

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Hedstrom Corporation		11/01/2004	CORPORATION:

RECEIVING PARTY DATA	
<b>Name:</b>	Ball, Bounce and Sport Incorporated
<b>Street Address:</b>	1401 Jacobson Avenue
<b>City:</b>	Ashland
<b>State/Country:</b>	OHIO
<b>Postal Code:</b>	44805
<b>Entity Type:</b>	CORPORATION:

PROPERTY NUMBERS Total: 10

Property Type	Number	Word Mark
Registration Number:	2956781	ROLL 'N RASCALS
Registration Number:	1454764	SUPER-SOFT
Registration Number:	2226586	SHARKY'S SPLASH ATTACK
Registration Number:	2394528	GOOFBALLS
Registration Number:	2289069	ROMP 'N SLIDE
Registration Number:	2462654	SWIPE
Registration Number:	2103997	ULTRABOUNCE
Registration Number:	2880149	BOUNZING BUDDY
Registration Number:	2242004	TRIPLE PLAY
Registration Number:	1882353	BALL PIT

CORRESPONDENCE DATA	
Fax Number:	(617)951-3927
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	617-951-2500

CH \$265.00 2956781

Email: bethany@c-m.com, docket@c-m.com  
Correspondent Name: Cesari and McKenna  
Address Line 1: 88 Black Falcon Avenue  
Address Line 2: Suite 271  
Address Line 4: Boston, MASSACHUSETTS 02210

NAME OF SUBMITTER:	John F. McKenna
Signature:	/john f. mckenna/
Date:	07/27/2005

**Total Attachments: 64**

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**ASSIGNMENT OF AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Victory Lane Oil, Inc., an Ohio corporation, Assignor, hereby assigns, transfers, conveys and sets unto Ball, Bounce and Sport, Inc., Assignee, all of its rights, remedies, entitlements and obligations in, to and involving a certain Asset Purchase Agreement between and among Victory Lane Oil, Inc. on the one hand, and Hedstrom Corporation, Ero, Inc., Ero Industries, Inc., Ero Canada, Inc., Ero Marketing, Inc., Friss, Inc., and Impact, Inc. on the other hand, and dated as of October 18, 2004.

Agreed and Accepted By:

VICTORY LANE OIL, INC., Assignor

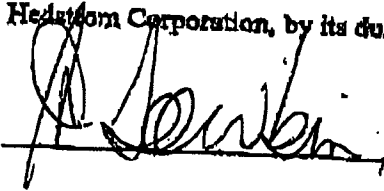
BALL, BOUNCE AND SPORT, INC., Assignee

  
\_\_\_\_\_  
Scott A. Conery, President

  
\_\_\_\_\_  
David B. Wurster, Secretary

**CONSENT TO ASSIGNMENT**

Hedstrom Corporation, by its duly authorized agent, hereby consents to the above assignment.

  
\_\_\_\_\_  
Title      Date      1/1/04

AMERICAN FOUNDATION OF ASSOCIATION 004

Execution Copy

"FINAL"  
SIGNED  
VERSION

**ASSET PURCHASE AGREEMENT**

**BETWEEN AND  
AMONG**

**HEDSTROM CORPORATION, ERO, INC., ERO INDUSTRIES, INC.,  
ERO CANADA, INC., ERO MARKETING, INC., PRISS PRINTS, INC.  
AND IMPACT, INC.**

**AND**

**VICTORY LANE OIL, INC.**

**DATED AS OF OCTOBER 18, 2004**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (the "Agreement"), dated as of October 18, 2004 is made between HEDSTROM CORPORATION, ERO INC., ERO INDUSTRIES, INC., ERO CANADA, INC., ERO MARKETING, INC., PRISS PRINTS, INC. AND IMPACT, INC. (collectively referred to herein as "Seller") and Victory Lane Oil, Inc., an Ohio corporation, or its designee (the "Buyer").

**RECITAL**

Seller desires to sell the assets described herein and Buyer desires to purchase such assets for the consideration hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties and agreements herein contained, the parties hereto agree as follows:

**ARTICLE I  
DEFINITIONS**

**1.1 Definitions.** As used herein, the following terms have the following meanings:

"Agreement" has the meaning set forth in the introductory paragraph hereof.

"Allocation Schedule" has the meaning set forth in Section 7.10.

"Assets" has the meaning set forth in Section 2.1.

"Assumed Liabilities" has the meaning set forth in Section 2.4.

"Auction" has the meaning set forth in Section 7.11(a)(i).

"Auction Date" has the meaning set forth in Section 7.11(a)(i).

"Auction Notice" has the meaning set forth in Section 7.11(a)(iii).

"Authority" means any national, federal, state or local governmental, judicial or regulatory agency or authority within or outside the United States.

"Back-up Bid" has the meaning set forth in Section 7.11(a)(ix).

"Bankruptcy Code" means Chapter 11 of Title 11 of the United States Code.

"Bankruptcy Sale Objection" has the meaning set forth in Section 8.11.

"Bid Analysis" has the meaning set forth in Section 7.11(a)(v).

"Bid Deadline" has the meaning set forth in Section 7.11(a)(ii).

"Bid Protections" has the meaning set forth in Section 7.11(a)(xv).

"Break-Up Fee" has the meaning set forth in Section 7.11(a)(xv).

"Business" means the Ball, Bounce and Sport business, the OEM division and the operations referred to as Hedstrom Canada conducted through the Ashland, Ohio division,

"Buyer" has the meaning set forth in the introductory paragraph hereof.

"Capital Stock" means all of the issued and outstanding capital stock and other equity interests held by Seller in the Canadian Affiliate.

"Canadian Affiliate" means Backyard Products Limited, an Ontario company.

"Chapter 11 Cases" means the cases commenced by Seller in the Bankruptcy Court upon the filing of voluntary Chapter 11 petitions.

"China Joint Venture" means Hedstrom Innovation Limited (currently known as Hedstrom Asia Ltd.), a limited company incorporated in Hong Kong.

"Closing" shall mean the consummation of the transactions contemplated by this Agreement.

"Closing Date" shall mean (i) the later of (A) the business day that is one (1) business day after the date that all the conditions to the Closing described in Article VIII and Article IX have been fully satisfied or waived by the appropriate party or parties or (B) the business day that is one (1) business day following the hearing to approve the Sale, or (ii) such other date as the Buyer and Seller may mutually agree upon.

"COBRA" means the Consolidated Omnibus Reconciliation Act of 1985, as amended, and the applicable regulations promulgated thereunder.

"Committee" means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases.

"Contracts" has the meaning set forth in Section 2.1(j).

"Court" means the United States Bankruptcy Court for the Northern District of Illinois–Eastern Division.

"Cure Amounts" has the meaning set forth in Section 2.4(b).

"Delinquent Taxes" means any real or personal property taxes assessed against any of the Assets and that are past due.

"Designated Contracts" has the meaning set forth in Section 7.13.

“Divested Assets” has the meaning set forth in Section 11.3.

“Earnest Money Deposit” means a sum equal to Eight Hundred Thousand and no/100 Dollars (\$800,000.00).

“Environmental Laws” means Environmental Statutes and any common law governing the contamination, pollution or protection of the environment or allocating liabilities in respect thereof.

“Environmental Statutes” means federal statutes and regulations promulgated thereunder intended to provide protection for public health and the environment, including, without limitation, the Clean Air Act, the Clean Water Act, CERCLA, the Solid Waste Disposal Act (including the Resource Conservation and Recovery Act), the Toxic Substances Control Act, their state statutory and regulatory counterparts and other substantially similar foreign statutes and regulations.

“Equipment” has the meaning set forth in Section 2.1(c).

“Essential Contracts” has the meaning set forth in Section 2.2.

“Excluded Assets” has the meaning set forth in Section 2.3.

“Excluded Liabilities” has the meaning set forth in Section 2.5.

“Hazardous Substance” means (i) any hazardous substance, hazardous material, hazardous waste, regulated substance or toxic substance (as those terms are defined by any applicable Environmental Laws) and (ii) any chemicals, pollutants, contaminants, or oil.

“Intellectual Property” has the meaning set forth in Section 2.1(d).

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

“Inventory” has the meaning set forth in Section 2.1(e).

“Leases” has the meaning set forth in Section 2.1(a).

“Leased Properties” has the meaning set forth in Section 2.1(a).

“Liability” or “Liabilities” means and includes any direct or indirect indebtedness, guaranty, endorsement, claim, loss, damage, deficiency, cost, expense, duty, obligation or responsibility, fixed or unfixed, known or unknown, asserted or unasserted, liquidated or unliquidated, contingent, matured, disputed, undisputed, legal, equitable, secured or unsecured.

“Licenses” has the meaning set forth in Section 2.1(m).

“Liens” has the meaning set forth in Section 8.4.



“Orange Street Property” has the meaning set forth in Section 2.3(g).

“Order” means an Order entered by the Court in the Chapter 11 Cases authorizing the sale of Assets contemplated herein, and approving the form and substance of this Agreement.

“Owned Property” has the meaning set forth in Section 2.1(b).

“Person” means an individual, partnership (general or limited), corporation, association or other form of business organization (whether or not regarded as a legal entity under applicable law), trust, estate or any other entity.

“Permitted Exceptions” means and includes those interests in Owned Property that will remain of record notwithstanding the Sale of the Assets as contemplated herein and (i) that are set forth on Schedule 1.1 (PE) or otherwise disclosed on title search reports on the Owned Property obtained by Buyer or Seller prior to the Closing, or (ii) will not impair the Buyer’s use of the Owned Property.

“Potential Bidder” has the meaning set forth in Section 7.11(a)(ii).

“Preference Claim” has the meaning set forth in Section 7.14.

“Prepaid Inventory” has the meaning set forth in Section 2.1(e).

“Procedures Order” means the order of the Court in the Chapter 11 Cases approving, among other things, certain sale and auction procedures to apply to Seller’s sale of the Assets.

“Prohibited Activities” has the meaning set forth in Section 7.1(c).

“Properties” has the meaning set forth in Section 2.1(b).

“Purchase Price” has the meaning set forth in Section 3.1.

“Purchaser” has the meaning set forth in Section 7.11(a)(xiv).

“Qualified Bid” has the meaning set forth in Section 7.11(a)(ii).

“Qualified Bidder” has the meaning set forth in Section 7.11(a)(ii).

“Related Agreements” has the meaning set forth in Section 4.1.

“Sale” has the meaning set forth in Section 7.11(a)(x).

“Sale and Procedures Motion” shall have the meaning set forth in Section 7.11(a).

“Sale Proceeds” has the meaning set forth in Section 7.11(a)(x).

"Tax Returns" means all returns, declarations, remittances, information returns, reports, forms, notices, statements, correspondence and other documents with respect to taxes due by Seller to any governmental units, including any schedule or attachment thereto, and including any amendment thereof.

"Transition Services Agreement" has the meaning set forth in Section 4.1(b).

"Winning Bid" has the meaning set forth in Section 7.11(a)(v).

"Winning Bidder" has the meaning set forth in Section 7.11(a)(v).

"Working Capital Contribution" has the meaning set forth in Section 7.3.

## ARTICLE II PURCHASE AND SALE OF ASSETS

**2.1 Purchase and Sale of Assets.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, at Closing, and free and clear of any liens, claims, encumbrances and interests (except those interests specified in this Agreement), all of the right, title and interest of Seller in and to all assets, properties and rights of Seller used in or necessary to the operation of the Business, including, but not limited to, the following specified assets, properties, rights and interests, all of which shall be sold "as is" and "where is", with no representations or warranties of fitness or condition from Seller, but specifically excluding the Excluded Assets as defined in Section 2.3 (collectively, the "Assets"):

(a) Leases. The leases for all of the manufacturing facilities, warehouses and offices that are reasonably necessary for use in the Business (the "Leases" and, any such locations, the "Leased Properties") described in Schedule 2.1(a) hereto, including, without limitation, any deposits or other security given or made in respect of the Leases, which shall be assumed and assigned pursuant to section 365 of the Bankruptcy Code.

(b) Owned Property. The interests in real property used in the Business described in Schedule 2.1(b) hereto, including all plants, buildings, fixtures and other improvements located thereon, and all easements, licenses, rights of way, permits and all appurtenances to such property (collectively, the "Owned Property" and, together with the Leased Properties, the "Properties") but subject to the Permitted Exceptions.

(c) Equipment. The machinery, equipment, vehicles, parts, spare parts, computers, computer equipment and hardware, copiers, plotters, security systems, operating manuals, training aids, office furniture and fixtures, tools, molds, supplies and other tangible personal property (other than the tangible personal property and fixtures described in other clauses of this Section 2.1) owned, used or held for use in or relating to the Business, wherever located, including, without limitation, the assets described in Schedule 2.1(c) (collectively, the "Equipment").

(d) Intellectual Property. Any intellectual property owned by Seller and used in the Business including (i) patents, patent disclosures, trademarks, service marks, trade dress, trade names, logos, copyrights and mask works, and all registrations, applications and goodwill associated with the foregoing, set forth on Schedule 2.1(d), (ii) computer software (including source and object codes), databases, data models or structures, algorithms, system architectures and related documentation, data and manuals, (iii) trade secrets, know-how and confidential business information (including information concerning products, product specifications, data, formulae, compositions, designs, sketches, photographs, graphs, drawings, samples, inventions, discoveries, ideas, past, current and planned research and development, current and planned methods and processes, client and customer lists and files, current and anticipated client and customer requirements, vendor and supplier lists and files, price lists, market studies, business plans, business opportunities, and financial data), (iv) rights in Internet web sites and domain names used by Seller and (v) rights in electronic mail addresses and in telephone, facsimile, cable or similar numbers used by Seller (collectively, the "Intellectual Property").

