

TRADEMARK ASSIGNMENT

Electronic Version v1.1
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SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	MERGER		
EFFECTIVE DATE:	10/05/2004		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
United Design Corporation		10/05/2004	CORPORATION: OKLAHOMA
RECEIVING PARTY DATA			
Name:	The Encore Group, Inc.		
Street Address:	10740 Thornmint Rd.		
City:	San Diego		
State/Country:	CALIFORNIA		
Postal Code:	92127-2700		
Entity Type:	CORPORATION: CALIFORNIA		
PROPERTY NUMBERS Total: 25			
Property Type	Number	Word Mark	
Registration Number:	2519472	CAMEO GIRLS	
Registration Number:	2450236	LIFE ECHOES	
Registration Number:	2310895	CLASSIC CRITTERS	
Registration Number:	2317857	GARDEN GUARDIANS	
Registration Number:	2292226	UNITED DESIGN	
Registration Number:	2310557	BEAN LINGO	
Registration Number:	2327638	CUPID THE GIFT OF LOVE	
Registration Number:	2400398	EARTH ECHOS	
Registration Number:	1993370	STONE GARDEN	
Registration Number:	1971518	FANCY FRAMES	
Registration Number:	1927509	ANIMAL CLASSICS	
Registration Number:	1721986	ITTY BITTY CRITTERS	
Registration Number:	2247435	CELTIC CROSSINGS	

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Registration Number:	2271165	SNOW ZONE
Registration Number:	2278771	CANDLELIGHTS
Registration Number:	2239920	POT FEET
Registration Number:	2179632	SECRET BLESSINGS
Registration Number:	2186842	FRAME-LOGY
Registration Number:	2181607	HIDE & KEEP
Registration Number:	1902734	STONE GARDEN
Registration Number:	1841741	ANIMAL MAGNETISM
Registration Number:	1884991	STONE CRITTERS THE ANIMAL COLLECTION
Registration Number:	1844475	THE LEGEND OF SANTA CLAUS
Registration Number:	1530910	STONE CRITTERS
Registration Number:	1497752	UNITEDSIGN

CORRESPONDENCE DATA

Fax Number: (858)535-1616
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 858-535-9400
 Email: rpolcyn@fisherthurber.com
 Correspondent Name: Randall S. Polcyn
 Address Line 1: 4225 Executive Square, Suite 1600
 Address Line 4: La Jolla, CALIFORNIA 94111

ATTORNEY DOCKET NUMBER:	709.03
NAME OF SUBMITTER:	Randall S. Polcyn
Signature:	/Randall S. Polcyn/
Date:	10/03/2005

Total Attachments: 40

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, dated as of October 5, 2004 (the "Agreement"), is entered into by and among THE ENCORE GROUP, INC., a California corporation ("Encore"), UD MERGER CORPORATION, a newly formed Oklahoma corporation ("Merger Sub"), UNITED DESIGN CORPORATION, an Oklahoma corporation (the "Company"), CHARTERHOUSE EQUITY PARTNERS III, L.P., a Delaware limited partnership ("CEP III"), and CHEF NOMINEES LIMITED, a company registered in England and Wales ("CHEF").

WITNESSETH:

WHEREAS, Encore and the Company desire that the Merger Sub merge with and into the Company (the "Merger"); and

WHEREAS, CEP III and Chef, own all of the outstanding shares of Company Preferred Stock (as hereinafter defined); and

WHEREAS, the Company and the Preferred Shareholders are making certain representations, warranties and indemnities as an inducement to Encore to enter into this Agreement; and

WHEREAS, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Glossary attached hereto as Exhibit A.

NOW, THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements contained herein, the parties hereto, intending to be legally bound, agree as follows:

**ARTICLE I
THE MERGER**

Section 1.1. The Merger. Upon the terms and subject to the conditions of this Agreement, at the Effective Time (as defined in Section 1.2) in accordance with the Oklahoma General Corporation Act ("OGCA"), Merger Sub shall be merged with and into the Company and the separate existence of Merger Sub shall thereupon cease. The Company shall be the surviving corporation in the Merger and is hereinafter sometimes referred to as the "Surviving Corporation."

Section 1.2. Effective Time of the Merger. Subject to the terms and conditions hereof, the Merger shall become effective upon the date and at the time of the filing of the certificate of merger substantially in the form of Exhibit B hereto (the "Certificate of Merger") with the Secretary of State of the State of Oklahoma (the "Effective Time") (such filing is hereinafter referred to as the "Merger Filing").

**ARTICLE II
THE SURVIVING CORPORATION**

Section 2.1. Certificate of Incorporation. The Articles of Incorporation of the Company, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation of the Surviving Corporation after the Effective Time, as the same may thereafter be amended in accordance with its terms and as provided under the applicable corporate laws of the State of Oklahoma.

Section 2.2. Bylaws. The Bylaws of the Company as in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation after the Effective Time, as the same may thereafter be amended in accordance with their terms and as provided by the applicable corporate laws of the State of Oklahoma.

Section 2.3. Directors. The directors of the Surviving Corporation shall be as designated in Schedule 2.3, and such directors shall serve in accordance with the Bylaws of the Surviving Corporation until their respective successors are duly elected or appointed and qualified.

Section 2.4. Officers. The officers of the Surviving Corporation shall be as designated in Schedule 2.4, and such officers shall serve in accordance with the Bylaws of the Surviving Corporation until their respective successors are duly elected or appointed and qualified.

**ARTICLE III
CONVERSION OF SHARES; CLOSING**

Section 3.1. Merger Consideration. Subject to the provisions of this Article III, at the Effective Time, by virtue of the Merger and without any further action on the part of Encore, Company, Merger Sub or their respective shareholders:

(a) each issued and outstanding share of capital stock of Merger Sub shall be converted into and become one fully paid and nonassessable share of common stock of the Surviving Corporation; and

(b) all of the Company's (i) common stock (herein collectively the "Company Common Stock") issued and outstanding to the shareholders of the Company shall be cancelled for no consideration to the holders thereof; and (ii) Series B Preferred Stock (herein collectively the "Company Preferred Stock") issued and outstanding to CEP and Chef (herein collectively the "Preferred Shareholders") immediately prior to the Effective Time shall be converted into the right to receive (i) at Closing, 3,229.87 shares of Encore's Series A Preferred Stock having a stated value of \$1,017.38 per share (the "Stated Value") and (ii) upon the sale of the Real Estate, the Contingent Payment described in Section 7.7 hereof (herein collectively the "Merger Consideration"), such Merger Consideration to be allocated among the Preferred Shareholders (proportionately based on the number of shares of Company Series B Preferred Stock owned by them immediately prior to the Effective Time) as set forth on Schedule 3.1(b).

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(c) Notwithstanding the foregoing, Dissent Shares shall not be cancelled, as herein provided, but rather the holders of Dissent Shares shall be entitled to payment of the fair value of such Dissent Shares in accordance with the applicable provisions of the OGCA; provided, however, that if any such holder shall fail to perfect or otherwise shall waive, withdraw or lose the right to receive payment of fair market value under the OGCA, then the right of such holder to be paid the fair value of such holder's Dissent Shares shall cease and such Dissent Shares shall be deemed to have been cancelled as of the Merger Effective Time as provided above.

Section 3.2. Exchange of Certificates. At Closing, immediately after the Effective Time, Encore will issue in the name of each Preferred Shareholder upon surrender of all certificates of Company Preferred Stock (the "Certificates") for cancellation, together with such other customary documents as may be required, the certificates representing shares of Encore Series A Preferred Stock to be issued to such Preferred Shareholder as provided for in Section 3.1, and the Certificates so surrendered shall forthwith be canceled. The certificates representing shares of Encore Series A Preferred Stock shall be delivered, at Closing, to the Preferred Shareholders.

Section 3.3. Stock Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers of the Company Common Stock or Company Preferred Stock thereafter on the records of the Company.

Section 3.4. No Further Ownership Rights. The Encore Series A Preferred Stock delivered upon the surrender for exchange of shares of Company Preferred Stock in accordance with the terms hereof, together with the payment of the Contingent Payment, if any, upon the sale of the Real Estate, shall be deemed to have been issued in full satisfaction of all rights pertaining to same.

Section 3.5. Taking of Necessary Action; Further Action. Each of Encore, Merger Sub and the Company will take all such reasonable and lawful action as may be necessary or appropriate in order to effectuate the Merger in accordance with this Agreement as promptly as possible. If, at any time after the Effective Time, any such further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company and Merger Sub, the officers and directors of the Company and Merger Sub in office immediately prior to the Effective Time are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

Section 3.6. Closing. The closing (the "Closing") of the transactions contemplated by this Agreement shall take place at a location mutually agreeable to Encore and the Company in Winston-Salem, North Carolina, on the date of this Agreement (the "Closing Date").

Section 3.7. Payment of Debt. Simultaneously with the Closing of the Merger, Encore shall pay to Republic Bank & Trust, by wire transfer of immediately available funds, \$____, such sum representing all amounts outstanding under the Loan Agreement dated as of December 19, 2000 by and between the Company and Republic Bank & Trust.

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF ENCORE**

Encore represents and warrants to the Company as follows:

Section 4.1. Organization and Qualification. Each of Encore and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation and has the requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as it is now being conducted. Each of Encore and Merger Sub is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the properties owned, leased, or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified and in good standing is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect. Set forth on Schedule 4.1 of the Encore Schedules is a list of all states in which Encore and Merger Sub is qualified to do business as a foreign corporation. True, accurate and complete copies of Encore's Articles of Incorporation, as amended, and Bylaws, in each case as in effect on the date hereof, including all amendments thereto, have heretofore been delivered to Charterhouse.

Section 4.2. Capitalization.

(a) The authorized capital stock of Encore consists of (i) 4,000,000 shares of common stock ("Encore Common Stock"), of which 9,061.45 shares are issued and outstanding and (ii) 1,000,000 shares of preferred stock, of which 4,212.78 shares have been designated Series A Preferred Stock and upon consummation of the Merger, 3,229.87 shares will be issued and outstanding. As of the date of this Agreement there are, and as of Closing there will be, no other shares of capital stock of Encore issued and outstanding except as provided above. All of such issued and outstanding shares of Encore Common Stock (i) are validly issued and are fully paid, nonassessable and, free and clear of all restrictions, liens, claims and encumbrances, except as set forth on Schedule 4.2(a) of the Encore Schedules and (ii) were not issued in violation of any preemptive rights. Upon issuance, all such shares of Series A Preferred Stock shall have been validly issued, fully paid, nonassessable and, free and clear of all restrictions, liens, claims and encumbrances, except as set forth in Schedule 4.2(a) of the Encore Schedules and or in violation of any preemptive rights.

(b) Except as set forth on Schedule 4.2(b) of the Encore Schedules, there are no outstanding (i) subscriptions, options, calls, contracts, commitments, understandings, restrictions, arrangements, rights or warrants, including any right of conversion or exchange under any outstanding security, debenture, instrument or other agreement obligating Encore or any shareholder of Encore to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of the capital stock of Encore or obligating the Encore or any shareholder of Encore to grant, extend or enter into any such agreement or commitment or (ii) obligations of Encore or any shareholder of Encore to repurchase, redeem or otherwise acquire any securities referred to in clause (i) above. Except as set forth on Schedule 4.2(b) of the Encore Schedules, there are no voting trusts, proxies or other agreements or understandings to which Encore or any

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shareholder of Encore is a party or is bound with respect to the voting of any shares of capital stock of Encore.

