

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Builders Specialties and Hardware, Inc.		12/31/2002	CORPORATION: INDIANA
Builders Specialties and Hardware of Cincinnati, Inc.		12/31/2002	CORPORATION: OHIO
et al		12/31/2002	unknown:
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	BSH Acquisition Company LLC		
<b>Street Address:</b>	1500 Amweld Drive		
<b>City:</b>	Garrettsville		
<b>State/Country:</b>	OHIO		
<b>Postal Code:</b>	44231		
<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: OHIO		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	2312036	BSH	
Registration Number:	2341003	BUILDERS SPECIALTIES & HARDWARE	
<b>CORRESPONDENCE DATA</b>			
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<b>Address Line 2:</b>	Suite 500		
<b>Address Line 4:</b>	Morrisville, NORTH CAROLINA 27560		
<b>ATTORNEY DOCKET NUMBER:</b>	020101.10ASIGNTBDRBSHEAR		

OP \$65.00 2312036

NAME OF SUBMITTER:	Ellen A. Rubel
Signature:	/Ellen A. Rubel/
Date:	09/14/2006

**Total Attachments: 125**

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**ASSET PURCHASE AGREEMENT**

by and among

**BSH ACQUISITION COMPANY LLC,  
BUILDERS SPECIALTIES AND HARDWARE OF CINCINNATI, INC.  
BUILDERS SPECIALTIES & HARDWARE OF EVANSVILLE, INC.  
BUILDERS SPECIALTIES & HARDWARE, INC.  
BSH-JOLIET, INC.  
BUILDERS SPECIALTY & HARDWARE OF KANSAS CITY, INC.  
BUILDER'S SPECIALTIES & HARDWARE OF PITTSBURGH, INC.  
BUILDERS SPECIALTIES & HARDWARE OF COLUMBUS, INC.  
BUILDERS SPECIALTIES & HARDWARE OF CHARLESTON, INC.**

and

**MAE HOLDING COMPANY**

Dated December 31, 2002

**EXECUTION COPY**

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is dated effective as of December 31, 2002, by and among **BSH ACQUISITION COMPANY LLC**, an Ohio limited liability company ("Buyer"); **BUILDERS SPECIALTIES AND HARDWARE OF CINCINNATI, INC.**, an Ohio corporation ("BSH-Cin"), **BUILDERS SPECIALTIES & HARDWARE OF EVANSVILLE, INC.**, an Indiana corporation ("BSH-Ind"), **BUILDERS SPECIALTIES & HARDWARE, INC.**, an Indiana corporation, **BSH - JOLIET, INC.**, an Illinois corporation ("BSH-Chi"), **BUILDERS SPECIALTY & HARDWARE OF KANSAS CITY, INC.** a Missouri corporation ("BSH-Kan", **BUILDER'S SPECIALTIES & HARDWARE OF PITTSBURGH INC.**, an Ohio corporation ("BSH-Pitt"), **BUILDERS SPECIALTIES & HARDWARE OF COLUMBUS, INC.**, an Ohio corporation ("BSH-Col"), and **BUILDERS SPECIALTIES & HARDWARE OF CHARLESTON, INC.**, a West Virginia corporation ("BSH-WVA"), (collectively referred to herein as the "Sellers"), and **MAE HOLDING COMPANY**, an Ohio corporation ("Shareholder").

### RECITALS:

A. Sellers are engaged in the distribution of commercial and industrial doors, frames and architectural hardware (the "Business").

B. Shareholder owns all of the issued and outstanding common stock and other equity securities of BSH-Cin, BSH-Chi, BSH-Pitt and BSH-WVA, approximately 93% of the issued and outstanding common stock and other equity securities of BSH-Ind and approximately 80% of the issued and outstanding common stock and other equity securities of BSH-Kan. BSH-Col is a wholly owned subsidiary of BSH-Pitt.

C. Sellers desire to sell, and Buyer desires to purchase, the Assets of Sellers for the consideration and on the terms set forth in this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties, intending to be legally bound, agree as follows:

#### **1. DEFINITIONS AND USAGE**

##### **1.1 Definitions**

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

"Accounts Receivable"--(a) all trade accounts receivable and other rights to payment from customers of Sellers and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to customers of Sellers, (b) all other accounts or notes receivable of

Sellers and the full benefit of all security for such accounts or notes and (c) any claim, remedy or other right related to any of the foregoing.

“Adjusted EBITDA” – EBITDA increased by (i) one hundred percent (100%) of the expenses associated with the license/lease of the Charlie Software System; (ii) any costs of the acquisition made pursuant to this Agreement; (iii) any expense attributable to the Contingent Payment; (iv) any direct or indirect charges or expense related to legal, tax, treasury, risk management services, information services, human resources or other support functions provided by W.W. Holdings or its Affiliates to the Buyer, except to the extent that the same is or was provided by any third party prior to the Closing Date, unless approved by Sellers which approval shall not be unreasonably withheld, conditioned or delayed; (v) any management services charged by WWH or its Affiliates except to the extent that the same is or was provided by any third party prior to the Closing Date, or except as approved by Sellers, which approval shall not be unreasonably withheld, conditioned or delayed; (vi) the “BSH-WVA Losses;” and (vii) the BSH-WVA Administrative Payment.

“Adjusted EBITDA Calculation” --as defined in Section 2.3(c)

“Adjustment Amount”--as defined in Section 2.8.

“Agreement Among Members” --shall mean the Agreement Among Members of Buyer.

“Appurtenances”--all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of the Land, including all easements appurtenant to and for the benefit of any Land (a “Dominant Parcel”) for, and as the primary means of access between, the Dominant Parcel and a public way, or for any other use upon which lawful use of the Dominant Parcel for the purposes for which it is presently being used is dependent, and all rights existing in and to any streets, alleys, passages and other rights-of-way included thereon or adjacent thereto (before or after vacation thereof) and vaults beneath any such streets.

“Assets”--as defined in Section 2.1.

“Assignment and Assumption Agreement”--as defined in Section 2.7(a)(ii).

“Assignment, Assumption and Amendment to Lease” --as defined in Section 2.7(a)(iii).

“Assumed Liabilities”--as defined in Section 2.4(a).

“BSH-Chi” – BSH-Joliet, Inc., an Illinois corporation.

“BSH-Cin” --Builders Specialties and Hardware Of Cincinnati, Inc., an Ohio corporation

“BSH-Col” --Builders Specialties & Hardware Of Columbus, Inc., an Ohio corporation

“BSH-Pitt” --Builder’s Specialties & Hardware Of Pittsburgh Inc., an Ohio corporation

“BSH-WVA” --Builders Specialties & Hardware Of Charleston, Inc., a West Virginia corporation

“BSH-WVA Administrative Payment” --as defined in Section 2.11.

“BSH-WVA LOSSES” --as defined in Section 2.11.

“Best Efforts”--the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible, provided, however, that a Person required to use Best Efforts under this Agreement will not be thereby required to take actions that would result in a material adverse change in the benefits to such Person of this Agreement and the Contemplated Transactions or to dispose of or make any change to its business, expend any material funds or incur any other material burden.

“Bill of Sale”--as defined in Section 2.7(a)(i).

“Breach”--any breach of, or any inaccuracy in, any representation or warranty or any breach of, or failure to perform or comply with, any covenant or obligation, in or of this Agreement or any other Contract, or any event which with the passing of time or the giving of notice, or both, would constitute such a breach, inaccuracy or failure.

“Bulk Sales Laws”--as defined in Section 5.5.

“Business Day”--any day other than (a) Saturday or Sunday or (b) any other day on which banks in Cleveland, Ohio are permitted or required to be closed.

“Buyer”--as defined in the first paragraph of this Agreement.

“Buyer Indemnified Persons”--as defined in Section 11.2.

“Charlie” – a database driven software application specifically geared toward optimizing the ability of a door, frame and hardware distribution company to estimate, detail and project manage customer jobs.

“Charlie Software” --the “works” and the “inventions” as defined in the Charlie Software License Agreement.

“Charlie Software License Agreement” – the Software License and Purchase Option Agreement dated as of December 31, 2002 by and between Buyer and Shareholder.



“Cincinnati Lease” – the Lease dated as of December 31, 2002 by and between Buyer and Thurner Hatfield Thurner, an Ohio general partnership.

“Closing”--as defined in Section 2.6.

“Closing Date”--the date on which the Closing actually takes place.

“Closing Financial Statements”--as defined in Section 2.9(b).

“Closing Shareholder’s Equity”--as defined in Section 2.9(a).

“Closing Working Capital”--as defined in Section 2.9(b).

“COBRA”--as defined in Section 3.16(f).

“Code”--the Internal Revenue Code of 1986.

“Confidential Information”--as defined in the Noncompetition Agreements.

“Consent”--any approval, consent, ratification, waiver or other authorization.

“Contemplated Transactions”--all of the transactions contemplated by this Agreement.

“Contingent Payment”--as defined in Section 2.3.

“Contract”--any agreement, contract, Lease, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding.

“Copyrights”--as defined in Section 3.25(a)(iii).

“Damages”--as defined in Section 11.2.

“Disclosure Letter”--the disclosure letter delivered by Sellers and Shareholders to Buyer concurrently with the execution and delivery of this Agreement.

“EBITDA”--Earnings before interest, taxes, depreciation and amortization, as determined in accordance with GAAP.

“Effective Time”--the close of business on the Closing Date.

“Employee Plans”--as defined in Section 3.16(a).

“Employment Agreement”--as defined in Section 2.7(a)(vi).

“Encumbrance”--any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement,

encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

"Environment"--soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

"Environmental, Health and Safety Liabilities"--any cost, damages, expense, liability, obligation or other responsibility arising from or under any Environmental Law or Occupational Safety and Health Law, including those consisting of or relating to:

(a) any environmental, health or safety matter or condition (including but not limited to on-site or off-site contamination, occupational safety and health and regulation of any chemical substance or product);

(b) any fine, penalty, judgment, award, settlement, legal, judicial or administrative proceeding, damages, loss, claim, injunction, demand or response, remedial or inspection cost or expense arising under any Environmental Law or Occupational Safety and Health Law;

(c) financial responsibility under any Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any cleanup, removal, containment or other remediation or response actions ("Cleanup") required by any Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other Person) and for any natural resource damages; or

(d) any other compliance, corrective or remedial measure required under any Environmental Law or Occupational Safety and Health Law.

The terms "removal," "remedial" and "response action" include the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

"Environmental Law"--any Legal Requirement that requires or relates to:

(a) advising appropriate authorities, employees or the public of intended or actual Releases of pollutants or Hazardous Materials, or substances, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment;

(b) preventing, reducing or abating to acceptable levels the Release of pollutants or Hazardous Materials or substances into the Environment;

- (c) reducing the quantities, preventing the Release of Hazardous Materials or minimizing the hazardous characteristics of wastes that are generated;
- (d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of;
- (e) protecting resources, species or ecological amenities from Releases of Hazardous Materials;
- (f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances;
- (g) cleaning up Hazardous Materials or pollutants that have been Released, preventing the Threat of Release or paying the costs of such clean up or prevention; or
- (h) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

“ERISA”--the Employee Retirement Income Security Act of 1974, as amended.

“Exchange Act”--the Securities Exchange Act of 1934.

“Excluded Assets”--as defined in Section 2.2.

“Facilities”--any real property, leasehold or other interest in real property currently owned or operated by Sellers, including the Tangible Personal Property used or operated by Sellers at the respective locations of the Real Property specified in Section 3.7. Notwithstanding the foregoing, for purposes of the definitions of “Hazardous Activity” and “Remedial Action” and Sections 3.22 and 11.3, “Facilities” shall mean any real property, leasehold or other interest in real property currently or formerly owned or operated by Sellers, including the Tangible Personal Property used or operated by Sellers at the respective locations of the Real Property specified in Section 3.7.

“Fiscal Year” --as defined in Section 2.3(c).

“Fiscal Year Pro Forma Adjusted EBITDA” --as defined in Section 2.3(d)(ii).

“Fiscal Year-to-Date Adjusted EBITDA” --as defined in Section 2.3(d)(i).

“GAAP”--generally accepted accounting principles for financial reporting in the United States, applied on a basis consistent with the basis on which the Balance Sheet and the other financial statements referred to in Section 3.4 were prepared.

“Governing Documents”--with respect to any particular entity, (a) if a corporation, the articles or certificate of incorporation and the regulations and/or bylaws; (b) if a general partnership, the

partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles of organization and operating agreement; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (f) all equityholders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equityholders of any Person; and (g) any amendment or supplement to any of the foregoing.

"Governmental Authorization"--any Consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body"--any:

- (a) nation, state, county, city, town, borough, village, district or other jurisdiction;
- (b) federal, state, local, municipal, foreign or other government;
- (c) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers);
- (d) multinational organization or body;
- (e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or
- (f) official of any of the foregoing.

"Ground Lease"--any long-term lease of land in which most of the rights and benefits comprising ownership of the land and the improvements thereon or to be constructed thereon, if any, are transferred to the tenant for the term thereof.

"Ground Lease Property"--any land, improvements and appurtenances subject to a Ground Lease in favor of Sellers.

"Guaranty" --the Guaranty of W.W. Holdings, L.L.C., as defined in Section 8.4(b).

"Hazardous Activity"--the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, labeling, testing, discharge, control, clean up, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Material in, on, under, about or migration from any of the Facilities to the Environment or any part thereof into the Environment and any other act, business, operation or thing that

increases the danger, or risk of danger, or poses an unreasonable risk of harm, to persons or property on or off the Facilities to adjoining property.

"Hazardous Material"--any substance, gas, chemical, liquid, material or waste which is or will foreseeably be regulated by any Governmental Body, including any material, substance or waste which is defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "contaminant," "toxic waste" or "toxic substance" or "pollutant and/or pollution" under any provision of Environmental Law, and including but not limited to petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde and polychlorinated biphenyls, chemical substances or mixtures, pesticides, radiation and chemicals known or suspected to cause cancer or reproductive toxicity.

"Improvements"--all buildings, structures, fixtures and improvements located on the Land or included in the Assets, including those under construction.

"Indemnified Person"--as defined in Section 11.9(a).

"Indemnifying Person"--as defined in Section 11.9(a).

"Independent Accountants" --as defined in Section 2.3.

"Initial Shareholder's Equity"--as defined in Section 2.9(a).

"Initial Working Capital"--as defined in Section 2.9(a).

"Intellectual Property Assets"--as defined in Section 3.25(a). For the purposes of this Agreement, the Intellectual Property Assets shall not include the Charlie Software.

"Interim Balance Sheet"--as defined in Section 3.4.

"Inventories"--all inventories of Sellers, wherever located, including all finished goods, work in process, raw materials, spare parts and all other materials and supplies to be used or consumed by Sellers in the production of finished goods.

"IRS"--the United States Internal Revenue Service and, to the extent relevant, the United States Department of the Treasury.

"Knowledge"--an individual will be deemed to have Knowledge of a particular fact or other matter if:

- (a) that individual is actually aware of that fact or matter; or
- (b) a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement.

A Person (other than an individual) will be deemed to have Knowledge of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, officer, partner, executor or trustee of that Person (or in any similar capacity) has, or at any time had, Knowledge of that fact or other matter (as set forth in (a) and (b) above), and any such individual (and any individual party to this Agreement) will be deemed to have conducted a reasonably comprehensive investigation regarding the accuracy of the representations and warranties made herein by that Person or individual.

"Land"--all parcels and tracts of land in which any of the Sellers have an ownership interest.

"Lease"--any Real Property Lease or any lease or rental agreement, license, right to use or installment and conditional sale agreement to which any of the Sellers is a party and any other Sellers Contract pertaining to the leasing or use of any Tangible Personal Property.

"Legal Requirement"--any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty, permits, licenses and other authorization.

"Liability"--with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Marks"--as defined in Section 3.25(a)(i).

"Material Consents"--as defined in Section 7.3.

"Membership Interests"--as defined in Section 2.3(d).

"Occupational Safety and Health Law"--any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, including the Occupational Safety and Health Act, and any program, whether governmental or private (such as those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

"Operating Agreement"--shall mean the Operating Agreement of Buyer.

"Order"--any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator.

"Ordinary Course of Business"--an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if that action:

(a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person;

(b) does not require authorization by the board of directors or shareholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature; and

(c) is similar in nature, scope and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal, day-to-day operations of other Persons that are in the same line of business as such Person.

“Part”--a part or section of the Disclosure Letter.

“Patents”--as defined in Section 3.25(a)(ii).

“Permitted Encumbrances”--as defined in Section 3.9(b).

“Person”--an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

“Proceeding”--any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

“Promissory Note”--as defined in Section 2.7(b)(ii).

“Purchase Price”--as defined in Section 2.3(a).

“Real Property”--the Land and Improvements and all Appurtenances thereto and any Ground Lease Property.

“Real Property Lease”--any Ground Lease or Space Lease.

“Record”--information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Redemption Event” --as defined in Section 2.3(d)(ii).

“Related Person”-- With respect to a particular individual:

(a) each other member of such individual’s Family;

(b) any Person that is directly or indirectly controlled by any one or more members of such individual's Family;

(c) any Person in which members of such individual's Family hold (individually or in the aggregate) a Material Interest; and

(d) any Person with respect to which one or more members of such individual's Family serves as a director, officer, partner, executor or trustee (or in a similar capacity).

With respect to a specified Person other than an individual:

(a) any Person that directly or indirectly controls, is directly or indirectly controlled by or is directly or indirectly under common control with such specified Person;

(b) any Person that holds a Material Interest in such specified Person;

(c) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity);

(d) any Person in which such specified Person holds a Material Interest; and

(e) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity).

For purposes of this definition, (a) "control" (including "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall be construed as such term is used in the rules promulgated under the Securities Act; (b) the "Family" of an individual includes (i) the individual, (ii) the individual's spouse, (iii) any other natural person who is related to the individual or the individual's spouse within the second degree and (iv) any other natural person who resides with such individual; and (c) "Material Interest" means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of voting securities or other voting interests representing at least ten percent (10%) of the outstanding voting power of a Person or equity securities or other equity interests representing at least ten percent (10%) of the outstanding equity securities or equity interests in a Person.

"Release"--any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into or from any property (including adjacent property).

"Remedial Action"--all actions, including any capital expenditures, required or voluntarily undertaken (a) to clean up, remove, treat, abate or in any other way address any Hazardous Material or other substance; (b) to prevent the Release or Threat of Release or to minimize the further Release of any Hazardous Material or other substance so it does not migrate or endanger or threaten to



endanger public health or welfare or the Environment; (c) to perform pre-remedial studies and investigations or post-remedial monitoring, operation and maintenance and care; or (d) to bring all Facilities and the operations conducted thereon into compliance with Environmental Laws and environmental Governmental Authorizations.

“Representative”--with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

“Retained Liabilities”--as defined in Section 2.4(b).

“SEC”--the United States Securities and Exchange Commission.

“Securities Act”--as defined in Section 3.3.

“Sellers”--as defined in the first paragraph of this Agreement.

“Sellers Contract”--any Contract (a) under which Sellers have or may acquire any rights or benefits; (b) under which Sellers have or may become subject to any obligation or liability; or (c) by which Sellers or any of the assets owned or used by Sellers are or may become bound.

“Services Agreement” --as defined in Section 7.7.

“Shareholder”--as defined in the first paragraph of this Agreement.

“Software”--all computer software and subsequent versions thereof, including source code, object, executable or binary code, objects, comments, screens, user interfaces, report formats, templates, menus, buttons and icons and all files, data, materials, manuals, design notes and other items and documentation related thereto or associated therewith. For the purposes of this Agreement, Software shall not include the Charlie Software.

“Space Lease”--any lease or rental agreement pertaining to the occupancy of any improved space on any Land.

“Subordination Agreement” -- that certain Subordination Agreement among Sellers, Buyer and Congress Financial Corporation (Central).

“Subscription Agreement” --the subscription agreement to be executed by George E. Thurner III in connection with the issuance of membership interests in Buyer to him.

“Subsidiary”--with respect to any Person (the “Owner”), any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation’s or other Person’s board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having

such power only upon the happening of a contingency that has not occurred), are held by the Owner or one or more of its Subsidiaries.

“Tangible Personal Property”--all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property (other than Inventories) of every kind owned or leased by Sellers (wherever located and whether or not carried on Sellers’ books), together with any express or implied warranty by the manufacturers or Sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

“Target Adjusted EBITDA”--as defined in Section 2.3(c).

“Tax”--any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees’ income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever and any interest, penalty, addition or additional amount thereon imposed, assessed or collected by or under the authority of any Governmental Body or payable under any tax-sharing agreement or any other Contract.

“Tax Return”--any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

“Third Party”--a Person that is not a party to this Agreement.

“Third-Party Claim”--any claim against any Indemnified Person by a Third Party, whether or not involving a Proceeding.

“Threat of Release”--a reasonable likelihood of a Release that may require action in order to prevent, abate or mitigate damage to the Environment that may result from such Release.

“WARN Act”--as defined in Section 3.23(d).

“W.W. Holdings, LLC” --shall mean W.W. Holdings, LLC, an Ohio limited liability company.

