comply with any laws applicable with respect to the Employee Programs that have been maintained by any of the Nationwide Entities, except for any failures to comply that, individually or in the aggregate, would not have a material adverse effect on the properties, assets, business or



condition (financial or other) of the Nationwide Entities. With respect to any Employee Program now or heretofore maintained by any of the Nationwide Entities, there has occurred no "prohibited transaction," as defined in Section 406 and 408 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or Section 4975 of the Code since January 1, 1998. No litigation, arbitration, or governmental administrative proceeding (or investigation) or other proceeding (other than those relating to routine claims for benefits) is pending or, to the best knowledge of the Nationwide Entities or the Shareholders, threatened with respect to any such Employee Program, and neither the Nationwide Entities nor the Shareholders have knowledge of any facts that could form the basis for any such litigation, arbitration or governmental administrative proceeding or investigation. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will entitle any person to any additional or other benefits, or will otherwise modify benefits or the vesting of benefits, under any Employee Program.

(d) Neither the Nationwide Entities nor any Affiliate (as defined in subsection (f)) has incurred any outstanding liability (other than relating to premiums timely paid to the Pension Benefit Guaranty Corporation in the ordinary course) under title IV of ERISA and there currently is no "accumulated funding deficiency" (whether or not waived) with respect to any Employee Program currently maintained by either of the Nationwide Entities or any Affiliate and subject to Code Section 412 or ERISA Section 302. With respect to any Employee Program maintained by any of the Nationwide Entities or an Affiliate and subject to title IV of ERISA, there currently is no (i) "reportable event," within the meaning of ERISA Section 4043, or the regulations thereunder (for which notice the notice requirement is not waived under 29 C.F.R. Part 2615) or (ii) event or condition which will cause any of the Nationwide Entities or any Affiliate to incur liability or have a lien imposed on its assets under title IV of ERISA. Except as described in Schedule 2.22 no Employee Program maintained by either of the Nationwide Entities or an Affiliate and subject to title IV of ERISA (other than a Multiemployer Plan) has any "unfunded benefit liabilities" within the meaning of ERISA Section 4001(a)(18), as of the Closing Date. None of the Nationwide Entities nor any Affiliate has ever maintained a Multiemployer Plan since the date of incorporation of such Nationwide Entities except with each other.

(e) With respect to each Employee Program currently maintained by either of the Nationwide Entities since the date of incorporation of each, complete and correct copies of the following documents (if applicable to such Employee Program) have previously been delivered to the Parent, except as set forth in Schedule 2.22: (i) all documents embodying or governing such Employee Program, and any funding medium for the Employee Program (including, without limitation, trust agreements) as they may have been amended to the date hereof; (ii) the most recent IRS determination or approval letter with respect to such Employee Program under Code Section 401 or 501(c)(9), and any applications for determination or approval subsequently filed with the IRS; (iii) the three most recently filed IRS Forms 5500, with all applicable schedules and accountants' opinions attached thereto; (iv) the summary plan description for such Employee Program and all modifications thereto; and (v) any insurance policy (including any fiduciary liability insurance policy) related to such Employee Program.

(f) For purposes of this Section 2.22:

(i) "Employee Program" means (A) all employee benefit plans within the meaning of ERISA Section 3(3), including, but not limited to, multiple employer welfare arrangements (within the meaning of ERISA Section 3(40)), plans to which more than one unaffiliated employer contributes and employee benefit plans (such as foreign or excess benefit plans) which are not subject to ERISA; and (B) all stock option plans, bonus or incentive award plans, severance pay policies or agreements, deferred compensation agreements, supplemental income arrangements, vacation plans, and all other employee benefit plans, agreements and arrangements not described in (A) above, but excluding base compensation and annual discretionary cash bonuses. In the case of an Employee Program funded through an organization described in Code Section 501(c)(9), each reference to such Employee Program shall include a reference to such organization;

(ii) An entity "maintains" an Employee Program if such entity sponsors, contributes to, or provides (or has promised to provide) benefits under such Employee Program, or has any obligation (by agreement or under applicable law) to contribute to or provide benefits under such Employee Program, or if such Employee Program provides benefits to or otherwise covers employees of such entity (or their spouses, dependents, or beneficiaries);

(iii) An entity is an "Affiliate" of the Nationwide Entities for purposes of this Section 2.22 if it would have ever been considered a single employer with any of the Nationwide Entities under ERISA Section 4001(b) or part of the same "controlled group" as the Nationwide Entities for purposes of ERISA Section 302(d)(8)(C); and

(iv) "Multiemployer Plan" means a (pension or non-pension) employee benefit plan to which more than one employer contributes and which is maintained pursuant to one or more collective bargaining agreements.

### 2.23 List of Certain Employees and Suppliers.

(a) Schedule 2.23(a) attached hereto contains a list of all current directors and officers of the Nationwide Entities and a list of all managers, employees and consultants of the Nationwide Entities who, individually, have received or are scheduled to receive from the Nationwide Entities for the fiscal year of the Nationwide Entities ending December 31, 1998 base salary and/or other compensation in excess of \$40,000. In each case such Schedule includes, other than for the Shareholders, the current job title and current base salary or compensation structure of each such individual.

(b) Schedule 2.23(b) attached hereto sets forth a true and complete list of all suppliers (each, a "Supplier") of the Nationwide Entities to whom during the nine months ended on the date of the Base Balance Sheet, the Nationwide Entities made payments aggregating \$100,000 or more showing, with respect to each, the name and dollar volume involved. Since the date of the Base Balance Sheet, no Supplier has given written or oral notice to any of the Shareholders or the Nationwide Entities of its intent to terminate, cancel or otherwise materially and adversely modify its relationship with the Nationwide Entities or to limit or decrease its services, products, supplies or materials to any of the Nationwide Entities.

2.24 Employees: Labor Matters. None of the Nationwide Entities is delinquent in payments to any of its employees for any wages, salaries, commissions, bonuses or other direct compensation for any services performed for it to the date hereof or amounts required to be reimbursed to such employees. Except as set forth in Schedule 2.24 attached hereto, none of the Nationwide Entities has any policy, practice, plan or program of paying severance pay or any form of severance compensation in connection with the termination of employment. Each of the Nationwide Entities is in compliance with all applicable laws and regulations respecting labor, employment, fair employment practices, terms and conditions of employment, and wages and hours, except for any non-compliance that, individually or in the aggregate, would not have an adverse effect on the properties, assets, business or condition (financial or other) of the Nationwide Entities. No charges of employment discrimination or unfair labor practices are currently being brought against either of the Nationwide Entities or the Shareholders that might have an adverse affect on the Nationwide Entities or the conduct of its Business, nor are there any strikes, slowdowns, stoppages of work, or any other concerted interference with normal operations existing, or to their knowledge, threatened against or involving either of the Nationwide Entities. None of the Nationwide Entities has received written notice of any impending strikes, slowdowns, concerted interference with normal operations or union organization activities. Except as set forth in Schedule 2.24, there are no grievances, complaints or charges that have been filed against any of the Nationwide Entities under any dispute resolution procedure (including, but not limited to, any proceedings under any dispute resolution procedure under any collective bargaining agreement) that might have an adverse effect on the Nationwide Entities or the conduct of its Business. Except as set forth in Schedule 2.24, no collective bargaining agreements are in effect or are currently being or are about to be negotiated by any of the Nationwide Entities. None of the Nationwide Entities has received written notice of pending or threatened charges with respect to (including, without limitation, resignation of) the senior management or key supervisory personnel of the Nationwide Entities.

2.25 Customers None of the Nationwide Entities have any customers who purchase product or services in an aggregate amount in excess of \$25,000 in any calendar year.