Section 4.3. Subsidiaries. Set forth on Schedule 4.3 of the Encore Schedules is a complete list of the Subsidiaries of Encore. Except as set forth on Schedule 4.3 of the Encore Schedules, Encore does not hold any equity interest in or control (directly or indirectly, through the ownership of securities, by contract, by proxy, alone or in combination with others, or otherwise) any corporation, limited liability company, partnership, business organization or other Person. Each Subsidiary is duly incorporated or organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization and has all powers and all material governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted. Each Subsidiary is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary. All outstanding shares of capital stock of each Subsidiary have been duly authorized and validly issued and are fully paid and non-assessable, and none of such shares have been issued in violation of any preemptive right, right of first refusal or similar right. Except as set forth in Schedule 4.3 of the Encore Schedules, all of the outstanding capital stock or other voting securities of each Subsidiary is owned by Encore, directly or indirectly, free and clear of any Lien and free of any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other voting securities). There are no outstanding (i) securities of Encore or any of its Subsidiaries convertible into or exchangeable for shares of capital stock or voting securities of any of its Subsidiaries or (ii) options or other rights to acquire from Encore or any of its Subsidiaries, or other obligation of Encore or any of its Subsidiaries to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of any of its Subsidiaries (the items in clauses (i) and (ii) of this Section 4.3 being referred to collectively as the "Subsidiary Securities").

Section 4.4. Authority; Non-Contravention; Approvals.

(a) Each of Encore and Merger Sub has full corporate power and authority to execute, deliver and perform its obligations under this Agreement and, subject to the Encore Required Statutory Approvals (as defined in Section 4.4(c)), to consummate the transactions contemplated hereby. This Agreement has been approved by the Board of Directors of Encore and Merger Sub and the shareholders of Merger Sub, and no other corporate proceedings on the part of Encore or Merger Sub or are necessary to authorize the execution and delivery of this Agreement or the consummation by Encore or Merger Sub of the transactions contemplated hereby. This Agreement has been duly executed and delivered by Merger Sub and Encore, and, assuming the due authorization, execution and delivery hereof by UDC, CEP III and Chef, constitutes a valid and legally binding agreement of Encore and Merger Sub enforceable against it in accordance with its terms, except that such enforcement may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and (ii) general equitable principles.

(b) The execution and delivery of this Agreement by Encore and Merger Sub and the consummation by Encore and Merger Sub of the transactions contemplated hereby do not and will not violate or result in a breach of any provision of, or constitute a default (or an

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event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or result in the creation of any lien, security interest, charge or encumbrance upon any of the properties or assets of Encore, Merger Sub or any Subsidiary of Encore under any of the terms, conditions or provisions of (i) the charter or bylaws of Encore, Merger Sub or any Subsidiary of Encore, (ii) any statute, law, ordinance, rule, regulation, judgment, decree, order, injunction, writ, permit or license of any court or governmental authority applicable to Encore, Merger Sub, any Subsidiary of Encore or any of their respective properties or assets (assuming compliance with the matters referred to in Section 4.4(c)), or (iii) any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument, obligation or agreement of any kind to which Encore, Merger Sub or any Subsidiary of Encore is now a party or by which the Encore or Merger Sub or any of their respective properties or assets may be bound or affected except, in the case of clauses (ii) and (iii), for matters disclosed on Schedule 4.4(b) of the Encore Schedules or that would not have, or could not reasonably likely be anticipated to have, individually or in the aggregate, a Material Adverse Effect or materially impair the ability of Encore or Merger Sub to consummate the transactions contemplated by this Agreement.

(c) Except for the making of the Merger Filing with the Office of the Secretary of State of the State of Oklahoma, federal and state securities ("blue sky") laws filings and such other filings required connection with the Merger as set forth in Schedule 4.4(c) of the Encore Schedules (herein collectively referred to as the "Encore Required Statutory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental or regulatory body or authority is necessary for the execution and delivery of this Agreement by Encore or Merger Sub or the consummation by Encore and Merger Sub of the transactions contemplated hereby, other than such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not made or obtained, as the case may be, would not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect or materially impair the ability of Encore or Merger Sub to consummate the transactions contemplated by this Agreement.

Section 4.5. Financial Statements. Except as disclosed on Schedule 4.5 of the Encore Schedules, the audited and/or reviewed consolidated financial statements and unaudited interim consolidated financial statements of Encore listed on Schedule 4.5 of the Encore Schedules (collectively, the "Encore Financial Statements"), copies of which have been furnished to CEP III and Chef, fairly present in all material respects the financial position of Encore and its Subsidiaries as of the dates thereof and the results of its operations and cash flows for the periods then ended, subject, in the case of the unaudited interim financial statements, to normal year-end adjustments and any other adjustments described therein.

Section 4.6. Absence of Undisclosed Liabilities. Except as disclosed in Schedule 4.6 of the Encore Schedules, there are no liabilities of Encore or any Subsidiary of Encore (whether absolute, accrued, contingent or otherwise) of any nature, other than liabilities, obligations or contingencies (i) which would not be required to be provided for in an audited balance sheet or disclosed in the notes thereto that is prepared in accordance with GAAP or (ii) which, individually or in the aggregate, are not material to Encore.

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Section 4.7. Absence of Certain Changes or Events. Since August 31, 2004, the business of Encore and each Subsidiary of Encore has been conducted in the ordinary course of business consistent with past practices, and there has not been any event, occurrence, development or state of circumstances or facts which is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect.

Section 4.8. Litigation. Except as described in Schedule 4.8 of the Encore Schedules, there are no material claims, suits, actions, claims under any applicable Environmental Laws, inspections, or proceedings pending or, to the knowledge of Encore, threatened against Encore or any Subsidiary of Encore before any court, governmental department, commission, agency, instrumentality, authority, or any mediator or arbitrator. To the knowledge of Encore, there are no investigations pending or threatened against Encore or any Subsidiary of Encore. Except as described in Schedule 4.8 of the Encore Schedules, neither Encore nor any of its Subsidiaries is subject to any material judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality, authority, or any mediator or arbitrator.

Section 4.9. Accounts Receivable. All accounts receivable of Encore and its Subsidiaries reflected on the Encore Financial Statements represent sales actually made in the ordinary course of business. Except as set forth on Schedule 4.9 of the Encore Schedules, since December 31, 2003, there have not been any write-offs as uncollectible of any receivables, except for write-offs in the ordinary course of business and consistent with past practices, none of which are greater than \$25,000 for any single customer.

Section 4.10. Laws and Regulations.

(a) Encore and each of its Subsidiaries have complied in all material respects during the last two years, and are in compliance in all material respects, with all applicable laws, rules, regulations and codes, and all permits pertaining to the Business.

(b) Encore and each of its Subsidiaries has been granted all licenses and approvals from government regulatory bodies necessary for the conduct of the Business engaged in by Encore and each of its Subsidiaries, the absence of which would have a Material Adverse Effect on the conduct of the Business as conducted as of the date of this Agreement. All of such licenses and approvals (to the extent required to operate) are currently valid and in full force and effect. Set forth on Schedule 4.10(b) of the Encore Schedules is a true and complete list of all federal and state permits, required or held in connection with the Business as currently conducted by Encore and each of its Subsidiaries as of the date of this Agreement. There are no proceedings pending or, to the best of Encore's knowledge, threatened against Encore or any of its Subsidiaries which question the existence, continuation or scope of any of the foregoing. There has been no notice served with respect to any violation of any law or permit issued by any governmental agency to which Encore or any of its Subsidiaries is subject and which would have a material adverse effect on the Business following Closing. To the best of Encore's knowledge, none of the transactions contemplated by this Agreement will terminate, violate, or limit the effectiveness of, any such permit.

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(c) (i) No Hazardous Material has been released into the environment or disposed of by Encore or any of its Subsidiaries on owned, leased or operated by Encore or any of its Subsidiaries ("Encore Real Properties"), nor, to the best of Encore's knowledge, has the Encore Real Properties been used by any person as a landfill, toxic waste dump or a waste disposal site, or for the handling, treatment, storage or disposal of any solid waste or Hazardous Materials, except in accordance in all material respects with Environmental Law, (ii) all wastes, including hazardous wastes (as defined under Environmental Law) and, to the best of Encore's knowledge, all other Hazardous Material generated in the operation of the Business has been disposed of in accordance with all applicable federal and state laws, and (iii) no Hazardous Material is being or has been treated, stored (except in the ordinary course), reclaimed, recycled or disposed by or on behalf of Encore or any of its Subsidiaries, except in each case in accordance in all material respects with Environmental Law.

Section 4.11. Insurance. Schedule 4.11 of the Encore Schedules sets forth a list of all insurance policies owned by Encore or any of its Subsidiaries or by which Encore, or any of Encore's Subsidiaries or any of their respective properties or assets is covered against present losses, all of which are in full force and effect as of the date of this Agreement. No insurance carrier has denied any claims made against any of the policies listed on Schedule 4.11 of the Encore Schedules.

Section 4.12. Taxes.

(a) Schedule 4.12 of the Encore Schedules lists the jurisdictions (domestic and foreign) in which Encore or any of its Subsidiaries has filed federal, foreign, state and local income, excise, franchise, property, sales, use, employment, and other tax returns and employment tax returns.

(b) (i) Encore and its Subsidiaries have filed all necessary federal, state, local and foreign tax returns and reports and all Taxes shown by such Tax Returns to be due and payable have been paid; (ii) the most recent financial statements for Encore reflect an adequate accrual for all Taxes payable by Encore or any of its Subsidiaries for periods through the date of the financial statements; (iii) there is no Tax deficiency which has been, or to the knowledge of Encore, might be, asserted against Encore or any of its Subsidiaries which would have a Material Adverse Effect on the Business; (iv) neither Encore nor any of its Subsidiaries is now being audited by any federal, state, or local tax authorities; (v) no material issues relating to Taxes were raised by any tax authority in any completed audit or examination of Encore that can reasonably be expected to recur in a later taxable period; (vi) Encore and each of its Subsidiaries has made all required deposits for Taxes applicable to the current and immediately preceding tax year; and (vii) all Tax Returns of Encore and each of its Subsidiaries filed within the last three years were prepared in accordance with the relevant rules and regulations of each taxing authority having jurisdiction over them and are true and complete in all material respects.

(c) Neither Encore neither Encore nor any of its Subsidiaries has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to an assessment or deficiency.

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(d) Neither Encore neither Encore nor any of its Subsidiaries is a party to nor is bound by (nor will Encore, prior to the Closing, become a party to or become bound by) any Tax indemnity, Tax sharing or Tax allocation agreement.

(e) Neither Encore neither Encore nor any of its Subsidiaries has ever been a member of an affiliated group of corporations within the meaning of Section 1504 of the Code.

(f) Neither Encore nor any of its Subsidiaries has agreed to make, nor is required to make, any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise.

(g) There are no liens for Taxes (other than for current Taxes not yet due and payable) upon the assets of Encore or any of its Subsidiaries.

(h) No amount or other entitlement that could be received (whether in cash or property or the vesting of property) as a result of any of the transactions contemplated by this Agreement by any director, officer, employee or independent contractor of Encore who is a "disqualified individual" (as such term is defined in proposed Treasury Regulation Section 1.280G-1) under any Employee Benefit Plan described on Schedule 4.13(a) of the Encore Schedules or other compensation arrangement currently in effect would be characterized as an "excess parachute payment" (as such term is defined in Section 280G(b)(1) of the Code) and no such disqualified individual is entitled to receive any additional payment from Encore, from any of its Subsidiaries, or from any other person in the event that the excise tax required by Section 4999(a) of the Code is imposed on such disqualified individual.