## 1.2 Usage

(a) Interpretation In this Agreement, unless a clear contrary intention appears:

- (i) the singular number includes the plural number and vice versa;
- (ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (iii) reference to any gender includes each other gender;
- (iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (v) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;
- (vi) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;
- (vii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;
- (viii) "or" is used in the inclusive sense of "and/or";
- (ix) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and
- (x) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

(c) Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise

requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

## **2. SALE AND TRANSFER OF ASSETS; CLOSING**

### **2.1 Assets To Be Sold**

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, but effective as of the Effective Time, Sellers shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Sellers, free and clear of any Encumbrances other than Permitted Encumbrances, all of Sellers' right, title and interest in and to all of Sellers' property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, including the following (but excluding the Excluded Assets):

- (a) all cash, cash equivalents and short-term investments;
- (b) all Real Property, including the Real Property described in Parts 3.7 and 3.8;
- (c) all Tangible Personal Property, including those items described in Part 2.1(c);
- (d) all Inventories;
- (e) all Accounts Receivable;
- (f) all Sellers Contracts, including those listed in Part 3.20(a), and all outstanding offers or solicitations made by or to Sellers to enter into any Contract;
- (g) all Governmental Authorizations and all pending applications therefor or renewals thereof, in each case to the extent transferable to Buyer, including those listed in Part 3.17(b);
- (h) all data and Records related to the operations of Sellers, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records and, subject to Legal Requirements, copies of all personnel Records and other Records described in Part 2.2(f);
- (i) all of the intangible rights and property of Sellers, including Intellectual Property Assets, going concern value, goodwill, telephone, telecopy and e-mail addresses and listings and those items listed in Parts 3.25(d), (e), (f) and (h);
- (j) all insurance benefits, including rights and proceeds, arising from or relating to the Assets or the Assumed Liabilities prior to the Effective Time, unless expended in accordance with this Agreement and rights of Buyer as an additional insured under the Additional Insurance Policies;

(k) all claims of Sellers against third parties relating to the Assets, whether choate or inchoate, known or unknown, contingent or noncontingent, including all such claims listed in Part 2.1(k);

(l) all rights of Sellers relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof that are not listed in Part 2.2(c) and that are not excluded under Section 2.2(f).

All of the property and assets to be transferred to Buyer hereunder are herein referred to collectively as the "Assets."

Notwithstanding the foregoing, the transfer of the Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Assets unless Buyer expressly assumes that Liability pursuant to Section 2.4(a).

## 2.2 Excluded Assets

Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following assets of Sellers (collectively, the "Excluded Assets") are not part of the sale and purchase contemplated hereunder, are excluded from the Assets and shall remain the property of Sellers after the Closing:

- (a) all minute books, stock Records and corporate seals;
- (b) the shares of capital stock of Sellers held in treasury;
- (c) those rights relating to deposits and prepaid expenses and claims for refunds and rights to offset in respect thereof listed in Part 2.2(c);
- (d) all insurance policies and rights thereunder (except to the extent specified in Section 2.1(j) and (k));
- (e) all of the Sellers Contracts listed in Part 2.2(e);
- (f) all personnel Records and other Records that Sellers is required by law to retain in its possession;
- (g) all claims for refund of Taxes and other governmental charges of whatever nature;
- (h) all rights in connection with and assets of the Employee Plans;
- (i) all rights of Sellers under this Agreement, the Bill of Sale, the Assignment and Assumption Agreement, and the Promissory Note;
- (j) the property and assets expressly designated in Part 2.2(j); and

(k) all Employee Plans.

### 2.3 Consideration

(a) The consideration for the Assets (the "Purchase Price") will be (i) up to Twelve Million Six Hundred Forty-Seven Thousand Nine Hundred Four Dollars (\$12,647,904.00) plus or minus the Adjustment Amount and, and (ii) the assumption of the Assumed Liabilities.

(b) In accordance with Section 2.7(b), at the Closing, the Purchase Price, prior to adjustment on account of the Adjustment Amount, shall be delivered by Buyer to Sellers as follows: (i) Seven Million Seven Hundred Forty-Seven Thousand Nine Hundred Four Dollars (\$7,747,904.00) by wire transfer; (ii) Two Million Four Hundred Thousand Dollars (\$2,400,000.00) payable in the form of the Subordinated Promissory Note; (iii) up to Two Million Five Hundred Thousand Dollars (\$2,500,000.00) shall be paid with regard to the Contingent Payment (defined below), upon the terms and subject to the conditions set forth in Section 2.3(c); and (iv) the balance of the Purchase Price by the execution and delivery of the Assignment and Assumption Agreement and the Assignment and Assumption of Leases. The Adjustment Amount shall be paid in accordance with Section 2.8.

(c) The "Contingent Payment" shall, subject to the terms and conditions of the Subordination Agreement, be calculated and paid upon the terms and subject to the conditions set forth in this Section 2.3(c). In the event that Buyer has Adjusted EBITDA of Two Million Dollars (\$2,000,000.00) or more during the first calendar year, i.e., January 1, 2003 through December 31, 2003, from and after the Closing ("Fiscal Year"), the Buyer shall pay the Sellers One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00). In the event that Buyer has Adjusted EBITDA during the first Fiscal Year of less than Two Million Dollars (\$2,000,000.00), no Contingent Payment shall be paid for such Fiscal Year. In the event that the Buyer has Adjusted EBITDA of Three Million Dollars (\$3,000,000.00) or more during the second Fiscal Year from and after the Closing, Buyer shall pay the Sellers One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00). In the event that Buyer has Adjusted EBITDA of less than Three Million Dollars (\$3,000,000.00) during such second Fiscal Year, no Contingent Payment shall be paid with regard to the second Fiscal Year. Such Adjusted EBITDA targets for each such Fiscal Year are hereinafter referred to as "Target Adjusted EBITDA." For purposes of the Agreement Among Members, the term "Target Adjusted EBITDA" shall be deemed to include Four Million Dollars (\$4,000,000.00) for the third Fiscal Year.

Buyer shall prepare a calculation of Adjusted EBITDA ("Adjusted EBITDA Calculation") for the first Fiscal Year and second Fiscal Year within seventy-five (75) days of the close of each such Fiscal Year. Such calculation shall be made in accordance with GAAP, applying accounting principles, policies and practices on a basis consistent with past practice. Buyer shall deliver the Adjusted EBITDA Calculation within ninety (90) days following the close of each such Fiscal Year.

If within thirty (30) days following delivery of the Adjusted EBITDA Calculation, Sellers have not given Buyer written notice of their objection to the Adjusted EBITDA Calculation (which

notice shall state in reasonable detail the basis of Sellers' objection), then the Adjusted EBITDA Calculation by Buyer shall be binding and conclusive on the parties and be used in computing the Contingent Payment.

If Sellers duly give Buyer such notice of objection, and if Sellers and Buyer fail to resolve the issues outstanding with respect to the Adjusted EBITDA Calculation within thirty (30) days of Buyer's receipt of Sellers' objection notice, Sellers and Buyer shall submit the issues remaining in dispute to the Cincinnati, Ohio office of Clark, Schaeffer & Hackett, independent public accountants (the "Independent Accountants") for resolution applying the principles, policies and practices referred to in Section 2.3(c). If issues are submitted to the Independent Accountants for resolution, (i) Sellers and Buyer shall furnish or cause to be furnished to the Independent Accountants such work papers and other documents and information related to the disputed issues as the Independent Accountants may request and are available to that party or its agents and shall be afforded the opportunity to present to the Independent Accountants any material relating to the disputed issues and to discuss the issues with the Independent Accountants; (ii) the determination by the Independent Accountants, as set forth in a notice to be delivered to both Sellers and Buyer within sixty (60) days of the submission to the Independent Accountants of the issues remaining in dispute, shall be final, binding and conclusive on the parties and shall be used in the calculation of Adjusted EBITDA; and (iii) Sellers and Buyer shall each bear fifty percent (50%) of the fees and costs of the Independent Accountants for such determination.

Within three (3) business days after the calculation of the Adjusted EBITDA for a Fiscal Year becomes binding and conclusive on the parties, Buyer shall make the wire transfer of the applicable Contingent Payment, if required pursuant to the provisions of this Agreement.

(d) Notwithstanding anything to the contrary set forth herein, in the event that the membership interests ("Membership Interests") held by George E. Thurner III in Buyer are redeemed by Buyer prior to the Mandatory Call Option Effective Date (as such term is defined in the Agreement Among Members), then for purposes of determining whether the Adjusted EBITDA shall be deemed to meet the Target Adjusted EBITDA thresholds set forth above, and, accordingly, whether any Contingent Payment is payable hereunder, the following shall apply:

- (i) Buyer's accountants shall determine the Fiscal Year-to-date EBITDA of Buyer for the period commencing on the first day of the Fiscal Year in which the event giving rise to the redemption of Membership Interests (the "Redemption Event") occurs and ending on the date on which the Redemption Event occurs (the "Fiscal Year to Date Adjusted EBITDA").
- (ii) The Buyer's accountants shall extrapolate the Fiscal Year to Date Adjusted EBITDA on an annualized basis and shall render a determination of such annualized Fiscal Year to Date EBITDA (the "Fiscal Year Pro Forma Adjusted EBITDA").

- (iii) The Buyer's accountants shall compare the Fiscal Year Pro Forma Adjusted EBITDA to the Target Adjusted EBITDA for the Fiscal Year in which the Redemption Event occurs.
- (iv) If the Fiscal Year Pro Forma Adjusted EBITDA is equal to or in excess of the Target Adjusted EBITDA for such Fiscal Year, then the Contingent Payment shall be paid upon the terms and conditions set forth in Section 2.3(c); provided, however, that in an event of a Change of Control (as defined in the Agreement Among Members) such payment shall be made at the time that payments made pursuant to Section 5.2(C) of the Agreement Among Members following a Change of Control are to be made.
- (v) If the Fiscal Year Pro Forma Adjusted EBITDA is less than the Target Adjusted EBITDA for such Fiscal Year, then the amount of the Contingent Payment paid pursuant to Section 2.3(c) (or, if disputed, pursuant to Section 2.3(e) below) shall be a prorated amount calculated by multiplying (i) the amount of Contingent Payment that would have been payable under Section 2.3(c) above if Buyer's actual Adjusted EBITDA for the Fiscal Year in question was equal to or in excess of the Target Adjusted EBITDA for such Fiscal Year, by (ii) a fraction, the numerator of which is the Fiscal Year Pro Forma Adjusted EBITDA for such Fiscal Year and the denominator of which is the Target Adjusted EBITDA for such Fiscal Year.

(e) If within thirty (30) days following delivery of the calculations of the amounts set forth in Section 2.3(d)(iv), Sellers have not given Buyer written notice of their objection to the same (which notice shall state in reasonable detail the basis of Sellers' objection), then the Fiscal Year To Date Adjusted EBITDA and Fiscal Year Pro Forma Adjusted EBITDA calculations by Buyer shall be binding and conclusive on the parties and be used in computing the Contingent Payment.

If Sellers duly give Buyer such notice of objection, and if Sellers and Buyer fail to resolve the issues outstanding with respect to the Fiscal Year To Date Adjusted EBITDA and Fiscal Year Pro Forma Adjusted EBITDA calculations within thirty (30) days of Buyer's receipt of Sellers' objection notice, Sellers and Buyer shall submit the issues remaining in dispute to the Cincinnati, Ohio office of the Independent Accountants for resolution applying the principles, policies and practices referred to in Section 2.3(c). If issues are submitted to the Independent Accountants for resolution, (i) Sellers and Buyer shall furnish or cause to be furnished to the Independent Accountants such work papers and other documents and information related to the disputed issues as the Independent Accountants may request and are available to that party or its agents and shall be afforded the opportunity to present to the Independent Accountants any material relating to the disputed issues and to discuss the issues with the Independent Accounts; (ii) the determination by the Independent Accountants, as set forth in a notice to be delivered to both Sellers and Buyer within sixty (60) days of



the submission to the Independent Accountants of the issues remaining in dispute, shall be final, binding and conclusive on the parties and shall be used in the calculation of Adjusted EBITDA; and (iii) Sellers and Buyer shall each bear fifty percent (50%) of the fees and costs of the Independent Accounts for such determination.

Within three (3) business days after the calculation of the Fiscal Year To Date Adjusted EBITDA and Fiscal Year Pro Forma Adjusted EBITDA calculations for a Fiscal Year becomes binding and conclusive on the parties, Buyer shall make the wire transfer of the applicable Contingent Payment, if required pursuant to the provisions of this Agreement; provided, however, that payments to be made following a Change of Control shall be made at the time designated in Section 5.2(C) of the Agreement Among Members.

## 2.4 Liabilities

(a) Assumed Liabilities. On the Closing Date, but effective as of the Effective Time, Buyer shall assume and agree to discharge only the following Liabilities of Sellers (the "Assumed Liabilities"):

- (i) any trade account payable reflected on the Interim Balance Sheet (other than a trade account payable to any Shareholder or a Related Person of Sellers or Shareholder) that remains unpaid at and is not delinquent in any material amount as of the Effective Time;
- (ii) any trade account payable (other than a trade account payable to any Shareholder or a Related Person of Sellers or any Shareholder, other than current obligations incurred in the ordinary course of business to Chappell Door Co., Inc.) incurred by Sellers in the Ordinary Course of Business between the date of the Interim Balance Sheet and the Effective Time that remains unpaid at and is not delinquent in any material amount as of the Effective Time;
- (iii) any Liability to Sellers' customers incurred by Sellers in the Ordinary Course of Business for nondelinquent orders outstanding as of the Effective Time reflected on Sellers' books (other than any Liability arising out of or relating to a Breach that occurred prior to the Effective Time);
- (iv) any Liability arising after the Effective Time under the Sellers Contracts described in Part 3.20(a) (other than any Liability arising under the Sellers Contracts described in Section 2.4(a)(iv) or arising out of or relating to a Breach that occurred prior to the Effective Time);
- (v) any Liability of Sellers arising after the Effective Time under any Sellers Contract included in the Assets that is entered into by Sellers after the

date hereof in accordance with the provisions of this Agreement (other than any Liability arising out of or relating to a Breach that occurred prior to the Effective Time); and

(vi) any Liability of Sellers described in Part 2.4(a)(vi).

(b) Retained Liabilities. The Retained Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Sellers. "Retained Liabilities" shall mean every Liability of Sellers (other than the Assumed Liabilities), including:

- (i) any Liability arising out of or relating to products of Sellers to the extent manufactured or sold prior to the Effective Time other than to the extent assumed under Section 2.4(a)(iii), (iv) or (v);
- (ii) any Liability under any Contract assumed by Buyer pursuant to Section 2.4(a) that arises after the Effective Time but that arises out of or relates to any Breach that occurred prior to the Effective Time;
- (iii) any Liability for Taxes, including (A) any Taxes arising as a result of Sellers' operation of their business or ownership of the Assets prior to the Effective Time, and (B) any Taxes that will arise as a result of the sale of the Assets pursuant to this Agreement, other than transfer taxes, which will be pro rated equally by Sellers and Buyer, (C) any deferred Taxes of any nature and (D) any taxes arising from successor liability;
- (iv) any Liability under any Contract not assumed by Buyer under Section 2.4(a), including any Liability arising out of or relating to Sellers' credit facilities or any security interest related thereto;
- (v) any environmental, health and safety liabilities associated with any Release of Hazardous Material or Hazardous Activity in existence on or prior to the Closing Date with respect to any property owned, leased, or operated by the Sellers and/or other property (whether or not the Sellers ever had any ownership or leasehold interest in such property) to the extent such conditions are alleged to have resulted from the conduct of the business by the Sellers prior to the closing date (and irrespective of whether such above liabilities are imposed directly or indirectly under any theory of successor liability or otherwise);
- (vi) any Liability under the Employee Plans or relating to payroll, vacation, sick leave, workers' compensation, unemployment benefits, pension benefits, employee stock option or profit-sharing plans, health care plans or benefits or any other employee plans or benefits of any kind for Sellers' employees or former employees or both;

- (vii) any Liability under any employment, severance, retention or termination agreement with any employee of Sellers or any of its Related Persons;
- (viii) any Liability arising out of or relating to any employee grievance that arises out of or relates to matters that occurred prior to the Effective Time;
- (ix) any Liability of Sellers to any Shareholder or Related Person of Sellers or any Shareholder other than current liabilities incurred in the ordinary course of business for goods purchased from Chappell Door Co., Inc., and other than as provided for in the Real Property Leases;
- (x) any Liability to indemnify, reimburse or advance amounts to any officer, director, employee or agent of Sellers;
- (xi) any Liability to distribute to any of Sellers; shareholders or otherwise apply all or any part of the consideration received hereunder;
- (xii) any Liability arising out of any Proceeding pending as of the Effective Time;
- (xiii) any Liability arising out of any Proceeding commenced after the Effective Time and arising out of or relating to any occurrence or event happening prior to the Effective Time;
- (xiv) any Liability arising out of or resulting from Sellers' compliance or noncompliance with any Legal Requirement or Order of any Governmental Body;
- (xv) any Liability of Sellers under this Agreement or any other document executed in connection with the Contemplated Transactions;
- (xvi) any Liability relating to or arising out of claims of Sellers' employees or their dependents who became COBRA recipients before or after the Closing Date;
- (xvii) any Liability of Sellers based upon Sellers' acts or omissions occurring after the Effective Time; and
- (xviii) any Liability described in Section 2.4(b)(xviii).

## 2.5 Allocation

Attached hereto as Schedule 2.5 is the allocation of the Purchase Price and the Assumed Liabilities. Buyer and Sellers each shall report and file all Tax Returns (including amended Tax Returns and claims for refund) consistent with the Allocation Schedule, and shall take no position contrary thereto or inconsistent therewith (including, without limitation, in any audits or examinations by any taxing authority or any other proceedings) unless required by law. Buyer and Sellers shall cooperate in the filing of any forms (including Form 8594) with respect to such allocation, including any amendments to such forms required with respect to any adjustment to the Purchase Price, pursuant to the Agreement.

## **2.6 Closing**

The purchase and sale provided for in this Agreement (the "Closing") will take place at the offices of Buyer's counsel at 1300 East Ninth Street, Cleveland, Ohio, commencing at 10:00 a.m. (local time) as of December 31, 2002, unless Buyer and Sellers otherwise agree. Subject to the provisions of Article 9, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 2.6 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement. In such a situation, the Closing will occur as soon as practicable, subject to Article 9.

## **2.7 Closing Obligations**

In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing:

- (a) Sellers and Shareholder, as the case may be, shall deliver to Buyer, together with funds sufficient to pay all Taxes necessary for the transfer, filing or recording thereof:
- (i) a bill of sale for all of the Assets that are Tangible Personal Property in the form of Exhibit 2.7(a)(i) (the "Bill of Sale") executed by Sellers;
  - (ii) an assignment of all of the Assets that are intangible personal property in the form of Exhibit 2.7(a)(ii), which assignment shall also contain Buyer's undertaking and assumption of the Assumed Liabilities (the "Assignment and Assumption Agreement") executed by Sellers;
  - (iii) for each interest in Real Property identified on Section 3.8, other than the Real Property located in Cincinnati, Ohio, an Assignment, Assumption, and Amendment to Lease in the form of Exhibit 2.7(a)(iii), the Cincinnati Lease (for the Real Property located in Cincinnati, Ohio), or such other appropriate document or instrument of transfer, as the case may require, each in form and substance satisfactory to Buyer and its counsel and executed by Sellers;

- (iv) assignments of all Intellectual Property Assets and separate assignments of all registered Marks, Patents and Copyrights in the form of Exhibit 2.7(a)(iv)(A), (B) or (C), executed by Sellers;
- (v) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyer, each in form and substance satisfactory to Buyer and its legal counsel and executed by Sellers;
- (vi) an employment agreement in the form of Exhibit 2.7(a)(vi), executed by George Thurner III and Daniel Seliga (the "Employment Agreements");
- (vii) noncompetition agreements in the form of Exhibit 2.7(a)(vii), executed by George Thurner III, Daniel Seliga, Shareholder and each Seller (the "Noncompetition Agreements");
- (viii) a certificate executed by Sellers and Shareholder as to the accuracy of their representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 7.1 and as to their compliance with and performance of their covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 7.2;
- (ix) a certificate of the Secretary of Sellers and Shareholders certifying, as complete and accurate as of the Sellers, certifying and attaching all requisite resolutions or actions of Sellers', Shareholder's board of directors and shareholders approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and the change of name contemplated by Section 5.9 and certifying to the incumbency and signatures of the officers of Sellers and Shareholders executing this Agreement and any other document relating to the Contemplated Transactions and accompanied by the requisite documents for amending the relevant Governing Documents of Sellers required to effect such change of name in form sufficient for filing with the appropriate Governmental Body;
- (x) the documents referred to in Sections 7.4 and 7.7;
- (xi) the Charlie Software License Agreement, in the form of Exhibit 2.7(a)(xi) attached hereto;
- (xii) the Employee Leasing Agreement, in the form of Exhibit 2.7(a)(xii); and
- (xiii) the Services Agreement.

- (b) Buyer shall deliver to Sellers and Shareholders, as the case may be:
- (i) Seven Million Seven Hundred Forty-Nine Thousand Nine Hundred Four Dollars (\$7,749,904.00) by wire transfer to an account specified by Sellers prior to the Closing Date;
  - (ii) a subordinated promissory note executed by Buyer and payable to Sellers in the principal amount of Two Million Four Hundred Thousand Dollars (\$2,400,000.00) in the form of Exhibit 2.7(b)(ii) (the "Promissory Note");
  - (iii) the Assignment and Assumption Agreement executed by Buyer;
  - (iv) the Employment Agreements executed by Buyer;
  - (v) the Noncompetition Agreements executed by Buyer;
  - (vi) a certificate executed by Buyer as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 8.1 and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 8.2;
  - (vii) a certificate of the Secretary of Buyer certifying, and attaching all requisite resolutions or actions of Buyer's board of directors approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of Buyer executing this Agreement and any other document relating to the Contemplated Transactions;
  - (viii) a Certificate of the Secretary of W. W. Holdings, L.L.C. certifying and attaching all requisite resolutions or actions of W. W. Holdings' Board of Managers approving the execution and delivery of the Guaranty and certifying to the incumbency and signatures of the officers of W. W. Holdings executing the Guaranty and any other document relating to the Contemplated Transactions;
  - (ix) the Charlie Software License Agreement;
  - (x) the Employee Leasing Agreement; and
  - (xi) the Services Agreement.