2.26 Environmental Matters. Except as set forth on Schedule 2.26:

(a) no Hazardous Material (i) to their knowledge has been released, placed, stored, generated, used, manufactured, treated, deposited, spilled, discharged, released or disposed

of, on or under any real property currently or previously owned or leased by any of the Nationwide Entities, (ii) is presently maintained, used, generated, or permitted to remain in place by any of the Nationwide Entities in violation of any Environmental Law, (iii) to their knowledge, is required by any Environmental Law to be eliminated, removed, treated or mitigated by any of the Nationwide Entities, given the nature of its present condition, location, nature, material or maintenance, or (iv) to their knowledge, is of a type, location, material, nature or condition which requires special notification to third parties by any of the Nationwide Entities under any Environmental Law or common law;

(b) Since January 1, 1997, no outstanding notice, citation, summons, or order has been received by any of the Nationwide Entities, no notice has been given by any of the Nationwide Entities and no complaint has been filed, no penalty has been assessed and no investigation or review is pending or, to their knowledge, threatened by any governmental entity, with respect to (i) any alleged violation by any of the Nationwide Entities of any Environmental Law, or (ii) any alleged failure by any of the Nationwide Entities to have any environmental permit, certificate, license, approval, registration or authorization required in connection with its Business or properties in violation of an Environmental Law, or (iii) any use, possession, generation, treatment, storage, recycling, transportation, release or disposal by or on behalf of any of the Nationwide Entities of any Hazardous Material in violation of an Environmental Law;

(c) Since January 1, 1997 neither the Nationwide Entities nor any Shareholder has received any written request for information, notice of claim, demand or notification that it is or that indicates that it may be a "potentially responsible party" with respect to any investigation or remediation of any threatened or actual release of any Hazardous Material;

(d) Since January 1, 1997 no written notice has been received by the Nationwide Entities with respect to the listing or proposed listing of any property currently or previously owned, operated or leased by any of the Nationwide Entities on the National Priorities List promulgated pursuant to CERCLA, CERCLIS or any similar state list of sites requiring investigation or cleanup; and

(e) neither of the Nationwide Entities has released, transported, or arranged for the transportation of any Hazardous Material from any property currently or previously owned, operated or leased by the Nationwide Entities in violation of any Environmental Law.

For purposes of this Section 2.26, "Environmental Law" shall mean any environmental law, regulation, rule or ordinance, at the federal, state, or local level and "Hazardous Material" shall mean any flammable, ignitable, corrosive, reactive, radioactive or explosive substance or material, hazardous waste, toxic substance or related material and any other substance or material defined or designated as a hazardous or toxic substance, material or waste by any Environmental Law other than typical cleaning supplies and solvents.

2.27 *Disclosure.* The representations, warranties and statements contained in this Agreement and in the certificates, exhibits and schedules delivered by the Nationwide Entities or the Shareholders to the Parent pursuant to this Agreement contain all of the representations and warranties made by the Nationwide Entities and the Shareholders to the Parent and do not contain any untrue statement of a material fact.

### **ARTICLE 3. COVENANTS OF THE NATIONWIDE ENTITIES AND THE SHAREHOLDERS.**

3.1 *Making of Covenants and Agreements.* The Nationwide Entities and the Shareholders jointly and severally (except as noted herein) make the covenants and agreements as set forth in this Article 3 which covenants and agreements are applicable from this date to the Closing Date.

3.2 *Conduct of Business.* Except as set forth in Schedule 3.2, between the date of this Agreement and the Closing Date, the Shareholders will cause the Nationwide Entities to do and the Nationwide Entities will do the following, unless the Parent shall otherwise consent in writing:

(a) conduct the Business only in the ordinary course consistent with past practices;

(b) refrain from making any purchase, sale or disposition of any asset or property other than in the ordinary course of business or as contemplated herein, and from purchasing or selling any capital asset costing more than \$10,000;

(c) refrain from incurring or modifying any contingent liability as a guarantor with respect to the obligations of others, and from incurring or modifying any other contingent or fixed obligations or liabilities, other than as provided herein, except in the ordinary course of business and consistent with past practices;

(d) refrain from making any change in its organizational or incorporation documents, bylaws or authorized or issued capital stock and refrain from any merger or consolidation with or into any other person or entity;

(e) refrain from (i) declaring, setting aside or paying any dividend (except as contemplated in Section 2.11 hereof), (ii) making any other distribution in respect of its capital stock, making any direct or indirect redemption, purchase or other acquisition of its capital stock, (iii) issuing, granting, awarding, selling, pledging, disposing of or encumbering or authorizing the issuance, grant, award, sale, pledge, disposition or encumbrance of any shares of, or securities convertible or exchangeable for, or options, warrants, calls, commitments or rights of any kind to acquire, any shares of capital stock of any class of the Nationwide Entities and/or (iv) entering into any agreement or commitment with respect to any of the foregoing;

(f) refrain from (i) making any payments to its Shareholders except as set forth in Schedule 3.2(f), (ii) making any change in the compensation payable or to become payable to any of its officers, employees or agents, except for scheduled increases in salary or wages in the ordinary course of business consistent with past practices or increases or changes which do not survive the Closing Date, (iii) granting any severance or termination pay (except in the ordinary course of business) to, or entering into or amending any employment, severance or other agreement or arrangement with, any director, officer or other employee of any of the Nationwide Entities, and/or (iv) establishing, adopting or entering into or amending any collective bargaining, bonus, incentive, deferred compensation, profit sharing, stock option or purchase, insurance, pension, retirement or other employee benefit plan;

(g) use its good faith efforts, consistent with this Agreement, to prevent any change with respect to its management and supervisory personnel or banking arrangements;

(h) use its good faith efforts, consistent with this Agreement, to keep intact its business organization and to preserve the goodwill of and business relationships with all suppliers, customers and others having business relations with it;

(i) pay all accounts payable in the ordinary course of business consistent with past practices unless such accounts payable are being disputed in good faith;

(j) use its good faith efforts to have in effect and maintain at all times all insurance of the kind, in the amount and with the insurers set forth in Schedule 2.18 or equivalent insurance;

(k) refrain from changing accounting policies or procedures or from making any tax election except where such election is made in connection with the filing of federal or state tax returns and would not have an adverse effect on the properties, assets, business or condition (financial or other) of any of the Nationwide Entities or the Business;

(l) refrain from entering into any executory agreement, commitment or undertaking to do any of the activities prohibited by the foregoing provisions, unless the effectiveness of such agreement, commitment or undertaking is expressly conditioned on the termination of this Agreement pursuant to its terms; and

(m) permit the Parent and its authorized representatives (including without limitation the Parent's attorneys, accountants, investment bankers and lenders) to have reasonable access during normal business hours at the offices of the Nationwide Entities to all of its properties, assets, books, records, business files, executive personnel, tax returns, contracts and documents except the information referenced in Schedule 3.2(n) and furnish to the Parent and its authorized representatives such financial and other information with respect to its business or properties as the Parent may from time to time reasonably request and which is reasonably available to the Nationwide Entities.

Notwithstanding the foregoing, the parties agree and acknowledge that the Nationwide Entities intend to and shall have the right to sell, convey, assign, divide, distribute or otherwise transfer, at no cost to the Shareholders, to the Shareholders these assets of the Nationwide Entities set forth in Schedule 3.2 ("*Excluded Assets*").

3.3 *Consents and Approvals*. The Nationwide Entities and each of the Shareholders shall use their commercially reasonable efforts to obtain or cause to be obtained prior to the Closing Date all necessary consents and approvals to the performance of its obligations under this Agreement, including, without limitation, such authorizations, waivers, consents and permits as may be necessary to retain in full force and effect subsequent to the Closing Date all permits, licenses, agreements and franchises applicable to the Nationwide Entities.