Section 4.13. Employee Benefit Plans.

(a) Each Employee Benefit Plan maintained by Encore or its Subsidiaries is listed on Schedule 4.13 of the Encore Schedules and incorporated herein. Neither Encore nor any of its Subsidiaries has maintained any other plan, fund, program or arrangement whether or not funded and whether oral or written under which it has present or future obligations or liability. A true and complete copy of each Employee Benefit Plan has been provided to the Company.

(b) Each Employee Benefit Plan intended to be "qualified" within the meaning of Section 401(a) of the Code, is so qualified and a favorable determination letter has been issued by the Internal Revenue Service with respect to each such plan.

(c) Each Employee Benefit Plan conforms in all material respects and has been administered in all material respects with the applicable requirements of ERISA and, where applicable, Section 401(a) of the Code, and has not incurred any federal income or excise tax liability.

(d) All reports and information required by law to be filed within the last three years with the United States Department of Labor, Internal Revenue Service or Pension Benefit

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Guaranty Corporation, or distributed to plan participants and their beneficiaries with respect to the Employee Benefit Plans, have been timely filed and/or distributed.

(e) None of the Employee Benefit Plans are subject to Title IV of ERISA.

(f) There have been no "prohibited transactions" (as defined in Section 4975 of the Code or in Section 406 of ERISA) with respect to any Employee Benefit Plan, nor any fiduciary violations as defined in Section 404 of ERISA. No penalty or tax under Section 402(i) of ERISA or Sections 4971 and 4975 of the Code has been imposed upon Encore or any of its Subsidiaries.

(g) There are no threatened or pending claims by or on behalf of the Employee Benefit Plans by any employee or beneficiary covered under these benefit plans, or otherwise involving any of the Employee Benefit Plans which allege a violation of ERISA or any other law or a breach of any fiduciary duties which might result in liability on the part of Encore, any of its Subsidiaries, or any Employee Benefit Plan, nor is there any basis for such a claim.

(h) None of the Employee Benefit Plans is a "multiemployer plan" within the meaning of section 4001(a)(3) of ERISA. There are no retiree medical benefits for retired employees.

(i) Neither Encore nor any of its Subsidiaries has, nor could they reasonably be expected to incur, any unfunded liabilities in relation to any Employee Benefit Plan (other than liabilities relating to claims for benefits in the normal course and liabilities which have been appropriately accrued), and all benefits, contributions and premiums relating to each Employee Benefit Plan have been timely paid or made in accordance with the terms of such Employee Benefit Plan and the terms of all applicable laws.

Section 4.14. Employee and Labor Matters. Set forth on Schedule 4.14 of the Encore Schedules is a list of (i) any employment or consulting agreements with officers or other employees of Encore or any of its Subsidiaries, or any other person, to which Encore or any of its Subsidiaries is a party, and (ii) any incentive compensation plans in effect for employees of Encore or any of its Subsidiaries. Neither Encore nor any of its Subsidiaries is a party to any collective bargaining agreement or employment agreements, or any agreement for the provision of consulting or other professional services which is not cancelable without penalty on not more than ninety (90) days notice. No collective bargaining agreement is currently being negotiated by Encore or any of its Subsidiaries. To the best of Encore's knowledge, there are no union organizational drives in progress with respect to any employees of Encore or any of its Subsidiaries and there has been no request for collective bargaining or for an employee election from any union or from the National Labor Relations Board with respect to any employees of Encore or any of its Subsidiaries.

Section 4.15 OSHA. Except as set forth on Schedule 4.15 of the Encore Schedules, (i) Encore and each of its Subsidiaries has complied in all material respects with all applicable laws relating to employee health and safety affecting or related to the Business, and (ii) neither Encore nor any of its Subsidiaries has received any notice that any past or present conditions relating to

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such company and affecting or related to the Business violate any common law or other applicable legal requirements or that alleges or threatens any claim, proceeding, or investigation, based on or related to employee health and safety within the past five (5) years.

Section 4.16. Title to Assets. Except as set forth in Schedule 4.16 of the Encore Schedules, Encore and each of its Subsidiaries has good and marketable title to all their properties and assets, as reflected in the most recent balance sheet included in the Encore Financial Statements, except for properties and assets that have been disposed of in the ordinary course of business since the date of the latest balance sheet included therein, free and clear of all mortgages, liens, pledges, charges or encumbrances of any nature whatsoever, except (i) liens for current taxes, payments of which are not yet delinquent, (ii) such imperfections in title and easements and encumbrances, if any, as are not substantial in character, amount or extent and do not materially and adversely detract from the value, or materially and adversely interfere with the present use or marketability of the property subject thereto or affected thereby, or otherwise materially and adversely impair the business operations of Encore or any of its Subsidiaries (in the manner currently carried on by Encore and its Subsidiaries), or (iii) liens in favor of Sovereign Bank as security for the obligations due under the Encore Credit Facility.

Section 4.17. Owned Real Property. Schedule 4.17 of the Encore Schedules lists and generally describes all real property owned and/or leased by Encore and its Subsidiaries.

Section 4.18. Contracts, Agreements, Plans and Commitments. Schedule 4.18 of the Encore Schedules sets forth a complete list of the following contracts, agreements, plans and commitments (collectively, the "Material Contracts") to which Encore or any of its Subsidiaries is a party or by which Encore or any of its Subsidiaries or any of their properties is bound as of the date hereof:

- (a) any contract, lease, commitment or agreement that involves aggregate expenditures by Encore or any of its Subsidiaries of more than \$25,000 per year;
- (b) any indenture, loan agreement or note under which Encore or any of its Subsidiaries has outstanding indebtedness, obligations or liabilities for borrowed money;
- (c) any agreement that restricts the right of Encore or any of its Subsidiaries to engage in any type of business;
- (d) any partnership or joint venture agreement;
- (e) any agreement of surety, guarantee or indemnification with respect to which Encore or any of its Subsidiaries is the obligor, outside of the ordinary course of business; and
- (f) any contract, agreement, agreed order or consent agreement that requires Encore or any of its Subsidiaries to take any actions or incur expenses to remedy non-compliance with any Environmental Law.

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True, correct and complete copies of each of such Material Contract have been delivered to or made available for inspection by CEP III and Chef. All such Material Contracts (i) were duly and validly executed and delivered by Encore and, to Encore's knowledge, the other parties thereto and (ii) are valid binding obligations of Encore or a Subsidiary of Encore, as the case may be, and to Encore's knowledge, binding on the other parties thereto. Except as set forth on Schedule 4.18 of the Encore Schedules, to the best of Encore's knowledge, there are no counterclaims or offsets under any of such Material Contracts. The consummation of the Merger will vest in the Surviving Corporation all rights and benefits under the Material Contracts and the right to operate Encore's Business under the terms of the Material Contracts in the manner currently operated and used by Encore.

Section 4.19. Brokers and Finders. Except as set forth on Schedule 4.19 (for which Encore shall be responsible), neither Encore nor any of its Subsidiaries has entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of Encore or any of its Subsidiaries to pay any finder's fees, brokerage or agent commissions or other like payments in connection with the transactions contemplated hereby.

Section 4.20. Intellectual Property. Schedule 4.20 of the Encore Schedules contains a true and complete list of the material registered Intellectual Property owned by Encore or any of its Subsidiaries and used in the Business (collectively the "Encore Intellectual Property Rights"). Except as set forth on Schedule 4.20 of the Encore Schedules, neither Encore nor any of its Subsidiaries owns any patents. Except as set forth on Schedule 4.8 of the Encore Schedules, neither Encore nor any of its Subsidiaries has knowledge of any infringement by any other person of any material Encore Intellectual Property Rights, and neither Encore nor any of its Subsidiaries has entered into any agreement to indemnify any other party against any charge of infringement of any material Encore Intellectual Property Rights outside of the ordinary course of business. Neither Encore nor any of its Subsidiaries has knowledge that it violates or infringes any intellectual property right of any other person. Except as set forth in Schedule 4.8 of the Encore Schedules, neither Encore nor any of its Subsidiaries has received any communication alleging that it violates or infringes the intellectual property right of any other person and neither Encore nor any of its Subsidiaries has been sued for infringing any intellectual property right of another person. Except as set forth in Schedule 4.8 of the Encore Schedules, there is no claim or demand of any person pertaining to, or any proceeding which is pending or, to the knowledge of Encore, threatened, that challenges the rights of Encore or any of its Subsidiaries in respect of any material Encore Intellectual Property Rights, or that claims that any default exists under any material Encore Intellectual Property Rights. None of the material Encore Intellectual Property Rights is subject to any outstanding order, ruling, decree, judgment or stipulation by or with any court, tribunal, arbitrator, or other governmental authority.

Section 4.21. Certain Payments. Neither Encore nor any shareholder, officer, director, Subsidiary of Encore or, to Encore's knowledge, employee of Encore or any Subsidiary of Encore has paid or received or caused to be paid or received, directly or indirectly, in connection with the business of Encore (a) any bribe, kickback or other similar payment to or from any domestic or foreign government or agency thereof or any other person or (b) any contribution to any domestic or foreign political party or candidate (other than (x) from personal funds of such

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shareholder, officer, director or employee not reimbursed by Encore of any of its Subsidiaries or (y) as permitted by applicable law).

Section 4.22. Books and Records. The corporate minute books, and other corporate records of Encore and each of its Subsidiaries are true and correct in all material respects as in effect as of the date of this Agreement and accurately reflect in all material respects all proceedings of the board of directors and stockholders of Encore and each of its Subsidiaries as of the date of this Agreement.

Section 4.23. Customers. Except for the customers and/or accounts named in Schedule 4.23 of the Encore Schedules (herein the "Encore Key Customers"), neither Encore nor any of its Subsidiaries has a single customer and/or account to whom it made more than 5% of its total sales during its most recent fiscal year. During the past twelve months, neither Encore nor any of its Subsidiaries has (i) received any written complaint from an Encore Key Customer concerning its products and services, other than complaints in the ordinary course of business that are reasonably likely not to have, individually or in the aggregate, a Material Adverse Effect, or (ii) been informed in writing by any Encore Key Customer named in Schedule 4.23 of the Encore Schedules, that such Encore Key Customer expects to significantly reduce the products it will buy from Encore. No Key Customer listed on Schedule 4.23 of the Encore Schedules has informed Encore or any of its Subsidiaries that such Encore Key Customer intends to change its relationship with Encore or any of its Subsidiaries in any material manner because of the consummation of the transactions contemplated by this Agreement.

Section 4.24. Investment Intent. Encore is acquiring the Company Common Stock as part of the Merger for its own account with no present intention of reselling or otherwise distributing any such stock or participating in a distribution of such stock in violation of the Securities Act of 1933, or any applicable state securities laws.

Section 4.25 No Activity. Merger Sub is a newly formed Oklahoma corporation established for the sole purpose of carrying out the Merger described herein, and as such has not engaged in any business activities prior to the date hereof. Encore owns all of the issued and outstanding capital stock of Merger Sub which consists solely of 100 shares of common stock, par value \$0.01 per share.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES
OF THE COMPANY**

The Company hereby makes the following representations and warranties to Encore.

Section 5.1. Organization and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation and has the requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as it is now being conducted. The Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the properties owned, leased, or operated by it or the nature of the business conducted by

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it makes such qualification necessary, except where the failure to be so qualified and in good standing is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect. Set forth on Schedule 5.1 of the Company Schedules is a list of all states in which the Company is qualified to do business as a foreign corporation. True, accurate and complete copies of the Company's Articles of Incorporation, as amended, and Bylaws, in each case as in effect on the date hereof, including all amendments thereto, have heretofore been delivered to Encore.