## 2.8 Adjustment Amount And Payment

The "Adjustment Amount" (which may be a positive or negative number) will be equal to the greater of (a) the difference between the Closing Working Capital and the Initial Working Capital, and (b) the difference between the Closing Shareholder's Equity and the Initial Shareholder's Equity, and by taking the greater amount, if the Adjustment Amount is positive, or the lesser amount (i.e. the more negative amount) if the Adjustment Amount is negative. Notwithstanding the above, if one of the amounts calculated pursuant to clauses (a) or (b) above is positive and the other amount is negative, the Adjustment Amount shall be determined by adding such amounts together. If the Adjustment Amount is positive, the Adjustment Amount shall be paid by wire transfer by Buyer to an account specified by Sellers. If the Adjustment Amount is negative, the difference between the Closing Working Capital and the Initial Working Capital shall be paid by wire transfer by Sellers to an account specified by Buyer. All payments shall be made together with interest at the rate set forth in the Promissory Note, which interest shall begin accruing on the Closing Date and end on the date that the payment is made. Within three (3) business days after the calculation of the Closing Working Capital and Closing Shareholder's Equity becomes binding and conclusive on the parties pursuant to Section 2.9, Sellers or Buyer, as the case may be, shall make the wire transfer payment provided for in this Section 2.8.

## 2.9 Adjustment Procedure

(a) "Working Capital" as of a given date shall mean the amount calculated by subtracting the trade accounts payable and accrued liabilities of Sellers included in the Assumed Liabilities as of that date from the sum of (i) cash and cash equivalents of Sellers; plus (ii) the trade accounts receivable and rebate receivables of Sellers; plus (iii) Inventories (net of Inventory adjustments as of September 30, 2002) of Sellers included in the Assets as of that date; plus (iv) Shareholder computer hardware. The Working Capital of Sellers as of June 30, 2002 (the "Initial Working Capital") was Six Million Nine Hundred Twenty-Eight Thousand Five Hundred Fifty-Six Dollars and 00/100 Dollars (\$6,928,556.00). "Shareholder's Equity" as of a given date shall mean the amount calculated by subtracting the assets of Sellers included in the Assets from the liabilities of Sellers included in the Assumed Liabilities as of that date. The Shareholder's Equity of Sellers as of the date of the Balance Sheet (the "Initial Shareholder's Equity") was negative Six Million Three Hundred Sixty-Six Thousand Four Hundred Thirty Five Dollars and 00/100 Dollars (<\$6,366,435.00>).

(b) Buyer shall prepare financial statements ("Closing Financial Statements") of Sellers as of the Effective Time and for the period from the date of the Balance Sheet through the Effective Time on the same basis and applying the same accounting principles, policies and practices that were used in preparing the Balance Sheet, including the principles, policies and practices set forth on Exhibit 2.9. Buyer shall then determine the Working Capital as of the Effective Time (the "Closing Working Capital") based upon the Closing Financial Statements and using the same methodology as was used to calculate the Initial Working Capital. Buyer shall also determine the Shareholder's Equity as of the Effective Time in accordance with GAAP (the "Closing Shareholder's Equity"). Based upon the Closing Financial Statements and using the same methodology as was used to calculate the Initial Shareholder's Equity, Buyer shall deliver the Closing Financial Statements and its determination of the Closing Working Capital and Closing Shareholder's Equity to Sellers within sixty (60) days following the Closing Date.

(c) If within thirty (30) days following delivery of the Closing Financial Statements and the Closing Working Capital and Closing Shareholder's Equity calculations Sellers have not given Buyer written notice of its objection as to the Closing Working Capital or Closing Shareholder's Equity calculation (which notice shall state in reasonable detail the basis of Sellers' objection), then the Closing Working Capital and Closing Shareholder's Equity calculated by Buyer shall be binding and conclusive on the parties and be used in computing the Adjustment Amount.

(d) If Sellers duly give Buyer such notice of objection, and if Sellers and Buyer fail to resolve the issues outstanding with respect to the Closing Financial Statements and the calculation of the Closing Working Capital or Closing Shareholder's Equity, as applicable, within thirty (30) days of Buyer's receipt of Sellers' objection notice, Sellers and Buyer shall submit the issues remaining in dispute to Independent Accountants for resolution applying the principles, policies and practices referred to in Section 2.9(b). If issues are submitted to the Independent Accountants for resolution, (i) Sellers and Buyer shall furnish or cause to be furnished to the Independent Accountants such work papers and other documents and information relating to the disputed issues as the Independent Accountants may request and are available to that party or its agents and shall be afforded the opportunity to present to the Independent Accountants any material relating to the disputed issues and to discuss the issues with the Independent Accountants; (ii) the determination by the Independent Accountants, as set forth in a notice to be delivered to both Sellers and Buyer within sixty (60) days of the submission to the Independent Accountants of the issues remaining in dispute, shall be final, binding and conclusive on the parties and shall be used in the calculation of the Closing Working Capital; and (iii) Sellers and Buyer will each bear fifty percent (50%) of the fees and costs of the Independent Accountants for such determination.

## 2.10 Consents

(a) If there are any Material Consents that have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, in the case of each Sellers Contract as to which such Material Consents were not obtained (or otherwise are not in full force and effect) (the "Restricted Material Contracts"), Buyer may waive the closing conditions as to any such Material Consent and either:

- (i) elect to have Sellers continue their efforts to obtain the Material Consents; or
- (ii) elect to have Sellers retain that Restricted Material Contract and all Liabilities arising therefrom or relating thereto.

If Buyer elects to have Sellers continue their efforts to obtain any Material Consents and the Closing occurs, notwithstanding Sections 2.1 and 2.4, neither this Agreement nor the Assignment and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment, assumption, transfer, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of the Restricted Material



Contracts, and following the Closing, the parties shall use Best Efforts, and cooperate with each other, to obtain the Material Consent relating to each Restricted Material Contract as quickly as practicable. Pending the obtaining of such Material Consents relating to any Restricted Material Contract, the parties shall cooperate with each other in any reasonable and lawful arrangements designed to provide to Buyer the benefits of use of the Restricted Material Contract for its term (or any right or benefit arising thereunder, including the enforcement for the benefit of Buyer of any and all rights of Sellers against a third party thereunder). Once a Material Consent for the sale, assignment, assumption, transfer, conveyance and delivery of a Restricted Material Contract is obtained, Sellers shall promptly assign, transfer, convey and deliver such Restricted Material Contract to Buyer, and Buyer shall assume the obligations under such Restricted Material Contract assigned to Buyer from and after the date of assignment to Buyer pursuant to a special-purpose assignment and assumption agreement substantially similar in terms to those of the Assignment and Assumption Agreement (which special-purpose agreement the parties shall prepare, execute and deliver in good faith at the time of such transfer, all at no additional cost to Buyer).

(b) If there are any Consents not listed on Exhibit 7.3 necessary for the assignment and transfer of any Sellers Contracts to Buyer (the "Nonmaterial Consents") which have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, Buyer shall elect at the Closing, in the case of each of the Sellers Contracts as to which such Nonmaterial Consents were not obtained (or otherwise are not in full force and effect) (the "Restricted Nonmaterial Contracts"), whether to:

- (i) accept the assignment of such Restricted Nonmaterial Contract, in which case, as between Buyer and Sellers, such Restricted Nonmaterial Contract shall, to the maximum extent practicable and notwithstanding the failure to obtain the applicable Nonmaterial Consent, be transferred at the Closing pursuant to the Assignment and Assumption Agreement as elsewhere provided under this Agreement; or
- (ii) reject the assignment of such Restricted Nonmaterial Contract, in which case, notwithstanding Sections 2.1 and 2.4, (A) neither this Agreement nor the Assignment and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment, assumption, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of such Restricted Nonmaterial Contract, and (B) Sellers shall retain such Restricted Nonmaterial Contract and all Liabilities arising therefrom or relating thereto.

#### **2.11 Purchase of BSH – WVA Assets**

(a) On or before the date which is six (6) months after the Closing Date (the "Secondary Closing Date"), Buyer shall purchase the following assets of BSH – WVA, free and clear of any Encumbrance: (i) accounts receivables; (ii) inventory (excluding residential inventory); and (iii)

the fixed assets set forth on Exhibit 2.11 attached hereto (the "BSH-WVA Assets"). The purchase price for the BSH-WVA Assets shall be the book value of the same. The purchase price for the BSH-WVA Assets shall be paid in cash at the Secondary Closing Date upon receipt of a bill of sale from BSH-WVA, which bill of sale shall contain representations, warranties and covenants substantially similar to those set forth in Sections 3.9, 3.11, 3.12, 11.1, 11.2, 11.5 and 11.7 hereof. Upon the closing of the purchase of the BSH-WVA Assets, the BSH-WVA Assets shall be deemed to be "Assets" for purposes of this Agreement.

(b) Buyer shall reimburse BSH-WVA for up to One Hundred Fifty Thousand Dollars (\$150,000) in losses incurred by BSH-WVA from and after the Closing Date and through the Secondary Closing Date, provided, however, that rental payments shall be excluded from the calculation of losses (the "BSH-WVA Losses"). Such reimbursement shall be made by Buyer within thirty (30) days of receiving a certification from the President or Chief Financial Officer of BSH-WVA as to the amount of BSH-WVA Losses incurred by it for the applicable month following the Closing Date. Such certificate shall demonstrate, in reasonable detail, the calculations of such losses. Sellers agree to use their best efforts to operate the business of BSH-WVA so as to minimize any BSH-WVA Losses. In addition, Buyer shall pay BSH-WVA Four Thousand Five Hundred Dollars (\$4,500.00) per month during the first nine (9) months following the Closing for general administrative services ("BSH-WVA Administrative Payment"). The BSH-WVA Losses and the BSH-WVA Administrative Payment shall not be included in the calculation of Adjusted EBITDA.

### **3. REPRESENTATIONS AND WARRANTIES OF SELLERS AND SHAREHOLDER**

Except as set forth in the Disclosure Letter, Sellers and Shareholder represent and warrant, jointly and severally, to Buyer as follows:

#### **3.1 Organization And Good Standing**

(a) Part 3.1(a) contains a complete and accurate list of each Sellers' jurisdiction of incorporation and any other jurisdictions in which it is qualified to do business as a foreign corporation. Sellers are each corporations duly organized, validly existing and in good standing under the laws of their jurisdiction of incorporation, with full corporate power and authority to conduct their business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all their obligations under the Sellers Contracts. Sellers are duly qualified to do business as a foreign corporation and is in good standing under the laws of each state or other jurisdiction in which the failure to be so qualified would have a material adverse effect on such Sellers.

(b) Except as disclosed in Part 3.1(b), Sellers have no Subsidiary and do not own any shares of capital stock or other securities of any other Person.

### 3.2 Enforceability; Authority; No Conflict

(a) This Agreement constitutes the legal, valid and binding obligation of Sellers, and each Shareholder, enforceable against each of them in accordance with its terms. Upon the execution and delivery by Sellers and each Shareholder, as applicable, the Employment Agreement, the Noncompetition Agreement, the Charlie Software License Agreement, the Charlie Service Lease Agreement and each other agreement to be executed or delivered by any or all of Sellers, and/or each Shareholder at the Closing (collectively, the "Sellers' Closing Documents"), each of Sellers' Closing Documents will constitute the legal, valid and binding obligation of each of Sellers and Shareholder, enforceable against each of them in accordance with their terms. Sellers and Shareholder have the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Sellers' Closing Documents to which it is a party and to perform their obligations under this Agreement and the Sellers' Closing Documents, and such action has been duly authorized by all necessary action by Sellers' and Shareholder's respective shareholders and board of directors. Each Shareholder has all necessary legal capacity to enter into this Agreement and the Seller's Closing Documents to which such Shareholder is a party and to perform his obligations hereunder and thereunder.

(b) Except as set forth in Part 3.2(b), neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

- (i) Breach (A) any provision of any of the Governing Documents of Sellers or Shareholder or (B) any resolution adopted by the board of directors or the shareholders of Sellers or Shareholder;
- (ii) Breach or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Legal Requirement or any Order to which Sellers or Shareholder and/or any of the Assets, may be subject;
- (iii) contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by Sellers or that otherwise relates to the Assets or to the business of Sellers;
- (iv) to the knowledge of Sellers, cause Buyer to become subject to, or to become liable for the payment of, any Tax;
- (v) Breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or

performance of, or payment under, or to cancel, terminate or modify, any Sellers Contract;

- (vi) result in the imposition or creation of any Encumbrance upon or with respect to any of the Assets; or
- (vii) result in any Person having the right to exercise dissenters' appraisal rights.

(c) Except as set forth in Part 3.2(c), neither Sellers nor Shareholder is required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

### **3.3 Capitalization**

Part 3.3 sets forth a description of the authorized and issued equity securities of each Seller. Shareholder is and will be on the Closing Date the record and beneficial owner and holder of such shares as set forth on Part 3.3, free and clear of all Encumbrances. There are no Contracts relating to the issuance, sale or transfer of any equity securities or other securities of Sellers. None of the outstanding equity securities of Sellers was issued in violation of the Securities Act of 1933, as amended (the "Securities Act"), or any other Legal Requirement.

### **3.4 Financial Statements**

Sellers have delivered to Buyer: (a) a compiled balance sheet of Sellers as at December 31, 2001, and the related compiled statements of income and changes in shareholders' equity for the fiscal year then ended, including in each case the notes thereto, together with the report thereon of Cassady Schiller & Associates, Inc., independent certified public accountants; (b) an unaudited balance sheet of Sellers as at June 30, 2002, (the "Balance Sheet") and the related unaudited statement[s] of income for the six (6) months then ended, and (c) an unaudited balance sheet of Sellers as of September 30, 2002 (the "Interim Balance Sheet") and the related unaudited statements of income for the nine (9) months then ended. Such financial statements fairly present (and the financial statements delivered pursuant to Section 5.8 will fairly present) the financial condition and the results of operations, changes in shareholders' equity and cash flows of Sellers as at the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP. The financial statements referred to in this Section 3.4 and delivered pursuant to Section 5.8 reflect and will reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. The financial statements have been and will be prepared from and are in accordance with the accounting Records of Sellers. Sellers have also delivered to Buyer copies of all letters from Sellers' auditors to Sellers' board of directors or the audit committee thereof during the thirty-six (36) months preceding the execution of this Agreement, together with copies of all responses thereto.

### **3.5 Books And Records**

The books of account and other financial Records of Sellers, all of which have been made available to Buyer, are complete and correct and represent actual, bona fide transactions and have been maintained in accordance with sound business practices, including the maintenance of an adequate system of internal controls. The minute books of Sellers, all of which have been made available to Buyer, contain accurate and complete Records of all meetings held of, and corporate action taken by, the shareholders, the board of directors and committees of the board of directors of Sellers, and no meeting of any such shareholders, board of directors or committee has been held for which minutes have not been prepared or are not contained in such minute books.

### **3.6 Sufficiency Of Assets**

Except as set forth in Part 3.6, the Assets (a) constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate Sellers' business in the manner presently operated by Sellers and (b) include all of the operating assets of Sellers.

### **3.7 Description Of Owned Real Property**

Part 3.7 contains a correct legal description, street address and tax parcel identification number of all tracts, parcels and subdivided lots in which Sellers has an ownership interest.

### **3.8 Description Of Leased Real Property**

Part 3.8 contains a correct legal description, street address and tax parcel identification number of all tracts, parcels and subdivided lots in which Sellers has a leasehold interest and an accurate description (by location, name of lessor, date of Lease and term expiry date) of all Real Property Leases.

### **3.9 Title To Assets; Encumbrances**

(a) Sellers owns good and marketable title to its respective estates in the Real Property, free and clear of any Encumbrances, other than:

- (i) liens for Taxes for the current tax year which are not yet due and payable; and
- (ii) those described in Part 3.9(a) ("Real Estate Encumbrances").

True and complete copies of (A) all deeds, existing title insurance policies and surveys of or pertaining to the Real Property and (B) all instruments, agreements and other documents evidencing, creating or constituting any Real Estate Encumbrances have been delivered to Buyer. Sellers warrants to Buyer that, at the time of Closing, the Real Estate shall be free and clear of all Real Estate Encumbrances other than those identified on Part 3.9(a) as acceptable to Buyer ("Permitted Real Estate Encumbrances").

(b) Sellers own good and transferable title to all of the other Assets free and clear of any Encumbrances other than those described in Part 3.9(b) ("Non-Real Estate Encumbrances"). Sellers warrants to Buyer that, at the time of Closing, all other Assets shall be free and clear of all Non-Real Estate Encumbrances other than those identified on Part 3.9(b) as acceptable to Buyer ("Permitted Non-Real Estate Encumbrances" and, together with the Permitted Real Estate Encumbrances, "Permitted Encumbrances").

### **3.10 Condition Of Facilities**

(a) Use of the Real Property for the various purposes for which it is presently being used is permitted as of right under all applicable zoning legal requirements and is not subject to "permitted nonconforming" use or structure classifications. All Improvements are in compliance with all applicable Legal Requirements, including those pertaining to zoning, building and the disabled, are in good repair and in good condition, ordinary wear and tear excepted, and are free from patent and, to the knowledge of Sellers, latent defects. No part of any Improvement encroaches on any real property not included in the Real Property, and there are no buildings, structures, fixtures or other Improvements primarily situated on adjoining property which encroach on any part of the Land. The Land for each owned Facility abuts on and has direct vehicular access to a public road or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting such Land and comprising a part of the Real Property, is supplied with public or quasi-public utilities and other services appropriate for the operation of the Facilities located thereon and is not located within any flood plain or area subject to

wetlands regulation or any similar restriction. There is no existing or proposed plan to modify or realign any street or highway or any existing or proposed eminent domain proceeding that would result in the taking of all or any part of any Facility or that would prevent or hinder the continued use of any Facility as heretofore used in the conduct of the business of Sellers.

(b) Each item of Tangible Personal Property is in good repair and good operating condition, ordinary wear and tear excepted, is suitable for immediate use in the Ordinary Course of Business and is free from latent and patent defects. No item of Tangible Personal Property is in need of repair or replacement other than as part of routine maintenance in the Ordinary Course of Business. Except as disclosed in Part 3.10(b), all Tangible Personal Property used in Sellers' business is in the possession of Sellers.

(c) Those public utilities (including water, electricity, gas, sanitary sewage, storm water drainage and telephone utilities) sufficient to operate the Real Property for its current uses are available to the Real Property and are completed on the Real Property and, as may be appropriate, are connected to the improvements; such utilities enter the Real Property through adjoining public streets or valid and enforceable private easements; all appropriate and necessary permits have been issued and Sellers are in compliance with those permits, and all of the installation costs, "tap-on" fees, and similar costs for such utilities have been paid in full.

### **3.11 Accounts Receivable; Accounts Payable**

All Accounts Receivable that are reflected on the Balance Sheet or the Interim Balance Sheet or on the accounting Records of Sellers as of the Closing Date represent or will represent valid obligations arising from sales actually made or services actually performed by Sellers in the Ordinary Course of Business. 98.5% of such Accounts Receivable either have been or will be collected in full, without any setoff, within one (1) year after the Closing Date, and 1.5% of such Accounts Receivable shall be deemed to be the reserves (the "Reserves"). There is no contest, claim, defense or right of setoff, other than returns in the Ordinary Course of Business of Sellers, under any Contract with any account debtor of an Account Receivable relating to the amount or validity of such Account Receivable. Part 3.11(A) contains a complete and accurate list of all Accounts Receivable as of the date of the Interim Balance Sheet, which list sets forth the aging of each such Account Receivable. The amount of reserves set forth on the Balance Sheet and the Closing Financial Statement is adequate and consistent with past practice and the composition of the Accounts Receivables will not reflect a material adverse change in terms of aging. Part 3.11(B) is a true and complete summary in detail acceptable to Buyer of the accounts payable of Sellers as of the date of the Interim Balance Sheet, together with an accurate aging schedule or equivalent thereof. The accounts payable, and all accounts payable created after such date and through the Closing Date, arose and will arise from valid purchases in the ordinary course of business. Parts 3.11(A) and (B) shall be updated on the Closing Date and delivered to Buyer at the Closing.

### 3.12 Inventories

All items included in the Inventories consist of a quality and quantity usable and, with respect to finished goods, saleable, in the Ordinary Course of Business of Sellers except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value in the Balance Sheet or the Interim Balance Sheet or on the accounting Records of Sellers as of the Closing Date, as the case may be. Sellers is not in possession of any inventory not owned by Sellers, including goods already sold. All of the Inventories have been valued at the lower of cost or market value on a last in, first out basis. Inventories now on hand that were purchased after the date of the Balance Sheet or the Interim Balance Sheet were purchased in the Ordinary Course of Business of Sellers at a cost not exceeding market prices prevailing at the time of purchase. The quantities of each item of Inventories (whether raw materials, work-in-process or finished goods) are not excessive but are reasonable in the present circumstances of Sellers and are consistent with their prior operating levels. Work-in-process Inventories are now valued, and will be valued on the Closing Date, according to GAAP. Part 3.12(A) sets forth a list of all slow-moving inventory in inventory from cancelled jobs. The current backlog (detailed by branch location) for all accepted and unfilled orders for the sale of merchandise by Sellers as of the Closing Date is included on Part 3.12(B). There is no general understanding that merchandise in the hands of any customer would be returnable to Sellers. The net amount of merchandise returned by customers to Sellers during the course of 2001 or 2002 was not more than one percent (1%) of the net sales for that year or portion thereof. Neither Sellers nor Shareholder is aware of any reason for any of Steelers's future return practices and experience to be materially different from its prior practices and experiences.

### 3.13 No Undisclosed Liabilities

Except as set forth in Part 3.13, Sellers have no Liability except for Liabilities reflected or reserved against in the Balance Sheet or the Interim Balance Sheet and current liabilities incurred in the Ordinary Course of Business of Sellers since the date of the Interim Balance Sheet.

