# TRADEMARK ASSIGNMENT

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03/26/2009
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| SUBMISSION TYPE: | NEW ASSIGNMENT |
| NATURE OF CONVEYANCE: | BANKRUPTCY COURT SALE ORDER CLEARING ALL LIENS, INCLUDING, BUT NOT LIMITED TO, THE SECURITY INTEREST RECORDED AT REEL/FRAME 2991/0177 |

CONVEYING PARTY DATA

| Name | Formerly | Execution Data | Entity Type |
|---|---|---|---|
| MERRILL LYNCH CAPITAL, A DIVISION OF MERRILLL LYNCH BUSINESS FINANCIAL SERVICES, INC., AS ADMINISTRATIVE AGENT | | 03/23/2009 | DIVISION OF A DELAWARE CORPORATION: DELAWARE |

RECEIVING PARTY DATA

| | |
|---|---|
| Name: | DESA IP, LLC |
| Street Address: | 1001 BRICKELL BAY DRIVE 27TH FLOOR |
| Internal Address: | C/O HIG CAPITAL LLC |
| City: | MIAMI |
| State/Country: | FLORIDA |
| Postal Code: | 33131 |
| Entity Type: | LIMITED LIABILITY COMPANY: FLORIDA |

PROPERTY NUMBERS Total: 1

| Property Type | Number | Word Mark |
|---|---|---|
| Serial Number: | 76554349 | DESIGN DYNAMICS INNOVATION ON FIRE |

CH $40.00 76554349

CORRESPONDENCE DATA

Fax Number: (213)243-4199
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*
Email: trademarkdocketing@aporter.com,diane.lambillotte@aporter.com,diane.gregor@aporter.com
Correspondent Name: Diane M. Lambillotte
Address Line 1: 777 South Figueroa Street
Address Line 2: 44th Floor

TO:DIANE M. LAMBILLOTTE COMPANY:777 SOUTH FIGUEROA STREET

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|---|---|
| Address Line 4: | Los Angeles, CALIFORNIA 90017 |
| ATTORNEY DOCKET NUMBER: | 19346.004 |
| NAME OF SUBMITTER: | Diane M. Lambillotte |
| Signature: | /diane m. lambillotte/ |
| Date: | 03/26/2009 |

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

| | |
|---|---|
| **In re:** | **Chapter 11** |
| **DHP HOLDINGS II CORPORATION, *et al.*,[1]** | **Case No. 08-13422 (MFW)** |
| **Debtor.** | **Jointly Administered** |
| | **Related to Docket No. 164 and 193** |

**ORDER APPROVING DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE SALE OF THE DEBTORS' FMI CONTRACTOR BUSINESS ASSETS OUTSIDE THE ORDINARY COURSE OF BUSINESS TO FMI PRODUCTS, LLC, OR A HIGHER AND BETTER BIDDER; (II) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS PURSUANT TO SECTIONS 363(A), (F) AND (M) OF THE BANKRUPTCY CODE, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF**

The Motion for Order Approving Debtors' Motion for Entry of an Order (A) Approving Asset Purchase Agreement and Authorizing the Sale of the Debtors' FMI Contractor Business Assets Outside the Ordinary Course of Business to FMI Products, LLC, or a Higher and Better Bidder; (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to Sections 363(a), (f) and (m) of the Bankruptcy Code, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief (the "Motion") filed by the captioned debtors and debtors-in-possession ("Debtors") was filed on February 11, 2009.

The Court having reviewed and considered (i) the Motion, (ii) any objections thereto, (iii) the arguments of counsel made, and the evidence proffered or adduced, at the hearing on the Motion (the "Sale Hearing") and (iv) the record of this entire chapter 11 case; and it appearing

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are DHP Holdings II Corporation (5945); DESA LLC (5717); DESA Heating LLC (8137); DESA Specialty LLC (8143); DESA FMI LLC (8146); and DESA IP LLC (8149). The address for each of the Debtors is 2701 Industrial Drive, Bowling Green, KY 42101.

that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors, and other parties-in-interest; and after due deliberation thereon; and good cause appearing therefor,

**THE COURT HEREBY FINDS AND DETERMINES**[2] that:

1. On December 29, 2008 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code (the "Bankruptcy Code").

2. Since the Petition Date, each Debtor has continued in possession and management of its business and property as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3. No trustee or examiner has been appointed in any Debtor's Chapter 11 case.

4. On February 11, 2009, Debtors filed the Motion for Order Approving Debtors' Motion for Entry of an Order (A) Approving Asset Purchase Agreement and Authorizing the Sale of the Debtors' FMI Contractor Business Assets Outside the Ordinary Course of Business to FMI Products, LLC, or a Higher and Better Bidder; (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to Sections 363(a), (f) and (m) of the Bankruptcy Code, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief (the "Motion") [Docket 164]; and on February 19, 2009, this Court entered an Order (A) Approving Bid Procedures for the Sale of the Debtors' FMI Contractor Business Assets, (B) Scheduling an Auction and Hearing to Consider the Sale and Approve the Form and Manner of Notice Related Thereto; (C) Establishing Procedures Relating to the Assumption and Assignment of Certain Contracts, Including Notice of Proposed Cure Amounts, (D) Approving Break-Up Fees; and (E) Granting Related Relief (the "Order") [Docket 193].