Section 5.2. Capitalization.

(a) The authorized capital stock of the Company consists of (i) 2,000,000 shares of Company Common Stock, par value \$0.01 per share, of which 39,325 shares are issued and outstanding and (ii) 1,000 shares of Company Preferred Stock, par value \$0.01 per share, of which 146.0806 shares are issued and outstanding having an aggregate face value of \$7,304,030. As of the date of this Agreement there are, and as of Closing there will be, no other shares of capital stock of the Company issued and outstanding except as provided above. All of such issued and outstanding shares of Company Common Stock and Company Preferred Stock (herein collectively the "Company Stock") (i) are validly issued and are fully paid, nonassessable and, free and clear of all restrictions, liens, claims and encumbrances, except as set forth on Schedule 5.2(a) of the Company Schedules and (ii) were not issued in violation of any preemptive rights.

(b) Except as set forth on Schedule 5.2(b) of the Company Schedules, there are no outstanding (i) subscriptions, options, calls, contracts, commitments, understandings, restrictions, arrangements, rights or warrants, including any right of conversion or exchange under any outstanding security, debenture, instrument or other agreement obligating the Company or any Company Shareholder to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of the capital stock of the Company or obligating the Company or any Company Shareholder to grant, extend or enter into any such agreement or commitment or (ii) obligations of the Company or any Company Shareholder to repurchase, redeem or otherwise acquire any securities referred to in clause (i) above. Except as set forth on Schedule 5.2(b) of the Company Schedules, there are no voting trusts, proxies or other agreements or understandings to which the Company or any Company Shareholder is a party or is bound with respect to the voting of any shares of capital stock of the Company.

Section 5.3. Subsidiaries. Set forth on Schedule 5.3 of the Company Schedules is a complete list of the Subsidiaries of the Company. Except as set forth on Schedule 5.3 of the Company Schedules, the Company does not hold any equity interest in or control (directly or indirectly, through the ownership of securities, by contract, by proxy, alone or in combination with others, or otherwise) any corporation, limited liability company, partnership, business organization or other Person. Each Subsidiary is duly incorporated or organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization and has all powers and all material governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted. Each Subsidiary is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary. All outstanding shares of capital stock of each Subsidiary have been duly authorized and validly issued and are fully paid and non-assessable, and none of such shares have been issued in

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violation of any preemptive right, right of first refusal or similar right. Except as set forth in Schedule 5.3 of the Company Schedules, all of the outstanding capital stock or other voting securities of each Subsidiary is owned by the Company, directly or indirectly, free and clear of any Lien and free of any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other voting securities). There are no outstanding (i) securities of the Company or any of its Subsidiaries convertible into or exchangeable for shares of capital stock or voting securities of any of its Subsidiaries or (ii) options or other rights to acquire from the Company or any of its Subsidiaries, or other obligation of the Company or any of its Subsidiaries to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of any of its Subsidiaries (the items in clauses (i) and (ii) of this Section 5.3 being referred to collectively as the "Subsidiary Securities").

Section 5.4. Authority; Non-Contravention; Approvals.

(a) The Company has full corporate power and authority to execute, deliver and perform its obligations under this Agreement and, subject to the Company Required Statutory Approvals (as defined in Section 5.4(c)), to consummate the transactions contemplated hereby. This Agreement has been approved by the Board of Directors and the Company Shareholders, and no other corporate proceedings on the part of the Company or are necessary to authorize the execution and delivery of this Agreement or the consummation by the Company of the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company, and, assuming the due authorization, execution and delivery hereof by Encore, constitutes a valid and legally binding agreement of the Company enforceable against the Company in accordance with its terms, except that such enforcement may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and (ii) general equitable principles.

(b) Except as set forth in Schedule 5.4(b) of the Company Schedules, the execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby do not and will not violate or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or result in the creation of any lien, security interest, charge or encumbrance upon any of the properties or assets of the Company or any Subsidiary under any of the terms, conditions or provisions of (i) the charter or bylaws of the Company or any Subsidiary, (ii) any statute, law, ordinance, rule, regulation, judgment, decree, order, injunction, writ, permit or license of any court or governmental authority applicable to the Company or any Subsidiary, or any of their respective properties or assets (assuming compliance with the matters referred to in Section 5.4(c)), or (iii) any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument, obligation or agreement of any kind to which the Company or any Subsidiary is now a party or by which the Company or any of its respective properties or assets may be bound or affected except, in the case of clauses (ii) and (iii), for matters that are not as would not have, or could not reasonably likely be anticipated to have, individually or in

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the aggregate, a Material Adverse Effect or materially impair the ability of the Company to consummate the transactions contemplated by this Agreement.

(c) Except for the Merger Filing with the Office of the Secretary of State of the State of Oklahoma and such other filings required in connection with the Merger as set forth in Schedule 5.4(c) of the Company Schedules, (herein collectively the "Company Required Statutory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental or regulatory body or authority is necessary for the execution and delivery of this Agreement by the Company or the consummation by the Company of the transactions contemplated hereby other than such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not made or obtained, as the case may be, is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect or materially impair the ability of the Company to consummate the transactions contemplated by this Agreement.

Section 5.5. Financial Statements. Except as disclosed on Schedule 5.5 of the Company Schedules, the audited and/or reviewed consolidated financial statements and unaudited interim consolidated financial statements of the Company listed on Schedule 5.5 of the Company Schedules (collectively, the "Company Financial Statements"), copies of which have been furnished to Encore, fairly present in all material respects the financial position of the Company and its Subsidiaries as of the dates thereof and the results of its operations and cash flows for the periods then ended, subject, in the case of the unaudited interim financial statements, to normal year-end adjustments and any other adjustments described therein.

Section 5.6. Absence of Undisclosed Liabilities. Except as disclosed in Schedule 5.6 of the Company Schedules, there are no liabilities of the Company or any Subsidiary (whether absolute, accrued, contingent or otherwise) of any nature, other than liabilities, obligations or contingencies (i) which would not be required to be provided for in an audited balance sheet or disclosed in the notes thereto that is prepared in accordance with GAAP or (ii) which, individually or in the aggregate, are not material to the Company.

Section 5.7. Absence of Certain Changes or Events. Since August 31, 2004, the business of the Company and its Subsidiaries has been conducted in the ordinary course of business consistent with past practices, and there has not been any event, occurrence, development or state of circumstances or facts which is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.8. Litigation. Except as described in Schedule 5.8 of the Company Schedules, there are no material claims, suits, actions, claims under any applicable Environmental Laws, inspections, or proceedings pending or, to the knowledge of the Company or any of its Subsidiaries, threatened against the Company before any court, governmental department, commission, agency, instrumentality, authority, or any mediator or arbitrator. To the knowledge of the Company, there are no investigations pending or threatened against the Company or any of its Subsidiaries. Except as described in Schedule 5.8 of the Company Schedules, neither the Company nor any of its Subsidiaries is subject to any material judgment, decree, injunction, rule

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or order of any court, governmental department, commission, agency, instrumentality, authority, or any mediator or arbitrator.

Section 5.9. Accounts Receivable. All accounts receivable of the Company and its Subsidiaries reflected on the Company Financial Statements represent sales actually made in the ordinary course of business. Other than as described in Schedule 5.9 of the Company Schedules, since December 31, 2003, there have not been any write-offs as uncollectible of any receivables, except for write-offs in the ordinary course of business and consistent with past practices, none of which are greater than \$25,000 for any single customer.

Section 5.10. Laws and Regulations.

(a) Except as set forth on Schedule 5.10 of the Company Schedules, the Company and its Subsidiaries have complied in all material respects during the last two years, and are in compliance in all material respects, with all applicable laws, rules, regulations and codes, and all permits pertaining to the Business.

(b) The Company and its Subsidiaries have been granted all licenses and approvals from government regulatory bodies necessary for the conduct of the Business engaged in by the Company and its Subsidiaries, the absence of which would have a Material Adverse Effect on the conduct of the Business as conducted as of the date of this Agreement. All of such licenses and approvals (to the extent required to operate) are currently valid and in full force and effect. Set forth on Schedule 5.10 of the Company Schedules is a true and complete list of all federal and state permits, required or held in connection with the Business as currently conducted by the Company and its Subsidiaries as of the date of this Agreement. There are no proceedings pending or, to the best of the Company's knowledge, threatened which question the existence, continuation or scope of any of the foregoing. There has been no notice served with respect to any violation of any law or permit issued by any governmental agency to which the Company or any of its Subsidiaries is subject and which would have a material adverse effect on the Business following Closing. To the best of the Company's knowledge, none of the transactions contemplated by this Agreement will terminate, violate, or limit the effectiveness of, any such permit.

(c) Except as set forth on Schedule 5.10 of the Company Schedules, (i) no Hazardous Material has been released into the environment or disposed of by the Company or any of its Subsidiaries on the Real Estate (as defined in Section 5.17 of the Company Schedules), nor, to the best of the Company's knowledge, has the Real Estate been used by any person as a landfill, toxic waste dump or a waste disposal site, or for the handling, treatment, storage or disposal of any solid waste or Hazardous Materials, except in accordance in all material respects with Environmental Law, (ii) all wastes, including hazardous wastes (as defined under Environmental Law) and, to the best of the Company's knowledge, all other Hazardous Material generated in the operation of the Business has been disposed of in accordance with all applicable federal and state laws, and (iii) no Hazardous Material is being or has been treated, stored (except in the ordinary course), reclaimed, recycled or disposed of by or on behalf of the Company or any of its Subsidiaries, except in each case in accordance in all material respects with Environmental Law.

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Section 5.11. Insurance. Schedule 5.11 of the Company Schedules sets forth a list of all insurance policies owned by the Company or any of its Subsidiaries or by which the Company, any of its Subsidiaries or any of their respective properties or assets is covered against present losses, all of which are in full force and effect as of the date of this Agreement. No insurance carrier has denied any claims made against any of the policies listed on Schedule 5.11 of the Company Schedules.

Section 5.12. Taxes.

(a) Schedule 5.12 of the Company Schedules lists the jurisdictions (domestic and foreign) in which the Company or any of its Subsidiaries has filed federal, foreign, state and local income, excise, franchise, property, sales, use, employment, and other tax returns and employment tax returns.

(b) (i) The Company and its Subsidiaries have filed all necessary federal, state, local and foreign tax returns and reports and all Taxes shown by such Tax Returns to be due and payable have been paid; (ii) the most recent financial statements for the Company reflect an adequate accrual for all Taxes payable by the Company or any of its Subsidiaries for periods through the date of the financial statements; (iii) there is no Tax deficiency which has been, or to the knowledge of the Company, might be, asserted against the Company or any of its Subsidiaries which would have a Material Adverse Effect on the Business; (iv) except as disclosed on Schedule 5.12 of the Company Schedules, neither the Company nor any of its Subsidiaries is now being audited by any federal, state, or local tax authorities; (v) no material issues relating to Taxes were raised by any tax authority in any completed audit or examination of the Company or any of its Subsidiaries that can reasonably be expected to recur in a later taxable period; (vi) the Company and each of its Subsidiaries has made all required deposits for Taxes applicable to the current and immediately preceding tax year; and (vii) all Tax Returns of the Company and each of its Subsidiaries filed within the last three years were prepared in accordance with the relevant rules and regulations of each taxing authority having jurisdiction over them and are true and complete in all material respects.