(e) Inventory. Any and all raw materials, work in process, in transit inventory and finished goods inventory and supplies used in, manufactured by or purchased for sale in the Business and set forth in Schedule 2.1(e) (the "Inventory"), other than the items described in Section 7.1(b)(i); including any such Inventory paid for by the Sellers which has not yet been delivered or received by the Sellers (the "Prepaid Inventory") both as of September 30, 2004, wherever located.

(f) Records. All documents related to the Business, wherever located, including all production records, engineering records, purchasing and sales records, accounting records, business plans, budgets, cost and pricing information, correspondence, prospective client information, customer and vendor lists and data and other records and files, wherever located (including, without limitation, any such records maintained in connection with any computer system) related to the Business, other than those documents described in Section 2.3(e).

(g) Orders and Literature. All purchase order forms, forms, labels, stationery, shipping materials, catalogues, brochures, art work, photographs and advertising materials which relate to the Business, wherever located.

(h) Prepaid Insurance. All prepaid property insurance listed on Schedule 2.1(h).

(i) Names. The names **HEDSTROM CORPORATION**, **HEDSTROM CANADA**, **HEDSTROM** and any and all (i) logos and other trade names used by Seller in the Business; and (ii) copyrights, registered or unregistered listed on Schedule 2.1(i).

(j) Contracts. To the extent reasonably necessary for use in the Business, all of Seller's rights under the purchase orders, contracts and executory contracts to which it is a party, and any licensee interests, to the extent assumable and assignable under applicable non-bankruptcy law described in Schedule 2.1(j) hereto

(collectively the “**Contracts**”), and which the Buyer shall designate as those Buyer wishes to be assigned by Seller to Buyer.

(k) Insurance. All proceeds of insurance payable in the event any property that would have been an Asset has been damaged or destroyed by fire or other cause prior to the Closing Date or prior to the delivery of any such Asset hereunder to Buyer, used in connection with the Business, including the right of Buyer to represent that it has acquired the Business.

(l) Software Licenses. To the extent reasonably necessary for use in the Business and to the extent Buyer elects to accept an assignment of such, all software licenses to the extent assignable under applicable law, with any costs of such assignment to be at Buyer’s expense, including, but not limited to, all software related to marketing, creative and graphics for the Business.

(m) Trademark Licenses. Those trademark licenses reasonably necessary for use in the Business and identified on Schedule 2.1(m) (the “**Licenses**”) to the extent assignable under applicable law or with licensor’s consent with the costs of such assignment, including any consent fees required to be paid to the Licensor, to be payable by the Buyer.

(n) Warranty Claims. All of Seller’s claims or warranty claims related to the Equipment and the Inventory and all benefits of warranties on Equipment and Inventory.

(o) Accounts Receivable. All of Seller’s rights, title and interest in and to Seller’s accounts receivable arising out of or in connection with the Business as set forth on Schedule 2.1(o).

(p) Joint Venture. Any and all interest of Seller in the China Joint Venture, and any Assets in connection with the China Joint Venture.

**2.2 Failure to Deliver.** If Seller is unable to deliver all of the Leases, Contracts, Licenses and the China Joint Venture set forth on Schedule 2.2 at Closing (the “**Essential Contracts**”), Buyer may elect to forfeit the Working Capital Contribution and, provided that Buyer is not otherwise in default under the terms of this Agreement, obtain a refund of the Earnest Money Deposit as Buyer’s sole and exclusive remedy. In that event, this Agreement shall terminate without further liability accruing on behalf of Buyer or Seller.

**2.3 Excluded Assets.** The following assets (the “**Excluded Assets**”) to the extent that, but for this sentence, would constitute Assets, shall not be included in the Assets:

(a) cash and cash equivalents, including cash on hand or in the bank accounts, certificates of deposit, commercial paper and securities owned, used or held for use by Seller; and any retainers held by any of the Sellers’ or the Committee’s professionals; and any stock or other equity interests of Seller;

(b) all claims, causes of action, choses in action, rights of recovery, rights of set off and rights of recoupment relating to pre-Closing matters (other than any of the foregoing that relate to any liabilities or obligations assumed by the Buyer), including, without limitation, all avoidance claims and causes of action under sections 544, 547, 548, 549, 550 and 553 of the Bankruptcy Code or the proceeds thereof;

(c) all executory contracts, unexpired leases and contracts other than those identified for assumption and assignment by the Buyer;

(d) insurance policies owned by the Seller not listed on Schedule 2.1(h);

(e) all Tax Returns, the corporate charter, seals, minute books, stock transfer books, financial records and other documents relating solely to the organization, existence and maintenance of Seller as a business entity;

(f) all stock owned by Seller and all certificates and documentation evidencing ownership of the Canadian Affiliate, and any Assets in connection with the Canadian Affiliate;

(g) the 710 Orange Street, Ashland, Ohio building and land (the "Orange Street Property"); provided, however, Buyer shall have a period of up to 120 days following the Closing Date to remove any Assets located in or on the Orange Street Property. Buyer shall provide reasonable notice to Seller prior to removing any Assets from the Orange Street Property. Buyer shall also indemnify Seller for any and all actions taken by their agents in removing the Assets; and

(h) all assets and other property or interests of the Seller to the extent the same do not relate to the Business.

**2.4 Assumed Liabilities.** Buyer shall assume the following obligations and Liabilities of Seller relating to the Business and Assets:

(a) Only Liabilities with respect to Contracts, Leases, software license, Licenses and the China Joint Venture that Buyer has specifically designated to be assumed and assigned, including the Closing Date Assigned Contracts, arising after the entry of an order or orders by the Court in these Chapter 11 Cases with respect to such assignment and assumption; and

(b) all costs and expenses necessary to cure all defaults existing under the Contracts, Leases, software licenses, Licenses and China Joint Venture ("Cure Amounts") that are assumed and assigned to Buyer as described herein.

**2.5 Liabilities Not Assumed.** Buyer shall not assume any Liabilities and other obligations of Seller relating to the Business or Assets, other than Liabilities with respect to the Contracts, Leases and Licenses as provided by section 365 of the Bankruptcy Code and as assumed in Section 2.4 herein. Seller shall remain solely responsible for all Liabilities associated with the Business and Assets relating to or

incurred by Seller before Closing (other than the Assumed Liabilities) including, without limitation, the following (collectively, the "Excluded Liabilities"):

(a) Liabilities for federal, state and local income and franchise taxes and any other taxes incurred by Seller in the conduct of the Business or with respect to the Assets prior to the Closing;

(b) any Liabilities that may arise or have arisen under or on account of COBRA, the WARN Act, worker's compensation, withholding taxes, medicare, pension, retirement benefits, health, vacation and any and all other fringe benefits, if any;

(c) all Liabilities or other obligations arising under Environmental Laws in connection with facts, events, conditions, actions or omissions existing on or occurring prior to Closing in the conduct of the Business or use of the Assets including, but not limited to, any contribution obligations arising from the disposal of Hazardous Substances on real estate owned by third parties;

(d) all claims and Liabilities for product liability or under warranties associated with the Business or Assets (whether known or unknown, and whether recorded or reported), in each case other than those relating to any items produced or sold by Buyer after Closing;

(e) any Liability with respect to any litigation, investigation or threatened litigation or investigation, claims, obligations, damages, costs and expenses arising out of, in connection with, or as a result of the conduct of the Business by Seller or any use of the Assets prior to the Closing;

(f) all Liabilities in respect of all indebtedness for borrowed money owed by Seller to any Person; and

(g) any Liabilities not expressly assumed herein.

### ARTICLE III PURCHASE PRICE

**3.1 Purchase Price.** The consideration to be paid for the Assets shall be Eight Million and no/100 Dollars (\$8,000,000.00) plus Cure Amounts, subject to adjustment as provided in Section 3.2 below (the "Purchase Price"); payable as follows: (i) delivery of the Earnest Money Deposit in cash to Seller by wire transfer, which sum shall be deposited by Buyer in a joint escrow account to be established and maintained by Seller and Buyer subject to the terms and requirements of this Agreement, immediately upon execution of this Agreement; and (ii) the balance of the Purchase Price to be paid to Seller by wire transfer at Closing (provided that the Cure Amounts shall be paid upon the entry of an order approving the assumption and assignment of the applicable Contract, License or Lease, which may occur subsequent to the Closing), which wire transfer shall be made to an account as directed by the Seller.

**3.2 Purchase Price Adjustment.** The Purchase Price shall be adjusted upward or downward, as the case may be, by:

- (i) **Deducting from the Purchase Price:**
  - (1) The invoiced cost of all Inventory shipped by Seller between September 30, 2004 and the Closing Date; and
  - (2) The decrease in the Accounts Receivable between September 30, 2004 and the Closing Date;
- (ii) **Adding to the Purchase Price:**
  - (1) The invoiced cost of all Inventory received by Seller from September 30, 2004 and the Closing Date; and
  - (2) The increase in Accounts Receivable between September 30, 2004 and the Closing Date.

#### **ARTICLE IV RELATED AGREEMENTS**

**4.1 Related Agreements.** In connection with the consummation of the transactions contemplated hereby, Seller and Buyer shall enter into each of the following agreements (collectively referred to herein as the "**Related Agreements**") at or before the Closing:

(a) Patent, trademark and license assignment agreement with respect to the Intellectual Property and licenses being assigned to Buyer, in the form attached hereto as Schedule 4.1(a), in Buyer's sole discretion. }

(b) A transition services agreement in the form attached hereto as Schedule 4.1(b) providing for, among such other services as may be agreed upon by the parties, continued data processing services, network access, payroll processing, and management information systems for a period of up to 120 days following the Closing Date (the "**Transition Services Agreement**"). Buyer shall reimburse Seller for all expenses directly or indirectly incurred by Seller (at Seller's proportional cost for such services) with respect to Seller's obligations under the Transition Services Agreement.

**4.2 No Successor.** The parties hereby acknowledge and agree that Buyer is not acting as a successor to Seller in any manner whatsoever.

**4.3 Intellectual Property Not Owned by Seller.** Buyer agrees that it will not use in any manner whatsoever or disclose to any other entity any intellectual property not owned by Seller but in the Seller's possession, custody or control and shall return such property to its owner upon its request. This covenant shall survive the Closing.

**ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer, as of the date hereof and as of the Closing Date, and as of no other date, as follows:

**5.1 Organization; Qualification.** Each Seller is a corporation duly organized and validly existing under the laws of its respective state of organization. Seller has necessary corporate power and authority to own all of the Assets.

**5.2 Authority Relative to this Agreement and the Related Agreements.** Subject to the entry of the Procedures Order and the Order by the Court, Seller has the necessary corporate power and authority to execute and deliver each agreement or other document to be executed by it in connection with the transactions contemplated by this Agreement and the Related Agreements and to consummate the transactions contemplated hereby and thereby. Subject to the entry of the Procedures Order and the Order by the Court, the execution and delivery by Seller of each agreement or other document to be executed by it in connection with the transactions contemplated by this Agreement and the Related Agreements, and the consummation by it of any transactions contemplated on its part hereby and thereby, have been duly authorized by Seller's respective Boards of Directors and no other corporate action on the part of Seller is necessary with respect thereto. Subject to the provisions of the Procedures Order and the Order, this Agreement constitutes, and each agreement or other document to be executed by Seller in connection with the transactions contemplated by this Agreement (when executed and delivered by Seller), will evidence and constitute the valid and binding obligations of Seller, enforceable in accordance with their terms.

**5.3 Non-Contravention.** Subject to the entry of the Order, the execution and delivery by Seller of this Agreement and the other agreements and documents to be executed in connection with the transactions contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby will not (i) violate or result in a breach of any provision of the Articles of Incorporation or Bylaws of Seller, (ii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Seller or any of the Assets or the Business, or (iii) violate any agreement or obligation to which Seller or any subsidiary of Seller is a party or by which any of their respective assets are bound, excluding from the foregoing clause (ii) such violations that would not have a material adverse effect on any of the Assets or the Business.

**5.4 Compliance with Laws.** Except as set forth in Schedule 5.4, Seller has not received from any governmental authority any notice of any failure to substantially comply with any laws, regulations, policies, guidelines, orders, judgments or decrees of any Authority applicable to, or having jurisdiction over, Seller, the Assets or the Business, and Seller is not currently subject to any sanction for such noncompliance.

**5.5 Environmental Matters.** Except as set forth in Schedule 5.5 and as described in the following sentence, to Seller's knowledge, Seller has not received notice from any Authority or Person of any failure of any of the Assets or the Business to



comply in any material respect with, or of any material liability or any potential liability under, any Environmental Law. To Seller's Knowledge, Seller has delivered to Buyer true and complete copies of any reports, studies, analyses, tests or monitoring results possessed or initiated by or on behalf of any Seller pertaining to Hazardous Substances or activities in, on or under any real property, or concerning compliance by Seller with Environmental Laws. Other than the information contained in these reports, studies, analyses, tests or monitoring results and in certain written information previously delivered by Seller to Buyer concerning potential contribution liabilities arising from Seller's disposal of Hazardous Substances and real estate owned by third parties, Seller has no Knowledge of any failure of any of the Assets or the Business to comply with or of any material liability under any Environmental Law. No representation or warranty is made by Seller to Buyer regarding the disposal of materials in landfills owned by third parties.