3.4 *Breach of Representations and Warranties*. Promptly upon the occurrence of, or promptly upon any of the Nationwide Entities or any Shareholder becoming aware of, the impending or threatened occurrence of any event which would cause or constitute a breach, or would have caused or constituted a breach had such event occurred or been known prior to the date hereof, of any of the representations and warranties of any of the Nationwide Entities or the Shareholders contained in or referred to in this Agreement or in any Schedule hereto, such Nationwide Entity or such Shareholder shall give detailed written notice thereof to the Parent.

3.5 *Acquisition Proposals*. Unless and until this Agreement shall have been terminated pursuant to Article 7, neither the Nationwide Entities nor any Shareholder shall solicit or initiate submission of proposals or offers from any person relating to any acquisition or purchase of all or (other than in the ordinary course of business) a material portion of the assets of, or any equity interest in, the Nationwide Entities or any merger or business combination with the Nationwide Entities (an "Acquisition Proposal") or participate in any discussions or negotiations regarding an Acquisition Proposal, or furnish to any other person any information with respect to or afford access to the properties, books or records of the Nationwide Entities to any person that may consider making or has made an offer with respect to an Acquisition Proposal, or otherwise cooperate in any way with, or assist or participate in or facilitate any effort or attempt by any other person to do or seek any of the foregoing. A breach by an individual Shareholder of the covenants contained in this Section shall not be considered a breach by either of the Nationwide Entities or any other Shareholder, and such other Shareholders and the Nationwide Entities shall not incur any liability therefor.

3.6 *No Sales of Nationwide Entities Equity*. Between the date of this Agreement and the Closing, none of the Shareholders shall sell, exchange, deliver, assign, pledge, encumber, bequeath, gift or otherwise transfer or dispose of any shares of capital stock (or any interest therein) of any of the Nationwide Entities owned beneficially or of record by such Shareholder, except for any transfer or other disposition by operation of law, nor grant any right of any kind to acquire, dispose of, vote or otherwise control in any manner such shares of capital stock of any of the Nationwide Entities; provided, however, that anything herein to the contrary notwithstanding, any transferee, executor, heir, legal representative, successor or assign of any Shareholder shall be bound by this Agreement.

A breach by an individual Shareholder of the covenants contained in this Section shall not be considered a breach by either of the Nationwide Entities or any other Shareholder, and such other Shareholders and the Nationwide Entities shall not incur any liability therefor.

3.7 Consummation of Agreement; Cooperation. Each of the Nationwide Entities and the Shareholders shall use their good faith efforts, in addition to the performance and fulfillment of all covenants, agreements, conditions and obligations on their parts to be performed and fulfilled under this Agreement, to the end that the Merger Transactions contemplated by this Agreement shall be fully carried by the Closing Date, and shall cooperate toward such end with all reasonable requests of the Parent and the Parent's counsel in connection with the consummation of the Merger Transactions contemplated hereby including the provision of all current financial information regarding the Business as may be required or requested by the Parent or its senior lender to allow the Parent to obtain the debt financing sufficient to pay the Purchase Price and all of the Parent's closing costs, fees and expenses. Furthermore, the Nationwide Entities will allow one or more representatives of the Parent access to the facilities of the Nationwide Entities to allow such representatives to observe the day to day operations of the Nationwide Entities, subject to the Nationwide Entities' reasonable operational requirements and procedures.

3.8 Termination of 401(K) Plan. The Nationwide Entities intend to terminate their existing 401(K) plans relating to their employees prior to the Closing Date.

#### **ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF MGHC AND PARENT.**

4.1 Making of Representations and Warranties. Each of MGHC, Parent and the MG Merger Entities hereby jointly and severally represents and warrants to the Shareholders and the Nationwide Entities as follows:

4.2 Organization. Each of MGHC and Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of the MG Merger Entities is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania.

4.3 Authority. All necessary corporate action has been taken by each of MGHC, the Parent and the MG Merger Entities to authorize the execution, delivery and performance of this Agreement and each agreement, document and instrument to be executed and delivered by MGHC, the Parent or the MG Merger Entities pursuant to this Agreement. This Agreement and each agreement, document and instrument to be executed and delivered by MGHC, the Parent or the MG Merger Entities pursuant to this Agreement (to the extent it contains obligations to be performed by MGHC or the Parent) constitutes, or when executed and delivered will constitute, valid and binding obligations of the MGHC, Parent or the MG Merger Entities, as appropriate, enforceable in accordance with their respective terms. The execution, delivery and performance by MGHC, the Parent and the MG Merger Entities of this Agreement and each such agreement, document and instrument:



(a) do not and will not violate any provisions of the Certificate of Incorporation or By-Laws of MGHC, the Parent and the MG Merger Entities, each as amended through the date hereof;

(b) do not and will not violate any United States laws or laws of the jurisdiction of incorporation of MGHC, the Parent and the MG Merger Entities or of any other jurisdiction, or require MGHC, the Parent or the MG Merger Entities to obtain any approval, consent or waiver of, or to make any filing with, any person or entity that has not been obtained or made or will not be obtained or made prior to the Closing Date; and

(c) do not and will not result in a breach of, constitute a default under, accelerate any obligation under or give rise to a right of termination of any indenture or loan or credit agreement or any other agreement, contract, instrument, mortgage, lien, order, writ, judgment, injunction, decree, determination or arbitration award to which MGHC, Parent or the MG Merger Entities is a party or by which the property of MGHC, the Parent or the MG Merger Entities is bound or affected except where MGHC, the Parent or the MG Merger Entities shall obtain a waiver of such breach, default, acceleration or right of termination prior to the Closing Date.

4.4 Litigation. There is no litigation pending or, to the best knowledge of the MGHC, Parent and the MG Merger Entities, threatened against MGHC, the Parent or the MG Merger Entities which would prevent or hinder the consummation of the transactions contemplated by this Agreement.

4.5 Equity. All of the issued and outstanding capital stock of the Parent is owned beneficially and of record by MGHC. All of the issued and outstanding capital stock of the MG Merger Entities is owned beneficially and of record by the Parent.

4.6 Compliance with Laws. Each of MGHC, the Parent and the MG Merger Entities is in compliance with all applicable statutes, ordinances, orders, rules and regulations promulgated by any federal, state, municipal or other governmental authority which apply to the conduct of their business, except for any such non-compliance or violation that, individually or in the aggregate, would not have an adverse effect on their properties, assets, business or condition (financial or other), and none of MGHC, the Parent and the MG Merger Entities has received any written notice of a violation or alleged violation of any such statute, ordinance, order, rule or regulation.

4.7 Finder's Fees. Neither MGHC nor Parent has incurred or become liable for any broker's commission or finder's fee relating to or in connection with this Agreement or the transactions contemplated hereby.

4.8 Disclosure. The representations, warranties and statements contained in this Agreement and in the certificates, exhibits and schedules delivered by MGHC, the Parent and the MG Merger Entities to the Nationwide Entities and the Shareholders pursuant to this Agreement do not contain any untrue statement of a material fact.

4.9 Survival. All representations and warranties made in this Article 4 shall survive for a period of twelve (12) months from the Closing Date.

## **ARTICLE 5. COVENANTS OF MGHC AND PARENT.**

5.1 Making of Covenants and Agreements. MGHC and Parent make the covenants and agreements set forth in this Article 5 which covenants and agreements are applicable from this date to the Closing Date.

5.2 Consents and Approvals. MGHC and Parent will use their best efforts to cause all conditions to the obligations of MGHC and the Parent hereunder to be satisfied and to obtain all necessary consents and approvals to the performance of its obligations under this Agreement and the transactions contemplated hereby.

5.3 Breach of Representations and Warranties. Promptly upon the occurrence of, or promptly upon any of MGHC, the Parent or the MG Merger Entities becoming aware of, the impending or threatened occurrence of any event which would cause or constitute a breach, or would have caused or constituted a breach had such event occurred or been known prior to the date hereof, of any of the representations and warranties of any of MGHC, the Parent or the MG Merger Entities contained in or referred to in this Agreement or in any Schedule hereto, such party shall give detailed written notice thereof to the Nationwide Entities and the Shareholders' Representative.