(c) Neither the Company nor any of its Subsidiaries has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to an assessment or deficiency.

(d) Neither the Company nor any of its Subsidiaries is a party to nor is bound by (nor will the Company, prior to the Closing, become a party to or become bound by) any Tax indemnity, Tax sharing or Tax allocation agreement.

(e) Neither the Company nor any of its Subsidiaries has ever been a member of an affiliated group of corporations within the meaning of Section 1504 of the Code.

(f) Neither the Company nor any of its Subsidiaries has agreed to make, nor is required to make, any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise.

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(g) There are no liens for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company or any of its Subsidiaries.

(h) No amount or other entitlement that could be received (whether in cash or property or the vesting of property) as a result of any of the transactions contemplated by this Agreement by any director, officer, employee or independent contractor of the Company who is a "disqualified individual" (as such term is defined in proposed Treasury Regulation Section 1.280G-1) under any Employee Benefit Plan described on Schedule 5.13(a) of the Company Schedules or other compensation arrangement currently in effect would be characterized as an "excess parachute payment" (as such term is defined in Section 280G(b)(1) of the Code) and no such disqualified individual is entitled to receive any additional payment from the Company, from any of its Subsidiaries or from any other person in the event that the excise tax required by Section 4999(a) of the Code is imposed on such disqualified individual.

Section 5.13. Employee Benefit Plans.

(a) Each Employee Benefit Plan maintained by the Company or its Subsidiaries is listed on Schedule 5.13 of the Company Schedules and incorporated herein. Neither the Company nor any of its Subsidiaries has maintained any other plan, fund, program or arrangement whether or not funded and whether oral or written under which it has present or future obligations or liability. A true and complete copy of each Employee Benefit Plan has been provided to Encore.

(b) Each Employee Benefit Plan intended to be "qualified" within the meaning of Section 401(a) of the Code, is so qualified and a favorable determination letter has been issued by the Internal Revenue Service with respect to each such plan.

(c) Each Employee Benefit Plan conforms in all material respects and has been administered in all material respects with the applicable requirements of ERISA and, where applicable, Section 401(a) of the Code, and has not incurred any federal income or excise tax liability.

(d) All reports and information required by law to be filed within the last three years with the United States Department of Labor, Internal Revenue Service or Pension Benefit Guaranty Corporation, or distributed to plan participants and their beneficiaries with respect to the Employee Benefit Plans, have been timely filed and/or distributed.

(e) None of the Employee Benefit Plans are subject to Title IV of ERISA.

(f) There have been no "prohibited transactions" (as defined in Section 4975 of the Code or in Section 406 of ERISA) with respect to any Employee Benefit Plan, nor any fiduciary violations as defined in Section 404 of ERISA. No penalty or tax under Section 302(i) of ERISA or Sections 4971 and 4975 of the Code has been imposed upon the Company or any of its Subsidiaries.

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(g) There are no threatened or pending claims by or on behalf of the Employee Benefit Plans by any employee or beneficiary covered under these benefit plans, or otherwise involving any of the Employee Benefit Plans which allege a violation of ERISA or any other law or a breach of any fiduciary duties which might result in liability on the part of the Company, any of its Subsidiaries, or any Employee Benefit Plan, nor is there any basis for such a claim.

(h) None of the Employee Benefit Plans is a "multiemployer plan" within the meaning of section 4001(a)(3) of ERISA. There are no retiree medical benefits for retired employees except as set forth in Schedule 5.13 of the Company Schedules.

(i) Neither the Company nor any of its Subsidiaries has, nor could they reasonably be expected to incur, any unfunded liabilities in relation to any Employee Benefit Plan (other than liabilities relating to claims for benefits in the normal course and liabilities which have been appropriately accrued), and all benefits, contributions and premiums relating to each Employee Benefit Plan have been timely paid or made in accordance with the terms of such Employee Benefit Plan and the terms of all applicable laws.

Section 5.14. Employee and Labor Matters. Set forth on Schedule 5.14 of the Company Schedules is a list of (i) any employment or consulting agreements with officers or other employees of the Company or any of its Subsidiaries, or any other person, to which the Company or any of its Subsidiaries is a party, and (ii) any incentive compensation plans in effect for employees of the Company or any of its Subsidiaries. Except as set forth on Schedule 5.14 of the Company Schedules, neither the Company nor any of its Subsidiaries is party to any collective bargaining agreement or employment agreements, or any agreement for the provision of consulting or other professional services which is not cancelable without penalty on not more than ninety (90) days notice. No collective bargaining agreement is currently being negotiated by the Company or any of its Subsidiaries. To the best of the Company's knowledge, except as set forth in Schedule 5.14 of the Company Schedules, there are no union organizational drives in progress with respect to any employees of the Company or any of its Subsidiaries and there has been no request for collective bargaining or for an employee election from any union or from the National Labor Relations Board with respect to any employees of the Company or any of its Subsidiaries.

Section 5.15 OSHA. Except as set forth on Schedule 5.15 of the Company Schedules, (i) the Company and each of its Subsidiaries has complied in all material respects with all applicable laws relating to employee health and safety affecting or related to the Business, and (ii) neither the Company nor any of its Subsidiaries has received any notice that any past or present conditions relating to such company and affecting or related to the Business violate any common law or other applicable legal requirements or that alleges or threatens any claim, proceeding, or investigation, based on or related to employee health and safety within the past five (5) years.

Section 5.16. Title to Assets. Except as set forth in Schedule 5.16 of the Company Schedules, the Company and each of its Subsidiaries has good and marketable title to all their properties and assets, as reflected in the most recent balance sheet included in the Company

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Financial Statements, except for properties and assets that have been disposed of in the ordinary course of business since the date of the latest balance sheet included therein, free and clear of all mortgages, liens, pledges, charges or encumbrances of any nature whatsoever, except (i) liens for current taxes, payments of which are not yet delinquent, (ii) such imperfections in title and easements and encumbrances, if any, as are not substantial in character, amount or extent and do not materially and adversely detract from the value, or materially and adversely interfere with the present use or marketability of the property subject thereto or affected thereby, or otherwise materially and adversely impair the business operations of the Company or any of its Subsidiaries (in the manner currently carried on by the Company and its Subsidiaries), (iii) liens in favor of Republic bank & Trust as security for the obligations due under the Credit Facility, or (iv) liens in favor of CEP as security for the obligations under the Bridge Loan.

Section 5.17. Owned Real Property. Schedule 5.17 of the Company Schedules lists and generally describes all real property owned by the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries leases any real property.

Section 5.18. Contracts, Agreements, Plans and Commitments. Schedule 5.18 of the Company Schedules sets forth a complete list of the following contracts, agreements, plans and commitments (collectively, the "Material Contracts") to which the Company or any Subsidiary of the Company is a party or by which the Company or any or any Subsidiary of the Company or any of their properties is bound as of the date hereof:

- (a) any contract, lease, commitment or agreement that involves aggregate expenditures by the Company or any Subsidiary of the Company of more than \$25,000 per year;
- (b) any indenture, loan agreement or note under which the Company or any Subsidiary of the Company has outstanding indebtedness, obligations or liabilities for borrowed money;
- (c) any agreement that restricts the right of the Company or any Subsidiary of the Company to engage in any type of business;
- (d) any partnership or joint venture agreement;
- (e) any agreement of surety, guarantee or indemnification with respect to which the Company or any Subsidiary of the Company is the obligor, outside of the ordinary course of business; and
- (f) any contract, agreement, agreed order or consent agreement that requires the Company or any Subsidiary of the Company to take any actions or incur expenses to remedy non-compliance with any Environmental Law.

True, correct and complete copies of each such Material Contract have been delivered to or made available for inspection by the Company. All such Material Contracts (i) were duly and validly executed and delivered by the Company and, to the Company's knowledge, the other parties thereto and (ii) are valid binding obligations of the Company or a Subsidiary of the Company, as the case may be, and to the Company's knowledge, binding on the other parties thereto. Except

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as set forth on Schedule 5.18 of the Company Schedules, to the best of the Company's knowledge, there are no counterclaims or offsets under any of such Material Contracts. The consummation of the Merger will vest in the Surviving Corporation all rights and benefits under the Material Contracts and the right to operate the Company's Business under the terms of the Material Contracts in the manner currently operated and used by the Company or a Subsidiary of the Company, as the case may be.

Section 5.19. Brokers and Finders. Neither the Company nor any Subsidiary of the Company has entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of the Company or any Subsidiary of the Company to pay any finder's fees, brokerage or agent commissions or other like payments in connection with the transactions contemplated hereby.

Section 5.20. Intellectual Property. Schedule 5.20 of the Company Schedules contains a true and complete list of the material registered Intellectual Property owned by the Company or any Subsidiary of the Company and used in the Business (collectively the "Company Intellectual Property Rights"). Except as set forth on Schedule 5.20 of the Company Schedules, neither the Company nor any Subsidiary of the Company owns any patents. Except as set forth on Schedule 5.8 of the Company Schedules, the Company has no knowledge of any infringement by any other person of any material Company Intellectual Property Rights, and neither the Company nor any Subsidiary of the Company has entered into any agreement to indemnify any other party against any charge of infringement of any material Company Intellectual Property Rights outside of the ordinary course of business. The Company has no knowledge that it violates or infringes any intellectual property right of any other person. Except as set forth in Schedule 5.8 of the Company Schedules, neither the Company nor any Subsidiary of the Company has received any communication alleging that it violates or infringes the intellectual property right of any other person, and neither the Company nor any Subsidiary of the Company has been sued for infringing any intellectual property right of another person. Except as set forth in Schedule 5.8 of the Company Schedules, there is no claim or demand of any person pertaining to, or any proceeding which is pending or, to the knowledge of the Company, threatened, that challenges the rights of the Company or any Subsidiary of the Company in respect of any material Company Intellectual Property Rights, or that claims that any default exists under any material Company Intellectual Property Rights. None of the material Company Intellectual Property Rights is subject to any outstanding order, ruling, decree, judgment or stipulation by or with any court, tribunal, arbitrator, or other governmental authority.

Section 5.21. Certain Payments. Neither the Company nor any shareholder, officer, director, Subsidiary of the Company or, to the Company's knowledge, employee of the Company or any Subsidiary of the Company has paid or received or caused to be paid or received, directly or indirectly, in connection with the business of the Company (a) any bribe, kickback or other similar payment to or from any domestic or foreign government or agency thereof or any other person or (b) any contribution to any domestic or foreign political party or candidate (other than (x) from personal funds of such shareholder, officer, director or employee not reimbursed by the Company or any Subsidiary of the Company or (y) as permitted by applicable law).

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Section 5.22. Books and Records. The corporate minute books, and other corporate records of the Company and each Subsidiary of the Company are true and correct in all material respects as in effect as of the date of this Agreement and accurately reflect in all material respects all proceedings of the Board of Directors and stockholders of the Company and each Subsidiary of the Company as of the date of this Agreement.

Section 5.23. Customers. Except for the customers and/or accounts named in Schedule 5.23 of the Company Schedules (herein the "Key Customers"), neither the Company nor any Subsidiary of the Company has a single customer and/or account to whom it made more than 5% of its total sales during its most recent fiscal year. During the past twelve months, neither the Company nor any Subsidiary of the Company has (i) received any written complaint from a Key Customer concerning its products and services, other than complaints in the ordinary course of business that are reasonably likely not to have, individually or in the aggregate, a Material Adverse Effect, or (ii) been informed in writing by any Key Customer named in Schedule 5.23 of the Company Schedules, that such Key Customer expects to significantly reduce the products it will buy from the Company. No Key Customer listed on Schedule 5.23 of the Company Schedules has informed the Company or any Subsidiary of the Company that such Key Customer intends to change its relationship with the Company or any Subsidiary of the Company in any material manner because of the consummation of the transactions contemplated by this Agreement.