**5.6 Title to Assets.** Seller has good title to all Assets and will sell, transfer and convey the Assets free and clear of all liens and interests (other than the Permitted Exceptions) as provided in section 363(f) of the Bankruptcy Code.

**5.7 Intellectual Property.** To Seller's knowledge, Schedule 2.1(d) describes the Intellectual Property that is owned by Seller in connection with the Business and the Assets. Except as set forth in Schedule 5.7 and to Seller's knowledge, Seller owns the Intellectual Property. Except as described in Schedule 5.7, to Seller's knowledge, there is no claim, suit, action or proceeding pending or, to the best of Seller's knowledge, threatened against Seller asserting that its use of any Intellectual Property infringes upon the rights of any third parties. Except as disclosed in Schedule 5.7, to Seller's knowledge, Seller is not infringing upon the rights of any Person, and no Person is infringing upon the rights of Seller, in the Intellectual Property. To Seller's knowledge, none of the former or present employees, officers, directors or independent contractors of the Seller holds any contractual right, title or interest, directly or indirectly, in whole or in part, in or to any part of the Intellectual Property, or has asserted any claim with regard to any Intellectual Property. To Seller's knowledge, the Intellectual Property was developed by either employees of the Seller during the time they were employed by the Seller or independent contractors hired by the Seller or by employees of or independent contractors engaged by previous owners of the Business, and all rights arising from the work of such employees and independent contractors are owned by the Seller and included in the Assets. Except as disclosed in Schedule 5.7, to Seller's knowledge, there have been no written claims, applications, disputes, oppositions or proceedings in relation to the Intellectual Property. Notwithstanding the foregoing, Seller does not represent or warrant to Buyer that any contracts or licenses of the Intellectual Property, or any portion thereof, may be assumed and assigned to Buyer pursuant to section 365 of the Bankruptcy Code.

**5.8 Actions and Proceedings.** Subject to the entry of the Order and not including any outstanding judgments, orders, injunctions, decrees, lawsuits, actions, proceedings or investigations related to the qualifications of the Buyer, there are no (a) outstanding judgments, orders, injunctions or decrees of any Authority or arbitration tribunal against Seller or any of its respective affiliates, (b) lawsuits, actions or proceedings pending or, to the knowledge of Seller, threatened against Seller or any of its

affiliates, or (c) investigations by any Authority which are, to the knowledge of Seller, pending or threatened against Seller or any of its affiliates, and which, in the case of each of clauses (a), (b) and (c), have a material adverse effect on the ability of Seller to consummate the transactions contemplated hereby to be consummated by Seller.

**5.9 Finders.** No broker, finder or investment banker retained by or working on behalf of Seller is entitled to any fee or commission from Buyer for services rendered on behalf of Seller in connection with the transactions contemplated by this Agreement or the Related Agreements.

**5.10 Copies of Documents.** Seller has provided to Buyer true, complete and accurate copies of all documents and instruments listed on any of the Schedules to this Agreement.

**5.11 Full Disclosure.** None of the representations and warranties made in this Article contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

**5.12 Nonsurvivability of Seller's Representations and Warranties.** The representations and warranties made by Seller to Buyer herein shall not survive the Closing and shall expire and be of no force and effect whatsoever after the Closing except for any representations or warranties fraudulently made by Seller.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants the following to Seller.

**6.1 Organization; Qualification.** Buyer is a limited liability company which is duly formed and validly existing under the laws of the State of Ohio and has the necessary power and authority to own all of its properties and to carry on its business as it is now being conducted. Buyer is duly qualified and in good standing to do business in each jurisdiction in which the nature of its business makes such qualification necessary.

**6.2 Authority Relative to this Agreement and the Related Agreements.** Buyer possesses the necessary power and authority to execute and deliver this Agreement and the Related Agreements to which it is contemplated to be a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and the Related Agreements and the consummation by Buyer of the transactions contemplated hereby and thereby has been duly authorized by Buyer's Board of Directors and no other action on the part of Buyer is necessary with respect thereto. This Agreement constitutes, and any Related Agreement to which Buyer is a party when executed and delivered by it will constitute, its valid and binding obligations, enforceable in accordance with their terms.

**6.3 Non-Contravention.** The execution and delivery by Buyer of this Agreement does not, and its execution and delivery of any Related Agreements to which

Buyer is a party and the consummation of the transactions contemplated hereby and thereby will not, (i) violate or result in a breach of the Articles of Organization or bylaws of Buyer, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Buyer is a party or by which Buyer may be bound, except for such defaults (or rights of , cancellation or acceleration) which would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement, or (iii) to violate any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer.

**6.4 Full Disclosure.** None of the representations and warranties made in this Article contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

**6.5 No Consent.** Except as set forth herein, no material consent, approval, license, permit, order or authorization of, or registration, declaration or filing with, any Authority is required to be obtained or made by or with respect to Buyer or any of its affiliates in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

## **ARTICLE VII ADDITIONAL AGREEMENTS**

**7.1 Forbearances by Seller.** Except as specifically contemplated by this Agreement:

(a) From the date hereof until the Closing Date, subject to the requirements and restrictions of the Bankruptcy Court proceedings, Seller shall use its best efforts to preserve the Assets of the Business.

(b) Seller shall not, from the date hereof until the Closing, without the written consent of Buyer:

(i) sell, dispose of, transfer or encumber any of the Assets other than inventory sold in the ordinary course of Seller's business;

(ii) amend, modify or cancel any Contract, Lease or License except in accordance with its terms;

(iii) agree, so as to legally bind Buyer (whether in writing or otherwise) to take any of the actions set forth in this Section 7.1 and not otherwise permitted by this Agreement.

**7.2 Notice of Certain Events.**

(a) Seller shall promptly notify Buyer of:

(i) any notice or communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(ii) any notice or other communication from any Authority in connection with the transactions contemplated by this Agreement;

(iii) any actions, suits, claims, investigations or proceedings commenced or, to its knowledge threatened against, relating to or involving or otherwise affecting Seller or the Business that relate to the consummation of the transactions contemplated by this Agreement; and

(iv) the damage or destruction by fire or other casualty of any material portion of the Assets or if any material portion of Assets becomes the subject of any proceeding or, to the knowledge of Seller, threatened proceeding, for the taking thereof or any part thereof or of any right relating thereto by condemnation, eminent domain or other similar governmental action.

(b) Seller shall promptly notify Buyer of, and furnish Buyer any information which Buyer may reasonably request with respect to, the occurrence to Seller's knowledge of any event or condition or the existence to Seller's knowledge of any fact that would cause any of the conditions to Buyer's obligations hereunder not to be fulfilled. If between the date hereof and the Closing Date, any of the matters referenced in Section 7.2(a)(iv) shall have occurred, then Seller, at Buyer's option, shall either (i) repair any damage or casualty at Seller's expense; (ii) deliver to Buyer on the Closing Date any insurance proceeds (including but not limited to condemnation insurance proceeds) or rights to receive insurance proceeds with respect thereto; or (iii) reduce the Purchase Price by the amount of the insurance proceeds described in subsection (ii) herein.

**7.3 Working Capital Contribution by Buyer.** Upon execution of this Agreement, Buyer shall provide Seller up to \$800,000.00 (the "**Working Capital Contribution**"). Buyer may, in its sole discretion, increase the Working Capital Contribution to \$1,000,000.00. The Working Capital Contribution shall be funded by Buyer on or before such obligations or expenses are incurred by Seller in accordance with the budget attached hereto as Schedule 7.3, which budget may be modified at any time only in a writing executed by each of the parties hereto. Except as specifically set forth in Section 7.11(a)(vi), (viii) and (xv), the Working Capital Contribution shall be non-refundable and shall be made by Buyer without recourse to Seller, or its bankruptcy estate, and Buyer shall have no claim against Seller or its bankruptcy estate arising from the Working Capital Contribution.

**7.4 Retention of Books and Records.** On the Closing Date, Seller shall provide Buyer with all documents and records relating to the Business, including hard copies of all such documents and records currently maintained by Seller in electronic format. Buyer will retain and maintain, in substantially the same form and condition as received by Buyer, all such documents and records and will make available

such documents and records as may be reasonably requested by Seller or the Committee, or a subsequently appointed trustee for a period of four (4) years from Closing Date in order to, among other things, expeditiously comply with all pertinent requests from the Internal Revenue Service and state taxing authorities which relate to the period prior to the Closing. This access shall also be afforded to authorized representatives of the United States Trustee, any trustee who may be appointed in any of the Chapter 11 Cases, and any other Person authorized to have such access pursuant to the terms of any order entered by the Court in the Chapter 11 Cases. Seller or other persons requesting copies of such documents and records shall be responsible for paying any reasonable costs relating thereto.

**7.5 Mail Received After Closing.** Following the Closing, Buyer shall deliver or cause to be delivered to Seller, promptly after receipt by Buyer, all mail and other deliveries addressed to Seller including payments of any other sums due and payable by any third party to Seller.

**7.6 Information and Access.** Subject to applicable law and Seller's contractual obligations from and after the date of this Agreement to the Closing Date, the Seller will, upon reasonable prior notice given to Seller by Buyer (i) permit representatives of the Buyer to have full access during normal business hours to all premises, properties, personnel, accountants, books, records, files, electronic systems, contracts and documents of or pertaining to the Assets, (ii) allow the Buyer to examine the Assets and (iii) otherwise cooperate and assist, to the extent reasonably requested by the Buyer, with the Buyer's due diligence investigation. The Buyer and its representatives will treat and hold such information as confidential. Subject to applicable law and Seller's contractual obligations Seller further agrees to permit and to use reasonable efforts as reasonably requested by the Buyer for the facilitation of representatives of the Buyer to contact customers, vendors and other third parties relating to the Business, the Assets and for purposes of the transactions contemplated by this Agreement.

**7.7 Expenses.** Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement, the transactions contemplated hereby, and the discharge of the obligations hereunder shall be paid by the party incurring such costs and expenses.

**7.8 Efforts to Consummate.** Subject to the terms and conditions of this Agreement, each of the parties hereto shall use reasonable best efforts to take, or to cause to be taken, all action and to do, or to cause to be done, all things necessary, proper or advisable to consummate, as promptly as practicable, the transactions contemplated herein including, without limitation, the satisfaction of the conditions listed in Articles VIII and IX that are within the control of such party and the obtaining of all consents, waivers, authorizations, orders and approvals of third parties, whether private or governmental, required of it by this Agreement. Each party shall cooperate fully with the other parties hereto in assisting such parties to comply with this Section 7.8. However, except as specifically provided herein, no party shall be required to (i) initiate any litigation, (ii) make any material payment; or (iii) incur any material economic burden in connection with the obtaining of any consent, waiver, authorization, order or approval.

**7.9 Transfer Taxes and Recording Fees.** Buyer shall be responsible for payment of all sales, use, transfer taxes and other non-income taxes and fees incurred in connection with the sale of the Assets as contemplated herein. Any mortgage registration fees shall be at the expense of Buyer.

**7.10 Tax Matters.** Seller shall cooperate in Buyer's preparation and determination of a schedule (the "**Allocation Schedule**"), allocating the Purchase Price (including, for purposes of this Section, any other consideration paid by Buyer) among the Assets. Seller and Buyer each agrees to file Internal Revenue Service Form 8594 and any required attachments thereto, together with all federal, state, local, and foreign tax returns, in accordance with the Allocation Schedule. Seller and Buyer each agree to promptly provide the other with any other information required to complete the Allocation Schedule.

**7.11 Bankruptcy Sale Procedures.**

(a) The Sale Motion and Procedures Order. Not later than two (2) business day following execution of this Agreement, Seller shall file with the Court a motion to approve (i) procedures for the sale by auction of substantially all of the Seller's assets pursuant to section 363 of the Bankruptcy Code, and (ii) for approval of the Bid Protections (the "**Sale and Procedures Motion**"). The Motion shall request that the Court enter an order approving (i) the sale of the Assets by Auction in accordance with certain terms and procedures reasonably acceptable to Seller and Buyer, and (ii) approving the Bid Protections (the "**Procedures Order**"). The terms of the Procedures Order shall be promptly served upon all creditors and other interested parties in the Chapter 11 Cases as required by the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Court's local rules and served upon such other entities as may be required by the Court. Seller and Buyer shall request that the Procedures Order contain each of the following terms and conditions:

(i) Any competitive bidding for the Assets shall be conducted at an auction (the "**Auction**"), after which the Court, after notice and a hearing, shall enter an order in form and substance reasonably acceptable to the Buyer, authorizing the Sale of the Assets free and clear of liens and interests (other than the Permitted Exceptions) (the "**Order**"). At the Auction, the Seller shall conduct the sale by open bidding, except that nothing contained in the Procedures Order or elsewhere shall prohibit the Seller, at the Auction, from conducting separate or joint discussions with the Buyer, any Qualified Bidder or the Official Creditors Committee in private and not on the record of such proceeding. A court reporter shall make a record of the open bidding as it occurs.