### 3.14 Taxes

(a) Tax Returns Filed and Taxes Paid. Sellers have filed or caused to be filed on a timely basis all Tax Returns and all reports with respect to Taxes that are or were required to be filed pursuant to applicable Legal Requirements. All Tax Returns and reports filed by Sellers are true, correct and complete. Sellers have paid, or made provision for the payment of, all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Sellers, except such Taxes, if any, as are listed in Part 3.14(a) and are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided in the Balance Sheet and the Interim Balance Sheet. Except as provided in Part 3.14(a), Sellers currently are not the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made or is expected to be made by any Governmental Body in a jurisdiction where Sellers do not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Assets that arose in connection with any failure (or alleged failure) to pay



any Tax, and Sellers have no Knowledge of any basis for assertion of any claims attributable to Taxes which, if adversely determined, would result in any such Encumbrance.

(b) Intentionally deleted.

(c) Proper Accrual. The charges, accruals and reserves with respect to Taxes on the Records of Sellers are adequate (determined in accordance with GAAP) and are at least equal to Sellers' liability for Taxes. There exists no proposed tax assessment or deficiency against Sellers except as disclosed in the [Interim] Balance Sheet or in Part 3.14(c).

(d) Specific Potential Tax Liabilities and Tax Situations.

- (i) Withholding. All Taxes that Sellers is or was required by Legal Requirements to withhold, deduct or collect have been duly withheld, deducted and collected and, to the extent required, have been paid to the proper Governmental Body or other Person.
- (ii) Tax Sharing or Similar Agreements. There is no tax sharing agreement, tax allocation agreement, tax indemnity obligation or similar written or unwritten agreement, arrangement, understanding or practice with respect to Taxes (including any advance pricing agreement, closing agreement or other arrangement relating to Taxes) that will require any payment by Sellers.
- (iii) Consolidated Group. Sellers (A) have been a member of an affiliated group within the meaning of Code Section 1504(a) (or any similar group defined under a similar provision of state, local or foreign law) and (B) have no liability for Taxes of any person (other than Sellers and its Subsidiaries) under Treas. Reg. sect. 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor by contract or otherwise.
- (iv) S Corporation. Sellers are not an S corporation as defined in Code Section 1361.

### 3.15 No Material Adverse Change

Since the date of the Balance Sheet, there has not been any material adverse change in the business, operations, prospects, assets, results of operations or condition (financial or other) of Sellers, and no event has occurred or circumstance exists that may result in such a material adverse change.

### 3.16 Employee Benefits

(a) Set forth in Part 3.16(a) is a complete and correct list of all "employee benefit plans" as defined by Section 3(3) of ERISA, all specified fringe benefit plans as defined in Section 6039D of the Code, and all other bonus, incentive-compensation, deferred-compensation, profit-sharing, stock-option, stock-appreciation-right, stock-bonus, stock-purchase, employee-stock-ownership, savings, severance, change-in-control, supplemental-unemployment, layoff, salary-continuation, retirement, pension, health, life-insurance, disability, accident, group-insurance, vacation, holiday, sick-leave, fringe-benefit or welfare plan, and any other employee compensation or benefit plan, agreement, policy, practice, commitment, contract or understanding (whether qualified or nonqualified, currently effective or terminated, written or unwritten) and any trust, escrow or other agreement related thereto that (i) is maintained or contributed to by any one or more of Sellers or any other corporation or trade or business controlled by, controlling or under common control with any one or more of Sellers (within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(a)(14) or 4001(b) of ERISA) ("ERISA Affiliate") or has been maintained or contributed to in the last six (6) years by any one or more of Sellers or any ERISA Affiliate, or with respect to which Sellers or any ERISA Affiliate has or may have any liability, and (ii) provides or provided benefits, or describes policies or procedures applicable to any current or former director, officer, employee or service provider of Sellers or any ERISA Affiliate, or the dependents of any thereof, regardless of how (or whether) liabilities for the provision of benefits are accrued or assets are acquired or dedicated with respect to the funding thereof (collectively the "Employee Plans"). Part 3.16(a) identifies as such any Employee Plan that is (w) a "Defined Benefit Plan" (as defined in Section 414(l) of the Code); (x) a plan intended to meet the requirements of Section 401(a) of the Code; (y) a "Multiemployer Plan" (as defined in Section 3(37) of ERISA); (z) a plan subject to Title IV of ERISA, other than a Multiemployer Plan; or (aa) a plan subject to Section 412 of the Code or Section 302 of ERISA. Also set forth on Part 3.16(a) is a complete and correct list of all ERISA Affiliates of Sellers during the last six (6) years.

(b) Sellers have delivered to Buyer true, accurate and complete copies of (i) the documents comprising each Employee Plan (or, with respect to any Employee Plan which is unwritten, a detailed written description of eligibility, participation, benefits, funding arrangements, assets and any other matters which relate to the obligations of Sellers or any ERISA Affiliate); (ii) all trust agreements, insurance contracts or any other funding instruments related to the Employee Plans; (iii) all rulings, determination letters, no-action letters or advisory opinions from the IRS, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation ("PBGC") or any other Governmental Body that pertain to each Employee Plan and any open requests therefor; (iv) the most recent actuarial and

financial reports (audited and/or unaudited) and the annual reports filed with any Government Body with respect to the Employee Plans during the current year and each of the three preceding years; (v) all collective bargaining agreements pursuant to which contributions to any Employee Plan(s) have been made or obligations incurred (including both pension and welfare benefits) by Sellers or any ERISA Affiliate, and all collective bargaining agreements pursuant to which contributions are being made or obligations are owed by such entities; (vi) all securities registration statements filed with respect to any Employee Plan; (vii) all contracts with third-party administrators, actuaries, investment managers, consultants and other independent contractors that relate to any Employee Plan, (viii) with respect to Employee Plans that are subject to Title IV of ERISA, the Form PBGC-1 filed for each of the three most recent plan years; and (ix) all summary plan descriptions, summaries of material modifications and memoranda, employee handbooks and other written communications regarding the Employee Plans.

(c) Except as disclosed in Part 3.16(c), full payment has been made of all amounts that are required under the terms of each Employee Plan to be paid as contributions with respect to all periods prior to and including the last day of the most recent fiscal year of such Employee Plan ended on or before the date of this Agreement and all periods thereafter prior to the Closing Date and through December 31, 2002, and no accumulated funding deficiency or liquidity shortfall (as those terms are defined in Section 302 of ERISA and Section 412 of the Code) has been incurred with respect to any such Employee Plan, whether or not waived. The value of the assets of each Employee Plan exceeds the amount of all benefit liabilities (determined on a plan termination basis using the actuarial assumptions established by the PBGC as of the Closing Date and through December 31, 2002) of such Employee Plan. Sellers are not required to provide security to an Employee Plan under Section 401(a)(29) of the Code. The funded status of each Employee Plan that is a Defined Benefit Plan is disclosed on Part 3.16(c) in a manner consistent with the Statement of Financial Accounting Standards No. 87. Sellers have paid in full all required insurance premiums, subject only to normal retrospective adjustments in the ordinary course, with regard to the Employee Plans for all policy years or other applicable policy periods ending on or before the Closing Date and will continue pay all such premiums through December 31, 2002.

(d) Except as disclosed in Part 3.16(d), no Employee Plan, if subject to Title IV of ERISA, has been completely or partially terminated, nor has any event occurred nor does any circumstance exist that could result in the partial termination of such Employee Plan. The PBGC has not instituted or threatened a Proceeding to terminate or to appoint a trustee to administer any of the Employee Plans pursuant to Subtitle I of Title IV of ERISA, and no condition or set of circumstances exists that presents a material risk of termination or partial termination of any of the Employee Plans by the PBGC. None of the Employee Plans has been the subject of, and no event has occurred or condition exists that could be deemed, a reportable event (as defined in Section 4043 of ERISA) as to which a notice would be required (without regard to regulatory monetary thresholds) to be filed with the PBGC. Sellers have paid in full all insurance premiums due to the PBGC with regard to the Employee Plans for all applicable periods ending on or before the Closing Date and will continue pay all such premiums through December 31, 2002.

(e) Neither Sellers nor any ERISA Affiliate has any liability or has Knowledge of any facts or circumstances that might give rise to any liability, and the Contemplated Transactions will not result in any liability, (i) for the termination of or withdrawal from any Employee Plan under Sections 4062, 4063 or 4064 of ERISA, (ii) for any lien imposed under Section 302(f) of ERISA or Section 412(n) of the Code, (iii) for any interest payments required under Section 302(e) of ERISA or Section 412(m) of the Code, (iv) for any excise tax imposed by Section 4971 of the Code, (v) for any minimum funding contributions under Section 302(c)(11) of ERISA or Section 412(c)(11) of the Code or (vi) for withdrawal from any Multiemployer Plan under Section 4201 of ERISA.

(f) Sellers have, at all times, complied, and currently comply, in all material respects with the applicable continuation requirements for their welfare benefit plans, including (1) Section 4980B of the Code (as well as its predecessor provision, Section 162(k) of the Code) and Sections 601 through 608, inclusive, of ERISA, which provisions are hereinafter referred to collectively as "COBRA" and (2) any applicable state statutes mandating health insurance continuation coverage for employees.

(g) The form of all Employee Plans is in compliance with the applicable terms of ERISA, the Code, and any other applicable laws, including without limitation the Americans with Disabilities Act of 1990, the Family Medical Leave Act of 1993 and the Health Insurance Portability and Accountability Act of 1996, and such plans have been operated in compliance with such laws and the written Employee Plan documents. Neither Sellers nor any fiduciary of an Employee Plan has violated the requirements of Section 404 of ERISA. All required reports and descriptions of the Employee Plans (including Internal Revenue Service Form 5500 Annual Reports, Summary Annual Reports and Summary Plan Descriptions and Summaries of Material Modifications) have been (when required) timely filed with the IRS, the U.S. Department of Labor or other Governmental Body and distributed as required, and all notices required by ERISA or the Code or any other Legal Requirement with respect to the Employee Plans have been appropriately given.

(h) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS within the past six years, and Sellers have no Knowledge of any circumstances that will or could result in revocation of any such favorable determination letter. Each trust created under any Employee Plan has been determined to be exempt from taxation under Section 501(a) of the Code, and Sellers are not aware of any circumstance that will or could result in a revocation of such exemption. Each Employee Welfare Benefit Plan (as defined in Section 3(1) of ERISA) that utilizes a funding vehicle described in Section 501(c)(9) of the Code or is subject to the provisions of Section 505 of the Code has been the subject of a notification by the IRS that such funding vehicle qualifies for tax-exempt status under Section 501(c)(9) of the Code or that the plan complies with Section 505 of the Code, unless the IRS does not, as a matter of policy, issue such notification with respect to the particular type of plan. With respect to each Employee Plan, no event has occurred or condition exists that will or could give rise to a loss of any intended tax consequence or to any Tax under Section 511 of the Code.

(i) There is no material pending or threatened Proceeding relating to any Employee Plan, nor is there any basis for any such Proceeding. Neither Sellers nor any fiduciary of an Employee

Plan has engaged in a transaction with respect to any Employee Plan that, assuming the taxable period of such transaction expired as of the date hereof, could subject Sellers or Buyer to a Tax or penalty imposed by either Section 4975 of the Code or Section 502(l) of ERISA or a violation of Section 406 of ERISA. The Contemplated Transactions will not result in the potential assessment of a Tax or penalty under Section 4975 of the Code or Section 502(l) of ERISA nor result in a violation of Section 406 of ERISA.

(j) Sellers have maintained workers' compensation coverage as required by applicable state law through purchase of insurance and not by self-insurance or otherwise except as disclosed to Buyer on Part 3.16(j).

(k) Except as required by Legal Requirements and as provided in Section 10.1(d), the consummation of the Contemplated Transactions will not accelerate the time of vesting or the time of payment, or increase the amount, of compensation due to any director, employee, officer, former employee or former officer of Sellers. There are no contracts or arrangements providing for payments that could subject any person to liability for tax under Section 4999 of the Code.

(l) Except for the continuation coverage requirements of COBRA, Sellers have no obligations or potential liability for benefits to employees, former employees or their respective dependents following termination of employment or retirement under any of the Employee Plans that are Employee Welfare Benefit Plans.

(m) Except as provided in Section 10.1(d), none of the Contemplated Transactions will result in an amendment, modification or termination of any of the Employee Plans. No written or oral representations have been made to any employee or former employee of Sellers promising or guaranteeing any employer payment or funding for the continuation of medical, dental, life or disability coverage for any period of time beyond the end of the current plan year (except to the extent of coverage required under COBRA). No written or oral representations have been made to any employee or former employee of Sellers concerning the employee benefits of Buyer.

(n) With respect to any Employee Plan that is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA ("Multiemployer Plan"), and any other Multiemployer Plan to which Sellers have at any time had an obligation to contribute:

- (i) all contributions required by the terms of such Multiemployer Plan and any collective bargaining agreement have been made when due; and
- (ii) Sellers would not be subject to any withdrawal liability under Section 1 of Subtitle E of Title IV of ERISA if, as of the date hereof, Sellers were to engage in a "complete withdrawal" (as defined in ERISA Section 4203) or a "partial withdrawal" (as defined in ERISA Section 4205) from such Multiemployer Plan.

### **3.17 Compliance With Legal Requirements; Governmental Authorizations**

(a) Except as set forth in Part 3.17(a):

- (i) Sellers are, and at all times has been, in full compliance with each Legal Requirement that is or was applicable to Sellers or to the conduct or operation of their business or the ownership or use of any of their assets;
- (ii) no event has occurred or circumstance exists that (with or without notice or lapse of time) (A) may constitute or result in a violation by Sellers of, or a failure on the part of Sellers to comply with, any Legal Requirement or (B) may give rise to any obligation on the part of Sellers to undertake, or to bear all or any portion of the cost of, any cleanup, abatement or other remedial action of any nature; and
- (iii) Sellers have not received, at any time since January 1, 1998, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement or (B) any actual, alleged, possible or potential obligation on the part of Sellers to undertake, or to bear all or any portion of the cost of, any cleanup, abatement or other remedial action of any nature.

(b) Part 3.17(b) contains a complete and accurate list of each Governmental Authorization that is held by Sellers or that otherwise relates to Sellers' business or the Assets. Each Governmental Authorization listed or required to be listed in Section 3.17(b) is valid and in full force and effect. Except as set forth in Part 3.17(b):

- (i) Sellers are, and at all times since January 1, 1998, have been, in full compliance with all of the terms and requirements of each Governmental Authorization identified or required to be identified in Part 3.17(b);
- (ii) no event has occurred or circumstance exists that may (with or without notice or lapse of time) (A) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization listed or required to be listed in Part 3.17(b) or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Governmental Authorization listed or required to be listed in Part 3.17(b);

- (iii) Sellers have not received, at any time since January 1, 1998, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization or (B) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any Governmental Authorization; and
- (iv) all applications required to have been filed for the renewal of the Governmental Authorizations listed or required to be listed in Part 3.17(b) have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies.

The Governmental Authorizations listed in Part 3.17(b) collectively constitute all of the Governmental Authorizations necessary to permit Sellers to lawfully conduct and operate their business in the manner in which it currently conducts and operates such business and to permit Sellers to own and use their assets in the manner in which it currently owns and uses such assets.

### **3.18 Legal Proceedings; Orders**

(a) Except as set forth in Part 3.18(a), there is no pending or, to Sellers' Knowledge, threatened Proceeding:

- (i) by or against Sellers or that otherwise relates to or may affect the business of, or any of the assets owned or used by, Sellers; or
- (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions.

To the Knowledge of Sellers, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any such Proceeding. Sellers have delivered to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding listed in Part 3.18(a). There are no Proceedings listed or required to be listed in Part 3.18(a) that could have a material adverse effect on the business, operations, assets, condition or prospects of Sellers or upon the Assets.

- (b) Except as set forth in Part 3.18(b):
  - (i) there is no Order to which Sellers, their business or any of the Assets is subject; and
  - (ii) to the Knowledge of Sellers, no officer, director, agent or employee of Sellers are subject to any Order that prohibits such officer, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the business of Sellers.
- (c) Except as set forth in Part 3.18(c):
  - (i) Sellers are, and, at all times, has been in compliance with all of the terms and requirements of each Order to which it or any of the Assets is or has been subject;
  - (ii) no event has occurred or circumstance exists that is reasonably likely to constitute or result in (with or without notice or lapse of time) a violation of or failure to comply with any term or requirement of any Order to which Sellers or any of the Assets is subject; and
  - (iii) Sellers have not received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, any term or requirement of any Order to which Sellers or any of the Assets is or has been subject.

### **3.19 Absence Of Certain Changes And Events**

Except as set forth in Part 3.19, since the date of the Balance Sheet, Sellers have conducted their business only in the Ordinary Course of Business and there has not been any:

- (a) change in Sellers' authorized or issued capital stock, grant of any stock option or right to purchase shares of capital stock of Sellers or issuance of any security convertible into such capital stock;
- (b) amendment to the Governing Documents of Sellers;
- (c) payment (except in the Ordinary Course of Business) or increase by Sellers of any bonuses, salaries or other compensation to any shareholder, director, officer or employee or entry into any employment, severance or similar Contract with any director, officer or employee;
- (d) adoption of, amendment to or increase in the payments to or benefits under, any Employee Plan;



- (e) damage to or destruction or loss of any Asset, whether or not covered by insurance;
- (f) entry into, termination of or receipt of notice of termination of (i) any license, distributorship, dealer, sales representative, joint venture, credit or similar Contract to which Sellers are a party, or (ii) any Contract or transaction involving a total remaining commitment by Sellers of at least \$25,000.00;
- (g) sale (other than sales of Inventories in the Ordinary Course of Business), lease or other disposition of any Asset or property of Sellers (including the Intellectual Property Assets) or the creation of any Encumbrance on any Asset;
- (h) cancellation or waiver of any claims or rights with a value to Sellers in excess of \$25,000.00;
- (i) to the Knowledge of the Sellers, indication by any customer or supplier of an intention to discontinue or change the terms of its relationship with Sellers;
- (j) material change in the accounting methods used by Sellers; or
- (k) Contract by Sellers to do any of the foregoing.

### **3.20 Contracts; No Defaults**

- (a) Part 3.20(a) contains an accurate and complete list, and Sellers have delivered to Buyer accurate and complete copies, of:
  - (i) each Sellers Contract that involves performance of services or delivery of goods or materials by Sellers of an amount or value in excess of Twenty-Five Thousand Dollars (\$25,000.00);
  - (ii) each Sellers Contract that involves performance of services or delivery of goods or materials to Sellers of an amount or value in excess of Twenty-Five Thousand Dollars (\$25,000.00);
  - (iii) each Sellers Contract that was not entered into in the Ordinary Course of Business and that involves expenditures or receipts of Sellers in excess of Twenty-Five Thousand Dollars (\$25,000.00);
  - (iv) each Sellers Contract affecting the ownership of, leasing of, title to, use of or any leasehold or other interest in any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of less than

Ten Thousand Dollars (\$10,000.00) and with a term of less than one year);

- (v) each Sellers Contract with any labor union or other employee representative of a group of employees relating to wages, hours and other conditions of employment;
- (vi) each Sellers Contract (however named) involving a sharing of profits, losses, costs or liabilities by Sellers with any other Person;
- (vii) each Sellers Contract containing covenants that in any way purport to restrict Sellers' business activity or limit the freedom of Sellers to engage in any line of business or to compete with any Person;
- (viii) each Sellers Contract providing for payments to or by any Person based on sales, purchases or profits, other than direct payments for goods;
- (ix) each power of attorney of Sellers that is currently effective and outstanding;
- (x) each Sellers Contract entered into other than in the Ordinary Course of Business that contains or provides for an express undertaking by Sellers to be responsible for consequential damages;
- (xi) each Sellers Contract for capital expenditures in excess of Ten Thousand Dollars (\$10,000.00);
- (xii) each Sellers Contract not denominated in U.S. dollars;
- (xiii) each written warranty, guaranty and/or other similar undertaking with respect to contractual performance extended by Sellers other than in the Ordinary Course of Business; and
- (xiv) each amendment, supplement and modification (whether oral or written) in respect of any of the foregoing.

Part 3.20(a) sets forth reasonably complete details concerning such Contracts, including the parties to the Contracts, the amount of the remaining commitment of Sellers under the Contracts and the location of Sellers' office where details relating to the Contracts are located.

(b) Except as set forth in Part 3.20(b), neither Shareholder has or may acquire any rights under, and neither Shareholder has or may become subject to any obligation or liability under, any Contract that relates to the business of Sellers or any of the Assets.

- (c) Except as set forth in Part 3.20(c):
- (i) each Contract identified or required to be identified in Part 3.20(a) and which is to be assigned to or assumed by Buyer under this Agreement is in full force and effect and is valid and enforceable in accordance with its terms;
  - (ii) each Contract identified or required to be identified in Part 3.20(a) and which is being assigned to or assumed by Buyer is assignable by Sellers to Buyer without the consent of any other Person; and
  - (iii) to the Knowledge of Sellers, no Contract identified or required to be identified in Part 3.20(a) and which is to be assigned to or assumed by Buyer under this Agreement will upon completion or performance thereof have a material adverse affect on the business, assets or condition of Sellers or the business to be conducted by Buyer with the Assets.
- (d) Except as set forth in Part 3.20(d):
- (i) Sellers are, and at all times has been, in compliance with all applicable terms and requirements of each Sellers Contract which is being assumed by Buyer;
  - (ii) to the Knowledge of Sellers, each other Person that has or had any obligation or liability under any Sellers Contract which is being assigned to Buyer is, and at all times has been, in full compliance with all applicable terms and requirements of such Contract;
  - (iii) no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a Breach of, or give Sellers or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Sellers Contract that is being assigned to or assumed by Buyer;
  - (iv) no event has occurred or circumstance exists under or by virtue of any Contract that (with or without notice or lapse of time) would cause the creation of any Encumbrance affecting any of the Assets; and
  - (v) Sellers have not given to or received from any other Person, at any time, any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or Breach

of, or default under, any Contract which is being assigned to or assumed by Buyer.

(e) There are no renegotiations of, attempts to renegotiate or outstanding rights to renegotiate any material amounts paid or payable to Sellers under current or completed Contracts with any Person having the contractual or statutory right to demand or require such renegotiation and no such Person has made written demand for such renegotiation.