5.4 Consummation of Agreement; Cooperation. Each of MGHC, the Parent and the MG Merger Entities shall use their best efforts, in addition to the performance and fulfillment of all covenants, agreements, conditions and obligations on their parts to be performed and fulfilled under this Agreement, to the end that the Merger Transactions contemplated by this Agreement shall be fully carried by the Closing Date.

## **ARTICLE 6. CONDITIONS.**

6.1 Conditions to the Obligations of MGHC and the Parent. The obligation of MGHC, the Parent and the MG Merger Entities to consummate this Agreement and the transactions contemplated hereby are subject to the fulfillment, prior to or at the Closing, of the following conditions (any one or more of which may be waived in whole or in part by MGHC, the Parent and the MG Merger Entities):

(a) Representations; Warranties; Covenants. Each of the representations and warranties of the Nationwide Entities and the Shareholders contained in Article 2 shall be true and correct on and as of the Closing Date, with the same effect as though made on and as of the Closing Date; each of the Nationwide Entities and the Shareholders shall, on or before the Closing Date, have performed and satisfied in all material respects all agreements and conditions hereunder which by the terms hereof are to be performed and satisfied by the Nationwide Entities or the Shareholders on or before the Closing Date; each of the Nationwide Entities shall have delivered to the Parent a

certificate dated the Closing Date signed on its behalf by its President or its Vice-President to the foregoing effect with respect to the representations, warranties and covenants of the Nationwide Entities, and each Shareholder shall have delivered to the Parent a certificate dated the Closing Date to the foregoing effect with respect to the representations, warranties and covenants of the Shareholder. Notwithstanding the foregoing, the Nationwide Entities may give Parent written notice ("*Addendum Notice*"), not later than three (3) days prior to the Closing, setting forth any changes to the Schedules or their representations which are necessary to reflect changes to the Nationwide Entities or the Business which occur between the date hereof and the Closing Date, and the Schedules and the representations of the Nationwide Entities and the Shareholders shall be amended by such Addendum Notices as of the Closing Date; provided, however, that no such Addendum Notice shall be effective (i) to reflect any change caused by a breach of any of the covenants of the Nationwide Entities or the Shareholders hereunder, or (ii) to modify Sections or Schedules 2.2, 2.3, 2.4 or 2.19 hereof. The parties recognize and agree that, in the event the Addendum Notice shall modify the representations and warranties in any material way, MGHC, the Parent and the MG Merger Entities shall have the right to terminate this Agreement pursuant to Article 7 hereof.

Each Shareholder shall also have delivered to the Parent a certificate dated the Closing Date certifying that all of such Shareholder's representations and warranties are true and correct in all material respects on and as of the Closing Date, with the same effect as if made on and as of the Closing Date, and that all agreements and conditions hereunder which by the terms hereof are to be performed by such Shareholder on or before the Closing Date have been performed and satisfied in all material respects.

(b) *Approval of Merger Transactions.* Each of the Nationwide Entities and all of the Shareholders shall have approved the adoption of this Agreement, the Merger Transactions and any other matters required to be approved by them.

(c) *Debt Financing.* The Parent shall have obtained debt financing on terms and conditions satisfactory to the Parent and its board of directors sufficient to pay the Purchase Price and all of the Parent's closing costs, fees and expenses.

(d) *Escrow Agreements.* Each of the Shareholders shall have executed and delivered (i) the Escrow Agreement as contemplated in subsection 1.12(b) along with written instructions to deposit their proportionate share of the Escrow Deposit and (ii) the Indemnity Escrow Agreement as contemplated in Section 9.2 along with written instructions to deposit their proportionate share of the Indemnity Escrow Deposit.

(e) *Non-Compete Agreements.* Each of the Shareholders shall have executed and delivered a three-year non-compete agreement substantially in form attached hereto as Exhibit J.

(f) *Amendments of Warehouse Lease.* The Nationwide Entities shall have amended all leases, contracts, agreements or other arrangements binding on any of the Nationwide Entities relating to the lease, use or occupancy of the three warehouse facilities utilized by the

Nationwide Entities as of the date of this Agreement, in each case without penalty, cost or expense to either of the Nationwide Entities (either before or after consummation of the Merger Transactions) and in the form attached hereto as Exhibit K. The three facilities contemplated by this subsection 6.1(f) and the proposed amendments are described on Schedule 6.1(f) attached hereto.

(g) Distribution of Assets and Related Indebtedness. The Nationwide Entities shall have sold, conveyed, assigned and transferred to the Shareholders or otherwise the Excluded Assets and shall have satisfied, or caused the assignee thereof to assume, and have the Nationwide Entities released from, all related indebtedness, lease obligations, loans or other obligations and burdens as further described on Schedule 6.1(g), all without penalty, cost or expense to either of the Nationwide Entities or pay to NFR at or promptly after the Closing an amount equal to such indebtedness.

(h) Opinions of Counsel and Other Documents. On the Closing Date, the Parent shall have received an opinion of counsel for the Nationwide Entities and the Shareholders and addressed to Parent, dated the Closing Date, in the form attached hereto as Exhibit L.

(i) Certificates. On the Closing Date, the Parent shall have received stock certificates representing all of the issued and outstanding capital stock of each Nationwide Entity.

(j) Resignations. Each of the Shareholders shall have delivered a resignation, dated the Closing Date, from any and all capacities as a director, officer, partner or agent of each of the Nationwide Entities.

(k) Current Working Capital. On the Closing Date each of the Shareholders shall have delivered to the Parent a certificate representing that as of the Closing Date the current assets of the Nationwide Entities plus Fifty Thousand Dollars (\$50,000) shall not be less than the current liabilities of the Nationwide Entities as of the Closing Date. "Current assets" and "current liabilities" shall be determined in accordance with GAAP.

(l) Approvals and Consents. The Nationwide Entities and the Parent shall have received consents from third parties who are the Landlords representing not less than ninety percent (90%) of the leases for the Leased Real Property in the form attached hereto as Exhibit M hereto, such consent not to include any modification to the leases.

(m) Warranty Re: Affiliate Leases. Each of the Shareholders shall have executed and delivered a Warranty and Maintenance Agreement substantially in the form attached as Exhibit J.

(n) Release of Liens. Any and all liens, financing statements or encumbrances of any nature burdening any of the assets of the Nationwide Entities shall be released and discharged.

(o) Termination of Affiliated Transactions and Agreements. Each of the agreements and arrangements described on Schedule 6.1(o) shall be terminated, in each case without penalty, cost or expense to either of the Nationwide Entities (either before or after the Merger Transactions) and in such form satisfactory to the Parent and its counsel.

(p) Tax Letter. The Parent and the Shareholders shall enter into a letter agreement relating to the preparation and filing of all federal and state tax returns for the Nationwide Entities for the 1998 calendar year and for the period during 1999 ending on the Closing Date.

(q) Accountant's Representation Letter. One or more of the Shareholders, as appropriate, shall have executed and delivered to the Nationwide Accountants all management representation letters and other written assurances reasonably requested by the Nationwide Accountants which are necessary for the Nationwide Accountants to complete the 1998 Balance Sheet and related audited statements of income, stockholders equity and cash flow.

(r) Miscellaneous Closing Documents. Each of the Nationwide Entities shall have delivered to the Parent a certified copy of its organizational documents, a certificate of existence and good standing, where appropriate, a certified copy of the resolutions approving this Agreement and the transactions contemplated hereby and an incumbency certificate.