(ii) Unless otherwise ordered by the Court for cause shown, for any Person to participate in the Auction (a "**Potential Bidder**"), such Person must deliver to the Seller (x) such information as the Seller shall request establishing a Potential Bidder's ability to close the Sale of the Assets in a timely manner, including a demonstration of financial wherewithal to close such sale; (y) a wire transfer to Seller of funds equal to

the amount of the Earnest Money Deposit; and (z) an executed asset purchase agreement for all and not a part of the Assets in substantially the same form as this Agreement, in form and substance acceptable to the Seller. These three items must be actually received by the Seller by no later than 12:00 p.m. (Chicago time) on the date that is two (2) days prior to the Auction Date (the "**Bid Deadline**"), in order for the Potential Bidder to participate in the Auction. Any Potential Bidder meeting all of the above requirements that wishes to participate in the Auction must attend the Auction and acknowledge in writing that it is familiar with, understands and accepts the procedures specified in the Procedures Order. Any person qualifying under all of the above standards shall be entitled to bid to purchase all of the Assets and will be hereinafter referred to as a "**Qualified Bidder**." Any bid made by a Qualified Bidder shall be referred to as a "**Qualified Bid**."

(iii) The procedures specified in the Procedures Order shall be incorporated into the Notice of Auction Sale respecting the Auction (the "**Auction Notice**") and served pursuant to the procedure described in this Section. The Auction Notice shall specify the Auction Date and the time and place of the Auction. Seller shall serve copies of the Auction Notice upon all creditors and other interested parties in the Chapter 11 Cases along with the Sale and Procedures Motion and the Procedures Order. Subsequent to this service of the Auction Notice, the Seller shall provide the Auction Notice to any Person requesting in writing a copy of the same.

(iv) Seller may grant reasonable access to the Assets to any Person expressing an interest in viewing the same for the purpose of making a bid thereon, and the Seller will further agree to make financial and such other information concerning the Assets available to any prospective bidder. Barrier Advisors shall undertake the primary responsibility for providing the requested information. The Seller shall require any prospective bidder to enter into a confidentiality agreement, in form and substance no less restrictive than the confidentiality agreements executed by Buyer.

(v) The Seller will offer the Assets for sale at the Auction in conformity with the Procedures Motion and the Procedures Order. At the conclusion of the Auction, the Seller will engage in an analysis (the "**Bid Analysis**") to determine which Qualified Bid is, in its best judgment and after consultation with its professionals, the highest or otherwise best offer(s) (the "**Winning Bid**"). A Person making a Winning Bid is hereinafter referred to as a "**Winning Bidder**". At the conclusion of the Bid Analysis, the Seller shall ask the Court to enter an order ( in form and substance reasonably satisfactory to the Winning Bidder) authorizing the Seller to consummate the transaction in accordance with the Winning Bid with the Winning Bidder and to execute such additional documentation as is reasonably necessary to close such Sale.

(vi) The Procedures Order will include a requirement that any bid submitted must have a cash value that exceeds the Purchase Price by at least the amount of the Break-Up Fee plus the amount of Working Capital Contribution made by Buyer, and shall further require that any overbid submitted must be in increments of at least Fifty Thousand Dollars (\$50,000) (with the initial overbid required to be in the amount of the Break-Up Fee, plus the Working Capital Contribution and plus One Hundred Thousand Dollars (\$100,000).

(vii) The offers of all Qualified Bidders shall be irrevocable until the earlier of (i) the Closing of the sale of the Assets, (ii) the withdrawal of the Assets for sale by the Seller, or (iii) sixty (60) days from the date hereof.

(viii) In the event that a Winning Bidder defaults in the performance of its obligation to purchase the Assets pursuant to a Winning Bid, the Winning Bidder's Earnest Money Deposit shall be forfeited. Notwithstanding the foregoing, such a forfeiture shall not be in full satisfaction of any damages caused to any Person by the Winning Bidder's default as described herein. Any Person making an Earnest Money Deposit who does not become the Purchaser (viz., the Winning Bidder as specified in the Order as entered by the Court in the Chapter 11 Cases) shall have its Earnest Money Deposit returned to it by the Seller within two (2) business days after the conclusion of the hearing at which the Winning Bid(s) are confirmed.

(ix) In the event that a Winning Bidder defaults in the performance of its obligations to purchase the Assets pursuant to a Winning Bid, then the next highest bidder for the Assets shall be the Winning Bidder (provided that Buyer consents). Consequently, that Person's bid (the "**Back-Up Bid**") will be treated as the Winning Bid.

(x) Any sale of the Assets hereunder (the "**Sale**") shall be free and clear of all liens and interests other than the Permitted Exceptions (unless otherwise agreed to by such Winning Bidder and Seller), with such liens and interests attaching to the proceeds of the Sale (the "**Sale Proceeds**") in the same rank and priority as those liens and interests enjoyed prior to the Auction and Sale. The Order shall expressly so provide.

(xi) The Winning Bidder shall be solely responsible for any sales, transfer or other taxes, if any, applicable to its acquisition of the Assets.

(xii) The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Seller, its respective bankruptcy estates, or its respective agents. By submitting a bid, each Qualified Bidder shall be deemed to have acknowledged and represented that (i) it has had an opportunity to inspect and examine the Assets and to conduct any and all



due diligence regarding the Assets prior to making its bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and Assets in making its bid; and (iii) it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets by any Person whatsoever, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in this Agreement or, as to the Winning Bidder, the applicable purchase agreement.

(xiii) Notwithstanding anything to the contrary in the Sale and Procedures Motion or the Agreement, a Winning Bid shall have been accepted by the Seller only upon entry of the Order and the Seller will not be obligated to take any action related to the sale of the Assets unless and until the Court enters the Order. The Seller's presentation to the Court for approval of a Winning Bid does not constitute the Seller's acceptance thereof.

(xiv) Upon the Court's entry of the Order, a Winning Bidder(s) (which may be the Buyer) shall become a "**Purchaser**."

(xv) In the event the Seller enters into a transaction not in the ordinary course of its business for any portion of the Assets with any person other than Buyer or Buyer is not the Purchaser, and provided that Buyer is not otherwise in default or has not terminated this Agreement for any other reason, Buyer shall be paid a "break-up" fee in an amount equal to Two Hundred Twenty Forty Thousand Dollars (\$240,000.00) (the "**Break-Up Fee**") and together with the provisions of this Article VII, the "**Bid Protections**") and shall be reimbursed for the Working Capital Contribution actually made, which amounts will be paid by Seller from the Closing approved by the Court of a sale to a Purchaser other than the Buyer.

(b) Notwithstanding anything to the contrary herein, Seller may (i) modify the foregoing terms and procedures from time to time; and (ii) continue the Auction by announcement either at the Auction or in open Court, without being required to serve any additional notice upon any Person other than Buyer.

(c) The Seller acknowledges and agrees that Buyer has entered into this Agreement at arms-length and in good faith and in reliance upon the Bid-Protections set forth in this Agreement. It further acknowledges and agrees that the Purchase Price agreed upon in this Agreement has not been controlled by any agreement among any potential bidders and that the Buyer's offer has not been collusive with any other bidder, whether or not Qualified, in any way. Seller agrees to apply to the Court for a finding that Buyer, if the Winning Bidder, is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, accordingly, is entitled to all the benefits and protections thereof.

**7.12 Auction.** Provided that Buyer is not in default under the terms of this Agreement, Buyer shall be deemed a Qualified Bidder and entitled to participate as a

Qualified Bidder at the Auction in the event a Qualified Bid is made by another Qualified Bidder.

**7.13 Designated Contracts.** In addition to the Essential Contracts, Buyer may designate other Leases, Contracts and Licenses as those which Buyer desires to have assumed by Seller and assigned to Buyer (collectively, the “**Designated Contracts**”). Notwithstanding anything contained in this Agreement to the contrary, with respect to the Designated Contracts: (a) Buyer must designate in writing to Seller any Designated Contract with in thirty (30) days after Closing (b) Seller shall not be required to (i) initiate any litigation, other than the filing of an appropriate motion, (ii) make any payment, including, but not limited to, the payment of any cure amounts (which shall be the sole and exclusive responsibility of Buyer); or (iii) incur any material economic burden in connection with the obtaining of any consent, waiver, authorization, order or approval with respect to any assumption and assignment, (c) it shall not be a condition of Buyers obligation to Close that any of the Designated Contracts are assumed and assigned to Buyer, and (d) provided Seller otherwise complies with the terms of this Section 7.13, Seller shall not be in default of its obligations under this Agreement in the event any Designated Contract is not assumed and assigned to Buyer.

**7.14 Lost Potential Preference Recoveries.** In addition to the Purchase Price, upon the assignment and assumption of any of the Essential Contracts or the Designated Contracts, Buyer shall pay to Seller seventy-five percent (75%) of the value of any preference claim (net of any valid and applicable defense including the collectibility of the preference claim) (a “**Preference Claim**”) pursuant to section 547 the Bankruptcy Code against any party to the Essential Contracts or Designated Contracts. The amount of any Preference Claim shall (i) be determined as if the applicable Essential Contracts or Designated Contracts were not assumed and assigned, and (ii) be mutually agreed upon by Seller and Buyer or, if such agreement can not be reached, determined by the Bankruptcy Court.

**ARTICLE VIII  
CONDITIONS TO OBLIGATIONS OF BUYER**

The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject, to the extent not waived by Buyer, to the satisfaction of each of the following conditions before or at the Closing (unless specifically required at an earlier date).

**8.1 Representations and Warranties.** Except for changes contemplated by this Agreement, the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing, subject to changes made to the Schedules attached hereto as permitted by this Agreement.

**8.2 Performance of this Agreement.** Seller shall have performed all obligations and complied with all conditions required by this Agreement to be performed or complied with by it before or at the Closing.

*Brian  
Pleasant  
Advised.*

**8.3 Proceedings.** All necessary corporate actions to be taken by Seller in connection with the transactions contemplated herein shall have been completed, all such actions and all documents incident thereto shall be reasonably satisfactory in substance and form to Buyer, and Buyer shall have received all such counterparts, originals or certified or other copies of such documents as Buyer may reasonably request.

**8.4 Order.** The Seller shall have filed the Sale and Procedures Motion as required by Section 7.11 and shall thereafter have entered the Order, which must be reasonably satisfactory in form and substance to Buyer and Seller, (i) approving this Agreement in its entirety; (ii) authorizing disposition of the Assets as set forth in this Agreement (A) notwithstanding provisions in leases, reciprocal easement agreements or other contracts that purport to limit, govern or restrict such dispositions, and (B) without the necessity of obtaining any third party consents; (iii) requiring that no liens, claims, encumbrances and interests of any kind or nature whatsoever (“Liens”) shall encumber the Assets but shall attach only to the proceeds of the Sale; (iv) authorizing Seller to convey to Buyer all of its right, title and interest in and to the Assets; and (v) which Order shall not have been reversed, stayed, modified or amended and as to which (a) the time to appeal or seek review, reargument or rehearing has expired and as to which no appeal or petition for certiorari, review or rehearing is pending, or (b) if appeal, review, reargument, rehearing or certiorari of such order has been sought, such order has been affirmed and the request for further review, reargument, rehearing or certiorari has expired, as a result of which such order has become final and nonappealable in accordance with applicable law. Notwithstanding the foregoing clause, Buyer, in its sole discretion, may close the transactions contemplated herein prior to the Order becoming final; provided that the Court enters an Order authorizing Seller to consummate the transactions contemplated hereby, in which Order the Court finds that the transactions contemplated by this Agreement were negotiated at arms-length and in good faith and the Buyer acted in good faith in all respects, and such Order is not stayed pending appeal. The Order shall be binding upon any mortgagee holding a mortgage with respect to any Owned Property, and shall provide that each Owned Property may be freely transferred by Seller without the consent of the mortgagee or any other person or entity notwithstanding any corporate or trust structure or any other purported restriction on transferability, in each case, regardless whether any Owned Property is sold or otherwise transferred by Buyer, transferred by Seller to the applicable mortgagee or otherwise retained by Seller or disposed of. The Order shall further provide that (i) this Agreement constitutes the best offer or value received by Seller for the Assets; (ii) the Court retains jurisdiction to enforce the provisions of this Agreement in all respects; (iii) the provisions of the Order are nonseverable and mutually dependent; (iv) the transactions contemplated by this Agreement are undertaken by Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code; (v) the terms and provisions of the Order and this Agreement shall remain in full force and effect upon the dismissal or conversion of the Chapter 11 Cases to a case or cases under Chapter 7 of the Bankruptcy Code; and (vi) the terms and provisions of the Order and this Agreement shall be binding on all creditors and other parties in interest in these Chapter 11 Cases. The Order shall provide that, notwithstanding Rules 6004(g) and Rule 6006(d) of the Federal Rules of Bankruptcy Procedure, the Order shall take effect immediately upon signature and any stay of such Order is lifted and waived.

**8.5 Legislation.** No statute, rule or regulation shall have been enacted which prohibits the consummation of the transactions contemplated hereby.