**ARTICLE VI
REPRESENTATIONS AND WARRANTIES
OF THE PREFERRED STOCKHOLDERS**

The Preferred Stockholders, severally and jointly, hereby make the following representations and warranties to Encore.

Section 6.1. The Company Preferred Stock. Each Preferred Shareholder is the record and beneficial owner of the shares of Company Preferred Stock and Common Stock set forth opposite its name on Schedule 6.1 attached hereto, free and clear of any restrictions, liens, claims and encumbrances. The Preferred Shareholder does not own, of record or beneficially, any shares of Company Capital Stock other than the Company Preferred Stock and Common Stock set forth opposite its name on Schedule 6.1 attached hereto. The Preferred Shareholder has the sole right to vote such Company Preferred Stock, and none of such Company Preferred Stock is subject to any voting trust or other agreement, arrangement or restriction with respect to the voting of such Company Preferred Stock, except as contemplated by this Agreement.

Section 6.2. Authority; Execution and Delivery; Enforceability. The Preferred Shareholders have all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery by the Preferred Shareholders of this Agreement and consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Preferred Shareholders. The Preferred Shareholders have duly executed and delivered this Agreement, and, assuming the due authorization, execution and delivery hereof by Encore, the Company, and the other parties hereto, this Agreement constitutes a valid and legally binding agreement of the Preferred

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Shareholders, enforceable against the Preferred Shareholders in accordance with its terms, except that such enforcement may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors' rights generally and (ii) general equitable principles. The execution and delivery by the Preferred Shareholders of this Agreement does not, and the consummation of the transactions contemplated hereby does not and will not violate or result in a breach of any provision of, or constitute a default (or an event which with notice or lapse of time or both would constitute a default) under, or result in a right of termination or acceleration under, or result in the creation of any lien, security interest, charge or encumbrance upon any of the shares of Company Preferred Stock held by the Preferred Shareholders under, any provision of any contract to which either Preferred Shareholder is a party or by which any shares of the Company Preferred Stock held by either Preferred Shareholder is bound or, subject to the filings and other matters referred to in the next sentence, any provision of any statute, law, ordinance, rule, regulation, judgment, decree, order, injunction, writ, permit or license of any Governmental Entity applicable to the Preferred Shareholders or their respective shares of Company Preferred Stock. No declaration, registration or filing with any Governmental Entity is necessary with respect to the Preferred Shareholder in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

**ARTICLE VII
ADDITIONAL AGREEMENTS**

Section 7.1. Termination of Equity Incentive Plan; Management Consulting Agreement. Effective prior to the Merger Effective Time, the Company shall take such action as may be necessary to (i) terminate its Equity Incentive Plan established for the benefit of certain of its key employees and (ii) terminate effective on and as of the Closing Date the management consulting agreement between the Company and Paul H. Mullan.

Section 7.2. Expenses and Fees. The Surviving Corporation shall pay all costs and expenses incurred by the Preferred Shareholders and/or the Company up to the first \$125,000 in connection with this Agreement, the Investment Agreement and the transactions contemplated hereby and thereby, including, without limitation, the fees and expenses of the Company's attorneys and accountants (the "Company Expenses"), and the Preferred Shareholders shall pay any Company Expenses in excess of such \$125,000. Encore shall pay all costs and expenses incurred by it in connection with this Agreement, the Investment Agreement and the transactions contemplated hereby and thereby, including without limitation, the fees and expenses of its attorneys and accountants.

Section 7.3. Agreement to Cooperate. Subject to the terms and conditions herein provided, each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement, including using its reasonable efforts to obtain (i) all necessary, proper or advisable waivers, consents and approvals under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement, and (ii) all necessary or

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appropriate waivers, consents or approvals of third parties required in order to preserve material contractual relationships of the Company.

Section 7.4. Public Statements. Except as required by law, the parties shall obtain the written consent of the other prior to issuing any press release or any written public statement with respect to this Agreement or the transactions contemplated hereby and shall not issue any such press release or written public statement prior to such consent, which consent will not be unreasonably withheld or delayed.

Section 7.5. Tax Matters.

(a) Subject to the next sentence, Encore shall cause to be prepared and file or cause to be filed all Tax Returns of the Company for all periods ending on or before the Effective Time which are filed after the Closing Date, including, without limitation the federal and state income Tax Returns due for the period commencing January 1, 2004 through and including the Closing (the "Final Tax Returns"). The parties agree that all such Final Tax Returns shall be prepared in a manner consistent with prior Tax Returns, and will provide Preferred Shareholders with draft copies of the Final Tax Returns no later than 45 days prior to the due date for filing for the Preferred Shareholders review and approval. At the discretion of Encore, such Final Tax Returns shall be prepared by Dixon Hughes, LLP, Certified Public Accountants. The Preferred Shareholders will be deemed to have accepted the Final Tax Returns unless they provide Encore with a written list of items of disagreement within 15 days of receipt of the return. If the Preferred Shareholders deliver the notice of items of disagreement, the parties will work in good faith to resolve the differences.

(b) The Preferred Shareholders, Company and Encore shall (i) each provide the other, with such assistance as may reasonably be requested by either of them in connection with the preparation of any Tax Return, tax audit or other examination by any taxing authority or judicial or administrative proceedings relating to liability for Taxes, (ii) each retain and provide the other, and Encore shall cause the Company to retain and provide the Preferred Shareholders with any records or other information which may be relevant to such Tax Return, tax audit or examination, proceeding or determination, and (iii) each provide the other with any final determination of any such tax audit or examination, proceeding or determination that affects any amount required to be shown on any Tax Returns of the other for any period.

(c) The Preferred Shareholders shall have the right to exercise, at their expense, complete control over the handling, disposition and settlement of any governmental inquiry, examination or proceeding that could result in a determination with respect to Taxes due or payable by the Encore or the Company for which the Preferred Shareholders are solely liable or against which the Preferred Shareholders may be required to indemnify Encore pursuant hereto. Preferred Shareholders shall, however, promptly notify the Company if, in connection with any such inquiry, examination or proceeding, any government authority proposes in writing to make any assessment or adjustment with respect to tax items of the Company, which assessments or adjustments could affect the Tax liability of the Company following the Closing Date, and shall consult with the Company with respect to any such proposed assessment or adjustment. Encore shall notify the Preferred Shareholders within 5 days in writing upon

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learning of any such inquiry, examination or proceeding. Encore shall cooperate with the Preferred Shareholders, as the Preferred Shareholders may reasonably request, in any such inquiry, examination or proceeding. The Company and Encore shall not settle, compromise or conclude any audit or related proceeding with respect to Taxes for a pre-closing period without the prior written consent of the Preferred Shareholders.

(d) Encore shall not and shall not permit the Company to file an amended tax return for pre-closing periods without the prior written consent of the Preferred Shareholders.

(e) Encore and the Preferred Shareholders will report this Merger as a taxable exchange and not as a reorganization as defined under Section 368 of the Code

Section 7.6 Additional Investment and Bridge Loan. Simultaneously with the consummation of the Merger, the Preferred Shareholders and Encore will enter into a Securities Purchase Agreement in the form attached hereto as Exhibit C (herein, the "Investment Agreement"). Pursuant to and in accordance with the terms of the Investment Agreement, the Preferred Shareholders shall purchase from Encore 982.92 shares of Series A Preferred Stock and CEP III shall extend to the Surviving Corporation a short-term credit facility in the principal amount of \$1,000,000 (herein the "Bridge Loan").

Section 7.7 Sale of Real Estate. The parties acknowledge that the Real Estate is currently listed for sale. Encore and the Surviving Corporation shall continue to list the Real Estate for sale following the consummation of the Merger and shall diligently pursue a sale of the Real Estate. The parties further agree that the Net Proceeds received by Encore from the sale of the Real Estate will be applied as follows: (i) first, to repay the outstanding principal and interest under the Bridge Loan, (ii) second to Encore in an amount equal to expenses of maintaining and insuring the Real Estate up to the sale (including utilities, grounds maintenance and taxes etc.), (iii) the next \$1.0 million will be paid as additional consideration to the Preferred Shareholders for the exchange of their Company Preferred Stock (herein the "Contingent Payment"), and (iv) the balance, if any, will be retained by Encore. "Net Proceeds" shall mean the amount received by Encore and the Surviving Corporation for the sale of Real Estate after deduction any fees or commissions paid upon the sale and transfer taxes.

Section 7.8. Agreement Not To Compete.

(a) Each Preferred Shareholder understands that Encore shall be entitled to protect and preserve the going concern value of the business of the Company to the extent permitted by law and that Encore would not have entered into this Agreement absent the provisions of this Section 7.8 and, therefore, for a period from the Closing until two years after such time as such Preferred Shareholder no longer beneficially owns any equity interests in the Surviving Corporation (the "Covenant Period") and each Preferred Shareholder shall not, directly or indirectly:

(i) engage in activities or businesses, or establish any new businesses, within North America that are substantially in competition with the business of the Surviving Corporation ("Competitive Activities"), including (A) selling gifts and novelty items of the type sold by the Surviving Corporation within the one year period ending on the date neither

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Preferred Shareholder no longer beneficially owns any equity interests in the Surviving Corporation, and (B) soliciting any customer or prospective customer of the Surviving Corporation to purchase any goods or services sold by Surviving Corporation from anyone other than Encore and its affiliates; and

(ii) hire any employee of the Surviving Corporation or Person who worked for the Surviving Corporation on the date of this Agreement or during the Covenant Period,

(b) Notwithstanding the foregoing, Section 7.8 shall not be deemed breached as a result of the ownership by any Preferred Shareholder: (i) less than an aggregate of 5% of any class of stock of a Person engaged, directly or indirectly, in Competitive Activities; provided, however, that such stock is listed on a national securities exchange; (ii) less than 10% in value of any instrument of indebtedness of a Person engaged, directly or indirectly, in Competitive Activities; or (iii) a Person that engages, directly or indirectly, in Competitive Activities if such Competitive Activities account for less than 10% of such Person's consolidated annual revenues.

Section 7.9. Remedies. Notwithstanding any other provision of this Agreement, it is understood and agreed that the remedy of indemnity payments pursuant to Article X and other remedies at law would be inadequate in the case of any breach of the covenants contained in Section 7.8. Encore shall be entitled to equitable relief, including the remedy of specific performance, with respect to any breach or attempted breach of such covenants.

ARTICLE VIII CONDITIONS TO CLOSING

Section 8.1. Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the fulfillment or waiver, if permissible, at or prior to the Effective Time of the following conditions:

(a) no preliminary or permanent injunction or other order or decree by any federal or state court which prevents the consummation of the Merger shall have been issued and remain in effect (each party agreeing to use its best efforts to have any such injunction, order or decree lifted); and

(b) no action shall have been taken, and no statute, rule or regulation shall have been enacted, by any state or federal government or governmental agency in the United States which would prevent the consummation of the Merger or make the consummation of the Merger illegal.