(s) No Actions or Proceedings. No action or proceeding by any court, administrative body or governmental agency shall have been instituted or, to the knowledge of one of the Shareholders or the Nationwide Entities threatened, which would enjoin, restrain or prohibit, or might result in substantial damages to either of the Nationwide Entities in respect of, this Agreement or the complete consummation of the transactions contemplated by this Agreement and no court order shall have been entered in any action or proceeding instituted by any party which enjoins, restrains or prohibits this Agreement or the complete consummation of the transactions as contemplated by this Agreement.

6.2 Conditions to the Obligations of the Nationwide Entities and the Shareholders. The obligations of the Nationwide Entities and the Shareholders to consummate this Agreement and the transactions contemplated hereby are subject to the fulfillment, prior to or at the Closing Date, of the following conditions (any one or more of which may be waived in whole or in part by the Representative acting on behalf of the Shareholders):

(a) Representations; Warranties; Covenants. Each of the representations and warranties of MGHC and the Parent contained in Article 4 shall be true and correct in all material respects on and as of the Closing Date, with the same effect as though made on and as of the Closing Date; MGHC and the Parent shall, on or before the Closing Date, have performed and satisfied in all material respects all agreements and conditions hereunder which by the terms hereof are to be performed and satisfied by MGHC and the Parent on or before the Closing Date; and MGHC and the Parent shall have delivered to the Nationwide Entities a certificate signed on their behalf by their President and dated as of the Closing Date certifying to the foregoing effect.

(b) Merger Filings. The Parent, the MG Merger Entities and the Nationwide Entities shall have made all findings necessary or appropriate to consummate the Merger Transactions, all in accordance with Pennsylvania Law.

(c) Opinion of Counsel and Other Documents. At the Closing Date, the Shareholders shall have received an opinion of Messrs. Kane, Russell, Coleman & Logan, P.C., counsel for the Parent, dated as of the Closing Date and addressed to the Shareholders, in the form attached hereto as Exhibit N.

(d) Tax Letter. The Parent and the Shareholders shall enter into a letter agreement relating to the preparation and filing of all federal and state tax returns for the Nationwide Entities for the 1998 calendar year and for the period during 1999 ending on the Closing Date.

(e) Merger Consideration. The Merger Consideration payable to, or on behalf of, the Shareholders tendering their share certificates has been paid to such Shareholders.

(f) No Actions or Proceedings. No action or proceeding by any court, administrative body or governmental agency shall have been instituted or threatened which would enjoin, restrain or prohibit, or might result in substantial damages in respect of, this Agreement or the complete consummation of the transactions as contemplated by this Agreement and which would in the reasonable judgment of the Representative acting on behalf of the Shareholders make it inadvisable to consummate such transactions, and no law or regulation shall be in effect and no court order shall have been entered in any action or proceeding instituted by any party which enjoins, restrains or prohibits this Agreement or complete consummation of the transactions as contemplated by this Agreement.

(g) Proceedings Satisfactory to the Shareholders. All proceedings to be taken by the Parent in connection with the consummation of the Closing on the Closing Date and the other transactions contemplated hereby and all certificates, opinions, instruments and other documents required to effect the transactions contemplated hereby reasonably requested by the Nationwide Entities or the Shareholders will be reasonably satisfactory in form and substance to the Nationwide Entities and the Shareholders.

(h) Executive Employment Agreement. NFR and Andrew Epstein shall have executed and delivered the Executive Employment Agreement in the form attached hereto as Exhibit P.

## **ARTICLE 7. TERMINATION OF AGREEMENT.**

7.1 Termination. This Agreement may be terminated any time prior to the Closing Date as follows:

- (a) With the mutual consent of MGHC, the Parent and the Shareholders.

(b) By delivery of written notice of termination to the Representative by MGHC and the Parent, (i) if there has been a misrepresentation or breach of warranty on the part of any of the Nationwide Entities or a Shareholder in the representations and warranties contained herein, (ii) if there has been a breach of any agreement or covenant on the part of any of the Nationwide Entities or a Shareholder and the same has not been cured within 5 days after notice thereof or (iii) if the conditions precedent set forth in Section 6.1 have not been satisfied. In the event of any termination pursuant to this subsection 7.1(b), written notice setting forth the reasons therefor shall forthwith be given by MGHC and the Parent to the Nationwide Entities and the Shareholders. If this Agreement is terminated by MGHC and the Parent pursuant to this Section 7.1(b), neither MGHC, the Parent and the MG Merger Entities on the one hand nor the Nationwide Entities and the Shareholders on the other hand shall have any liability to each other except for those provisions of this Agreement that by their terms survive such termination and except in the event that the misrepresentation or breach giving rise to such termination arises from fraud on the part of any of the Nationwide Entities or a Shareholder, breach by any of the Nationwide Entities or a Shareholder of its or his obligations under Section 3.5 or intentional breach by the Nationwide Entities or any Shareholder of any other provision of this Agreement for the purpose of enabling the Nationwide Entities or the Shareholders, or any of them, to evade or avoid their obligations hereunder.

(c) By delivery of written notice of termination to MGHC and the Parent from the Representative acting on behalf of the Nationwide Entities and the Shareholders, (i) if there has been a misrepresentation or breach of warranty on the part of MGHC, the Parent or the MG Merger Entities in the representations and warranties contained herein, (ii) if there has been a breach of any agreement or covenant on the part of MGHC or the Parent and the same has not been cured within 5 days after notice thereof or (iii) if the conditions precedent set forth in Section 6.2 have not been satisfied. In the event of any termination pursuant to this subsection 7.1(c), written notice setting forth the reasons therefor shall forthwith be given by the Nationwide Entities to MGHC and the Parent. If this Agreement is terminated pursuant to this subsection 7.1(c), neither MGHC, the Parent and the MG Merger Entities on the one hand nor the Nationwide Entities and the Shareholders on the other hand shall have any liability to each other except for those provisions of this Agreement that, by their terms, survive such termination and except in the event that the misrepresentation or breach of warranty or covenant giving rise to such termination arises from fraud on the part of MGHC, the Parent or the MG Merger Entities or intentional breach by MGHC, the Parent or the MG Merger Entities of any provision of this Agreement for the purpose of evading or avoiding its obligations hereunder.

7.2 Effect of Termination. All obligations of the parties hereunder shall cease upon any termination pursuant to Section 7.1, provided, however, that (i) the provisions of this Article 7 and Section 8.2 hereof shall survive any termination of this Agreement in any event, and (ii) any party may proceed as further set forth in Section 7.3 below.

7.3 Right to Proceed. Anything in this Agreement to the contrary notwithstanding, if any of the conditions specified in Section 6.1 hereof has not been satisfied, MGHC and the Parent shall have the right to proceed with the transactions contemplated hereby and if any of the conditions

specified in Section 6.2 hereof has not been satisfied, the Nationwide Entities and the Shareholders shall have the right to proceed with the transactions contemplated hereby. In the event the Parent, the Nationwide Entities and/or the Shareholders proceed with the transactions contemplated hereby, all conditions which have not been satisfied shall be deemed waived.

## **ARTICLE 8. CERTAIN RIGHTS AND OBLIGATIONS SUBSEQUENT TO CLOSING.**

8.1 *Survival of Warranties.* All representations, warranties, agreements, covenants and obligations herein or in any Schedule or certificate delivered by any party incident to the transactions contemplated hereby are material and may be relied upon by the party receiving the same and shall survive the Closing for a period of twelve (12) months (except for the representations and warranties set forth in Sections 2.4 and 2.8 which shall survive the Closing for a period of forty-eight (48) months) regardless of any investigation by or knowledge of such party and shall not merge into the performance of any obligation by any party hereto, subject to the provisions of Article 9 hereof.

8.2 *Fees and Expenses.* Each party shall pay its own expenses and costs incidental to the preparation of this Agreement and to the consummation of the transactions contemplated hereby; provided that the Nationwide Entities shall pay all fees associated with their transactions applicable to themselves and the Shareholders which are accrued prior to the Closing Date.