**8.6 Related Agreements.** Seller shall have executed and delivered all Related Agreements.

**8.7 Personal Property Taxes.** Seller shall pay and discharge any and all Delinquent Taxes out of the Sale Proceeds as described herein. In the event that the transactions are determined not to be exempt from state and local taxation, then the Buyer shall be responsible for the payment of such taxes, as provided in Section 7.8.

**8.8 Access.** Prior to the Closing Date, Seller shall, upon reasonable prior notice to Seller, (i) grant to Buyer and its representatives, employees, counsel and accountants, reasonable access during normal business hours and upon reasonable notice to key personnel, customer representatives, vendors representatives, properties, books, commitments, contracts and records of Seller relating to the Assets and the Business; (ii) will furnish to Buyer, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information relating to the Business as such Persons may reasonably request and (iii) will instruct the agents, counsel and financial advisors of Seller to cooperate with Buyer in its investigation of the Business.

**8.9 Insurance Coverage for Material Damage.** Seller shall maintain adequate product liability insurance coverage from the date of the commencement of the Chapter 11 Cases through Closing. In the event of physical damage to a material portion of the Assets prior to Closing, Seller shall have sufficient property and casualty insurance coverage in an amount sufficient to cover the payment described in Section 7.2(b)(ii).

**8.10 Employees.** Buyer shall not be restricted from hiring any employees of Seller with respect to the Business.

**8.11 No Bankruptcy Sale Objections.** As of the Closing Date, there shall be no written objection filed by an Authority with the Court and not withdrawn or overruled in the Chapter 11 Cases seeking to prohibit consummation of the transactions contemplated by this Agreement (the "Bankruptcy Sale Objection").

**8.12 Consent of China Joint Venture.** Buyer shall have received, prior to the Closing, the consent, waiver and ratification of the shareholders of the China Joint Venture to the transactions contemplated by this Agreement and the sale of the Assets to Buyer, all in such form and content as may be reasonably acceptable to Buyer.

## ARTICLE IX CONDITIONS TO OBLIGATIONS OF SELLER

The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject, to the extent not waived, to the satisfaction of each of the following conditions before or at the Closing:

**9.1 Representations and Warranties.** Except for changes contemplated by this Agreement, the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing.

**9.2 Performance of this Agreement.** Buyer shall have performed all obligations and complied with all conditions required by this Agreement to be performed or complied with by it before or at the Closing.

**9.3 Proceedings.** All proceedings to be taken by Buyer, if any, in connection with the transactions contemplated hereby shall have been completed, all such proceedings and all documents incident thereto shall be reasonably satisfactory in substance and form to Seller and Seller shall have received all such counterparts, originals or certified or other copies of such documents as Seller may reasonably request.

**9.4 Consents and Approvals.** All consents, authorizations, orders or approvals of any Authority and of individuals or business entities which Buyer is required to obtain in order to consummate the transactions contemplated by this Agreement shall have been obtained by Buyer and all waiting periods specified by law with respect thereto shall have passed.

**9.5 Order.** The Court shall have entered the Order, which Order shall not have been stayed or reversed as of Closing.

**9.6 Legislation.** No statute, rule or regulation shall have been enacted that prohibits or restricts the consummation of the transactions contemplated hereby.

## **ARTICLE X DELIVERIES, ETC., IN CONNECTION WITH CLOSING**

**10.1 Time and Place of Closing.** If all the conditions to Closing set forth in this Agreement have been satisfied or waived in writing prior to such date, the Closing will take place on the Closing Date and at the Chicago, Illinois offices of Shaw Gussis Fishman Glantz Wolfson & Towbin LLC.

Notwithstanding the foregoing, the Closing must occur by no later than 5:00 p.m. (Chicago time) on October 29, 2004, unless that date is extended by mutual agreement among the parties hereto. If the Closing takes place, the Closing and all of the transactions contemplated by this Agreement shall be deemed to have occurred simultaneously and become effective as of 12:01 a.m. on the date of Closing.

**10.2 Deliveries by Seller.** At or before the Closing, Seller shall deliver to Buyer, as applicable, the following:

(a) a bill or bills of sale and such other document or documents suitable for filing, registration or recording, (if applicable) as are necessary to transfer to Buyer the Assets;

- (b) evidence that all of the proceedings contemplated by Section 8.3 have been completed;
- (c) each of the Related Agreements executed by Seller to which it is a party;
- (d) copies of the Order;
- (e) such other documents, instruments or writings required to be delivered to the Buyer at or prior to the Closing pursuant to this Agreement and documents as Buyer may reasonably request; and
- (f) the Transition Services Agreement executed by Seller.

**10.3 Deliveries by Buyer.** At or before the Closing, Buyer shall deliver to Seller, as applicable, the following:

- (a) the Purchase Price of the Assets in immediately available funds;
- (b) the Transition Services Agreement executed by Buyer;
- (c) evidence that all of the proceedings contemplated by Section 9.3 have been completed;
- (d) copies of any consents obtained as contemplated by Section 9.4;
- (e) certified copies of Buyer's resolutions adopted by the members of Buyer authorizing the Buyer to enter into and consummate this Agreement and of the transactions contemplated hereby;
- (f) each of the Related Agreements duly executed by Buyer to which it is a party; and
- (g) such other documents, instruments or writings required to be delivered to the Seller at or prior to the Closing pursuant to this Agreement.

## ARTICLE XI TERMINATION

### 11.1 Grounds for Termination.

- (a) This Agreement may be terminated at any time prior to the Closing:
  - (i) by mutual written agreement of the Seller and Buyer or as permitted in Section 2.2;

(ii) by Buyer upon written notice in the event of a material breach of any covenant or agreement to be performed or complied with by the Seller, or in the event of a material breach of any representation or warranty of the Seller, which breach would result in a condition to Closing set forth in Article VIII hereof becoming incapable of fulfillment or cure (which condition has not been waived by the Buyer in writing), or in the event any of the conditions to Closing set forth in Article VIII hereof shall not be satisfied;

(iii) by Seller upon written notice in the event of a material breach of any covenant or agreement to be performed or complied with by the Buyer, or in the event of a material breach of any representation or warranty of the Buyer, pursuant to the terms of this Agreement which breach would result in a condition to Closing set forth in Article IX hereof becoming incapable of fulfillment or cure (which condition has not been waived by the Seller in writing);

(iv) by either Seller or Buyer if there shall be any law or administrative regulation enacted or adopted by any Authority that would prohibit the Closing of the Sale or if consummation of the transactions contemplated hereby would violate any nonappealable final order of any court or Authority having competent jurisdiction (other than the Court); or

(v) by either Seller or Buyer if the Court shall have issued an order which has become final and nonappealable restricting or restraining in a material manner or enjoining or otherwise prohibiting or making illegal the effectuation of the transactions contemplated by this Agreement.

The party desiring to terminate this Agreement pursuant to this Section 11.1 shall give written notice of such termination to the other party hereto.

**11.2 Effect of Termination.** If this Agreement is terminated as permitted by Section 11.1, and except as set forth in this Section 11.2, this Agreement will forthwith become null and void, and there will be no liability or obligation on the part of either party thereto (or their respective directors, officers, employees, agents, consultants, advisors, other representatives, or affiliates) and Seller shall promptly return to Buyer any Earnest Money Deposit if Seller holds the same; provided, however, that nothing contained in this Agreement will relieve any party from any liability arising from such party's (A) willful failure to fulfill a condition to the performance of the obligations of the other party, (B) failure to perform a covenant of this Agreement, or (C) breach of any representation or warranty or agreement contained herein. If this Agreement is terminated as set forth in Section 11.1(a)(iii) or due to the Buyer's refusal or failure to timely close the Sale transactions described herein in the event that all of the conditions to Buyer's obligations set forth in Article X have been satisfied (or otherwise waived by Buyer), then Seller's sole remedy shall be to retain the Earnest Money Deposit as full liquidation of those damages and Seller shall have no further recourse against Buyer.

Notwithstanding anything to the contrary contained herein, neither Buyer nor Seller shall be entitled to recover consequential damages from the other.

**11.3 Effect of Divestiture Order.** In the event that any Authority orders the divestiture of all or a portion of the Assets by the Buyer (the "Divested Assets"), then Seller and Buyer shall cooperate with each other in arranging for a prompt disposition of the Divested Assets to another entity and the net proceeds of any such disposition shall be delivered to the Buyer. The foregoing right of the Buyer to the net proceeds of disposition shall be the sole and exclusive recourse by the Buyer on account of such divestiture. In no circumstances, however, shall the Seller, be required to return any portion of the Earnest Money Deposit or the Purchase Price to the Buyer on account of such divestiture.

## **ARTICLE XII GENERAL PROVISIONS**

**12.1 Amendment.** This Agreement may be amended at any time only in a writing executed by each of the parties hereto.

**12.2 Extension; Waiver.** At any time before the Closing, any party to this Agreement which is entitled to the benefits thereof may (i) extend the time for the performance of any of the obligations of another party hereto, (ii) waive any misrepresentation (including an omission) or breach of a representation or warranty of another party hereto, whether contained herein or in any exhibit, schedule or document delivered pursuant hereto, or (iii) waive compliance of another party hereto with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid if set forth in a written instrument signed by the party or parties giving the extension or waiver.

**12.3 Notices.** All notices and other communications required or permitted hereunder shall be in writing (including telefax or similar writing) and shall be given,

(a) If to Seller, to:

Steven B. Towbin, Esq.  
Robert W. Glantz, Esq.  
Shaw Gussis Fishman Glantz Wolfson & Towbin LLC  
321 North Clark Street, Suite 800  
Chicago, IL 60610  
Telephone No. (312) 541-0151  
Fax No. (312) 980-3888

(b) If to Buyer, to:

Scott Conery  
1380 Enterprise Parkway  
Ashland, OH 44805  
Telephone No. (419) 281-4089



Fax No. (419) 281-0366

With copies to:

Jack Vanosdall  
60 West Second Street  
Box 127  
Ashland, OH 44805  
Telephone No. (419) 289-6888  
Fax No. (419) 281-2461

or in either case, to such other person or to such other address or fax number as a party to whom notice is to be given may have furnished the other parties in writing by like notice. If mailed, any such communication shall be deemed to have been given on the third (3rd) business day following the day on which the communication is posted by registered or certified mail (return receipt requested). If notice is given by any other means, it shall be deemed to have been given when delivered to the address specified in this Section 12.3.

**12.4 Interpretation.** The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretations of this Agreement. Unless the context otherwise requires, terms (including defined terms) used in the plural include the singular, and vice versa.

**12.5 Counterparts.** This Agreement may be executed in two or more facsimile counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**12.6 Miscellaneous.** This Agreement (i) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof; (ii) is not intended to and shall not confer upon any person, association or entity, other than the parties hereto, any rights or remedies with respect to the subject matter or any provision hereof; and (iii) shall inure to the benefit of and shall be binding upon each of Buyer and Seller and their respective successors and assigns, including, without limitation any trustee appointed or elected in Seller's proceedings.

**12.7 Exclusive Jurisdiction.** The parties hereby agree that, without limitation of any party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder or the transactions contemplated herein; and (ii) any and all claims, actions, causes of action, suits and proceedings relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent and submit to the jurisdiction of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.3 hereof.

**12.8 AS IS. SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE ASSETS ON AN "AS IS WITH ALL FAULTS" BASIS, AND THAT, BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE ASSETS, INCLUDING, WITHOUT LIMITATION: (i) the quality, nature, adequacy and physical condition of the Assets, including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities and appliances, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Sellers' premises, (iv) the compliance of the Assets with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasigovernmental entity or of any other person or entity, (v) the presence of Hazardous Substance on, under or about the Sellers' premises or the adjoining or neighboring property, (vi) the quality of any labor and materials used in any improvements on the Sellers' premises, and (viii) the economics of the operation of the Business.**

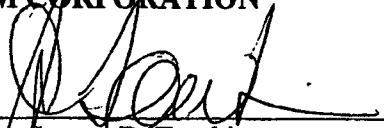
**12.9 Time of the Essence.** Time is of the essence with respect to the performance by Buyer and Seller of all of their respective obligations under this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**


IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**SELLER:**

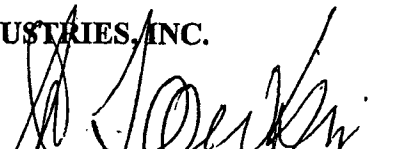
**HEDSTROM CORPORATION**

By:   
Name: Steven B. Towbin  
Title: Attorney in fact

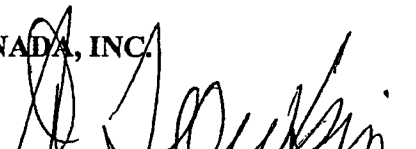
**ERO, INC.**

By:   
Name: Steven B. Towbin  
Title: Attorney in fact


**ERO INDUSTRIES, INC.**

By:   
Name: Steven B. Towbin  
Title: Attorney in fact


**ERO CANADA, INC.**

By:   
Name: Steven B. Towbin  
Title: Attorney in fact

**ERO MARKETING, INC.**

By:   
Name: Steven B. Towbin  
Title: Attorney in fact

**PRISS PRINTS, INC.**

By:   
Name: Steven B. Towbin  
Title: Attorney in fact

**IMPACT, INC.**

By: \_\_\_\_\_  
Name: Steven B. Towbin  
Title: Attorney in fact

**BUYER:**

**VICTORY LANE OIL, INC.,** an Ohio corporation

By: \_\_\_\_\_ 10/17/04  
Name: Scott A. Conery  
Title: President

**IMPACT, INC.**


By: \_\_\_\_\_

  
Name: Steven B. Towbin  
Title: Attorney in fact

**BUYER:**

**VICTORY LANE OIL, INC., an Ohio  
corporation**

By: \_\_\_\_\_

  
Name: Scott A. Conery  
Title: President

Ball, Bounce and Sport Division							
Trademarks							
Schedule 2.1(d)							
NAME	CATEGORY	COUNTRY	REG_NO	ISSUED	EXPIRES		
BALL PIT	TOYS & GYM SETS	USA	1,882,353	03/07/95	03/07/05		
BALL PIT	TOYS & GYM SETS	CANADA	466,079	11/19/96	11/19/11		
BALL PIT	TOYS & GYM SETS	MEXICO	622,943	09/17/99	09/17/09		
BEST SHOT	GYMS SETS, ASHL	GREAT BRITAIN	B1,487,906	01/14/92			
COOL KITS	ASHLAND	USA	2,186,641	09/01/98	09/01/08		
GOOF BALLS	ASHLAND	USA	2,394,528	10/17/00	10/17/10		
GOOF BALLZ BY APR	ASHLAND PLAYBAL	USA					
HEDS UP	ASHLAND	USA	2,245,756	05/18/99	05/18/09		
HEDSTROM	GENERAL	USA	1,842,855	07/05/94	07/05/04		
HEDSTROM	GENERAL (NEW GC	CANADA	448,541	10/06/95	10/06/10		
HEDSTROM	GENERAL	ARGENTINA	1,686,849	09/11/98	09/11/08		
HEDSTROM	GENERAL	AUSTRALIA	718,885	10/07/96	10/07/06		
HEDSTROM	GENERAL	BRAZIL	819681156	07/27/99	07/27/09		
HEDSTROM	GENERAL	EUROPEAN	389,643	08/20/98	10/29/06		
HEDSTROM	GENERAL	NEW ZEALAND	267,751	10/01/96	10/01/03		
HEDSTROM	GENERAL	ISRAEL	108,340	02/04/98	10/29/03		
HEDSTROM	GENERAL	JAPAN	4,289,894	07/02/99	07/02/09		
HEDSTROM	GENERAL	MEXICO	538,900	12/17/96	12/17/06		
HEDSTROM	GENERAL	COSTA RICA	104,758	11/24/97	11/24/07		
HEDSTROM	GENERAL	CHINA	1,318,187	09/28/99	09/28/09		
HEDSTROM	GENERAL	CHILE	530,107	12/17/98	12/17/08		
HEDSTROM	GYMS, TOYS, BALL	GREAT BRITAIN	1,487,778	01/13/92	01/13/06		
HEDSTROM	GENERAL NEW GO	USA	1,842,855	07/05/94	07/05/04		
HEDSTROM LOGO & DESIGN	GENERAL	USA	1,421,818	12/23/86	12/23/06		
ROMP N SLIDE	BALL PITTS	USA	2,289,069	10/26/99	10/26/09		
SHARKY'S SPLASH ATTACK	ASHLAND	USA	2,226,586	02/23/99	02/23/09		
SUPER SOFT	ASHLAND	USA	1,454,764	08/25/87	08/25/07		
SWIPE	ASHLAND	USA	2,462,654	06/19/01	06/19/11		
TEAM SPIRIT	ASHLAND	GREAT BRITAIN	B1,487,908	01/14/92			
TRIPLE PLAY	ASHLAND	USA	2,242,004	04/27/99	04/27/09		
WACKY WONDER	ASHLAND	USA	2,104,117	10/07/97	10/07/07		
WACKY WONDER	ASHLAND	CANADA	485,096	10/31/97	10/31/12		

Schedule 2.1(d) IntellectualProperty

QUICK PLAY SPORTS							
G2 AIR							
QUARTERBACK JACK							
BOUNZING BUDDY							
SURFSIDE SPORTS							
ROLL 'N RASCALS							
FLITTER CRITTERS							
TUFF STUFF							
HOP ALONG							
HOOP HOP							
SOC HOP							
FUN HOP							
SNO SPEEDSTER							
<b>Ball, Bounce and Sport Division</b>							
<b>Patents</b>							
<b>Schedule 2.1(d)</b>							
<b>NAME</b>	<b>CATEGORY</b>	<b>DESCRIPT</b>	<b>COUNTRY</b>	<b>REG_NO</b>	<b>ISSUED</b>		
BALL PIT & BALLS	GYM SETS	PATENT SEARCH	USA	366,511	01/23/96		
BARREL BALL PIT & CRAWL PIT	BALL PITS	BARREL STYLE BALL PIT AND CRAWL BALL PIT	USA	379,209	05/13/97		
FABRIC COATED SLED	ASHLAND / ERO	FABRIC SLED	USA	5,893,570	10/25/98		
FOAM BALL	ASHLAND	FOAM SWIRL BALLS	USA	D483,822	12/16/03		
INFLATABLE EXERCISE DEVICE	ASHLAND	INFLATABLE EXERCISE DEVICE	USA	6,068,580	02/23/98		
RUFF N TUMBLE INFLATABLE	BALL PITS	INFLATABLE BALL PIT	USA	393,686	04/21/98		

Schedule 4.1(a) Trademark License Assignments

Ball, Bounce and Sport Division		Trademark Assignments		Schedule 4.1(a)	
NAME	CATEGORY	COUNTRY	REG. NO	ISSUED	EXPIRES
BALL PIT	TOYS & GYM SETS	USA	1,882,353	03/07/95	03/07/05
BALL PIT	TOYS & GYM SETS	CANADA	486,079	11/19/96	11/19/11
BEST SHOT	TOYS & GYM SETS	MEXICO	622,943	09/17/99	09/17/09
COOL KITS	GYMS SETS, ASHLAND PLAYBALLS	GREAT BRITAIN	B1,487,906	01/14/92	
GOOF BALLS	ASHLAND	USA	2,186,641	09/01/98	09/01/08
GOOF BALLZ BY APR	ASHLAND PLAYBALL OPPOSITION	USA	2,394,528	10/17/00	10/17/10
HEDS UP	ASHLAND	USA			
HEDSTROM	GENERAL	USA	2,245,756	05/18/99	05/18/09
HEDSTROM	GENERAL	USA	1,842,855	07/05/94	07/05/04
HEDSTROM	GENERAL (NEW GOODS)	CANADA	448,541	10/06/95	10/06/10
HEDSTROM	GENERAL	ARGENTINA	1,686,849	09/11/98	09/11/08
HEDSTROM	GENERAL	AUSTRALIA	718,885	10/07/96	10/07/06
HEDSTROM	GENERAL	BRAZIL	819,681,156	07/27/99	07/27/09
HEDSTROM	GENERAL	EUROPEAN	389,643	08/20/98	10/29/06
HEDSTROM	GENERAL	NEW ZEALAND	267,751	10/01/96	10/01/03
HEDSTROM	GENERAL	ISRAEL	108,340	02/04/98	10/29/03
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HEDSTROM	GENERAL	MEXICO	538,900	12/17/96	12/17/06
HEDSTROM	GENERAL	COSTA RICA	104,758	11/24/97	11/24/07
HEDSTROM	GENERAL	CHINA	1,318,187	09/28/99	09/28/09
HEDSTROM	GENERAL	CHILE	530,107	12/17/98	12/17/08
HEDSTROM	GYMS, TOYS, BALLS, GAMES	GREAT BRITAIN	1,487,778	01/13/92	01/13/06
HEDSTROM	GENERAL NEW GOODS	USA	1,842,855	07/05/94	07/05/04
HEDSTROM	GENERAL	USA	1,421,818	12/23/86	12/23/06
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SHARKY'S SPLASH ATTACK	ASHLAND	USA	2,226,586	02/23/99	02/23/09
SUPER SOFT	ASHLAND	USA	1,454,764	08/25/87	08/25/07
SWIPE	ASHLAND	USA	2,462,654	06/19/01	06/19/11
TEAM SPIRIT	ASHLAND	GREAT BRITAIN	B1,487,908	01/14/92	
TRIPLE PLAY	ASHLAND	USA	2,242,004	04/27/99	04/27/09
WACKY WONDER	ASHLAND	USA	2,104,117	10/07/97	10/07/07



Schedule 4.1(a) Trademark License Assignments

WACKY WONDER	ASHLAND					
QUICK PLAY SPORTS		CANADA	485,096	10/31/97	10/31/12	
G2 AIR						
QUARTERBACK JACK						
BOUNZING BUDDY						
SURFSIDE SPORTS						
ROLL 'N RASCALS						
FLUTTER CRITTERS						
TUFF STUFF						
HOP ALONG						
HOOP HOP						
SOC HOP						
FUN HOP						
SNO SPEEDSTER						

Schedule 4.1(a) Patent Assignments

NAME	CATEGORY	DESCRIPTION	COUNTRY	REG. NO	ISSUED	EXPIRES
BALL PIT & BALLS	GYM SETS	PATENT SEARCH				
BARREL BALL PIT & CRAWL PIT	BALL PITS	BARREL STYLE BALL PIT AND CRAWL BALL PIT	USA	366,511	01/23/96	01/23/10
FABRIC COATED SLED	ASHLAND / ERO	FABRIC SLED	USA	379,209	05/13/97	05/13/11
FOAM BALL	ASHLAND	FOAM SWIRL BALLS	USA	5,893,570	10/25/98	10/25/16
INFLATABLE EXERCISE DEVICE	ASHLAND	INFLATABLE EXERCISE DEVICE	USA	D483,822	12/16/03	12/17/17
RUFF N TUMBLE INFLATABLE	BALL PITS	INFLATABLE BALL PIT	USA	6,068,580	02/23/98	02/23/18
			USA	393,686	04/21/98	04/21/12

Additonal  
 Eagle  
 Cotton Candy  
 Luna - Geo  
 All-Star Shootout  
 @ utahline: extreme sports  
 Utah bounce  
 "N' string But Fun"  
 "

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
HEDSTROM CORPORATION, <i>et al.</i> ,	)	Case No. 04-38543
	)	(Jointly Administered)
	)	
Debtors.	)	Hon. Jack B. Schmetterer

**ORDER UNDER 11 U.S.C. §§ 105, 363, 365 AND 1146(c)  
AND FED. R. BANKR. P. 6004 AND 6006 (A) APPROVING AGREEMENT  
OF PURCHASE AND SALE WITH PURCHASER,  
(B) AUTHORIZING SALE OF ASSETS AND  
ASSUMPTION AND ASSIGNMENT OF ASSUMED EXECUTORY  
CONTRACTS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES  
AND INTERESTS, AND (C) GRANTING RELATED RELIEF**

This matter having come before the Court upon the Debtor's Emergency Motion to Authorize Sale of Certain Assets Outside the Ordinary Course of Business pursuant to Section 363 of the Bankruptcy Code of the above-captioned Debtors in these jointly administered Chapter 11 cases (together, the "Debtor"), dated October 18, 2004 (the "Motion"), for an Order under sections 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (i) approving the Asset Purchase Agreement dated as of October 18, 2004 (as amended from time to time, the "Sale Agreement"); for the sale (the "Asset Sale") of certain personal property and contracts (as more particularly described in

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<sup>1</sup> Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Motion or the Sale Agreement. In the event of any conflict in the meanings of defined terms, the definitions contained in the Sale Agreement shall control.

the Sale Agreement, the "Sale Assets") of the Debtor to Victory Lane Oil, Inc., or its designee (the "Purchaser"); (ii) authorizing the sale of the Sale Assets free and clear of all liens, claims, encumbrances and interests; (iii) by separate motion or motions filed by the Debtor, authorizing the assumption and assignment of certain executory contracts and unexpired leases (collectively, the "Contracts"); (iv) granting related relief; and a hearing having been held on October 27, 2004 (the "Sale Hearing"), at which time all interested parties were offered an opportunity to be heard with respect to the Asset Sale and the identification of the Purchaser; and the Court having considered (i) the Motion, (ii) any competing bids and objections to the Motion, and (iii) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors and other parties in interest, is not opposed by the Official Committee of Unsecured Creditors of the Debtors (the "Creditors' Committee") and, subject to the terms and conditions set forth herein, is approved under section 363(f) of the Bankruptcy Code by the Prepetition Lenders and Congress, the secured lenders to the Debtor (the "Secured Lenders"); and any and all objections having been resolved or overruled by the Court and upon the record of the Sale Hearing; and after due deliberation thereon and good cause appearing therefore:

IT IS HEREBY FOUND AND DETERMINED THAT:2

- A. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Motion are sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006.

C. As evidenced by the affidavits of service filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing and the Asset Sale has been provided in accordance with sections 102(I), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006, to all creditors and interested parties in the Debtor' above-captioned chapter 11 case, (ii) such notice was good and sufficient and appropriate under the particular circumstances, and (iii) no other or further notice of the Asset Sale, the Motion, or the Sale Hearing is required.

D. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including (i) the Office of the United States Trustee for the Northern District of Illinois; (ii) counsel for the Purchaser; (iii) counsel for the Secured Lenders; (iv) all entities known to have expressed an interest in a transaction with respect to the Sale Assets during the six (6) months prior to the date of the Motion; (v) all entities known to have an Interest (as defined below) in the Sale Assets; (vi) all federal, state, and local regulatory or taxing authorities or recording offices which have a known interest in the relief requested by the

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

Motion; (vii) all parties to the Contracts; (viii) the United States Attorney's office; (ix) the Internal Revenue Service; (x) all creditors and other parties in interest; and (xi) all other entities that have filed requests for notices in the Debtor's chapter 11 cases pursuant to Bankruptcy Rule 2002.

E. The Debtor has full power and authority to consummate the transactions contemplated by the Sale Agreement. No consents or approvals, other than those expressly provided for in the Sale Agreement, are required for the Debtor to consummate such transactions.

F. Approval of the Sale Agreement and consummation of the transactions contemplated therein (the "Transactions") at this time are in the best interests of the Debtor's estate and their respective creditors.

G. The Debtor has demonstrated (i) a good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Transactions pursuant to section 363(b) of the Bankruptcy Code.

H. The Sale Agreement was negotiated, proposed and entered into by and between the Purchaser and the Debtor at arms' length, without collusion and in good faith. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. Neither the Purchaser nor the Debtor have engaged in any conduct that would cause or permit the Sale Agreement to be avoided under section 363(n) of the Bankruptcy Code.

I. There is no need for a stay of this Order under Bankruptcy Rule 6004(g) as the Purchaser is acting in good faith within the meaning of section 363(m) of the Bankruptcy Code, and there is no need to delay closing the Transactions contemplated under the Sale Agreement at any time after the entry of this Order.

J. The Sale Agreement is the highest and best offer for the Sale Assets and will provide an equal or greater recovery for the Debtor's estate than would be provided by any other practical, available alternative.

K. The consideration provided by the Purchaser for the Sale Assets pursuant to the Sale Agreement constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and applicable non-bankruptcy law.

L. The transfer of the Sale Assets to the Purchaser pursuant to the Sale Agreement will be a legal, valid, and effective transfer of the Sale Assets, and vests or will vest the Purchaser with all right, title, and interest of the Debtor to the Sale Assets free and clear of:

- (i) any security interests, conditional sales or other title retention agreements, pledges, liens, claims, judgments, demands, encumbrances, rights of set-off, reversionary rights, due on sales rights (including, without limitation, claims, and encumbrances (i) that purport to give to any party a right or option to effect any forfeiture, modification or termination of the Debtor's or the Purchaser's interests in the Sale Assets or (ii) in respect of ~~of tenets~~, easements, restrictions, rights of first refusal, charges or interests of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership) (collectively, the "Interests"), and

- (ii) debts arising under, relating to, or in connection with any acts of the Debtor, claims (as that term is defined in section 101(5) of the Bankruptcy Code), obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, claims and encumbrances (i) that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of any of the Debtor's or the Purchaser's interests in the Sale Assets, or any similar rights, or ~~in~~ <sup>(ii)</sup> ~~respect of taxes, or (iii)~~ that relate to pollution or other adverse effects on human health, the WARN Act, or worker's compensation) (collectively, "Claims");

in each case, with the exception of those Claims and Interests expressly assumed in connection with the Sale Agreement (all such assumed Claims and Interests, including, without limitation, the Assumed Liabilities, the "Assumed Claims and Interests"). Claims and Interests other than the Assumed Claims and Interests shall attach to the Debtor's interest in the proceeds of the Asset Sale (the "Sale Proceeds") in the same order of priority in which they attached to the Sale Assets.

M. The Debtor may sell the Sale Assets free and clear of all Interests because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests who did not object, or who withdrew their objections, to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. The Secured Lenders have consented to the relief sought hereby on the terms and conditions set forth herein. Any holders of Interests that may object are adequately protected by having their Interests, if any, attach to the Sale Proceeds.



NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND  
DECREED THAT:

**General Provisions**

1. The Motion be, and hereby is, GRANTED.
2. All objections to the Motion or the relief requested thereby that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits.

**Approval of Sale Agreement**

3. The Sale Agreement (including all of the related documents, exhibits, schedules, lists and agreements) and the transactions contemplated thereby be, and hereby are, approved in all respects.
4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized and directed to execute, deliver and consummate the Asset Sale, pursuant to and in accordance with the terms and conditions of the Sale Agreement and the instruments and agreements contemplated thereby.
5. The Debtor is empowered to perform under, consummate and implement, the Sale Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Sale Agreement, and to take all further actions as may reasonably be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to possession, the Sale Assets, or as may be necessary or appropriate, to the performance of the obligations as contemplated by the Sale Agreement.

### Transfer of Sale Assets

6. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Sale Assets shall be transferred to the Purchaser upon consummation of the Sale Agreement, and such transfer shall be, free and clear of (a) all Interests, and (b) all <sup>existing</sup> Claims, in either case subject to the Assumed Claims and Interests. All Interests and Claims other than the Assumed Claims and Interests shall attach to the Debtor's interest in the Sale Proceeds in the same order of priority, and with the same validity, force and effect which they now have as against the Sale Assets, subject to any claims and defenses the Debtor may possess with respect thereto.

7. Except as expressly permitted by the Sale Agreement, all <sup>noted</sup> persons and entities holding Interests or Claims of any kind and nature with respect to the Sale Assets, and their successors or assigns, are hereby enjoined from asserting, prosecuting or otherwise pursuing such Interests and <sup>existing</sup> Claims of any kind and nature against the Purchaser, its successors or assigns, or the Sale Assets.

8. The Secured Lenders and their successors or assigns are deemed to consent to the Sale Agreement pursuant to section 363(f) of the Bankruptcy Code and all of their Claims and Interests shall attach to the Sale Proceeds at Closing. The Sale Proceeds shall be delivered to the Secured Lenders pursuant to the joint written instructions provided to Debtor's counsel by counsel to the Secured Lenders, or, in the alternative, pursuant to an order of the Court resolving the allocation of the Sale Proceeds between the Secured Lenders. Pending delivery of the Sale Proceeds to the Secured Lenders, the Sale Proceeds shall be held by counsel to the Debtors in trust for the Secured Lenders.

9. To the extent permitted under applicable law and only as to parties who have received notice of the Motion, Purchaser is not a successor to Debtor or the Business and shall not incur any liability as such successor, nor shall Purchaser otherwise be liable for any of the Interests and Claims other than the Assumed Claims and Interests, and each holder of any of the Interests and Claims other than the Assumed Claims and Interests is hereby permanently enjoined from commencing, continuing or otherwise pursuing or enforcing any remedy or claim, cause of action or encumbrance against Purchaser related thereto.

**Assumption and Assignment to Purchaser  
of Assumed Contracts and Assumed Leases**

10. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the closing of the Asset Sale, the Debtor's assumption and assignment to the Purchaser of the contracts and leases described on Exhibits A-D attached hereto (collectively, the "Essential Contracts") is hereby approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

11. The Debtor is hereby authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code, to (a) assume and assign to the Purchaser or its designee(s), effective upon the Closing of the Asset Sale, the Essential Contracts free and clear of all Claims and Interests, other than the Assumed Claims and Interests; (b) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Essential Contracts to the Purchaser; and (c) make immaterial modifications to the Sale Agreement prior to the Closing of the Asset Sale.

12. The Essential Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Essential Contract (including those described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtor and its estate shall be relieved from any further liability for any breach of such Essential Contracts occurring after such assumption and assignment. The Purchaser shall enjoy all of the rights and benefits under each such Essential Contract without the necessity of obtaining each respective non-Debtor party's written consent to the Debtor's assumption and assignment thereof.

13. The Cure Amounts shall be paid to the counterparties to the Essential Contracts by the Purchaser as a condition to assumption and assignment thereof pursuant to Bankruptcy Code § 365, which payments shall be in full and final satisfaction of all obligations and as full compensation to the counterparties for any pecuniary losses under such Essential Contracts pursuant to Bankruptcy Code § 365(b)(1).

14. Each non-Debtor party to an Essential Contract hereby is forever barred, estopped, and permanently enjoined from asserting against the Purchaser, or its property, any default or breach under any Essential Contract, any claim of lack of consent or any other condition to assignment thereof, or any counterclaim, defense, setoff, right of recoupment or any other claim asserted or assertable against the Debtor, arising under or related to the Essential Contracts and existing as of the Closing Date or arising by reason of the Asset Sale.

### Additional Provisions

15. The consideration provided by the Purchaser for the Sale Assets under the Sale Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

16. The consideration provided by the Purchaser for the Sale Assets under the Sale Agreement is fair and reasonable and may not be avoided under section 363(n) of the Bankruptcy Code.

17. On the Closing Date, this Order will be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Sale Assets or a bill of sale transferring good and marketable title in such Sale Assets to the Purchaser. Each and every federal, state, and local governmental agency or department is hereby ~~directed~~<sup>permitted</sup> to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Sale Agreement.

18. On the Closing Date, each of the Debtor's creditors is authorized and directed to execute such documents prepared by Debtor or Purchaser and to take all other actions as may be reasonably necessary to release its Interests in or Claims against the Sale Assets, if any, as may have been recorded or may otherwise exist.

19. This Order (a) is and shall be effective as a determination that, subject to the Assumed Claims and Interests, and subject to the terms and provisions of this Order, on the Closing Date, all Interests and Claims of any kind or nature whatsoever existing as to the Sale Assets prior to the Closing Date have been unconditionally released, discharged and terminated,

and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Sale Assets, *in accord with the usual procedures*

21. Any provision limiting the assignment of any Essential Contract shall be null, void and of no force and effect in connection with the assignment to the Purchaser.

22. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, registrations or other documents or agreements evidencing Claims against or Interests in the Sale Assets shall not have delivered to the Debtor prior to the Closing Date, in proper form for filing or registration and executed by the appropriate parties, termination statements, instruments of satisfaction, and/or releases of all Claims or Interests which such person or entity has with respect to the Sale Assets, each of the Debtor and the Purchaser is hereby authorized and directed to execute and file or register such statements, instruments, releases, registrations and other documents on behalf of the person or entity with respect to the Sale Assets.

23. All entities who are presently, or on the Closing Date may be, in possession of some or all of the Sale Assets are hereby directed to surrender possession of the Sale Assets to the Purchaser on the Closing Date. All entities who may come into possession of some or all of

the Sale Assets or the proceeds of the Sale Assets subsequent to the Closing Date are hereby directed to promptly surrender possession of same to the Purchaser, including but not limited to the proceeds of any Accounts Receivable purchased by Purchaser and deposited in the Debtor's accounts after the Closing Date.

24. The Purchaser shall have no liability or responsibility for any <sup>existing</sup> liability or other obligation of the Debtor arising under or related to the Sale Assets other than for the Purchase Price and the Assumed Claims and Interests.

25. Other than the Assumed Claims and Interests and the payment of the Purchase Price, the sale, transfer, assignment and delivery of the Sale Assets shall not be subject to any Interests or Claims, and Interests or Claims of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtor. Upon payment of the Purchase Price and assumption of the Assumed Liabilities, all persons holding Interests in or Claims against the Sale Assets of any kind or nature whatsoever (other than persons holding Assumed Claims and Interests) shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests or Claims of any kind or nature whatsoever against the Purchaser, its property, its successors and assigns, its affiliates or the Sale Assets, with respect to any Interest or Claims of any kind or nature whatsoever such person or entity had, has, or may have against or in the Sale Assets. Following the Closing Date (including, but not limited to, the payment of the Purchase Price and the assumption of the Assumed Claims and Interests), no holder of an Interest in or Claim (other than holders of Assumed Claims and Interests) against the Debtor shall interfere with the Purchaser's title to or use and enjoyment of the Sale Assets based on or related to such Interests or Claims and all such

Claims and Interests, to the extent relating to the Sale Assets, shall be and hereby are channeled, transferred and attached solely and exclusively to the Sale Proceeds.

26. Nothing contained in any chapter 11 plan confirmed in these cases or the order of confirmation confirming any such plan shall conflict with or derogate from the provisions of the Sale Agreement or the terms of this Order.

27. Upon the granting of this Order by this Court, with respect to the Sale Agreement, including the assumption and assignment of the Contracts approved and authorized herein or by separate order of the Court, the Purchaser shall be entitled to the protection of section 363(m) of the Bankruptcy Code. The transactions contemplated by the Sale Agreement are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of this Order and the authorization to consummate the transactions provided herein shall not affect the validity of any transfer under the Sale Agreement and this Order to the Purchaser, unless such transfer is duly stayed pending such appeal.

28. The Purchaser shall be entitled, in its capacity as good faith purchaser, to have representatives, agents, or employees present at the Debtors' business from the date of this Order through the date of Closing to ensure the preservation of all assets subject to the Sale Agreement and otherwise ensure that the Transactions contemplated under the Sale Agreement are fully consummated, and shall not by virtue of such presence be deemed to have acted by or on behalf of the Debtor or in any other capacity assumed any obligations, duties, liabilities of any kind whatsoever of the Debtor.



29. The terms and provisions of the Sale Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their respective estates, and their respective creditors and interest holders, the Purchaser, and its affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting a Claim against or Interest in the Sale Assets to be sold to the Purchaser pursuant to the Sale Agreement.