Section 8.2. Conditions to Obligation of the Company to Effect the Merger. Unless waived by the Company, the obligation of the Company to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following additional conditions:

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(a) Encore shall have performed in all material respects (or in all respects in the case of any agreement containing any materiality qualification) their agreements contained in this Agreement required to be performed on or prior to the Closing Date;

(b) the representations and warranties of Encore contained in this Agreement shall be true and correct in all material respects (or in all respects in the case of any representation or warranty containing any materiality qualification) on and as of the date made and on and as of the Closing Date as if made at and as of such date;

(c) the Company shall have received (i) a certificate executed on behalf of Encore by the President or a Vice President of Encore, with respect to (a) and (b) above and (ii) certified copies of resolutions duly adopted by the board of directors of Encore and Merger Sub evidencing the taking of all corporate action necessary to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby;

(d) since the date hereof, there shall have been no changes that constitute, and no event or events shall have occurred which have resulted in or constitute, a Material Adverse Effect with respect to Encore; and

(e) Employment Agreements, in the form attached hereto as Exhibit D-1 executed by Richard Snow and Exhibit D-2 executed by Eldredge C. Hanes;

Section 8.3. Conditions to Obligations of Encore to Effect the Merger. Unless waived by Encore, the obligations of Encore to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the additional following conditions:

(a) the Company shall have performed in all material respects (or in all respects in the case of any agreement containing any materiality qualification) its agreements contained in this Agreement required to be performed on or prior to the Closing Date;

(b) the representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects (or in all respects in the case of any representation or warranty containing any materiality qualification) on and as of the date made and on and as of the Closing Date as if made at and as of such date;

(c) since the date hereof, there shall have been no changes that constitute, and no event or events shall have occurred which have resulted in or constitute, a Material Adverse Effect with respect to the Company;

(d) all prior governmental waivers, consents, orders, and approvals legally required for the consummation of the Merger and the transactions contemplated hereby or to permit the Surviving Corporation to carry on the business of the Company after Closing in accordance with past customs and practice shall have been obtained and be in effect at the Closing Date;

(e) Encore shall have received (i) a certificate executed on behalf of the Company by the President or Chief Executive Officer of the Company with respect to (a)

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through (d) above and (ii) certified copies of resolutions duly adopted by the board of directors of the Company and Company Stockholders evidencing the taking of all corporate action necessary to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby;

(f) The Preferred Holders shall have entered into the Investment Agreement with Encore in the form attached hereto as Exhibit C; and

(g) the Company shall have delivered to Encore on or prior to the Closing Date a certificate, in form and substance reasonably satisfactory to Encore, certifying that the Merger is exempt from withholding under the Foreign Investment in Real Property Tax Act.

ARTICLE IX AMENDMENT AND WAIVER

Section 9.1. Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of all of the parties.

Section 9.2. Extensions; Waiver. At any time prior to the Effective Time, the parties hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant thereto and (c) waive compliance with any of the agreements or conditions herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid if set forth in an instrument in writing signed on behalf of such party.

ARTICLE X INDEMNIFICATION

Section 10.1. Preferred Shareholders' Indemnity Obligations. The Preferred Shareholders, jointly and severally, shall indemnify and hold harmless the Company, Encore and Encore's officers, directors, stockholders, employees, agents, representatives and Affiliates (each a "Encore Indemnified Party") from and against any and all claims, actions, causes of action, arbitrations, proceedings, losses, damages, remediations, liabilities, strict liabilities, judgments, fines, penalties and expenses (including, without limitation, reasonable attorneys' fees) (collectively, the "Indemnified Amounts"), paid, imposed on or incurred by an Encore Indemnified Party, directly or indirectly, relating to, resulting from or arising out of, or any allegation of a third party of:

(a) any breach or misrepresentation in any of the representations and warranties made by or on behalf of the Company in this Agreement, the Investment Agreement or any certificate or instrument delivered pursuant to this Agreement or the Investment Agreement or the Investment Agreement;

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(b) any violation or breach by the Company of or default by the Company under the terms of this Agreement, the Investment Agreement or any certificate or instrument delivered pursuant to this Agreement or the Investment Agreement;

(c) any environmental matter relating to the Real Estate or the transport or disposal of Hazardous Material and existing at or prior to the Effective Time;

(d) the exercise by any Company Shareholder of any appraisal or dissent rights arising out of the consummation of the Merger;

(e) the termination of the Equity Incentive Plan by the Company; and,

(f) any Indemnified Amounts in excess of \$50,000 in the aggregate attributable to the litigation matters described on Schedule 5.8.

Section 10.2. Encore's Indemnity Obligations. Encore shall indemnify and hold harmless the Preferred Shareholders and their respective agents, representatives and Affiliates (each a "Preferred Shareholder Indemnified Party") from and against any and all Indemnified Amounts paid, imposed on or incurred by a Preferred Shareholder Indemnified Party directly or indirectly, relating to, resulting from or arising out of, or any allegation of a third party of:

(a) any breach or misrepresentation in any of the representations and warranties made by or on behalf of Encore in this Agreement, the Investment Agreement or any certificate or instrument delivered pursuant to this Agreement or the Investment Agreement,

(b) any violation or breach by Encore of or default by Encore under the terms of this Agreement, the Investment Agreement or any certificate or instrument delivered pursuant to this Agreement or the Investment Agreement; and

(c) any environmental matter relating to the Real Estate or the transport or disposal of Hazardous Material and existing at or prior to the Effective Time.

Section 10.3. Indemnification Procedures. All claims for indemnification under this Agreement or the Investment Agreement shall be asserted and resolved as follows:

(a) A party claiming indemnification under this Agreement or the Investment Agreement (an "Indemnified Party") shall with reasonable promptness (i) notify the party from whom indemnification is sought (the "Indemnifying Party") of any third-party claim or claims asserted against the Indemnified Party ("Third Party Claim") for which indemnification is sought and (ii) transmit to the Indemnifying Party a copy of all papers served with respect to such claim, if any, and a written notice ("Claim Notice") containing a description in reasonable detail of the nature of the Third Party Claim, an estimate of the amount of damages attributable to the Third Party Claim to the extent feasible (which estimate shall not be conclusive of the final amount of such claim) and the basis of the Indemnified Party's request for indemnification under this Agreement or the Investment Agreement.

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Within 15 days after receipt of any Claim Notice (the "Election Period"), the Indemnifying Party shall notify the Indemnified Party (i) whether the Indemnifying Party disputes its potential liability to the Indemnified Party with respect to such Third Party Claim and (ii) whether the Indemnifying Party desires, at the sole cost and expense of the Indemnifying Party, to defend the Indemnified Party against such Third Party Claim.

If the Indemnifying Party notifies the Indemnified Party within the Election Period that the Indemnifying Party elects to assume the defense of the Third Party Claim, then the Indemnifying Party shall have the right to defend, at its sole cost and expense, such Third Party Claim by all appropriate proceedings, which proceedings shall be prosecuted diligently by the Indemnifying Party to a final conclusion or settled at the discretion of the Indemnifying Party in accordance with this Section 10.3(a). The Indemnifying Party shall have full control of such defense and proceedings. If requested by the Indemnifying Party, the Indemnified Party agrees to cooperate with the Indemnifying Party and its counsel in contesting any Third Party Claim that the Indemnifying Party elects to contest, including, without limitation, the making of any related counterclaim against the person asserting the Third Party Claim or any cross-complaint against any person. Except as otherwise provided herein, the Indemnified Party may participate in, but not control, any defense or settlement of any Third Party claim controlled by the Indemnifying Party pursuant to this Section 10.3 and shall bear its own costs and expenses with respect to such participation, unless there is an actual conflict of interest, in which case, the Indemnified Party can participate at the cost of the Indemnifying Party.

If the Indemnifying Party (i) fails to notify the Indemnified Party within the Election Period that the Indemnifying Party elects to defend the Indemnified Party pursuant to the preceding paragraph, (ii) elects to defend the Indemnified Party but fails to prosecute or settle the Third Party Claim as herein provided, or (iii) objects to such election on the grounds that counsel for such Indemnifying Party cannot represent both the Indemnified Party and the Indemnifying Parties because such representation would result in a conflict of interest, then the Indemnified Party shall have the right to defend, at the sole cost and expense of the Indemnifying Party, the Third Party Claim by all appropriate proceedings, which proceedings shall be promptly and vigorously prosecuted by the Indemnified Party to a final conclusion or settled. In such a situation, the Indemnified Party shall have full control of such defense and proceedings and the Indemnifying Party may participate in, but not control, any defense or settlement controlled by the Indemnified Party pursuant to this Section 10.3, and the Indemnifying Party shall bear its own costs and expenses with respect to such participation.

The Indemnifying Party shall not settle or compromise any Third Party Claim unless (i) the terms of such compromise or settlement require no more than the payment of money (i.e., such compromise or settlement does not require the Indemnified Party to admit any wrongdoing or take or refrain from taking any action), (ii) the full amount of such monetary compromise or settlement will be paid by the Indemnifying Party, subject to the limitations set forth in Section 10.5(b) and Section 10.6(b), and (iii) the Indemnified Party receives as part of such settlement a legal, binding and enforceable unconditional satisfaction and/or release, in form and substance reasonably satisfactory to it, providing that such Third Party Claim and any claimed liability of the Indemnified Party with respect thereto is being fully satisfied by reason of such compromise or settlement and that the Indemnified Party is being released from any and all

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obligations or liabilities it may have with respect thereto. The Indemnified Party shall not settle or admit liability to any Third Party Claim without the prior written consent of the Indemnifying Party unless (x) the Indemnifying Party has disputed its potential liability to the Indemnified Party, and such dispute either has not been resolved or has been resolved in favor of the Indemnifying Party or (y) the Indemnifying Party has failed to respond to the Indemnified Party's Claim Notice.

(b) In the event any Indemnified Party should have a claim against any Indemnifying Party hereunder that does not involve a Third Party Claim, the Indemnified Party shall transmit to the Indemnifying Party a written notice (the "Indemnity Notice") describing in reasonable detail the nature of the claim, an estimate of the amount of damages attributable to such claim to the extent feasible (which estimate shall not be conclusive of the final amount of such claim) and the basis of the Indemnified Party's request for indemnification under this Agreement or the Investment Agreement.

Section 10.4. Determination of Indemnified Amounts.

(a) The Indemnified Amounts payable by an Indemnifying Party hereunder shall be determined (i) by the written agreement of the parties, (ii) by mediation, (iii) by binding arbitration pursuant to Section 11.6 hereof, or (iv) by any other means agreed to in writing by the parties. A judgment or decree of a court shall be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken have been fully determined.

(b) Notwithstanding the foregoing, the obligation of indemnity for any event described in Sections 10.1 and 10.2 (herein an "Indemnity Event") shall be reduced by any amounts recoverable by the Indemnified Party for such Indemnity Event (i) under policies of insurance maintained by it or its Affiliates less all reasonable out-of-pocket costs or expenses incurred by the Indemnified Party (excluding overhead costs) in recovering such amount under any such insurance policy and/or (ii) from third parties contractually or otherwise responsible for all or part of the indemnity loss. In addition, in no event shall any party be responsible to the other for special, consequential or punitive damages or diminution in value.

Section 10.5. Limitation of Preferred Shareholders' Liability.

(a) Notwithstanding anything to the contrary contained in this Article X, the aggregate liability of the Preferred Shareholders for any events or occurrences giving rise to their being required to indemnify one or more of the Encore Indemnified Parties pursuant to Section 10.1 of this Agreement shall be limited to \$2,000,000; and

(b) Encore Indemnified Parties are entitled to indemnification pursuant to Section 10.1(a) through (e) only to the extent that any Indemnified Amount, individually or in the aggregate, exceeds \$50,000 (herein the "Basket"), in which case the Encore Indemnified Parties may recover the full amount of such Indemnified Amounts, excluding the amount of the Basket.