(f) Each Contract relating to the sale, design, manufacture or provision of products or services by Sellers have been entered into in the Ordinary Course of Business of Sellers and has been entered into without the commission of any act alone or in concert with any other Person, or any consideration having been paid or promised, that is or would be in violation of any Legal Requirement.

### 3.21 Insurance

(a) Sellers have delivered to Buyer:

- (i) accurate and complete copies of all policies of insurance (and correspondence relating to coverage thereunder) to which Sellers are a party or under which Sellers are or have been covered at any time since January 1, 1998, a list of which is included in Part 3.21(a);
- (ii) accurate and complete copies of all pending applications by Sellers for policies of insurance; and
- (iii) any statement by the auditor of Sellers' financial statements or any consultant or risk management advisor with regard to the adequacy of Sellers' coverage or of the reserves for claims.

(b) Part 3.21(b) describes:

- (i) any self-insurance arrangement by or affecting Sellers, including any reserves established thereunder;
- (ii) any Contract or arrangement, other than a policy of insurance, for the transfer or sharing of any risk to which Sellers are a party or which involves the business of Sellers; and
- (iii) all obligations of Sellers to provide insurance coverage to Third Parties (for example, under Leases or service agreements) and identifies the policy under which such coverage is provided.

(c) Part 3.21(c) sets forth for the current policy year:

- (i) a summary of the loss experience under each policy of insurance;

- (ii) a statement describing each claim under a policy of insurance for an amount in excess of Ten Thousand Dollars (\$10,000.00), which sets forth:
    - (A) the name of the claimant;
    - (B) a description of the policy by insurer, type of insurance and period of coverage; and
    - (C) the amount and a brief description of the claim; and
  - (iii) a statement describing the loss experience for all claims that were self-insured, including the number and aggregate cost of such claims.
- (d) Except as set forth in Part 3.21(d):
- (i) all policies of insurance to which Sellers are a party or that provide coverage to Sellers:
    - (A) are valid, outstanding and enforceable;
    - (B) are issued by an insurer that is financially sound and reputable;
    - (C) to the knowledge of Sellers, taken together, provide adequate insurance coverage for the Assets and the operations of Sellers for all risks normally insured against by a Person carrying on the same business or businesses as Sellers in the same location and for all risks to which Sellers are normally exposed; and
    - (D) are sufficient for compliance with all Legal Requirements and Sellers Contracts
  - (ii) Sellers have not received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights or (B) any notice of cancellation or any other indication that any policy of insurance is no longer in full force or effect or that the issuer of any policy of insurance is not willing or able to perform their obligations thereunder;
  - (iii) Sellers have paid all premiums due, and has otherwise performed all of their obligations, under each policy of insurance to which it is a party or that provides coverage to Sellers; and
  - (iv) Sellers have given notice to the insurer of all claims that may be insured thereby.

### 3.22 Environmental Matters

Except as disclosed in Part 3.22:

(a) To the Knowledge of the Sellers, Sellers are, and at all times have been, in full compliance (except for such instances on non-compliance which would have de minimis effect) with, and have not been and are not in violation of or liable under, any Environmental Law. Neither Sellers nor any Shareholder have any basis to expect, nor have any of them or any other Person for whose conduct they are or may be held to be responsible received, any actual or threatened order, notice or other communication from (i) any Governmental Body or private citizen acting in the public interest or (ii) the current or prior owner or operator of any Facilities, of any actual or potential violation or failure to comply with any Environmental Law or Legal Requirement, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or other property or asset (whether real, personal or mixed) in which Sellers has or had an interest, or with respect to any property or Facility at or to which Hazardous Activity conducted by Sellers occurred or is occurring; or, Hazardous Materials were generated, manufactured, refined, transferred, Released, imported, used or processed by Sellers or any other Person for whose conduct it is or may be held responsible, or from which Hazardous Activity occurred or is occurring or Hazardous Materials have been transported, treated, stored, handled, transferred, Released, disposed, recycled or received.

(b) There are no pending or, to the Knowledge of Sellers, threatened claims, Encumbrances, or other restrictions of any nature resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any Environmental Law or any Hazardous Activity with respect to or affecting any Facility or any other property (whether or not the Sellers ever had any ownership or leasehold interest in such property) or asset (whether real, personal or mixed) to the extent such liabilities stated above are alleged to have resulted from the conduct of the Sellers.

(c) Neither Sellers nor either Shareholder has any Knowledge of or any basis to expect, nor has any of them, or any other Person for whose conduct they are or may be held responsible, received, any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Activity, Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or property or asset (whether real, personal or mixed) in which Sellers have or had an interest, or with respect to any property or facility to which Hazardous Activity occurred or is occurring or Hazardous Materials were generated, manufactured, refined, transferred, imported, used, Released or processed by Sellers or any other Person for whose conduct it is or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, Released, recycled or received.

(d) Neither Sellers nor Shareholder to the Knowledge of Sellers, any other Person for whose conduct it is or may be held responsible has any Environmental, Health and Safety Liabilities or conducted Hazardous Activities with respect to any Facility or, to the Knowledge of Sellers, with respect to any other property or asset (whether real, personal or mixed) in which Sellers (or any predecessor) has or had an interest or at any property geologically or hydrologically adjoining any Facility or any such other property or asset.

(e) To the Knowledge of Sellers, there are no Hazardous Materials present on or in the Environment at any Facility or at any geologically or hydrologically adjoining property, including any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, or deposited or located in land, water, sumps, on, under or within any other part of the Facility or such adjoining property, or incorporated into any structure therein or thereon. Neither Sellers nor any Person for whose conduct it is or may be held responsible, or to the Knowledge of Sellers, any other Person, has permitted or conducted, or is aware of, any Hazardous Activity conducted with respect to any Facility or any other property (whether or not the Sellers ever had any ownership or leasehold interest in such property) or assets (whether real, personal or mixed) to the extent such conduct is alleged to have resulted from the activities of the Sellers, except in full compliance with all applicable Environmental Laws.

(f) There has been no Release or, to the Knowledge of Sellers, Threat of Release, of any Hazardous Materials at or from any Facility or at any other location where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by any Facility, or from any other property or asset (whether real, personal or mixed) in which Sellers have or had an interest, or to the Knowledge of Sellers any geologically or hydrologically adjoining property, whether by Sellers or any other Person.

(g) Sellers have delivered to Buyer true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by Sellers pertaining to Hazardous Materials or Hazardous Activities in, on, or under the Facilities, or concerning compliance, by Sellers or any other Person for whose conduct it is or may be held responsible, with Environmental Laws (the "Environmental Reports").

### 3.23 Employees

(a) Part 3.23(a) contains a complete and accurate list of the following information for each employee, director, independent contractor, consultant and agent of Sellers, including each employee on leave of absence or layoff status: employer; name; job title; date of hiring or engagement; date of commencement of employment or engagement; current compensation paid or payable and any change in compensation since January 1, 2002; sick and vacation leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Employee Plan, or any other employee or director benefit plan.

(b) Part 3.23(b) contains a complete and accurate list of the following information for each retired employee or director of Sellers, or their dependents, receiving benefits or scheduled to receive benefits in the future: name; pension benefits; pension option election; retiree medical insurance coverage; retiree life insurance coverage; and other benefits.

(c) Part 3.23(c) states the number of employees terminated by Sellers since January 1, 2002, and contains a complete and accurate list of the following information for each

employee of Sellers who has been terminated or laid off, or whose hours of work have been reduced by more than fifty percent (50%) by Sellers, in the six (6) months prior to the date of this Agreement: (i) the date of such termination, layoff or reduction in hours; (ii) the reason for such termination, layoff or reduction in hours; and (iii) the location to which the employee was assigned.

(d) Sellers have not violated the Worker Adjustment and Retraining Notification Act (the "WARN Act") or any similar state or local Legal Requirement. During the ninety (90) day period prior to the date of this Agreement, Sellers have terminated thirty-five (35) employees.

(e) To the Knowledge of Sellers, no officer, director, agent, employee, consultant, or contractor of Sellers are bound by any Contract that purports to limit the ability of such officer, director, agent, employee, consultant, or contractor (i) to engage in or continue or perform any conduct, activity, duties or practice relating to the business of Sellers or (ii) to assign to Sellers or to any other Person any rights to any invention, improvement, or discovery. No former or current employee of Sellers are a party to, or is otherwise bound by, any Contract that in any way adversely affected, affects, or will affect the ability of Sellers or Buyer to conduct the business as heretofore carried on by Sellers.

### **3.24 Labor Disputes; Compliance**

(a) Sellers have complied in all material respects with all Legal Requirements relating to employment practices, terms and conditions of employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar Taxes and occupational safety and health. Sellers are not liable for the payment of any Taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

(b) Except as disclosed in Part 3.24(b), (i) Sellers have not been, and are not now, a party to any collective bargaining agreement or other labor contract; (ii) since January 1, 1999, there has not been, there is not presently pending or existing, and to Sellers' Knowledge there is not threatened, any strike, slowdown, picketing, work stoppage or employee grievance process involving Sellers; (iii) to Sellers' Knowledge no event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute; (iv) there is not pending or, to Sellers' Knowledge, threatened against or affecting Sellers any Proceeding relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters, including any charge or complaint filed with the National Labor Relations Board or any comparable Governmental Body, and there is no organizational activity or other labor dispute against or affecting Sellers or the Facilities; (v) no application or petition for an election of or for certification of a collective bargaining agent is pending; (vi) no grievance or arbitration Proceeding exists that might have an adverse effect upon Sellers or the conduct of their business; (vii) there is no lockout of any employees by Sellers, and no such action is contemplated by Sellers; and (viii) to Sellers' Knowledge there has been no charge of discrimination filed against or threatened against Sellers with the Equal Employment Opportunity Commission or similar Governmental Body.



### 3.25 Intellectual Property Assets

(a) The term "Intellectual Property Assets" means all intellectual property owned or licensed (as licensor or licensee) by Sellers in which Sellers have a proprietary interest and which are necessary and/or appropriate to conduct the Business as it is presently conducted, including:

- (i) Sellers' name, all assumed fictional business names, trade names, registered and unregistered trademarks, service marks and applications (collectively, "Marks");
- (ii) all patents, patent applications and inventions and discoveries that may be patentable (collectively, "Patents");
- (iii) all registered and unregistered copyrights in both published works and unpublished works (collectively, "Copyrights");
- (iv) all rights in mask works;
- (v) all know-how, trade secrets, confidential or proprietary information, customer lists, Software, technical information, data, process technology, plans, drawings and blue prints (collectively, "Trade Secrets"); and
- (vi) all rights in internet web sites and internet domain names presently used by Sellers (collectively "Net Names").

(b) Part 3.25(b) contains a complete and accurate list and summary description, including any royalties paid or received by Sellers, and Sellers have delivered to Buyer accurate and complete copies, of all Sellers Contracts relating to the Intellectual Property Assets. There are no outstanding and, to Sellers' Knowledge, no threatened disputes or disagreements with respect to any such Contract.

(c)

- (i) Except as set forth in Part 3.25(c), the Intellectual Property Assets are all those necessary for the operation of Sellers' business as it is currently conducted. Sellers are the owner or licensee of all right, title and interest in and to each of the Intellectual Property Assets, free and clear of all Encumbrances, and has the right to use without payment to a Third Party all of the Intellectual Property Assets, other than in respect of licenses listed in Part 3.25(c).
- (ii) Except as set forth in Part 3.25(c), all former and current employees of Sellers have executed written Contracts with Sellers that assign to

Sellers all rights to any inventions, improvements, discoveries or information relating to the business of Sellers.

(d)

- (i) Part 3.25(d) contains a complete and accurate list and summary description of all Patents.
- (ii) All of the issued Patents are currently in compliance with formal legal requirements (including payment of filing, examination and maintenance fees and proofs of working or use), are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Closing Date.
- (iii) No Patent has been or is now involved in any interference, reissue, reexamination, or opposition Proceeding. To Sellers' Knowledge, there is no potentially interfering patent or patent application of any Third Party.
- (iv) Except as set forth in Part 3.25 (d), (A) no Patent is infringed or, to Sellers' Knowledge, has been challenged or threatened in any way and (B) none of the products manufactured or sold, nor any process or know-how used, by Sellers infringes or is alleged to infringe any patent or other proprietary right of any other Person.
- (v) All products made, used or sold under the Patents have been marked with the proper patent notice.

(e)

- (i) Part 3.25(e) contains a complete and accurate list and summary description of all Marks.
- (ii) All Marks have been registered with the United States Patent and Trademark Office, are currently in compliance with all formal Legal Requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications), are valid and enforceable and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Closing Date.
- (iii) No Mark has been or is now involved in any opposition, invalidation or cancellation Proceeding and, to Sellers' Knowledge, no such action is threatened with respect to any of the Marks.

- (iv) To Sellers' Knowledge, there is no potentially interfering trademark or trademark application of any other Person.
  - (v) No Mark is infringed or, to Sellers' Knowledge, has been challenged or threatened in any way. None of the Marks used by Sellers infringes or is alleged to infringe any trade name, trademark or service mark of any other Person.
  - (vi) All products and materials containing a Mark bear the proper federal registration notice where permitted by law.
- (f)
- (i) Part 3.25(f) contains a complete and accurate list and summary description of all Copyrights.
  - (ii) All of the registered Copyrights are currently in compliance with formal Legal Requirements, are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the date of Closing.
  - (iii) No Copyright is infringed or, to Sellers' Knowledge, has been challenged or threatened in any way. None of the subject matter of any of the Copyrights infringes or is alleged to infringe any copyright of any Third Party or is a derivative work based upon the work of any other Person.
  - (iv) All works encompassed by the Copyrights have been marked with the proper copyright notice.
- (g)
- (i) With respect to each Trade Secret, the documentation relating to such Trade Secret is current, accurate and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual.
  - (ii) Sellers have taken all reasonable precautions to protect the secrecy, confidentiality and value of all Trade Secrets (including the enforcement by Sellers of a policy requiring each employee or contractor to execute proprietary information and confidentiality agreements substantially in Sellers' standard form, and all current and former employees and contractors of Sellers have executed such an agreement).

(iii) Sellers have good title to and an absolute right to use the Trade Secrets. The Trade Secrets are not part of the public knowledge or literature and, to Sellers' Knowledge, have not been used, divulged or appropriated either for the benefit of any Person (other than Sellers) or to the detriment of Sellers. No Trade Secret is subject to any adverse claim or has been challenged or threatened in any way or infringes any intellectual property right of any other Person.

(h)

- (i) Part 3.25(h) contains a complete and accurate list and summary description of all Net Names.
- (ii) All Net Names have been registered in the name of Sellers and are in compliance with all formal Legal Requirements.
- (iii) No Net Name has been or is now involved in any dispute, opposition, invalidation or cancellation Proceeding and, to Sellers' Knowledge, no such action is threatened with respect to any Net Name.
- (iv) To Sellers' Knowledge, there is no domain name application pending of any other person which would or would potentially interfere with or infringe any Net Name.
- (v) No Net Name is infringed or, to Sellers' Knowledge, has been challenged, interfered with or threatened in any way. No Net Name infringes, interferes with or is alleged to interfere with or infringe the trademark, copyright or domain name of any other Person.

### **3.26 Compliance With The Foreign Corrupt Practices Act And Export Control And Antiboycott Laws**

(a) Sellers and their Representatives have not, to obtain or retain business, directly or indirectly offered, paid or promised to pay, or authorized the payment of, any money or other thing of value (including any fee, gift, sample, travel expense or entertainment with a value in excess of one hundred dollars (\$100.00) in the aggregate to any one individual in any year), to:

- (i) any person who is an official, officer, agent, employee or representative of any Governmental Body or of any existing or prospective customer (whether government owned or nongovernment owned);
- (ii) any political party or official thereof;
- (iii) any candidate for political or political party office; or

(iv) any other individual or entity;

while knowing or having reason to believe that all or any portion of such money or thing of value would be offered, given, or promised, directly or indirectly, to any such official, officer, agent, employee, representative, political party, political party official, candidate, individual, or any entity affiliated with such customer, political party or official or political office.

(b) Except as set forth in Part 3.26(b), Sellers have made all payments to Third Parties by check mailed to such Third Parties' principal place of business or by wire transfer to a bank located in the same jurisdiction as such party's principal place of business.

(c) Each transaction is properly and accurately recorded on the books and Records of Sellers, and each document upon which entries in Sellers' books and Records are based is complete and accurate in all respects. Sellers maintain a system of internal accounting controls adequate to insure that Sellers maintain no off-the-books accounts and that Sellers' assets are used only in accordance with Sellers' management directives.

(d) Sellers have at all times been in compliance with all Legal Requirements relating to export control and trade embargoes. No product sold or service provided by Sellers during the last five (5) years has been, directly or indirectly, sold to or performed on behalf of Cuba, Iraq, Iran, Libya or North Korea.

(e) Except as set forth in Part 3.26(e), Sellers have not violated the antiboycott prohibitions contained in 50 U.S.C. sect. 2401 et seq. or taken any action that can be penalized under Section 999 of the Code. Except as set forth in Part 3.26(e), during the last five (5) years, Sellers have not been a party to, is not a beneficiary under and has not performed any service or sold any product under any Sellers Contract under which a product has been sold to customers in Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Sudan, Syria, United Arab Emirates or the Republic of Yemen.

### **3.27 Relationships With Related Persons**

Except as disclosed in Part 3.27, neither Sellers nor Shareholder nor any Related Person of any of them has, or since January 1, 2000, has had, any interest in any property (whether real, personal or mixed and whether tangible or intangible) used in or pertaining to Sellers' business. Neither Sellers nor Shareholder nor any Related Person of any of them owns, or since January 1, 2000, has owned, of record or as a beneficial owner, an equity interest or any other financial or profit interest in any Person that has (a) had business dealings or a material financial interest in any transaction with Sellers other than business dealings or transactions disclosed in Section 3.29, each of which has been conducted in the Ordinary Course of Business with Sellers at substantially prevailing market prices and on substantially prevailing market terms or (b) engaged in competition with Sellers with respect to any line of the products or services of Sellers (a "Competing Business") in any market presently served by Sellers, except for ownership of less than one percent (1%) of the outstanding capital stock of any

Competing Business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth in Part 3.29, neither Sellers nor Shareholders nor any Related Person of any of them is a party to any Contract with, or has any claim or right against, Sellers.

### **3.28 Brokers Or Finders**

Neither Sellers nor any of their Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with the sale of Sellers' business or the Assets or the Contemplated Transactions.

### **3.29 Securities Law Matters**

(a) Sellers are acquiring the Promissory Note for their own account and not with a view to their distribution within the meaning of Section 2(11) of the Securities Act.

(b) Sellers confirm that Buyer and W.W. Holdings have made available to Sellers and their Representatives the opportunity to ask questions of the officers and management employees of Buyer and WWH and to acquire such additional information about the business and financial condition of Buyer and WWH as Sellers have requested, and all such information has been received.

(c) Sellers are an Accredited Investor, as defined in Regulation D of the Securities Act.

(d) Sellers have discussed with Sellers' professional legal, tax and financial advisors the suitability of an investment in Buyer in light of Sellers' particular tax and financial situation.

(e) Sellers have adequate means of providing for current needs and possible personal contingencies and has no need for liquidity of this investment; Sellers and/or Sellers' advisors are familiar with the nature of, and the degree of tax and other risks attendant to, investments of this nature, and have determined that an investment in Buyer is consistent with the investment objectives and income prospects of Sellers; Sellers are able to bear the economic risks of this investment and Sellers' overall commitment to investments which are not readily marketable is not disproportionate to Sellers' net worth.

(f) Sellers understand and acknowledges that: (i) the Promissory Note has not been registered under the Securities Act or any state securities laws in reliance on exemptions provided thereunder; (ii) the Promissory Note may not be sold, assigned or transferred without registration under the Securities Act and any applicable state securities laws unless Buyer first receives an opinion of counsel satisfactory in form and substance to it that registration is not necessary and that such sale, assignment or transfer is in compliance with all applicable federal and state securities laws; (iii) Buyer will place a legend on any document evidencing the Promissory Note stating that the Promissory Note has not been registered under the Securities Act or under any state securities laws (and setting forth the foregoing limitations on resale), and will make appropriate notation on Buyer's records prohibiting any transfer in violation of applicable federal or state securities laws; (iv) no federal or state securities or

other agency has made any recommendation or endorsement of the investment or reviewed or passed upon the merits of the Promissory Note.

### **3.30 Solvency**

(a) Sellers are not now insolvent and will not be rendered insolvent by any of the Contemplated Transactions. As used in this section, "insolvent" means that the sum of the debts and other probable Liabilities of Sellers exceeds the present fair saleable value of Sellers' assets.

(b) Immediately after giving effect to the consummation of the Contemplated Transactions: (i) Sellers will be able to pay its Liabilities as they become due in the usual course of its business; (ii) Sellers will not have unreasonably small capital with which to conduct their present or proposed business; (iii) Sellers will have assets (calculated at fair market value) that exceed their Liabilities; and (iv) taking into account all pending and threatened litigation, final judgments against Sellers in actions for money damages are not reasonably anticipated to be rendered at a time when, or in amounts such that, Sellers will be unable to satisfy any such judgments promptly in accordance with their terms (taking into account the maximum probable amount of such judgments in any such actions and the earliest reasonable time at which such judgments might be rendered) as well as all other obligations of Sellers. The cash available to Sellers, after taking into account all other anticipated uses of the cash, will be sufficient to pay all such debts and judgments promptly in accordance with their terms.

### **3.31 Necessary Services**

Part 3.31 contains a list of all services (other than services of public utilities) provided to the business of Sellers other than by Sellers or which are performed other than at the Real Property, and which are of such a nature that Buyer will have to obtain such services or comparable services after the Closing in order to effectively operate the business.