## **ARTICLE 9. INDEMNIFICATION.**

9.1 *Indemnification by the Shareholders.* Subject to the minimum amount and other limitations and provisions set forth in Section 9.2 if and to the extent applicable as provided therein, the Shareholders, jointly and severally (except as to the representations in subsections 2.4(b) and 2.5(b) and (c) which shall be several only), agree subsequent to the Closing Date to indemnify and hold harmless MGHC, the Parent, the Nationwide Entities and their respective affiliates, officers, directors, employees and agents (individually, a "Parent Indemnified Party" and collectively, the "Parent Indemnified Parties") from and against and in respect of all losses, liabilities, obligations, damages, deficiencies, actions, suits, proceedings, demands, assessments, orders, judgments, fines, penalties, costs and expenses (including the reasonable fees, disbursements and expenses of attorneys, accountants and consultants) of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in defense or settlement of the foregoing) sustained, suffered or incurred by or made against any Parent Indemnified Party (a "Loss" or "Losses") arising out of (a) any breach of any representation or warranty made by any of the Nationwide Entities or any Shareholder in this Agreement or in any Schedule, exhibit, certificate, agreement or other instrument delivered under or in connection with this Agreement; (b) any breach of any covenant or agreement made by any of the Nationwide Entities or any Shareholder in this Agreement or in any Schedule or exhibit hereto, or in any certificate, agreement or other instrument delivered at the Closing under or in connection with this Agreement; and/or (c) the sale by NFR of its rental and leasing business pursuant to that certain Asset Purchase Agreement dated September 30, 1998 by and between NFR and American Furniture Rentals, Inc.



With respect to each Loss indemnifiable by the Shareholders pursuant to this Section 9.1 (each a "Parent Indemnifiable Loss"), in the event any Shareholder is liable for a Parent Indemnifiable Loss referred to in this Section 9.1, such Shareholder agrees not to seek indemnity against the Nationwide Entities, or any of them, as a result of any rights to indemnification provided under the articles of incorporation, bylaws, or any other document, agreement or instrument executed by, or binding on, any such Nationwide Entity, or the statutes of any state governing the Nationwide Entities except to the extent of insurance coverage therefor.

9.2 Limitations on Indemnification by the Shareholders.

(a) General Threshold. The Shareholders shall not be obligated to indemnify Parent Indemnified Parties except to the extent the cumulative amount of Parent Indemnifiable Losses exceeds Three Hundred Thousand Dollars (\$300,000) (the "Minimum Threshold") provided, however, such Minimum Threshold shall not be applicable to any Parent Indemnifiable Losses which occur as a result of fraud, any intentional misrepresentation of a material fact made by any Shareholder or any breach of the representations contained in the certificate to be delivered at the Closing pursuant to subsection 6.1(k) hereof. The Shareholders agree to escrow at the Closing, in proportion to the Merger Consideration payable to them as set forth in Exhibit B, an aggregate of One Million Nine Hundred Sixty Thousand Dollars (\$1,960,000.00) of the Purchase Price (the "Indemnity Escrow Deposit") pursuant to an Indemnity Escrow Agreement substantially in the form attached hereto as Exhibit O, such escrow to insure the availability of initial funds to support the indemnity of the Shareholders contemplated herein.

(b) Time Limits for Claims. Other than indemnification with respect to the Losses as a result of any misrepresentation or breach of warranty set forth in Sections 2.4 and 2.8 which shall expire on the date forty-eight (48) months following the Closing Date, indemnification with respect to all Parent Indemnifiable Losses shall expire on the date twelve (12) months following the Closing Date; provided further, however, that in each case, if prior to the applicable date of expiration a specific claim for indemnification for a Parent Indemnifiable Loss, a Parent Indemnified Party shall have given notice of such claim to the Shareholders' Representative, then the right to indemnification with respect thereto shall remain in effect until such matter shall have been finally determined and disposed of, and any indemnification due in respect thereof shall have been paid, according to the date on which notice of the applicable claim is given.

(c) Sole Remedy. Indemnification pursuant to Section 9.1 is the sole remedy of Parent Indemnified Parties against the Shareholders for matters arising out of the transactions contemplated by this Agreement after the Closing. Notwithstanding anything herein to the contrary, the limitations set forth in this Section 9.2 shall in no way limit any rights the Parent may have in law or equity, consistent with Section 7.2, in the event the Closing does not occur.

9.3 Indemnification by MGHC and the Parent.

(a) Each MGHC and Parent agrees to indemnify and hold harmless the Shareholders and their respective officers, directors, employees and agents (individually, a "Seller Indemnified Party" and collectively, "Seller Indemnified Parties") from and against and in respect of all losses, liabilities, obligations, damages, deficiencies, actions, suits, proceedings, demands, assessments, orders, judgments, fines, penalties, costs and expenses (including the reasonable fees, disbursements and expenses of attorneys, accountants and consultants) of any kind or nature whatsoever (whether or not arising out of third party claims and including all amounts paid in investigation, defense or settlement of the foregoing) sustained, suffered or incurred by or made against any Seller Indemnified Party arising out of (a) any breach of any representation or warranty made by the Parent in this Agreement or in any Schedule, exhibit, certificate, agreement or other instrument delivered under or in connection with this Agreement, and (b) any breach of any covenant or agreement made by Parent in this Agreement or in any Schedule, exhibit, certificate, agreement or other instrument delivered under or in connection with this Agreement (such claims under clauses (a) and (b) being hereinafter collectively referred to as "Seller Indemnifiable Losses").

(b) Indemnification with respect to all Seller Indemnifiable Losses contemplated by subsections 9.3(a) shall expire on the date twelve (12) months following the Closing Date; provided, however, that in each case, if prior to the applicable date of expiration a specific claim shall have become known which may constitute or give rise to any Seller Indemnifiable Loss as to which indemnity may be payable and a Seller Indemnifiable Party shall have given notice of such claim to the Parent, then the right to indemnification with respect thereto shall remain in effect until such matter shall have been finally determined and disposed of, and any indemnification due in respect thereof shall have been paid, according to the date on which notice of the applicable claim is given.

9.4 Notice; Defense of Claims.

(a) Promptly after receipt by an indemnified party of notice of any claim, liability or expense to which the indemnification obligations hereunder would apply, the indemnified party shall give notice thereof in writing to the indemnifying party (the Parent with respect to claims by Seller Indemnified Parties and the Representative with respect to claims by Parent Indemnified Parties), but the omission to so notify the indemnifying party promptly will not relieve the indemnifying party from any liability except to the extent that the indemnifying party shall have been prejudiced as a result of the failure or delay in giving such notice. Such notice shall state the information then available regarding the amount and nature of such claim, liability or expense and shall specify the provision or provisions of this Agreement under which the liability or obligation is asserted. If within twenty days after receiving such notice the indemnifying party gives written notice to the indemnified party stating that it disputes and intends to defend against such claim, liability or expense at its own cost and expense, then counsel for the defense shall be selected by the indemnifying party and the indemnifying party shall not be required to make any payment with respect to such claim, liability or expense as long as the indemnifying party is conducting a good

faith and diligent defense at its own expense; provided, however, that the assumption of defense of any such matters by the indemnifying party shall relate solely to the claim, liability or expense that is subject or potentially subject to indemnification. Each indemnified party shall cooperate in all reasonable respects, at the indemnifying party's request and cost, risk and expense, with the indemnifying party and its attorneys in the investigation, trial and defense of such claim, liability or expense and any resulting suit, proceeding or enforcement action and any appeal therefrom. The indemnifying party shall have the right, with the consent of the indemnified party, which consent shall not be unreasonably withheld, to settle all indemnifiable matters related to claims by third parties which are susceptible to being settled, provided that no such consent shall be required if as part of such settlement the indemnified party is released from all liability relating to the subject matter of such settlement. The indemnifying party shall keep the indemnified party apprised of the status of the claim, liability or expense and any resulting suit, proceeding or enforcement action, shall furnish the indemnified party with all documents and information that the indemnified party shall reasonably request and shall consult with the indemnified party prior to acting on major matters, including settlement discussions. Notwithstanding anything herein stated, the indemnified party shall at all times have the right to fully participate in such defense at its own expense directly or through counsel; provided, however, if the named parties to the action or proceeding include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate under applicable standards of professional conduct, the expense of separate counsel for the indemnified party shall be paid by the indemnifying party. If no such notice of intent to dispute and defend is given by the indemnifying party, or if such defense is not being or ceases to be conducted, the indemnified party shall, at the expense of the indemnifying party, undertake the defense of (with counsel selected by the indemnified party), and shall have the right to compromise or settle (exercising reasonable business judgment), such claim, liability or expense. If such claim, liability or expense is one that by its nature cannot be defended solely by the indemnifying party, then the indemnified party shall make available all information and assistance that the indemnifying party may reasonably request and shall cooperate with the indemnifying party in such defense.