30. The failure specifically to include or to reference any particular provision of the Sale Agreement in this Order shall not diminish or impair the effectiveness of such provision.

31. Nothing contained in any order of any type or kind entered in these chapter 11 cases, or any related proceeding, subsequent to entry of this Order, shall conflict with or derogate from the provisions of the terms of this Order.

32. The Sale Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by the parties thereto, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement is not material and upon at least one (1) business day notice to the Secured Lenders.

33. This Court retains jurisdiction to:

- (a) Interpret, implement and enforce the terms and provisions of this Order and the terms of the Sale Agreement, all amendments thereto and any waivers and consents thereunder and of each of the agreements executed in connection therewith;
- (b) Compel delivery of the Sale Assets to the Purchaser;

- (c) Resolve any disputes arising under or related to the Asset Sale to the Purchaser, including, without limitation, resolving Cure Amounts owing to counterparties to the Essential Contracts; and
- (d) Adjudicate all issues concerning alleged liens and other Claims and any other alleged Interests in and to the Sale Assets or the Sale Proceeds, including the extent, validity, enforceability, priority and nature of all such alleged liens and other Claims and any other alleged interests relating to the Sale Proceeds.

34. Notwithstanding Bankruptcy Rules 6004(g), 6006(d) and 7062, this Order shall be effective and enforceable immediately upon entry. The Court expressly finds that there is no reason for delay in the implementation of this Order.

35. Notwithstanding other provisions in this Order or the Sale Agreement, that in addition to the terms of the Sale Agreement, any molds, tools, jigs, dyes or related equipment not owned by the Debtor shall be deemed Excluded Assets and specifically excluded from the Sale Assets.

36. All net proceeds paid by the Purchaser to the Debtor for the Sale Assets shall be paid by the Debtor to the Secured Lenders in accordance with Paragraph 8 above, and shall be applied (i) in accordance with the Order Authorizing Debtors To: (A) Use Cash Collateral on an Interim Basis; (B) Incur Postpetition Debt; and (C) Grant Adequate Protection and Provide Security and Other Relief to Congress Financial Corporation (Central) as Lender, entered by the Court on October 19, 2004 (the "Interim Financing Order") to the extent paid to Congress; and (ii) in accordance with the applicable loan documents to the extent paid to the Prepetition

Lenders. Provided however, that nothing contained in this paragraph shall prejudice the rights of any party in interest or the Official Committee of Unsecured Creditors with respect to any objection to the claims of any of the Secured Lenders, subject to the terms of the Interim Financing Order.

37. Nothing contained in this Order, the Motion or the Sale Agreement shall be deemed to constitute the assumption or the assumption and assignment of (a) that certain License Agreement dated January 2, 2001, between Hedstrom Corporation and HIT Entertainment PLC, as amended, and (b) that certain Retail License Agreement dated July 1, 2002 between ERO Industries, Inc. and The Wiggles Touring Pty. Limited.

Dated: Chicago, Illinois  
October 29, 2004

**ENTERED**

OCT 29 2004

JACK B. SCHMETTERER BANKRUPTCY JUDGE  
UNITED STATES BANKRUPTCY COURT

Hon. Jack B. Schmetterer  
United States Bankruptcy Judge

**EXHIBIT A**

<b>Licensor</b>	<b>Property</b>	<b>License Name on Contract</b>	<b>Cure Amount</b>
MTV Networks	Rugrats, Rocket Power, Spongebob Squarepants, Jimmy Neutron, Dora the Explorer, FOP (L)	Hedstrom Corp.	\$65,916.74
Studio Licensing	Blues, Dora, Spongebob, Jimmy Neutron, Rocket Power, Rugrats (L)	Hedstrom Corp.	\$366.64
Warner Bros.	Scooby Doo	Hedstrom Corp.	\$19,397.94

**Hedstrom Ashland  
Ball, Bounce, Sport Division  
Warehouses Leases**

<b>Warehouse</b>	<b>Location</b>	<b>Landlord</b>	<b>Landlord Address</b>	<b>Cure Amount</b>
Plant 2	1401 Jacobson Ave Ashland Ohio 44805	JDD Properties	1649 Haymarket Way Hudson, Ohio 44236	18,574.41
Reno	900 N Hills Blvd Reno Nevada 89506 Building #3	Prologis Trust	c/o Bank of America File # 73103 PO Box 60000 San Francisco California	-
Carrollton	1501 Kelly Boulevard Carrollton Texas 75006	Belt Line Business Center Limited Partnership	2225 Beltline Rd suit 321 Carrollton Texas 75006	33,207.40
Dothan	400 West Carroll Street Dothan Alabama 36301	Wiregrass Warehouse Inc	4590 Mobile Highway Montgomery Alabama 36108	9,868.39
Cambridge Ontario	130 Turnbull Court Cambridge, Ontario Canada	Graceland Properties LTD	675 Riverbend Drive Kitchener, Ontario Fax: 519-742-1841	
Faro Services	3275 Alum Creek Drive Columbus, Ohio	Faro Services	Same	45,278.65



**Hedstrom Ashland  
Bail, Bounce, Sport Division  
Equipment Leases**



Xerox	Xerox	DC425asc	13,139.34
Xerox	Xerox	DC1632	
Xerox	Xerox	DC1632	
Xerox	Xerox	DC545	
Xerox	Xerox	DC412	
Xerox	Xerox	DC545	
Xerox	Xerox	DC1632	
Xerox	Xerox	DC412	
Xerox	Xerox	DC412	
Xerox	Xerox	DC412	
Xerox	Xerox	DC412	
Xerox	Xerox	DC412	
Xerox	Xerox	WRKCTR Fax	
Xerox	Xerox	WRKCTR Fax	
Xerox	Xerox	WRKCTR Fax	
Konica	Imagistics	[REDACTED]	134.36
Xerox	Xerox	DC425	
Konica	Konica Bus Machines	9615 Fax	
Canon	IOS Capital	GP200D Fax	239.15
Pitney Bowes	Pitney Bowes	Folder (1)	
Pitney Bowes	Pitney Bowes	Mail Machine (1)	1,754.75
Pitney Bowes	Pitney Bowes	Mail Machine (1)	
Pitney Bowes	Pitney Bowes	Scale (1)	
Pitney Bowes	Pitney Bowes	Mail Machine (1)	
Pitney Bowes	Pitney Bowes	Scale (1)	
Pitney Bowes	Pitney Bowes	Mefer	
	Raymond Leasing	Lift Truck	2,105.52
	Shirks Forklift	GCS25 Lift Truck	956.69
Mansfield Business Systems	De Lage Landed Fin Sen Digital Riso Duplicatc Model RP3790		2,115.20
Armstrong Cable	Armstrong Cable	Fiber Optics Lease	2,442.90
Armstrong Cable	Armstrong Cable	Fiber Optics Lease	
Armstrong Cable	Armstrong Cable	Zoom Cable Internet	
Time Warner	Time Warner	RoadRunner	1,171.35



(1) These items are paid on a quarterly basis

**TRADEMARK**

**Hedstrom Ashland  
Ball, Bounce, Sport Division  
Services**



BF1 Waste Disposal 40 Yard on call 532.08  
BF1 Waste Disposal 40 Yard on call Cardboard  
BF1 Waste Disposal 40 Yard on call Cardboard

Xerox DC412 Maintenance 0.00

Delph Solutions Phone system maintenance 0.00



**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
HEDSTROM CORPORATION, <i>et al.</i> ,	)	Case No. 04-38543
	)	(Jointly Administered)
	)	
Debtors.	)	Hon. Jack B. Schmetterer

**ORDER SETTING AUCTION AND SALE HEARING DATE, APPROVING SALE  
TERMS AND PROCEDURES, AND APPROVING PROCEDURES FOR THE  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS**

Upon consideration of the emergency motion (“Motion”)<sup>1</sup> of the Hedstrom Corporation and certain of its affiliates (the “Hedstrom Companies”)<sup>2</sup> made pursuant to 11 U.S.C. §§ 363 and 365 and Fed. R. Bankr. P. 2002, 6004, 6006, 9007, 9008, and 9014, requesting the entry of an order (a) authorizing the sale of certain of the Hedstrom Companies’ assets (the “Purchased Assets”) to Victory Lane Oil, Inc., or its designee (“Buyer”), pursuant to the terms herein and the Asset Purchase Agreement, dated as of October 18, 2004, attached to the Motion as Exhibit “A” (the “APA”); (b) authorizing the Hedstrom Companies to offer the Purchased Assets for sale at auction pursuant to the terms provided for in the Motion and herein; (c) approving (i) the Terms and Procedures, and (ii) the Notice Procedures; and (d) authorizing a procedure for the designation, assumption and assignment of certain executory contracts; the Court having determined that the relief requested in the Motion is in the best interests of the Hedstrom

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<sup>1</sup> Unless otherwise defined, capitalized terms herein carry the same meaning ascribed to them in the Motion.

<sup>2</sup> The Hedstrom Companies are: Hedstrom Corporation; Ero, Inc.; Ero Industries, Inc.; Ero Canada, Inc.; and Priss Prints Inc.



Companies, their estates and creditors; all objections to the Motion having been withdrawn or overruled, it appearing that due and proper notice of the Motion having been given and that no other or further notice is necessary; and after finding that good and sufficient cause appears therefore on the record; it is **ORDERED**:

1. The Hedstrom Companies are authorized to proceed with the sale of the Purchased Assets to Victory Lane Oil, Inc. ("Buyer") pursuant to the terms of the APA, and subject to the Terms and Procedures, as amended by this Order.

2. The form of the APA, as amended by this Order, is approved for use in connection with the sale of the Purchased Assets, *subject to amendments recited on the record this date.*

3. The Hedstrom Companies are authorized to offer the Purchased Assets for sale at the Auction pursuant to the terms provided for in the Motion and the APA; provided however, that the Terms and Procedures and the APA are hereby amended as follows:

- a. The Prepetition Lenders and Congress (collectively the "Lenders") are deemed Qualified Bidders and may credit bid under 11 U.S.C. §363(k), subject to the following conditions:
  - i. The Break-up Fee and Working Capital Contribution component of a Lender's bid must be for cash;
  - ii. The component of the Lender's bid for the Purchased Assets that are not subject to that Lender's undisputed first priority lien claim must be for cash; and
  - iii. The Court shall determine upon timely motion of any party in interest, including any secured creditor, the allocation of a Lender's bid

between the credit and the cash components thereof.

- b. Except for a Lender that has submitted a competitive bid at the Auction, the Lenders shall be permitted to conduct joint discussions with the Hedstrom Companies and the Buyer or any other Qualified Bidder;
- c. Except for a Lender that has submitted a competitive bid at the Auction, the Hedstrom Companies shall consult with the Lenders during the Bid Analysis;
- d. At least one (1) day prior to the Bid Deadline, Barrier Advisors and Buyer, shall, upon the request of any Potential Bidder, provide an accounting of the Working Capital Contribution paid to date and an estimate of total Working Capital Contribution to be made prior to the Auction;
- e. At the Auction Barrier Advisors and Buyer shall provide to each Qualified Bidder an accounting of the total Working Capital Contribution made;
- f. In addition to the provisions of the APA, the Working Capital Contribution shall be made by Buyer without recourse to any of the Lenders; and
- g. The initial overbid ("Overbid") must exceed the Purchase Price (as defined in the APA) by the Break-up Fee, plus the Working Capital Contribution, and plus Fifty Thousand Dollars (\$50,000.00).

4. The terms, conditions and procedures contained in the Motion, as modified by this Order, specifically including, without limitation, the Terms and Procedures, Overbid and Break-up Fee, and the form and manner of sale notice to be sent to parties in interest (the "Notice"), are proper and adequate, and are all approved.

5. To the extent that they are paid to the Buyer as a result of the Bidding Procedures,

the Break-Up Fee and the Working Capital Contribution shall remain free and clear of any claim or lien of any secured creditors and the sale proceeds resulting from such components of the Winning Bid shall be paid directly to the Buyer at Closing from the sale proceeds.

6. The procedures for the designation, assumption and assignment of executory contracts, as set forth in the Motion, are approved.

7. The Auction is set for 11:00 a.m. on October 28, 2004 at the offices of Shaw Gussis Fishman Glantz Wolfson & Towbin LLC, 321N. Clark Street, Suite 800 Chicago, Illinois 60610.

8. The hearing to approve the sale of the Purchased Assets to the Buyer and to approve the assumption and assignment of the Essential Contracts and certain of the Designated Contracts (as defined in the Motion) shall be held on October 29, 2004 at 11:00 a.m. before the Honorable Jack B. Schmetterer, Courtroom 682, 219 South Dearborn Street, Chicago, Illinois.

**ENTERED**

ENTER:

OCT 19 2004

Dated: \_\_\_\_\_

JACK B. SCHMETTERER BANKRUPTCY Judge  
UNITED STATES BANKRUPTCY COURT  
United States Bankruptcy Judge

**Prepared By:**

Steven B. Towbin (#2848546)  
Robert W. Glantz (#6201207)  
Allen J. Guon (#6244526)  
James T. Teich (#6273149)  
Shaw Gussis Fishman Glantz  
Wolfson & Towbin LLC  
321 North Clark Street, Suite 800  
Chicago, Illinois 60610  
(312) 541-0151 telephone  
(312) 980-3888 facsimile