### **3.32 Disclosure**

No representation or warranty or other statement made by Sellers or either Shareholder in this Agreement, the Disclosure Letter, any supplement to the Disclosure Letter, the certificates delivered pursuant to Section 2.7(a) or otherwise in connection with the Contemplated Transactions contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

### **3.33 Suppliers, Distributors and Customers**

Part 3.33 lists by dollar volume for the 12 months ending on the date of the Interim Balance Sheet, (i) the thirteen (13) largest suppliers of Sellers, and (ii) the twenty (20) largest direct purchasers of Sellers' products. In such last twelve (12) months, no such supplier or distributor or customer of Sellers have canceled or otherwise terminated, or threatened in writing to cancel or otherwise terminate, their relationship with any Sellers or has during such last twelve (12) months

decreased materially, or threatened in writing to decrease or limit materially, their services, supplies or materials to any Sellers or their usage or purchase of the services or products of Sellers. Sellers and Shareholder have no Knowledge, and do not have any reason to believe, that any such supplier, distributor or customer intends to decrease or limit materially either their services, supplies or materials provided to Sellers (or to Buyer after the Closing) or their usage or purchase of services or products of any Sellers (or of any Sellers after the Closing), or materially adversely alter the terms and conditions under which it conducts business with Sellers.

### **3.34 Continuing Operations**

Sellers have sufficient capacity and sufficient sources of materials and supplies to meet future obligations of Sellers' business, and Sellers have purchased and taken delivery of all metal and other materials necessary to perform their obligations under existing purchase orders in accordance with Sellers' past practice; and there are no pending regulatory restrictions or prohibitions which would make such obligations unattainable.

### **3.35 No Defective or Unsafe Products**

Except as set forth on Part 3.35, there are no written statements, citations or decisions by any governmental authority stating that any product sold by any Sellers are defective or unsafe or fails to meet any standards promulgated by any governmental authority. Except as set forth on Part 3.35, there have been no recalls ordered by any governmental authority with respect to any such product. Except as set forth on Part 3.35, to the best of Sellers' knowledge, there is no (i) fact relating to any product of any Sellers that may impose upon any Sellers a duty to recall any such product or a duty to warn customers of a defect in any such product, (ii) design, manufacturing or other defect in any such product, or (iii) any material liability for warranty claims, returns or servicing with respect to any such product not fully reflected on the Financial Statements.

### **3.36 Existing Relationships**

Sellers have no knowledge of any fact or circumstance which would reasonably cause it to believe that any contract, lease, agreement or credit agreement of any Sellers, whether oral or written, may be terminated or upon their expiration not renewed or continued other than in the ordinary course of business; nor of any fact or circumstance reasonably calculated to cause it to believe that any essential business relationship may be prejudiced or impaired.

## **4. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Sellers and Shareholders as follows:



#### **4.1 Organization And Good Standing**

Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Ohio, with full power and authority to conduct its business as it is now conducted.

#### **4.2 Authority; No Conflict**

(a) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon the execution and delivery by Buyer of the Assignment and Assumption Agreement, the Employment Agreement, the Promissory Note and each other agreement to be executed or delivered by Buyer at Closing (collectively, the "Buyer's Closing Documents"), each of the Buyer's Closing Documents will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its respective terms. Upon the execution and delivery by W. W. Holdings of the Guaranty, the Guaranty will constitute the legal, valid and binding obligation of WWH, enforceable against WWH in accordance with its terms. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Buyer's Closing Documents and to perform its obligations under this Agreement and the Buyer's Closing Documents, and such action has been duly authorized by all necessary corporate action.

(b) Neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will give any Person the right to prevent, delay or otherwise interfere with any of the Contemplated Transactions pursuant to:

- (i) any provision of Buyer's Governing Documents;
- (ii) any resolution adopted by the board of directors or the shareholders of Buyer;
- (iii) any Legal Requirement or Order to which Buyer may be subject; or
- (iv) any Contract to which Buyer is a party or by which Buyer may be bound.

Buyer is not and will not be required to obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

#### **4.3 Certain Proceedings**

There is no pending Proceeding that has been commenced against Buyer and that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions. To Buyer's Knowledge, no such Proceeding has been threatened.

#### **4.4 Brokers Or Finders**

Neither Buyer nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Contemplated Transactions.

#### **4.5 Financial Statements**

Buyer has delivered to Sellers an audited balance sheet of W.W. Holdings LLC as at December 31, 2001, and the related audited statements of income and changes in members' equity for the fiscal year then ended, including in each case the notes thereto, together with the report thereon of Saltz, Shamis & Goldfarb, independent certified public accountants. Such financial statements fairly present the financial condition and the results of operations, changes in members' equity and cash flows of W.W. Holdings LLC as at such date of and for the periods referred to in such financial statements, all in accordance with GAAP.

### **5. COVENANTS OF SELLERS PRIOR TO CLOSING**

#### **5.1 Access And Investigation**

Between the date of this Agreement and the Closing Date, and upon reasonable advance notice received from Buyer, Sellers shall (and Shareholder shall cause Sellers to) (a) afford Buyer and its Representatives and prospective lenders and their Representatives (collectively, "Buyer Group") full and free access, during regular business hours, to Sellers' personnel, properties (including subsurface testing), Contracts, Governmental Authorizations, books and Records and other documents and data, such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Sellers; (b) furnish Buyer Group with copies of all such Contracts, Governmental Authorizations, books and Records and other existing documents and data as Buyer may reasonably request; (c) furnish Buyer Group with such additional financial, operating and other relevant data and information as Buyer may reasonably request; and (d) otherwise cooperate and assist, to the extent reasonably requested by Buyer, with Buyer's investigation of the properties, assets and financial condition related to Sellers. In addition, Buyer shall have the right to have the Real Property and Tangible Personal Property inspected by Buyer Group, at Buyer's sole cost and expense, for purposes of determining the physical condition and legal characteristics of the Real Property and Tangible Personal Property. In the event subsurface or other destructive testing is recommended by any of Buyer Group, Buyer shall be permitted to have the same performed, subject to the approval of Sellers, which approval shall not be unreasonably withheld, conditioned or delayed.

#### **5.2 Operation Of The Business Of Sellers**

Between the date of this Agreement and the Closing, Sellers shall (and Shareholder shall cause Sellers to):

- (a) conduct their business only in the Ordinary Course of Business;

(b) except as otherwise directed by Buyer in writing, and without making any commitment on Buyer's behalf, use their Best Efforts to preserve intact its current business organization, keep available the services of its officers, employees and agents and maintain its relations and good will with suppliers, customers, landlords, creditors, employees, agents and others having business relationships with them;

(c) confer with Buyer prior to implementing operational decisions of a material nature;

(d) otherwise report periodically to Buyer concerning the status of its business, operations and finances;

(e) make no material changes in management personnel without prior consultation with Buyer;

(f) maintain the Assets in a state of repair and condition that complies with Legal Requirements and is consistent with the requirements and normal conduct of Sellers' businesses;

(g) keep in full force and effect, without amendment, all material rights relating to Sellers' businesses;

(h) comply with all Legal Requirements and contractual obligations applicable to the operations of Sellers' business;

(i) continue in full force and effect the insurance coverage under the policies set forth in Section 3.21 or substantially equivalent policies;

(j) except as required to comply with ERISA or to maintain qualification under Section 401(a) of the Code, not amend, modify or terminate any Employee Plan without the express written consent of Buyer, and except as required under the provisions of any Employee Plan, not make any contributions to or with respect to any Employee Plan without the express written consent of Buyer, provided that Sellers shall contribute that amount of cash to each Employee Plan necessary to fully fund all of the benefit liabilities of such Employee Plan on a plan-termination basis as of the Closing Date;

(k) cooperate with Buyer and assist Buyer in identifying the Governmental Authorizations required by Buyer to operate the business from and after the Closing Date and either transferring existing Governmental Authorizations of Sellers to Buyer, where permissible, or obtaining new Governmental Authorizations for Buyer;

(l) upon request from time to time, execute and deliver all documents, make all truthful oaths, testify in any Proceedings and do all other acts that may be reasonably necessary or desirable in the opinion of Buyer to consummate the Contemplated Transactions, all without further consideration; and

(m) maintain all books and Records of Sellers relating to Sellers' businesses in the Ordinary Course of Business.

### **5.3 Negative Covenant**

Except as otherwise expressly permitted herein, between the date of this Agreement and the Closing Date, Sellers shall not, and Shareholder shall not permit Sellers to, without the prior written Consent of Buyer, (a) take any affirmative action, or fail to take any reasonable action within its control, as a result of which any of the changes or events listed in Sections 3.15 or 3.19 would be likely to occur; (b) make any modification to any material Contract or Governmental Authorization; (c) allow the levels of raw materials, supplies or other materials included in the Inventories to vary materially from the levels customarily maintained; or (d) enter into any compromise or settlement of any litigation, proceeding or governmental investigation relating to the Assets, the business of Sellers or the Assumed Liabilities.

### **5.4 Tax Filings**

As promptly as practicable after the date of this Agreement, BSH-Pitt shall make all filings required by Legal Requirements to be made by it in order to consummate the Contemplated Transactions, including all filings with the Department of Revenue required by PA. STAT. ANN. tit. 72 §§ 1403, 7240 or 7321.1 (2002) ("Pennsylvania Statutes") in connection with the Contemplated Transactions. BSH-Pitt also shall cooperate with Buyer and its Representatives with respect to all filings that Buyer elects to make or, pursuant to Legal Requirements, shall be required to make in connection with the Contemplated Transactions. BSH-Pitt also shall cooperate with Buyer and its Representatives in obtaining all Material Consents.

### **5.5 Required Approvals**

As promptly as practicable after the date of this Agreement, Sellers shall make all filings required by Legal Requirements to be made by it in order to consummate the Contemplated Transactions, including without limitation the Pennsylvania Statutes. Sellers and Shareholders also shall cooperate with Buyer and its Representatives with respect to all filings that Buyer elects to make or, pursuant to Legal Requirements, shall be required to make in connection with the Contemplated Transactions. Sellers and Shareholders also shall cooperate with Buyer and its Representatives in obtaining all Material Consents (including taking all actions requested by Buyer to cause early termination of any applicable waiting period under the HSR Act). Sellers and Buyer shall not give notice under the provisions of the Uniform Commercial Code in effect in Missouri, Indiana and/or any other applicable state law relating to bulk sales. Except as is otherwise specifically provided under this Agreement, Sellers shall remain solely responsible to all of their respective creditors with respect to liabilities incurred relative to the conduct of Sellers prior to the Closing Date. Notwithstanding anything to the contrary in this Agreement, except for Buyer's obligation to pay the Assumed Liabilities, Sellers, jointly and severally, agree to indemnify, defend and hold harmless Buyer for any loss or liability incurred by Buyer because of the failure to comply with the bulk sales laws of Missouri, Indiana and/or any other applicable state bulk sales law.

Nothing contained herein shall waive the Sellers' right to cause compliance with Missouri's Uniform Commercial Code--Bulk Transfers, Indiana's Uniform Commercial Code-Bulk Sales and/or any other applicable state bulk sales law (collectively the "Bulk Sales Laws"), and Buyer shall cooperate with compliance with the Bulk Transfer Laws and with executing related documents and instruments required for such compliance, provided, however, compliance with the Bulk Transfer Laws shall not delay the Closing. In the event the Sellers elect to cause compliance with the Bulk Transfer Laws, the Closing Date shall be deemed to be the Closing Date for all purposes of this Agreement with respect to matters between the Buyer and the Sellers and the date by which claims must be submitted for payment pursuant to the notice given in connection with compliance with the Bulk Transfer Laws will be the Closing Date for that purpose only. Nothing contained herein shall waive the Sellers' rights to obtain any tax clearance certificates, provided, however, obtaining such tax clearance certificates shall not delay the Closing.

### **5.6 Notification**

Between the date of this Agreement and the Closing, Sellers and Shareholder shall promptly notify Buyer in writing if any of them becomes aware of (a) any fact or condition that causes or constitutes a Breach of any of Sellers' representations and warranties made as of the date of this Agreement or (b) the occurrence after the date of this Agreement of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this Agreement) cause or constitute a Breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or Sellers' or either Shareholders' discovery of, such fact or condition. Should any such fact or condition require any change to the Disclosure Letter, Sellers shall promptly deliver to Buyer a supplement to the Disclosure Letter specifying such change. Such delivery shall not affect any rights of Buyer under Section 9.2 and Article 11. During the same period, Sellers and Shareholder also shall promptly notify Buyer of the occurrence of any Breach of any covenant of Sellers and Shareholder in this Article 5 or of the occurrence of any event that may make the satisfaction of the conditions in Article 7 impossible or unlikely.

### **5.7 No Negotiation**

Until such time as this Agreement shall be terminated pursuant to Section 9.1, neither Sellers and Shareholder shall directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to or consider the merits of any inquiries or proposals from any Person (other than Buyer) relating to any business combination transaction involving Sellers, including the sale by Shareholders of Sellers' stock, the merger or consolidation of Sellers or the sale of Sellers' business or any of the Assets (other than in the Ordinary Course of Business). Sellers and Shareholder shall notify Buyer of any such inquiry or proposal within twenty-four (24) hours of receipt or awareness of the same by Sellers and Shareholder.

## **5.8 Best Efforts**

Sellers and Shareholder shall use their Best Efforts to cause the conditions in Article 7 and Section 8.3 to be satisfied.

## **5.9 Interim Financial Statements**

Until the Closing Date, Sellers shall deliver to Buyer within ten (10) days after the end of each month a copy of the unaudited, interim financial statements for such month prepared in a manner and containing information consistent with Sellers' current practices and certified by Sellers' chief financial officer as to compliance with Section 3.4.

## **5.10 Change Of Name**

On or before the Closing Date, Sellers shall (a) amend their Governing Documents and take all other actions necessary to change their names to ones sufficiently dissimilar to Sellers' present names, in Buyer's judgment, to avoid confusion and (b) take all actions requested by Buyer to enable Buyer to change its name to Sellers' present names.

## **5.11 Payment Of Liabilities**

(a) Sellers shall pay or otherwise satisfy in the Ordinary Course of Business all of its Liabilities and obligations.

# **6. COVENANTS OF BUYER PRIOR TO CLOSING**

## **6.1 Required Approvals**

As promptly as practicable after the date of this Agreement, Buyer shall make, or cause to be made, all filings required by Legal Requirements (including all filings under the HSR Act) to be made by it to consummate the Contemplated Transactions. Buyer also shall cooperate, and cause its Related Persons to cooperate, with Sellers (a) with respect to all filings Sellers shall be required by Legal Requirements to make and (b) in obtaining all Consents identified in Section 3.2(c), provided, however, that Buyer shall not be required to dispose of or make any change to its business, expend any material funds or incur any other burden in order to comply with this Section 6.1.

## **6.2 Best Efforts**

Buyer shall use its Best Efforts to cause the conditions in Article 8 and Section 7.3 to be satisfied.

## **7. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE**

Buyer's obligation to purchase the Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

### **7.1 Accuracy Of Representations**

(a) All of Sellers' and Shareholder's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all material respects as of the date of this Agreement, and shall be accurate in all material respects as of the time of the Closing as if then made, without giving effect to any supplement to the Disclosure Letter.

(b) Each of the representations and warranties in Sections 3.2(a) and 3.4, and each of the representations and warranties in this Agreement that contains an express materiality qualification, shall have been accurate in all respects as of the date of this Agreement, and shall be accurate in all respects as of the time of the Closing as if then made, without giving effect to any supplement to the Disclosure Letter.

### **7.2 Sellers' Performance**

All of the covenants and obligations that Sellers and Shareholder are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all material respects.

### **7.3 Consents**

Each of the Consents identified in Part 3.2(b) (the "Material Consents") shall have been obtained and shall be in full force and effect.

### **7.4 Additional Documents**

Sellers and Shareholder shall have caused the documents and instruments required by Section 2.7(a) and the following documents to be delivered (or tendered subject only to Closing) to Buyer:

(a) an opinion of Katz, Teller, Brant & Hild, dated the Closing Date, in the form of Exhibit 7.4(a);

(b) The articles of incorporation and all amendments thereto of Sellers, duly certified as of a recent date by the Secretary of State of the jurisdiction of Sellers' incorporation;

(c) If requested by Buyer, any Consents or other instruments that may be required to permit Buyer's qualification in each jurisdiction in which Sellers are licensed or qualified to do business as a foreign corporation under the name "Builders Specialties & Hardware" or "BSH" or any derivative thereof;

(d) the Operating Agreement, executed by George E. Thurner III;

(e) the Agreement Among Members, executed by George E. Thurner III;

(f) the Subscription Agreement, executed by George E. Thurner, III;

(g) Releases of all Encumbrances on the Assets, other than Permitted Encumbrances;

(h) Certificates dated as of a date not earlier than the third business day prior to the Closing as to the good standing of Sellers and payment of all applicable state Taxes by Sellers, executed by the appropriate officials of the State of Ohio and each jurisdiction in which Sellers are licensed or qualified to do business as a foreign corporation as specified in Section 3.1(a); and

(i) Such other documents as Buyer may reasonably request for the purpose of:

(i) evidencing the accuracy of any of Sellers' and Shareholder's representations and warranties;

(ii) evidencing the performance by Sellers and Shareholder of, or the compliance by Sellers and Shareholder with, any covenant or obligation required to be performed or complied with by Sellers or Shareholder;

(iii) evidencing the satisfaction of any condition referred to in this Article 7; or

(iv) otherwise facilitating the consummation or performance of any of the Contemplated Transactions.

## 7.5 No Proceedings

Since the date of this Agreement, there shall not have been commenced or threatened against Buyer, or against any Related Person of Buyer, any Proceeding (a) involving any challenge to, or seeking Damages or other relief in connection with, any of the Contemplated Transactions or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on or otherwise interfering with any of the Contemplated Transactions.



## **7.6 No Conflict**

Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time), contravene or conflict with or result in a violation of or cause Buyer or any Related Person of Buyer to suffer any adverse consequence under (a) any applicable Legal Requirement or Order or (b) any Legal Requirement or Order that has been published, introduced or otherwise proposed by or before any Governmental Body, excluding Bulk Sales Laws.

## **7.7 Services Agreement**

Buyer shall have entered into a Services Agreement with Shareholder in the form of Exhibit 7.7 attached hereto (the "Services Agreement").

## **7.8 Development Agreement**

Sellers shall have delivered to Buyer a fully-executed copy of a Development Agreement with regard to Charlie, in form and substance acceptable to Buyer.

## **7.9 Governmental Authorizations**

Buyer shall have received such Governmental Authorizations as are necessary or desirable to allow Buyer to operate the Assets from and after the Closing.

## **7.10 Environmental Report**

Buyer shall have received an environmental site assessment report with respect to Sellers' Facilities, which report shall be acceptable in form and substance to Buyer in its sole discretion.

## **7.11 Warn Act Notice Periods And Employees**

- (a) All requisite notice periods under the Warn Act shall have expired.
- (b) Buyer shall have entered into employment agreements with those employees of Sellers identified in Exhibit 7.11.
- (c) Those key employees of Sellers identified on Exhibit 7.11, or substitutes therefor who shall be acceptable to Buyer, in its sole discretion, shall have accepted employment with Buyer with such employment to commence on and as of the Closing Date.
- (d) Substantially all other employees of Sellers shall be available for hiring by Buyer, on and as of January 1, 2003.

## **7.12 Ancillary Agreements**

The relevant Persons shall have entered into ancillary agreements in form and substance as set forth in Exhibit 7.12 hereto.

## **7.13 Financing**

The financing of the Contemplated Transactions shall have occurred in accordance with the terms and subject to the conditions of that certain Loan and Security Agreement dated December \_\_\_\_, 2002 by and between Buyer and Congress Financial Corporation (Central).

## **8. CONDITIONS PRECEDENT TO SELLERS' OBLIGATION TO CLOSE**

Sellers' obligation to sell the Assets and to take the other actions required to be taken by Sellers at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Sellers in whole or in part):

### **8.1 Accuracy Of Representations**

All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all material respects as of the date of this Agreement and shall be accurate in all material respects as of the time of the Closing as if then made.

### **8.2 Buyer's Performance**

All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been performed and complied with in all material respects.

### **8.3 Consents**

Each of the Consents identified in Exhibit 8.3 shall have been obtained and shall be in full force and effect.

### **8.4 Additional Documents**

Buyer shall have caused the documents and instruments required by Section 2.7(b) and the following documents to be delivered (or tendered subject only to Closing) to Sellers and Shareholders:

(a) an opinion of Ulmer & Berne LLP, dated the Closing Date, in the form of Exhibit 8.4(a);

- hereto ; and
- (b) the Guaranty of W.W. Holdings, LLC, in the form of Exhibit 8.4(b) attached
  - (c) such other documents as Sellers may reasonably request for the purpose of
    - (i) evidencing the accuracy of any representation or warranty of Buyer,
    - (ii) evidencing the performance by Buyer of, or the compliance by Buyer with, any covenant or obligation required to be performed or complied with by Buyer or
    - (iii) evidencing the satisfaction of any condition referred to in this Article 8.

#### **8.5 No Injunction**

There shall not be in effect any Legal Requirement or any injunction or other Order that (a) prohibits the consummation of the Contemplated Transactions and (b) has been adopted or issued, or has otherwise become effective, since the date of this Agreement.

### **9. TERMINATION**

#### **9.1 Termination Events**

By notice given prior to or at the Closing, subject to Section 9.2, this Agreement may be terminated as follows:

- (a) by Buyer if a material Breach of any provision of this Agreement has been committed by Sellers or Shareholders and such Breach has not been waived by Buyer;
- (b) by Sellers if a material Breach of any provision of this Agreement has been committed by Buyer and such Breach has not been waived by Sellers;
- (c) by Buyer if any condition in Article 7 has not been satisfied as of the date specified for Closing in the first sentence of Section 2.6 or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement), and Buyer has not waived such condition on or before such date;
- (d) by Sellers if any condition in Article 8 has not been satisfied as of the date specified for Closing in the first sentence of Section 2.6 or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Sellers or the Shareholders to comply with their obligations under this Agreement), and Sellers have not waived such condition on or before such date;
- (e) by mutual consent of Buyer and Sellers;

(f) by Buyer if the Closing has not occurred on or before December 31, 2002, or such later date as the parties may agree upon, unless the Buyer is in material Breach of this Agreement; or

(g) by Sellers if the Closing has not occurred on or before December 31, 2002, or such later date as the parties may agree upon, unless the Sellers or Shareholder are in material Breach of this Agreement.