9.5 Satisfaction of Shareholders' Indemnification Obligations. Any indemnity payable pursuant to this Section 9 shall be paid within the later of (a) thirty (30) days after the indemnified party's request therefor or (b) ten (10) days prior to the date on which the Loss upon which the indemnity is based is required to be satisfied by the indemnified party.

9.6 Arbitration of Claims. In the event any of the Parent Indemnified Parties or the Seller Indemnified Parties shall seek indemnity hereunder against any other party to this Agreement for a Parent Indemnified Loss or a Seller Indemnified Loss, respectively, the parties agree to resolve any claim for such loss within the thirty (30) day period following the delivery of a notice of claim to the indemnifying party. In this event the parties cannot resolve any claim for such loss as set forth in such notice of claim during such thirty (30) day period, such claim shall be submitted for arbitration by the AAA in Philadelphia, Pennsylvania, the expense of which shall be shared equally by the Parent and the Shareholders, provided that each party shall bear its own expenses. The parties shall request the AAA to appoint three arbitrators for resolution of such claim (unless the amount subject

to the claim is \$50,000 or less in which case it shall be one arbitrator) whose decision shall be final. Any amounts due pursuant to the arbitrators' decision shall be paid within ten days of their decision.

9.7 Special Provisions Relating to Subsection 6.1(k). Notwithstanding anything to the contrary contained herein, the Parent shall notify in writing the Representative, within sixty (60) days of the Closing Date, of any breach claimed by the Parent of the Shareholders' representations contained in the certificate to be delivered pursuant to Section 6.1(k) (the "Section 6.1(k) Notice"). The Parent and the Representative shall attempt to resolve any dispute regarding the Section 6.1(k) Notice within thirty (30) days following delivery of such Section 6.1(k) Notice. In the event there shall continue to remain any dispute following such thirty (30) days, such dispute shall be submitted for arbitration by the AAA in Philadelphia, Pennsylvania, the expense of which shall be shared equally by the Parent and the Shareholders, provided that each party shall bear its own expenses. The parties shall request the AAA to appoint three arbitrators for such dispute (unless the amount in dispute is \$50,000 or less in which case it shall be one arbitrator) whose decision shall be final. Any amounts due pursuant to the arbitrators' decision shall be paid within ten days of their decision.

#### ARTICLE 10. MISCELLANEOUS.

10.1 Law Governing. This Agreement shall be construed under and governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws provisions.

10.2 Notices. Any notice, request, demand other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if delivered personally, upon receipt, or if sent by registered or certified mail upon the sooner of the expiration of three days after deposit in United States post office facilities properly addressed with postage prepaid or acknowledgment of receipt or if sent by any national overnight delivery services, one business day after delivery to such service. All notices and payments to a party will be sent to the addresses set forth below or on or to such other address or person as such party may designate by notice to each other party hereunder:

#### TO MGHC OR THE PARENT:

Phil Lang  
14665 Midway Road, Suite 100  
Dallas, Texas 75244  
Facsimile No: 972/392-7308

with a copy to:

Patrick V. Stark  
Kane, Russell, Coleman & Logan, P.C.  
3700 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201  
Facsimile No: 214/777-4299

TO THE NATIONWIDE ENTITIES:

Nationwide Furniture Rentals & Sales, Inc.  
3800 Frankford Ave.  
Philadelphia, Pennsylvania  
Facsimile No: 610/743-9179

with a copy to:

A. John May III  
Pepper Hamilton LLP  
1235 Westlakes Drive  
Berwyn, Pennsylvania 19312  
Facsimile No: 610/640-7835

TO SHAREHOLDERS' REPRESENTATIVE:

Kenneth F. Mazda  
2050 Grantham Road  
Berwyn, Pennsylvania 19312  
Facsimile No. 610/648-0859

TO SHAREHOLDERS:

At their address and/or facsimile number set forth on the signature page hereto and to the Shareholders' Representative

Any notice given hereunder may be given on behalf of any party by its counsel or other authorized representative.

10.3 Entire Agreement. This Agreement, including the Schedules and Exhibits referred to herein and the other writings specifically identified herein or contemplated hereby or delivered in connection with the transactions contemplated hereby, is complete, reflects the entire agreement of the parties with respect to its subject matter, and supersedes all previous written or oral

negotiations, commitments and writings including the letter of intent dated July 8, 1998. Notwithstanding the foregoing, the parties agreed that the Confidentiality and Non-Compete Agreement dated July 15, 1998 shall not terminate but shall remain in full force and effect as if this Agreement had not been executed.

10.4 Assignability. This Agreement shall be assignable by the Parent prior to the Closing only to a wholly-owned subsidiary of the Parent although no such assignment shall relieve the Parent of any liabilities or obligations under this Agreement. This Agreement (including without limitation the provisions of Article 9) shall be binding upon and enforceable by, and shall inure to the benefit of, the parties hereto and their respective successors, heirs, executors, administrators and permitted assigns, and no others. This Agreement may not be assigned by the Nationwide Entities or the Shareholders, except the heirs, executors and administrators of a deceased Shareholder.

10.5 Captions and Gender. The captions in this Agreement are for convenience only and shall not affect the construction or interpretation of any term or provision hereof. The use in this Agreement of the masculine pronoun in reference to a party hereto shall be deemed to include the feminine or neuter pronoun, as the context may require.

10.6 Certain Definitions. For purposes of this Agreement, the term:

(a) "affiliate" of a person shall mean a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned person;

(b) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of stock, as trustee or executor, by contract or credit arrangement or otherwise;

(c) "person" means an individual, corporation, partnership, association, trust or any unincorporated organization; and

(d) "subsidiary" of a person means any corporation more than fifty percent of whose outstanding voting securities, or any partnership, joint venture or other entity more than fifty percent of whose total equity interest, is directly or indirectly owned by such person.

10.7 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

10.8 Amendments; Waivers. This Agreement may not be amended or modified, nor may compliance with any condition or covenant set forth herein be waived, except by a writing duly and validly executed by the Parent, the Nationwide Entities and the Representative, acting on behalf of

the Shareholders, or, in the case of a waiver, the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any such right, power or privilege, or any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege.

10.9 Consent to Jurisdiction. Solely for the purpose of allowing a party to enforce its indemnification and other rights hereunder, each of the parties, on his, her or its behalf and on behalf of its successors and assigns, hereby consents to personal jurisdiction, service of process and venue in the federal or state courts of Pennsylvania or in the court in which any claim for which indemnification may be sought hereunder is brought against an indemnified party.

10.10 Deposit Agreement. Upon execution of this Agreement, the Parent and the Representative and the Nationwide Entities shall enter into and deliver that certain Deposit Agreement in the form attached hereto as Exhibit 10.10 pursuant to which the Parent will deposit in escrow the sum of Two Hundred Thousand Dollars (\$200,000), sum deposit to be held pursuant to the terms of such Deposit Agreement.