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(c) Notwithstanding the foregoing, the liability of the Preferred Shareholders for a breach of the representation and warranty in Section 5.12 relating to tax liabilities for periods prior to the Closing Date, shall be limited to federal and/or state taxes actually imposed on Encore following the Merger that relate to adjustments (i.e., increases) in the Company's net income for periods prior to the Closing that exceed, in the aggregate, the (i) applicable federal/state net operating loss carryover of the Company existing as of Closing, (ii) reduced by the amount of the applicable federal/state net operating loss carryover applied against any taxable gain recognized upon the subsequent sale or other disposition of assets of the Company (including the Real Estate) following the Merger.

Section 10.6. Limitation of Encore's Liability.

(a) Notwithstanding anything to the contrary contained in Article X, the aggregate liability of Encore for any events or occurrences giving rise to Encore being required to indemnify one or more of the Preferred Shareholder Indemnified Parties pursuant to Section 10.2 of this Agreement shall be limited to \$2,000,000 (the "Encore Cap").

(b) Preferred Shareholder Indemnified Parties are entitled to indemnification pursuant to Section 10.2(a) only to the extent that the amount of any Indemnified Amount, individually or in the aggregate, exceeds the Basket, in which case the Preferred Shareholder Indemnified Parties may recover the full amount of such Indemnified Amounts, excluding the Basket.

Section 10.7. Sole Remedy.

(a) In the event the Preferred Shareholders are liable for indemnification hereunder, Encore's sole remedy will be to reduce the number of shares of Series A Preferred Stock that has been issued to the Preferred Holders pursuant to Section 3.1(b) hereof by that number of such shares determined by dividing (i) the full Indemnified Amount (less the Basket) for which the Preferred Shareholders are responsible pursuant to the terms of this Agreement or the Investment Agreement by (ii) the Stated Value. In the event that the Preferred Shareholders are liable for indemnification hereunder, the Preferred Shareholders shall promptly deliver to Encore stock certificates representing the shares of Series A Preferred Stock that have been issued to them pursuant to this Agreement or the Investment Agreement for cancellation and reissuance. Upon receipt, Encore shall cancel such stock certificates and promptly issue to the Preferred Holders new stock certificates representing the balance, if any, of the number of shares of Preferred Holders are entitled to hold following the operation of this Section 10.7.

(b) In the event that Encore is liable for indemnification hereunder, the Preferred Holders' sole remedy will be to receive (i) cash with respect to the first \$1,000,000 of Indemnified Amounts, and (ii) with respect to Indemnified Amounts in excess of \$1,000,000 up to the Encore Cap, additional shares of Series A Preferred Stock determined by dividing (A) the Indemnified Amount (less the Basket) by (B) the Stated Value; provided, that Encore shall have the right, in lieu of issuing additional shares of Series A Preferred Stock to the Preferred Holders, to satisfy any obligation for indemnification through a cash payment to the Preferred Shareholders equal to the Indemnified Amount (less the Basket if still applicable). In the event

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that Encore is liable for indemnification hereunder, Encore shall promptly issue to the Preferred Holders (pro rata based upon their ownership of Series A Preferred Stock certificates representing shares of Series A Preferred Stock, except to the extent it elects to satisfy this obligation in cash as hereinabove provided.

(b) Notwithstanding anything contained in this Agreement or the Investment Agreement to the contrary, after the Closing the provisions contained in this Article X shall be the sole and exclusive remedy of the Indemnified Parties, and any of their respective Affiliates, successors or permitted assigns, with respect to any and all matters relating to this Agreement, the Investment Agreement, the Merger, any of the agreements, documents and instruments executed and delivered in connection herewith and therewith, and the transactions contemplated hereby and thereby.

ARTICLE XI GENERAL PROVISIONS

Section 11.1. Survival. The representations, warranties, covenants and agreements (including but not limited to indemnification obligations) set forth in this Agreement and in any certificate or instrument delivered in connection herewith shall be continuing and shall survive the Closing for a period of two years following the Closing Date (the "Survival Date"); *provided, however, that the representations and warranties contained in Sections 4.10(c), 4.12, 5.10(c), 5.12, 6.1 and 6.2 shall survive the Closing for a period of three (3) years following the Closing Date; provided further, that in the event either party provides an Indemnity Notice or Claim Notice to an Indemnifying Party pursuant to Article X then any such claim for indemnification shall survive until such time of the claim set forth in such Indemnity Notice or Claim Notice is finally determined.*

Section 11.2. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, mailed by registered or certified mail (return receipt requested) or sent via facsimile to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to Encore to:

111 Cloverleaf Drive
Winston-Salem, NC 27103
Attn: Rick Snow
Louis R. Valente
Telecopy: 336/659-7492

with a copy to:

Bell, Davis & Pitt, P.A.
100 North Cherry Street, Suite 600
Winston-Salem, NC 27101
Attention: John W. Babcock
Telecopy: 336/722-6558

(b) if to the Company (prior to Closing) or the Preferred Holders, to:

c/o Charterhouse Group, Inc.
535 Madison Avenue
New York, NY 10022-4279
Attn: Paul H. Mullan
Telecopy: 212/750-9704

with a copy to:

Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103
Attn: James D. Epstein, Esq.
Telecopy: 215/689-4694

Section 11.3. Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way or interpretation of this Agreement. In this Agreement, unless a contrary intention appears, (i) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision and (ii) reference to any Article or Section means such Article or Section hereof. No provision of this Agreement shall be interpreted or construed against any party hereto solely because such party or its legal representative drafted such provision.

Section 11.4. Miscellaneous. This Agreement (including the documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof, and (b) shall not be assigned by operation of law or otherwise except that Encore may assign this Agreement to wholly-owned Subsidiary of Encore, but no such assignment shall relieve Encore of its obligations hereunder.

Section 11.5. Governing Law. This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of North Carolina applicable to contracts executed and to be performed wholly within such state.

Section 11.6. Binding Arbitration.

(a) **General.** Notwithstanding any provision of this Agreement to the contrary, upon the request of any party (defined for the purpose of this provision to include affiliates, principles and agents of any such party), any dispute, controversy or claim arising out of, relating to, or in connection with, this Agreement or any agreement executed in connection herewith or contemplated hereby, or the breach, termination, interpretation, or validity hereof or thereof (hereinafter referred to as a "Dispute"), shall be finally resolved by mandatory and binding arbitration, before a panel of three arbitrators, in accordance with the terms hereof. Any party to this Agreement may bring an action in court to compel arbitration of any Dispute. Any party who fails or refuses to submit any Dispute to binding arbitration following a lawful demand by the opposing party shall bear all costs and expenses incurred by the opposing party in compelling arbitration of such Dispute.

(b) **Governing Rules.** The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the arbitration, except as they may be modified herein or by mutual agreement of the parties. The seat of the arbitration shall be Charlotte, North Carolina. The arbitrator shall award all reasonable and necessary costs (including the reasonable fees and expenses of counsel) incurred in conducting the arbitration to the prevailing party in any such Dispute. The parties expressly waive all rights whatsoever to file an appeal against or otherwise to challenge any award by the arbitrators hereunder; provided, that the foregoing shall not limit the rights of either party to bring a proceeding in any applicable jurisdiction to confirm, enforce or enter judgment upon such award.

(c) **No Waiver; Preservation of Remedies.** No provision of, nor the exercise of any rights under this Agreement shall limit the right of any party to apply for injunctive relief or similar equitable relief with respect to the enforcement of this Agreement or any agreement executed in connection herewith or contemplated hereby, and any such action shall not be deemed an election of remedies. Such rights can be exercised at any time except to the extent such action is contrary to a final award or decision in any arbitration proceeding. The institution and maintenance of an action for injunctive relief or similar equitable relief shall not constitute a waiver of the right of any party, including without limitation the plaintiff, to submit any Dispute to arbitration nor render inapplicable the compulsory arbitration provisions of this Agreement.

(d) **Other Matters.** This arbitration provision constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior discussions, arrangements, negotiations and other communications on dispute resolution. This arbitration provision shall survive any termination, amendment, renewal, extension or expiration of this Agreement or any agreement executed in connection herewith or contemplated hereby unless the parties otherwise expressly agree in writing. The obligation to arbitrate any dispute shall be binding upon the successors and assigns of each of the parties.

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Section 11.7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

Section 11.8. Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 10.9. Validity. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

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10/04/2004 14:27 FAX 8724239

TERRY GARNER

0004

OCT-04-2004 14:55

PEPPER HAMILTON LLP

215 981 6368 P.05/08

IN WITNESS WHEREOF, Encore, Merger Sub, the Preferred Shareholders and the Company have executed and delivered this Agreement effective as of the date first written above.

THE ENCORE GROUP, INC

By: Louis Valente
Name: LOUIS R. VALENTE
Title: EVP

UNITED DESIGN CORPORATION

By: Michael G. Gault
Name: Michael E. Gault
Title: CEO

UD MERGER CORPORATION

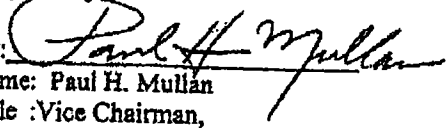
By: Louis Valente
Name: LOUIS R. VALENTE
Title: EVP

[Signature pages continue.]

CHARTERHOUSE EQUITY PARTNERS III, LP


By: CHUSA Equity Investors III, L.P.,
its general partner

By: Charterhouse Equity III, Inc.,
its general partner

By: 
Name: Paul H. Mullán
Title: Vice Chairman,
Strategic Partner

CHEF NOMINEES LIMITED

By: Charterhouse Group International, Inc.
Attorney in Power

By: 
Name: Joseph Rhodes
Title: Vice President

SCHEDULE 5.20

INTELLECTUAL PROPERTY

Trademarks

The following are the live federally registered marks of United Design Corporation. All of these marks are subject to a recorded security interest to Congress Financial Corporation (Southwest).

<u>Registration No.</u>	<u>Mark</u>
2,591,472	CAMEO GIRLS
2,450,236	LIFE ECHOES
2,310,895	CLASSIC CRITTERS
2,317,857	GARDEN GUARDIANS
2,292,226	UNITED DESIGN
2,310,557	BEAN LINGO
2,247,435	CELTIC CROSSINGS
2,271,165	SNOW ZONE
2,327,638	CUPID THE GIFT OF LOVE
2,278,771	CANDLELIGHTS
2,239,920	POT FEET
2,179,632	SECRET BLESSINGS
2,400,398	EARTH ECHOS
2,186,842	FRAME-LOGY
2,131,376	TINY WINGS
2,129,568	WELCOME NOTES
2,181,607	HIDE & KEEP
2,120,464	ANGEL IN YOUR CORNER
2,120,431	STONEGLOW
2,136,571	FIRST SNOW
1,993,370	STONE GARDEN
1,971,518	FANCY FRAMES
1,927,509	ANIMAL CLASSICS
1,902,734	STONE GARDEN
1,841,741	ANIMAL MAGNETISM
1,884,991	STONE CRITTERS THE ANIMAL COLLECTION
1,844,475	THE LEGEND OF SANTA CLAUS
1,826,392	ANGEL BABIES
1,721,986	ITTY BITTY CRITTERS
1,530,910	STONE CRITTERS
1,497,752	UNITEDSIGN

Copyright Registrations

Attached is a schedule of the registered copyrights of United Design Corporation. Most or all of these copyrights are subject to a recorded security interest to Congress Financial Corporation (Southwest).