## **9.2 Effect Of Termination**

Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of such right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1, all obligations of the parties under this Agreement will terminate, except that the obligations of the parties in this Section 9.2 and Articles 12 and 13 (except for those in Section 13.5) will survive, provided, however, that, if this Agreement is terminated because of a Breach of this Agreement by the nonterminating party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

## **10. ADDITIONAL COVENANTS**

### **10.1 Employees And Employee Benefits**

(a) Information on Active Employees. For the purpose of this Agreement, the term "Active Employees" shall mean all employees employed by Sellers on the date the Employee Leasing Agreement is terminated (the "Hire Date") and who are:

- (i) bargaining unit employees currently by a collective bargaining agreement on the Hire Date or
- (ii) employed exclusively in Sellers' businesses as conducted on the Hire Date, including employees on temporary leave of absence, including family medical leave, military leave, temporary disability or sick leave, but excluding employees on long-term disability leave.

(b) Employment of Active Employees by Buyer.

- (i) On the Hire Date, Buyer intends to offer continued employment to substantially all of the Active Employees on substantially the same terms of employment in effect for such Active Employees on the Hire Date. Buyer will provide Sellers with a list of Active Employees to whom Buyer has made an offer of employment that has been accepted to be effective on the Hire Date (the "Hired Active Employees"). Subject to

Legal Requirements, Buyer will have reasonable access to the Facilities and personnel Records (including performance appraisals, disciplinary actions, grievances and medical Records) of Sellers for the purpose of preparing for and conducting employment interviews with all Active Employees and will conduct the interviews as expeditiously as possible prior to the Closing Date. Access will be provided by Sellers upon reasonable prior notice during normal business hours. Effective immediately before the Hire Date, Sellers will terminate the employment of all of their Hired Active Employees.

(ii) Neither Sellers nor Shareholder nor their Related Persons shall solicit the continued employment of any Active Employee (unless and until Buyer has informed Sellers in writing that the particular Active Employee will not receive any employment offer from Buyer) during the term of the Employee Leasing Agreement.

(iii) It is understood and agreed that (A) Buyer's expressed intention to extend offers of employment as set forth in this section shall not constitute any commitment, Contract or understanding (expressed or implied) of any obligation on the part of Buyer to a post-Hire Date employment relationship of any fixed term or duration or upon any terms or conditions other than those that Buyer may establish pursuant to individual offers of employment (provided that such offers of employment initially shall be on terms substantially similar to then in effect), and (B) employment offered by Buyer is "at will" and may be terminated by Buyer or by an employee at any time for any reason (subject to any written commitments to the contrary made by Buyer or an employee and Legal Requirements). Nothing in this Agreement shall be deemed to prevent or restrict in any way the right of Buyer to terminate, reassign, promote or demote any of the Hired Active Employees after the Hire Date or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.

(c) Salaries and Benefits.

(i) Sellers shall be responsible for (A) the payment of all wages and other remuneration due to Active Employees with respect to their services as employees of Sellers through the Hire Date; provided, however, that Buyer shall pay to Seller the cost of the same pursuant to the Employee Leasing Agreement; (B) any and all payments to employees required under the WARN Act; and (C) the payment of any termination or severance payments and the provision of health plan continuation

coverage and appropriate COBRA notice in accordance with the requirements of COBRA and Sections 601 through 608 of ERISA for all of Sellers' employees or former employees, and their qualifying beneficiaries, whose qualifying event occurred prior to or in connection with the transactions contemplated by this Agreement and the Employee Leasing Agreement for the entire term required by COBRA. In the event Sellers fail to comply with this obligation, and Buyer is determined to have an obligation to provide such COBRA continuation coverage benefit, Sellers will reimburse Buyer for all costs and expenses which Buyer determines it incurs due to Sellers' failure.

(ii) Sellers shall be liable for any claims made or incurred by Active Employees and their beneficiaries through the Hire Date under the Employee Plans. For purposes of the immediately preceding sentence, a charge will be deemed incurred, in the case of hospital, medical or dental benefits, when the services that are the subject of the charge are performed and, in the case of other benefits (such as disability or life insurance), when an event has occurred or when a condition has been diagnosed that entitles the employee to the benefit.

(d) Sellers' Retirement and Savings Plans.

(i) All Hired Active Employees who are participants in Sellers' retirement plans shall retain their accrued benefits under Sellers' retirement plans through the Hire Date, and Sellers (or Sellers' retirement plans) shall retain sole liability for the payment of such benefits as and when such Hired Active Employees become eligible therefor under such plans. All Hired Active Employees shall become fully vested in their accrued benefits under Sellers' retirement plans as of the Hire Date, and Sellers will so amend such plans if necessary to achieve this result. Sellers shall cause the assets of each Employee Plan to equal or exceed the benefit liabilities of such Employee Plan on a plan-termination basis as of the Hire Date.

(ii) Sellers will cause their savings plan to be amended in order to provide that the Hired Active Employees shall be fully vested in their accounts under such plan as of the Hire Date and all payments thereafter shall be made from such plan as provided in the plan.

(e) No Transfer of Assets. Sellers nor Shareholder nor their respective Related Persons will make any transfer of pension or other employee benefit plan assets to Buyer, other than in the form of a direct rollover at the option of the employee.

(f) **Collective Bargaining Matters.** Buyer will set its own initial terms and conditions of employment for the Hired Active Employees and others it may hire, including work rules, benefits and salary and wage structure, all as permitted by law. Buyer is not obligated to assume any collective bargaining agreements under this Agreement. Sellers shall be solely liable for any severance payment required to be made to their employees due to the Contemplated Transactions. Any bargaining obligations of Buyer with any union with respect to bargaining unit employees subsequent to the Hire Date, whether such obligations arise before or after the Closing, shall be the sole responsibility of Buyer. In the event that at any time between the Closing Date and the Hire Date Sellers are required to recognize and negotiate with any labor organization on behalf of the Active Employees, Sellers shall promptly give Buyer written notice of the same and provide Buyer with the opportunity to participate in such proceedings.

(g) **General Employee Provisions.**

- (i) Sellers and Buyer shall give any notices required by Legal Requirements and take whatever other actions with respect to the plans, programs and policies described in this Section 10.1 as may be necessary to carry out the arrangements described in this Section 10.1.
- (ii) Sellers and Buyer shall provide each other with such plan documents and summary plan descriptions, employee data or other information as may be reasonably required to carry out the arrangements described in this Section 10.1.
- (iii) If any of the arrangements described in this Section 10.1 are determined by the IRS or other Governmental Body to be prohibited by law, Sellers and Buyer shall modify such arrangements to as closely as possible reflect their expressed intent and retain the allocation of economic benefits and burdens to the parties contemplated herein in a manner that is not prohibited by law.
- (iv) Sellers shall provide Buyer with completed I-9 forms and attachments with respect to all Hired Active Employees, except for such employees as Sellers certify in writing to Buyer are exempt from such requirement.
- (v) Buyer shall not have any responsibility, liability or obligation, whether to Active Employees, former employees, their beneficiaries or to any other Person, with respect to any employee benefit plans, practices, programs or arrangements (including the establishment, operation or termination thereof and the notification and provision of COBRA coverage extension) maintained by Sellers.

## **10.2 Payment Of All Taxes Resulting From Sale Of Assets By Sellers**

Sellers shall pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed by Legal Requirements; provided, however, that transfer taxes will be paid equally by the parties.

## **10.3 Payment Of Other Retained Liabilities**

In addition to payment of Taxes pursuant to Section 10.2, Sellers shall pay, or make adequate provision for the payment, in full all of the Retained Liabilities and other Liabilities of Sellers under this Agreement. If any such Liabilities are not so paid or provided for, or if Buyer reasonably determines that failure to make any payments will impair Buyer's use or enjoyment of the Assets or conduct of the business previously conducted by Sellers with the Assets, Buyer may, at any time after the Closing Date, after providing not less than ten (10) days prior written notice to Sellers, elect to make all such payments directly (but shall have no obligation to do so) and set off and deduct the full amount of all such payments from the first maturing installments of the unpaid principal balance of the Promissory Note pursuant to Section 11.8. Buyer shall receive full credit under the Promissory Note and this Agreement for all payments so made.

## **10.4 Restrictions On Sellers Dissolution And Distributions**

Sellers shall not dissolve, until the later of (a) thirty (30) days after the completion of all adjustment procedures contemplated by Section 2.9; or (b) Sellers' payment, or adequate provision for the payment, of all of their obligations pursuant to Sections 10.2.

## **10.5 Removing Excluded Assets**

On or before the Closing Date (or at such later date as is agreeable to Buyer), Sellers shall remove all Excluded Assets from all Facilities and other Real Property to be occupied by Buyer. Such removal shall be done in such manner as to avoid any damage to the Facilities and other properties to be occupied by Buyer and any disruption of the business operations to be conducted by Buyer after the Closing. Any damage to the Assets or to the Facilities resulting from such removal shall be paid by Sellers at the Closing. Should Sellers fail to remove the Excluded Assets as required by this Section, Buyer shall have the right, but not the obligation, (a) to remove the Excluded Assets at Sellers' sole cost and expense; (b) to store the Excluded Assets and to charge Sellers all storage costs associated therewith; (c) to treat the Excluded Assets as unclaimed and to proceed to dispose of the same under the laws governing unclaimed property; or (d) to exercise any other right or remedy conferred by this Agreement or otherwise available at law or in equity. Sellers shall promptly reimburse Buyer for all costs and expenses incurred by Buyer in connection with any Excluded Assets not removed by Sellers on or before the Closing Date.



## **10.6 Reports And Returns**

Sellers shall promptly after the Closing prepare and file all reports and returns required by Legal Requirements relating to the business of Sellers as conducted using the Assets, to and including the Effective Time.

## **10.7 Assistance In Proceedings**

Sellers and Shareholder will cooperate with Buyer and their counsel in the contest or defense of, and make available their personnel and provide any testimony and access to their books and Records in connection with, any Proceeding involving or relating to (a) any Contemplated Transaction or (b) any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving Sellers or their business or Shareholder.

## **10.8 Customer And Other Business Relationships**

After the Closing, Sellers and Shareholder will cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer those business relationships of Sellers existing prior to the Closing and relating to the business to be operated by Buyer after the Closing, including relationships with lessors, employees, regulatory authorities, licensors, customers, suppliers and others, and Sellers will satisfy the Retained Liabilities in a manner that is not detrimental to any of such relationships. Sellers will refer to Buyer all inquiries relating to such business. Neither Sellers nor any of its officers, employees, agents or shareholders shall take any action that would tend to diminish the value of the Assets after the Closing or that would interfere with the business of Buyer to be engaged in after the Closing, including disparaging the name or business of Buyer.

## **10.9 Retention Of And Access To Records**

After the Closing Date, Buyer shall retain for a period consistent with Buyer's record-retention policies and practices those Records of Sellers delivered to Buyer. Buyer also shall provide Sellers and Shareholder, and their Representatives reasonable access thereto, during normal business hours and on at least three days' prior written notice, to enable them to prepare financial statements or tax returns or deal with tax audits. After the Closing Date, Sellers shall provide Buyer and its Representatives reasonable access to Records that are Excluded Assets, during normal business hours and on at least three days' prior written notice, for any reasonable business purpose specified by Buyer in such notice.

## **10.10 Further Assurances**

Subject to the proviso in Section 6.1, the parties shall cooperate reasonably with each other and with their respective Representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such

other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

#### **10.11 Procedures Concerning Collection of Receivables**

During the one (1) year period following the Closing Date (the "Collection Period"), Buyer shall use commercially reasonable efforts (without resort to litigation) to collect the Accounts Receivable. Buyer shall not be required to, but may in its discretion, turn any of the Accounts Receivable over to a collection agency, with the approval of Sellers, which approval shall not be unnecessarily withheld, conditioned or delayed. In the event the Sellers receive payment for any of the Accounts Receivable during the Collection Period, such payment shall be paid over to Buyer. After the expiration of the Collection Period, Buyer shall determine the amount of the Accounts Receivable that remain outstanding, net of the Reserves (the "Outstanding Accounts"). Upon completion of such determination in accordance with this Section 10.11, Buyer shall have the right but not the obligation to require Sellers and/or Shareholder to purchase from Buyer any Outstanding Accounts at the face value thereof. In the event Buyer receives payment for any of the Outstanding Accounts after such Outstanding Accounts have been assigned to Sellers pursuant to the terms of this Section 10.11, such payment shall be promptly paid over to Sellers. The determination of Outstanding Accounts shall be made by Buyer within 30 days following the expiration of the Collection Period, and Sellers' accountants will be provided access to all related books and records needed to verify such determination by Buyer. The payment for any Outstanding Accounts shall be made within 45 days following the expiration of the Collection Period and shall be accompanied by an instrument duly executed by Buyer assigning such Outstanding Accounts to Sellers. For purposes of determining the amount of the Outstanding Accounts, any payment received by Buyer following the Closing Date from a customer of the Business shall be allocated among the outstanding invoices of such customer as follows: first, to the invoice referenced on the customer's payment or transmittal correspondence; if there is no invoice referenced, then to the customer's invoice in the same amount as the payment, if such matching is possible; or if it is not, then in accordance with the customer's specific instructions accompanying the payment and in the absence of specific instructions, then such payment shall be applied against the customer's outstanding balance, with the invoices that have been outstanding for the longest period of time being credited first. Buyer shall render a report to Sellers within 15 days following the end of each month (with the first such report due February 15, 2003 with respect to the month ending January 31, 2003) of the Accounts Receivable that constitute Outstanding Accounts at the end of such month.

#### **10.12 Shareholder's Net Worth**

Shareholder hereby covenants and agrees that it shall have as of the Effective Time and shall maintain through December 31, 2006, a net worth determined in accordance with GAAP of not less than Nine Million And No/100 Dollars (\$9,000,000.00).

## 10.13 Nondisparagement

Each of Sellers and Shareholder and their Related Persons on the one hand, and Buyer and its Related Persons on the other hand, agree that they will not disparage the assets, business or goodwill of the other for a period of four years after the Closing.

## 11. INDEMNIFICATION; REMEDIES

### 11.1 Survival

All representations, warranties, covenants and obligations in this Agreement, the Disclosure Letter, the supplements to the Disclosure Letter, the certificates delivered pursuant to Section 2.7 and any other certificate or document delivered pursuant to this Agreement shall survive the Closing and the consummation of the Contemplated Transactions, subject to Section 11.7. The right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations shall not be affected by any investigation (including any environmental investigation or assessment) conducted with respect to, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

### 11.2 Indemnification And Reimbursement By Sellers and Shareholder

Sellers and Shareholder, jointly and severally, will indemnify and hold harmless Buyer, and its Representatives, shareholders, subsidiaries and Related Persons (collectively, the "Buyer Indemnified Persons"), and will reimburse the Buyer Indemnified Persons for any loss, liability, claim, damage, (whether direct or consequential) injunction fines, civil penalties, disbursements, expense (including costs of investigation, court costs, expert fees, and defense and reasonable attorneys' fees and expenses) or diminution of value, whether or not involving a Third-Party Claim (collectively, "Damages"), arising from or in connection with:

(a) any Breach of any representation or warranty made by Sellers or Shareholder in (i) this Agreement (without giving effect to any supplement to the Disclosure Letter), (ii) the Disclosure Letter, (iii) the supplements to the Disclosure Letter, (iv) the certificates delivered pursuant to Section 2.7 (for this purpose, each such certificate will be deemed to have stated that Sellers' and Shareholder's representations and warranties in this Agreement fulfill the requirements of Section 7.1 as of the Closing Date as if made on the Closing Date without giving effect to any supplement to the Disclosure Letter, unless the certificate expressly states that the matters disclosed in a supplement have caused a condition specified in Section 7.1 not to be satisfied), (v) any transfer instrument or (vi) any other certificate, document, writing or instrument delivered by Sellers or Shareholder pursuant to this Agreement;

(b) any Breach of any covenant or obligation of Sellers or Shareholder in this Agreement or in any other certificate, document, writing or instrument delivered by Sellers or Shareholder pursuant to this Agreement;

(c) any Liability arising out of the ownership or operation of the Assets prior to the Effective Time other than the Assumed Liabilities;

(d) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any Person with Sellers or Shareholder (or any Person acting on their behalf) in connection with any of the Contemplated Transactions;

(e) any product or component thereof manufactured by or shipped, or any services provided by, Sellers, in whole or in part, prior to the Closing Date;

(f) any matter disclosed in Parts \_\_\_\_\_ of the Disclosure Letter;

(g) any noncompliance with any Bulk Sales Laws or fraudulent transfer law in respect of the Contemplated Transactions;

(h) any liability under the WARN Act or any similar state or local Legal Requirement that may result from an "Employment Loss," as defined by 29 U.S.C. sect. 2101(a)(6), caused by any action of Sellers prior to the Closing or by Buyer's decision not to hire previous employees of Sellers;

(i) any Employee Plan established or maintained by Sellers or any ERISA Affiliate of one or more of Sellers; or

(j) any Retained Liabilities.

### **11.3 Indemnification And Reimbursement By Sellers—Environmental Matters**

In addition to the other indemnification provisions in this Article 11, Sellers, and Shareholder, jointly and severally, will indemnify and hold harmless Buyer and the other Buyer Indemnified Persons, and will reimburse Buyer and the other Buyer Indemnified Persons, for any Damages as defined in Article 11.2 (including injunctions, administrative orders, costs of cleanup, containment, abatement or other remediation) arising from or in connection with:

(a) any Environmental, Health and Safety Liabilities arising out of or relating to: (i) the ownership or operation by any Person at any time on or prior to the Closing Date of any of the Facilities, Assets or the business of Sellers, or (ii) any Hazardous Materials or other contaminants or Hazardous Activities that were present on the Facilities or Assets at any time on or prior to the Closing Date; or

(b) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any Person or any Assets in any way arising from or allegedly arising from any Hazardous Activity conducted by any Person with respect to the business of Sellers or the Assets prior to the Closing Date or from any Hazardous Material that was (i) present or suspected to be present on or before the Closing Date on or at the Facilities (or present or suspected to be present on any other property, if such Hazardous Material emanated, migrated or Released from or allegedly emanated, migrated or Released from any Facility to the environment and was present or suspected to be present on any Facility, on or prior to the Closing Date) or (ii) Released Hazardous Materials or allegedly Released Hazardous Materials by any Person on or at any Facilities or Assets to the environment at any time on or prior to the Closing Date.

(c) Any lease agreement entered into between Buyer and Seller which will commence after the Closing Date for any of the Facilities or other properties Sellers will conduct any operations and or business which result in a Release of Hazardous Materials to the Environment or non-compliance with Environmental laws and Legal Requirements.

Buyer will be entitled to control any Remedial Action, any Proceeding relating to an Environmental Claim and, except as provided in the following sentence, any other Proceeding with respect to which indemnity may be sought under this Section 11.3. The procedure described in Section 11.9 will apply to any claim solely for monetary damages relating to a matter covered by this Section 11.3.

#### **11.4 Indemnification And Reimbursement By Buyer**

Buyer will indemnify and hold harmless Sellers, and will reimburse Sellers, for any Damages arising from or in connection with:

(a) any Breach of any representation or warranty made by Buyer in this Agreement or in any certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(b) any Breach of any covenant or obligation of Buyer in this Agreement (including, without limitation, the obligation of the Buyer to pay all or any part of the Purchaser Price) or in any other certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(c) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with Buyer (or any Person acting on Buyer's behalf) in connection with any of the Contemplated Transactions;

(d) any Liability arising out of ownership or operation of Assets after the Effective Time except to the extent arises directly or indirectly from any item covered by Sections 11.1 or 11.2 hereof; or

- (e) any Assumed Liabilities.

### **11.5 Limitations On Amount—Sellers and Shareholder**

Sellers and Shareholder shall have no liability (for indemnification or otherwise) with respect to claims under Section 11.2(a) until the total of all Damages with respect to such matters exceeds One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00), and then only to the extent the same exceeds such amount. However, this Section 11.5 will not apply to claims under Section 11.2(b) through (j) or to matters arising in respect of Sections 3.9, 3.11, 3.14, 3.22, 3.29 or 3.30 or to any Breach of any of Sellers' and Shareholder's representations and warranties of which the Sellers and/or Shareholder had Knowledge at any time prior to the date on which such representation and warranty is made or any intentional Breach by Sellers or Shareholder of any covenant or obligation, and Sellers and Shareholder will be jointly and severally liable for all Damages with respect to such Breaches.

### **11.6 Limitations On Amount—Buyer**

Buyer will have no liability (for indemnification or otherwise) with respect to claims under Section 11.4(a) until the total of all Damages with respect to such matters exceeds One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00), and then only to the extent the same exceeds such amount. However, this Section 11.6 will not apply to claims under Section 11.4(b) through (e) or matters arising in respect of Section 4.4 or to any Breach of any of Buyer's representations and warranties of which Buyer had Knowledge at any time prior to the date on which such representation and warranty is made or any intentional Breach by Buyer of any covenant or obligation, and Buyer will be liable for all Damages with respect to such Breaches.

### **11.7 Time Limitations**

(a) If the Closing occurs, Sellers and Shareholder will have liability (for indemnification or otherwise) with respect to any Breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date (other than those in Sections 2.1 and 2.4(b) and Articles 10 and 12, as to which a claim may be made at any time) or (ii) a representation or warranty (other than those in Section 3.9 and as to which a claim may be made at any time and those in Sections 3.14, 3.16, 3.22, 3.29 and 3.30 as to which a claim may be made with the applicable statute of limitations) only if on or before March 31, 2004, Buyer notifies Sellers or Shareholder of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer. This Section 11.7(a) shall not apply to claims under Section 11.2(b) through (j) or to matters involving fraud.