## **ARTICLE 11. CERTAIN TAX MATTERS.**

11.1 Section 338(h)(10) Election. At the request of the Parent, each of the Nationwide Entities, which is a subchapter S corporation, and the Shareholders will join with Parent in making an election under Code § 338(h)(10) of the Code (and any corresponding election under state, local, and foreign tax law) with respect to the Merger Transactions hereunder (a "Section 338(h)(10) Election"). Each Shareholder will include any and all income, gain, loss, deduction, or other tax item resulting from the Section 338(h)(10) Election with respect to the Merger Transaction on his Tax return to the extent permitted by applicable law and neither Parent, the MG Entities nor the Nationwide Entities shall be liable or responsible for any such Taxes. Each Shareholder shall also pay any Tax imposed on the Nationwide Entities attributable to the making of the Section 338(h)(10) Election, including, but not limited to, (i) any Tax imposed under Code § 1374, (ii) any tax imposed under Reg. § 1.338(h)(10)-1(e)(5), or (iii) any state, local or foreign Tax imposed on the Nationwide Entities' gain, and each Shareholder shall indemnify the Parent, the MG Entities and the Nationwide Entities against any adverse consequences arising out of any failure to pay any such Taxes.

11.2 Allocation of Purchase Price. The Parent, the MG Entities and the Nationwide Entities agree that the Merger Consideration will be allocated to the assets of the Nationwide Entities for all tax purposes as shown on the allocation schedule attached hereto as Exhibit G. The Parent, the MG Entities and the Nationwide Entities will file all Tax returns (including amended returns and claims for refund) and information reports in a manner consistent with such allocation.

11.3 S Corporation Status. Prior to the Closing, the Nationwide Entities and the Shareholders will not revoke the Nationwide Entities' election to be taxed as an S corporation

within the meaning of Code §§ 1361 and 1362 and the Nationwide Entities and the Shareholders will not take any action other than the Merger Transactions hereunder that would result in the termination of the Nationwide Entities' status as a validly electing S corporation within the meaning of Code §§ 1361 and 1362.

11.4 Tax Periods Ending on or Before the Closing Date. The Shareholders and the Parent shall prepare or cause to be prepared and file or cause to be filed all Tax returns for the Nationwide Entities for all periods ending on or prior to the Closing Date which are filed after the Closing Date. The tax returns for the 1998 calendar year and the period between the 1998 Balance Sheet and the Closing Date shall be prepared consistent with the audited financial statements for such periods. The Parent shall be responsible for the initial preparation of such returns and shall permit the Representative to review and comment on each such Tax return described in the preceding sentence prior to filing. To the extent permitted by applicable law, the Shareholders shall include any and all income, gain, loss, deduction or deduction or other tax items for such periods on their Tax returns in a manner consistent with the Schedule K-1s prepared for the Shareholders for such periods.

11.5 Cooperation on Tax Matters.

(a) The Parent, the MG Entities and Nationwide Entities shall cooperate fully, as and to the extent reasonably requested by any other party, in connection with the filing of Tax returns pursuant to this Section 11 and any audit, litigation or other proceeding with respect to such Taxes. Such cooperation shall include the retention and (upon the other party's request) the provisions of records and information which are reasonably relevant of any such audit, litigation or other proceeding and making employees available to provide additional information and explanation of any material provided hereunder. The Parent agrees (A) to retain all books and records with respect to Tax matters pertinent to the Nationwide Entities relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and any extensions thereof) of the respective taxable periods, and (B) to give Shareholders copies of such books and records.

(b) The Parent and the Shareholders further agree, upon request, to use their best efforts to obtain any certificate or other document from any governmental authority or any other person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the transactions contemplated hereby).

(c) To the extent that the Parent and the Shareholders are unable to agree as to the appropriate tax treatment of any item relating to the business of the Nationwide Entities prior to the Closing Date, the Parent and the Shareholders agree to submit any dispute relating thereto to arbitration in Philadelphia, Pennsylvania.

11.6 Post-Closing Audits. In the event that after the Closing there shall be commenced any audit of either of the Nationwide Entities by the Internal Revenue Service or any third party



regulatory authority, the Parent agrees that (i) the Shareholders and their tax advisors shall be given reasonable access during normal business hours at the offices of the Nationwide Entities to the books and records of the Nationwide Entities applicable to such audit, and (ii) with respect to audits relating to periods prior to the Closing Date, the Shareholders shall be entitled to control, direct and resolve any such audit and the Parent agrees to cooperate with and assist the Shareholders in such audit proceedings including naming the Representative as attorney-in-fact to deal with the IRS provided that the Shareholders shall pay and reimburse any tax owed by the Nationwide Entities (and not passed on to the Shareholders) as a result of such audit of a period prior to the Closing Date.

## **ARTICLE 12. POST-CLOSING COVENANTS.**

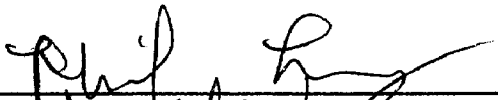
12.1 *Assistance in Accounting Matters.* From and after the Closing Date, the Representative, Stephen Mazda and any other Shareholder who executes a management representation letter in connection with the 1998 Balance Sheet agree to provide, upon request of the Parent, reasonable assistance to the Parent, the Nationwide Accountants and Deloitte & Touche, LLP (the Parent's accountants) in preparing and finalizing (i) the 1998 Balance Sheet and related audited statements of income, stockholders' equity and cash flow, and (ii) an audited balance sheet as of the Closing Date (or other date close to the Closing Date which is selected by the Parent) and related audited statements of income, stockholders' equity and cash flow for the period from the 1998 Balance Sheet date to the date of the balance sheet contemplated in this subsection (ii). Such reasonable assistance shall include assistance with information requests and execution and delivery of appropriate management representation letters and other written assurances requested by the accountants conducting such audit; provided however, such reasonable assistance regarding information requests shall not require any such party to travel or to perform any duties other than answer questions of the Parent as to financial matters relating to the Nationwide Entities prior to the Closing Date to which he has knowledge.

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

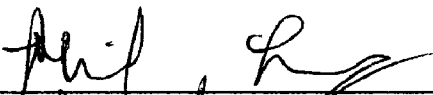
**MATTRESS GIANT HOLDING CORPORATION**

By:   
Its: President


**MATTRESS GIANT ACQUISITION CORPORATION**

By:   
Its: President

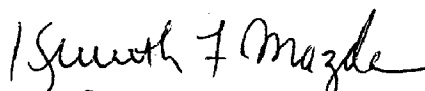
**M G MERGER SUB NO. 1, INC.**

By:   
Its: President

**M G MERGER SUB NO. 2, INC.**

By:   
Its: President

**NATIONWIDE FURNITURE RENTALS & SALES, INC.**

By:   
Its: PRESIDENT

**NATIONWIDE MATTRESS GIANT, INC.**

By:           *Kenneth F. Mazda*            
Its:           *President*                          

**SHAREHOLDERS:**

          *Kenneth F. Mazda*            
Kenneth F. Mazda

          *James Conway, Jr.*            
James Conway, Jr.

          *Steven Mazda*                    
Steven Mazda  
*pr*

          *Ron D'Argenio*                    
Ron D'Argenio

          *Andy Epstein*                        
Andy Epstein

          *Chris Conway*                        
Chris Conway

SCHEDULE 2.13

**[Proprietary Rights]**

(1) Proprietary Rights

-Registered Trademark - "Nationwide Discount Sleep Centers"

-Licenses of various computer software packages for accounting and other uses.

(2) Title

-NFR has licensed its rights, if any, to the name "Nationwide Furniture Rentals" to American Furniture Rentals, Inc.