(b) If the Closing occurs, Buyer will have liability (for indemnification or otherwise) with respect to any Breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date (other than those in Article 12, as to which a claim may be made at any time) or (ii) a representation or warranty (other than that set forth in Section 4.4, as to which a claim may be made at any time), only if on or before March 31, 2004, Sellers or Shareholder notify Buyer of a claim

specifying the factual basis of the claim in reasonable detail to the extent then known by Sellers or Shareholder. This Section 11.7(b) will not apply to claims under Section 11.4(b) through (e) or to matters involving fraud.

### **11.8 Right Of Setoff**

In addition to any right or remedy available to Buyer under this Agreement, at law, in equity or otherwise, upon notice to Sellers specifying in reasonable detail the basis therefor, Buyer may set off any amount to which it may be entitled under this Article 11 against amounts otherwise payable under this Agreement, the Promissory Note, the Contingent Payment, the Agreement Among Members, any Assignment and Assumption of Lease, the Cincinnati Lease or the Charlie Software License Agreement. The provisions of this Section 11.8 shall not apply to the Adjustment Amount or the Employment Agreement. The exercise of such right of setoff by Buyer in good faith, whether or not ultimately determined to be justified, will not constitute an event of default under this Agreement, the Promissory Note, the Agreement Among Members, any Assignment and Assumption of Lease, the Cincinnati Lease or the Charlie Software License Agreement. Neither the exercise of nor the failure to exercise such right of setoff or to give a notice of a claim will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it. To the extent that Buyer shall be entitled to indemnification hereunder and payments under the Promissory Note which are due and payable within three (3) months would be sufficient to satisfy the same, Buyer shall set off such amount against such payments under the Promissory Note. If payments to be made under the Promissory Note within such three (3) month period are not sufficient to satisfy the same, Buyer may proceed to exercise any right or remedy it may have pursuant to this Agreement or otherwise. If any amounts set off by Buyer are determined by a court of competent jurisdiction or the agreement of the parties to have been in excess of the amount determined to be due to Buyer, Buyer shall promptly remit the amount determined to have been set off in excess to Sellers with interest on such amount at the rate of ten percent (10%) per annum.

### **11.9 Third-Party Claims**

(a) Promptly after receipt by a Person entitled to indemnity under Section 11.2, 11.3 (to the extent provided in the last sentence of Section 11.3) or 11.4 (an "Indemnified Person") of notice of the assertion of a Third-Party Claim against it, such Indemnified Person shall give notice to the Person obligated to indemnify under such Section (an "Indemnifying Person") of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the defense of such Third-Party Claim is prejudiced by the Indemnified Person's failure to give such notice.

(b) If an Indemnified Person gives notice to the Indemnifying Person pursuant to Section 11.9(a) of the assertion of a Third-Party Claim, the Indemnifying Person shall be entitled to participate in the defense of such Third-Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Person is also a Person against whom the Third-Party Claim is made and the Indemnified

Person determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third-Party Claim and provide indemnification with respect to such Third-Party Claim), to assume the defense of such Third-Party Claim with counsel satisfactory to the Indemnified Person. After notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person shall not, so long as it diligently conducts such defense, be liable to the Indemnified Person under this Article 11 for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Person assumes the defense of a Third-Party Claim, (i) such assumption will conclusively establish for purposes of this Agreement that the claims made in that Third-Party Claim are within the scope of and subject to indemnification, and (ii) no compromise or settlement of such Third-Party Claims may be effected by the Indemnifying Person without the Indemnified Person's Consent unless (A) there is no finding or admission of any violation of Legal Requirement or any violation of the rights of any Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the Indemnified Person shall have no liability with respect to any compromise or settlement of such Third-Party Claims effected without its Consent. If notice is given to an Indemnifying Person of the assertion of any Third-Party Claim and the Indemnifying Person does not, within ten (10) days after the Indemnified Person's notice is given, give notice to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person will be bound by any determination made in such Third-Party Claim or any compromise or settlement effected by the Indemnified Person.

(c) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it or its Related Persons other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Person will not be bound by any determination of any Third-Party Claim so defended for the purposes of this Agreement or any compromise or settlement effected without its Consent (which may not be unreasonably withheld).

(d) Notwithstanding the provisions of Section 12.4, Sellers and Shareholder hereby consent to the nonexclusive jurisdiction of any court in which a Proceeding in respect of a Third-Party Claim is brought against any Buyer Indemnified Person for purposes of any claim that a Buyer Indemnified Person may have under this Agreement with respect to such Proceeding or the matters alleged therein and agree that process may be served on Sellers and Shareholder with respect to such a claim anywhere in the world.

(e) With respect to any Third-Party Claim subject to indemnification under this Article 11: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim and any related Proceedings at all stages thereof where such Person is not represented by its own counsel, and (ii) the parties agree



(each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(f) With respect to any Third-Party Claim subject to indemnification under this Article 11, the parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all Confidential Information and the attorney-client and work-product privileges. In connection therewith, each party agrees that: (i) it will use its Best Efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable law and rules of procedure), and (ii) all communications between any party hereto and counsel responsible for or participating in the defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

#### **11.10 Other Claims**

A claim for indemnification for any matter not involving a Third-Party Claim may be asserted by notice to the party from whom indemnification is sought and shall be paid promptly after such notice.

#### **11.11 Indemnification In Case Of Strict Liability Or Indemnitee Negligence**

THE INDEMNIFICATION PROVISIONS IN THIS ARTICLE 11 SHALL BE ENFORCEABLE REGARDLESS OF WHETHER THE LIABILITY IS BASED UPON PAST, PRESENT OR FUTURE ACTS, CLAIMS OR LEGAL REQUIREMENTS (INCLUDING ANY PAST, PRESENT OR FUTURE BULK SALES LAW, ENVIRONMENTAL LAW, FRAUDULENT TRANSFER ACT, OCCUPATIONAL SAFETY AND HEALTH LAW OR PRODUCTS LIABILITY, SECURITIES OR OTHER LEGAL REQUIREMENT) AND REGARDLESS OF WHETHER ANY PERSON (INCLUDING THE PERSON FROM WHOM INDEMNIFICATION IS SOUGHT) ALLEGES OR PROVES THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF THE PERSON SEEKING INDEMNIFICATION OR THE SOLE OR CONCURRENT STRICT LIABILITY IMPOSED UPON THE PERSON SEEKING INDEMNIFICATION.

#### **11.12 ADDITIONAL INDEMNIFICATION LIMITATIONS**

(a) The aggregate liability of Sellers and Shareholder for claims for indemnification under Section 11.2(a) shall not exceed Nine Million and 00/100 Dollars (\$9,000,000.00). The aggregate liability of Buyer for claims under Section 11.4(a) shall not exceed Nine Million and 00/100 Dollars (\$9,000,000.00).

(b) No indemnification shall be payable under this Section 11 for any breaches of the representations, warranties, covenants or agreements of Sellers and Shareholder and/or Buyer contained herein if the total amount of such Damages is less than Five Thousand Dollars (\$5,000), it

being understood and agreed that all such Damages shall not be counted towards the cap set forth in Section 11.12(a) hereof or the thresholds set forth in Sections 11.5 and 11.6 hereof.

(c) The amount of any Damages indemnifiable hereunder shall be reduced to reflect (i) the value of any benefit (including, without limitation, any Tax benefit) realized, directly or indirectly, by the indemnifying party as a result of such Damages; and (ii) the amount of any insurance proceeds entitled to be received by the Indemnified Party or its successors and assigns in respect of such damages.

## **12. GENERAL PROVISIONS**

### **12.1 Expenses**

Except as otherwise provided in this Agreement, each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expense of its Representatives. If this Agreement is terminated, the obligation of each party to pay its own fees and expenses will be subject to any rights of such party arising from a Breach of this Agreement by another party.

### **12.2 Public Announcements**

Any public announcement, press release or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as Buyer and Sellers jointly agree. Except with the prior consent of Buyer or Sellers and Shareholder, or as permitted by this Agreement, neither Buyer, nor any of their Representatives or Sellers or Shareholder nor any of their Representatives shall disclose to any Person (a) the fact that any Confidential Information of Sellers or Shareholder has been disclosed to Buyer or its Representatives, that Buyer or its Representatives have inspected any portion of the Confidential Information of Sellers or Shareholder, that any Confidential Information of Buyer and W. W. Holdings has been disclosed to Sellers, Shareholder or their Representatives or that Sellers, Shareholder or their Representatives have inspected any portion of the Confidential Information of Buyer and W. W. Holdings or (b) any information about the Contemplated Transactions, including the status of such discussions or negotiations, the execution of any documents (including this Agreement) or any of the terms of the Contemplated Transactions or the related documents (including this Agreement). Sellers and Buyer will consult with each other concerning the means by which Sellers' employees, customers, suppliers and others having dealings with Sellers will be informed of the Contemplated Transactions, and Buyer will have the right to be present for any such communication.

### **12.3 Notices**

All notices, Consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b)

sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other parties):

*[Remainder of Page Intentionally Left Blank]*

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23108.038

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TRADEMARK  
REEL: 003390 FRAME: 0675

**Sellers (before the Closing):** Builders Specialties & Hardware  
5145 Fischer Place  
Cincinnati, Ohio 45217  
Attention: George Thurner III  
Fax no.: \_\_\_\_\_  
E-mail address: gthurner3@bsh.com

**with a mandatory copy to:** Katz, Teller, Brant & Hild  
Attention: Mark J. Jahnke  
255 East Fifth Street, Suite 2400  
Cincinnati, Ohio 45202  
Fax no.: (513) 721-7120  
E-mail address: mjahnke@katzteller.com

**Sellers (after the Closing):** \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax no.: \_\_\_\_\_  
E-mail address: \_\_\_\_\_

**with a mandatory copy to:** Katz, Teller, Brant & Hild  
Attention: Mark J. Jahnke  
255 East Fifth Street, Suite 2400  
Cincinnati, Ohio 45202  
Fax no.: (513) 721-7120  
E-mail address: mjahnke@katzteller.com

**Shareholder:** MAE Holding Company  
\_\_\_\_\_  
\_\_\_\_\_  
Fax no.: \_\_\_\_\_  
E-mail address: \_\_\_\_\_

**with a mandatory copy to:** Katz, Teller, Brant & Hild  
Attention: William T. Hayden  
255 East Fifth Street, Suite 2400  
Cincinnati, Ohio 45202  
Fax no.: (513) 721-7120  
E-mail address: whayden@katzteller.com

**Buyer:** BSH Acquisition Company, LLC  
1500 Amweld Drive  
Garrettsville, Ohio 44231  
Attention: Jeffrey D. Weiner  
Fax no.: (330) 527-7627  
E-mail address: weinerj@amweld.com

**with a mandatory copy to:** Peter A. Rome, Esq.  
Ulmer & Berne LLP  
Penton Media Building  
1300 East Ninth Street, Suite 900  
Cleveland, Ohio 44114-1583  
Fax no.: (216) 621-7488  
E-mail address: promer@ulmer.com

#### **12.4 Jurisdiction; Service Of Process**

Any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction shall be brought in the courts of the State of Ohio, County of Hamilton, or, if it has or can acquire jurisdiction, in the United States District Court for the Southern District of Ohio, Western Division, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this section may be served on any party anywhere in the world.

## **12.5 Enforcement Of Agreement**

Sellers and Shareholder acknowledge and agree that Buyer would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any Breach of this Agreement by Sellers and Shareholder could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which Buyer may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent Breaches or threatened Breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

## **12.6 Waiver; Remedies Cumulative**

The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

## **12.7 Entire Agreement And Modification**

This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter (including any letter of intent and any confidentiality agreement between Buyer and Sellers) and constitutes (along with the Disclosure Letter, Exhibits and other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

## **12.8 Disclosure Letter**

(a) The information in the Disclosure Letter constitutes (i) exceptions to particular representations, warranties, covenants and obligations of Sellers and Shareholder as set forth in this Agreement or (ii) descriptions or lists of assets and liabilities and other items referred to in this Agreement. If there is any inconsistency between the statements in this Agreement and those in the Disclosure Letter (other than an exception expressly set forth as such in the Disclosure Letter with

respect to a specifically identified representation or warranty), the statements in this Agreement will control.

(b) The statements in the Disclosure Letter, and those in any supplement thereto, relate only to the provisions in the Section of this Agreement to which they expressly relate and not to any other provision in this Agreement.

### **12.9 Assignments, Successors And No Third-Party Rights**

No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties, except that Buyer may assign any of its rights and delegate any of its obligations under this Agreement to any Subsidiary of Buyer (provided that such assignment or delegation shall not relieve Buyer of its obligations hereunder) and may collaterally assign its rights hereunder to any financial institution providing financing in connection with the Contemplated Transactions. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section 13.9.

### **12.10 Severability**

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

### **12.11 Construction**

The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Articles," "Sections" and "Parts" refer to the corresponding Articles, Sections and Parts of this Agreement and the Disclosure Letter.

### **12.12 Time Of Essence**

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

### **12.13 Governing Law**

This Agreement will be governed by and construed under the laws of the State of Ohio without regard to conflicts-of-laws principles that would require the application of any other law.

#### **12.14 Execution Of Agreement**

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

#### **12.15 Shareholder Obligations**

The liability of the Shareholder hereunder shall be joint and several with Sellers. Where in this Agreement provision is made for any action to be taken or not taken by Sellers, Shareholder undertakes to cause Sellers to take or not take such action, as the case may be. Without limiting the generality of the foregoing, Shareholder shall be jointly and severally liable with Sellers for the indemnities set forth in Article 11.

#### **12.16 Agent**

Sellers hereby designate BSH-Cin as their Agent for all purposes of this Agreement in dealing with the Buyer and/or WWH. Buyer and/or W.W. Holdings, LLC may deal with Agent on all matters relating to the Sellers, it being understood and agreed that Agent has the requisite authority to represent the interests of the Sellers hereunder.

*[Signature Page Follows]*



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

**Sellers:**

BUILDERS SPECIALTIES AND  
HARDWARE OF CINCINNATI, INC.

By: of HES  
Its: PRESIDENT

BUILDERS SPECIALTIES & HARDWARE  
OF EVANSVILLE, INC.

By: of HES  
Its: PRESIDENT

BSH - JOLIET, INC.

By: of HES  
Its: PRESIDENT

BUILDERS SPECIALTY & HARDWARE OF  
KANSAS CITY, INC.

By: of HES  
Its: PRESIDENT

BUILDER'S SPECIALTIES & HARDWARE  
OF PITTSBURGH, INC.

By: of HES  
Its: PRESIDENT

BUILDERS SPECIALTIES &  
HARDWARE OF COLUMBUS, INC.

By: of HES  
Its: PRESIDENT

BUILDERS SPECIALTIES & HARDWARE  
OF CHARLESTON, INC.

By: of HES  
Its: PRESIDENT

BUILDERS SPECIALITIES & HARDWARE,  
INC.

By: of HES  
Its: PRESIDENT

*[Signature Page to Asset Purchase Agreement dated December 31, 2002]*

**Buyer:**

BSH ACQUISITION COMPANY LLC

By: Spicy David Weir  
Its: Manager

**Shareholder:**

MAE HOLDING COMPANY

By: df HS  
Its: PRESIDENT

*[Signature Page to Asset Purchase Agreement dated December 31, 2002]*

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TRADEMARK  
REEL: 003390 FRAME: 0682

Exhibits and Schedules are on file with Ulmer & Berne LLP, located at 1300 East 9<sup>th</sup> Street,  
Suite 900, Cleveland, OH 44114.

Part 3.25  
Intellectual Property

**Part 3.25**

**Intellectual Property**

**TRADEMARK**

**REEL: 003390 FRAME: 0685**

Part 3.5 (b)  
Royalties Paid

**Part 3.25 (b)**

**Royalties Paid**

None.

**Part 3.25 (c)**  
**Contracts with Employees**  
**for District to March**



**Part 3.25(c)**

**Contracts with Employees for Rights to Work**

None.



**Part 3.25 (d)**

**Patents**

None.

Part 3.25 (e)  
Marks

**Part 3.25 (e)**

**Marks**

Builders Specialties & Hardware, United States Trademark Registration Number  
2,341,003.

BSH, United States Trademark Registration Number 2,312,036.



## Trademark Electronic Search System (TESS)

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## Record 1 out of 1

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### Typed Drawing

<b>Word Mark</b>	BUILDERS SPECIALTIES & HARDWARE
<b>Goods and Services</b>	IC 035. US 100 101 102. G & S: Retail and wholesale store services featuring commercial building materials and hardware. FIRST USE: 19661021. FIRST USE IN COMMERCE: 19661021
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	75694399
<b>Filing Date</b>	April 30, 1999
<b>Published for Opposition</b>	January 18, 2000
<b>Registration Number</b>	2341003
<b>Registration Date</b>	April 11, 2000
<b>Owner</b>	(REGISTRANT) Builders Specialties & Hardware, Inc. CORPORATION INDIANA 5145 Fischer Place Cincinnati OHIO 45217
<b>Attorney of Record</b>	ANDREW C EMMERT
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HARDWARE" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL-2(F)
<b>Live/Dead Indicator</b>	LIVE

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 12/06/2002 15:06:09 ET

Serial Number: 75694399

Registration Number: 2341003

Mark (words only): BUILDERS SPECIALTIES & HARDWARE

Current Status: Registered.

Date of Status: 2000-04-11

Filing Date: 1999-04-30

Registration Date: 2000-04-11

Law Office Assigned: TMEG Law Office 101

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 900 -Warehouse (Newington)

Date In Location: 2000-04-18

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**CURRENT APPLICANT(S)/OWNER(S)**

---

1. Builders Specialties & Hardware, Inc.

**Address:**

Builders Specialties & Hardware, Inc.

5145 Fischer Place

Cincinnati, OH 45217

United States

**State or Country of Incorporation:** Indiana

**Legal Entity Type:** Corporation

---

**GOODS AND/OR SERVICES**

---

Retail and wholesale store services featuring commercial building materials and hardware

**International Class:** 035

**First Use Date:** 19661021

**First Use in Commerce Date:** 19661021

**Basis:** 1(a)

---

**ADDITIONAL INFORMATION**

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**Disclaimer:** "HARDWARE"

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**PROSECUTION HISTORY**

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2000-04-11 - Registered - Principal Register

2000-01-18 - Published for opposition

1999-12-17 - Notice of publication

1999-11-05 - Approved for Pub - Principal Register (Initial exam)

1999-10-26 - Communication received from applicant

1999-08-25 - Non-final action mailed

1999-07-28 - Case file assigned to examining attorney

---

**CONTACT INFORMATION**

---

**Correspondent (Owner)**

ANDREW C EMMERT (Attorney of record)

ANDREW C EMMERT  
COHEN TODD KITE STANFORD LLC  
525 VINE ST 16TH FL  
CINCINNATI OH 45202-3124  
United States

---





TESS was last updated on Fri Dec 6 04:10:44 EST 2002

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## Record 1 out of 1

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### Typed Drawing

**Word Mark** BSH

**Goods and Services** IC 035. US 100 101 102. G & S: wholesale and retail store services in the field of commercial building materials and hardware. FIRST USE: 19661021. FIRST USE IN COMMERCE: 19661021

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 75674050

**Filing Date** April 5, 1999

**Published for Opposition** November 2, 1999

**Registration Number** 2312036

**Registration Date** January 25, 2000

**Owner** (REGISTRANT) Builders Specialties & Hardware, Inc. CORPORATION  
INDIANA 5145 Fischer Place Cincinnati OHIO 45217

**Attorney of Record** ANDREW C EMMERT

**Type of Mark** SERVICE MARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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Serial Number: 75674050

Registration Number: 2312036

Mark (words only): BSH

Current Status: Registered.

Date of Status: 2000-01-25

Filing Date: 1999-04-05

Registration Date: 2000-01-25

Law Office Assigned: TMEG Law Office 101

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 650 -Publication And Issue Section

Date In Location: 2000-01-25

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**CURRENT APPLICANT(S)/OWNER(S)**

---

1. Builders Specialties & Hardware, Inc.

**Address:**

Builders Specialties & Hardware, Inc.

5145 Fischer Place

Cincinnati, OH 45217

United States

**State or Country of Incorporation:** Indiana

**Legal Entity Type:** Corporation

---

**GOODS AND/OR SERVICES**

---

wholesale and retail store services in the field of commercial building materials and hardware

**International Class:** 035

**First Use Date:** 19661021

**First Use in Commerce Date:** 19661021

**Basis:** 1(a)

---

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entrv=75674050>

12/6/2002

**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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2000-01-25 - Registered - Principal Register

1999-11-02 - Published for opposition

1999-10-01 - Notice of publication

1999-07-13 - Approved for Pub - Principal Register (Initial exam)

1999-07-02 - Examiner's amendment mailed

1999-06-29 - Case file assigned to examining attorney

---

**CONTACT INFORMATION**

---

**Correspondent (Owner)**

ANDREW C EMMERT (Attorney of record)

ANDREW C EMMERT  
COHEN TODD KITE & STANFORD LLC  
525 VINE ST 16TH FL  
CINCINNATI OH 45202-3124  
United States

---

Part 3.25 (f)  
Copyrights

Part 3.25 (f)

Copyrights

None.

Part 3.25 (h)  
Net Names

**Part 3.25 (h)**

**Net Names**

[www.bsh1.com](http://www.bsh1.com)

[www.teambsh.com](http://www.teambsh.com)





**Part 3.26**

**Compliance with the Foreign Corrupt Practices Act and Export Control and  
Antiboycott Laws**

**TRADEMARK**

**RECORDED: 09/14/2006**

**REEL: 003390 FRAME: 0705**