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

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

6. The statutory predicates for the relief sought in the Motion are Sections 105(a), 363(b), (f), (m) and (n) and 365 of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004, 6006 and 9014. Pursuant to the Motion, the Debtors seek an Order authorizing the Debtors DHP Holdings II Corporation, DESA Heating, LLC, and DESA IP LLC (collectively, "Seller") to: (i) sell the FMI Contractor Business assets (collectively, "Assets"), free and clear of Liens, Claims, Encumbrances and Interests (as hereinafter defined); (ii) to assume and assign contracts pursuant to and on the terms and conditions described in the Asset Purchase Agreement ("Agreement") with the Buyer, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. Capitalized terms used, but not defined herein, shall have the meaning set forth in the Agreement.

7. Proper, timely, adequate and sufficient notice of the Motion and the Sale Hearing has been provided; such notice was good, sufficient, and appropriate under the particular circumstances; and no other or further notice of the Motion, the Sale Hearing or the entry of this Order shall be required.

8. A reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to all interested persons and entities.

9. The Seller is the sole and lawful owner of the Assets.

10. The Buyer's offer is memorialized in the Agreement, which provides for the Seller to assume, assign, sell and transfer the Assets to the Buyer and to undertake other related transactions. The Buyer's offer to purchase the Assets as reflected in the Agreement is the

highest and best offer received for the sale of the Assets and the assumption and assignment of contracts under the Agreement (the "Assigned Contracts").

11. The purchase price to be paid by the Buyer is fair and constitutes reasonably equivalent value and reasonable market value for the Assets and the Assigned Contracts under the Agreement. Continental Appliances, Inc. is the Back-Up Bid as that term is defined in the Bidding Procedures Order previously approved by this Court at $7,350,000 plus payment of the Break-up Fee.

12. The Buyer is a purchaser in good faith with respect to the Assets and the Assigned Contracts as that term is used in Section 363(m) of the Bankruptcy Code. The Agreement was negotiated, proposed and entered into by the parties in good faith, from arm's length bargaining positions and without collusion and, therefore, the Buyer is entitled to the protections of Section 363(m) of the Bankruptcy Code with respect to the Assets and Assigned Contracts. Neither the Debtors nor the Buyer has engaged in any conduct that would cause or permit the Agreement to be voided under Section 363(n) of the Bankruptcy Code.

13. The Debtors have articulated sound business reasons for consummating the Agreement, selling the Assets and assuming and assigning the Assigned Contracts as set forth in the Motion and the Agreement outside of a plan of reorganization, and it is a reasonable exercise of the Debtors' business judgment to consummate the transactions contemplated by the Agreement.

14. The Seller may sell and transfer the Assets and assume and assign the Assigned Contracts to the Buyer and otherwise consummate all the transactions described in the Agreement free and clear of all Liens and Claims (as hereinafter defined) in accordance with Sections 105, 363(f) and 365 of the Bankruptcy Code, except as otherwise explicitly provided in the Agreement. As a condition to purchasing the Assets and for the assumption and assignment

of the Assigned Contracts, and except as otherwise explicitly provided in the Agreement, the Buyer requires that: (a) the Assets and the Acquired Contracts be sold free and clear of all Liens and Claims; and (b) the Buyer shall have no liability whatsoever for any obligations of or claims (including without limitation as defined in Section 101(5) of the Bankruptcy Code) against the Debtors. The Buyer would not enter into the Agreement and consummate the transactions contemplated by it, thus adversely affecting the Debtors' estates, if the sale of the Assets and the assumption and assignment of the Assigned Contracts to the Buyer were not free and clear of all Liens and Claims or if the Buyer was or would be liable for any obligations of or claims (including without limitation as defined in Sections 101(5) of the Bankruptcy Code) against the Debtors, except as otherwise explicitly provided in the Agreement.

15. The assumption, assignment, sale and transfer of the Assets and the Assigned Contracts to the Buyer is or will be a legal, valid and effective transfer of the Assets and the Assigned Contracts, and will vest the Buyer with all right, title and interest in and to the Assets and the Assigned Contracts, free and clear of all Liens and Claims, except as otherwise explicitly provided in the Agreement.

16. An injunction against creditors and third parties from pursuing any Liens and Claims against the Assets and the Assigned Contracts and the Buyer is necessary to induce the Buyer to close under the Agreement; the issuance of such an injunction is therefore necessary to avoid irreparable injury to the Debtors' estates, and will benefit all creditors.

17. The Debtors have satisfactorily provided sufficient evidence (including by providing notice of cure amounts and opportunity of counterparties to object) that the Debtors are not in default of any obligations under the Assigned Contracts, other than those proposed to be cured under the Agreement.

18. Cancilla Properties II, LLC has a valid cure claim in the amount of $101,388.15 (the "Cancilla Cure Claim") which must be paid in connection with any assumption and assignment of its lease with the counterparty Debtor.

19. Adequate assurance exists (including by providing notice assumption and assignment and opportunity of counterparties to object) that the Buyer will fully perform all future obligations under the Assigned Contracts being assumed and assigned to the Buyer.

20. The Court acknowledges that appropriate notice was given to the parties to the Assigned Contracts and no objections to said assumption and assignment have been filed with the Court (other than the objection to cure amount filed by Cancilla Properties II, LLC, which is addressed by this order above).

**ACCORDINGLY, IT IS HEREBY ORDERED** as follows:

A. The Motion is hereby GRANTED.

B. The Court's findings are incorporated by reference.

C. Any objections to the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, with the exception of those with respect to the Cancilla Cure Claim, are overruled on the merits and denied. The Agreement and all of the transactions contemplated thereby are hereby approved and Debtors are hereby authorized, empowered and directed to perform its obligations under the Agreement and to take such action as is necessary to effectuate the terms of the Agreement, without any further corporate authorization or Order of this Court.

D. Pursuant to Sections 105, 363(b) and (f), and 365 of the Bankruptcy Code, the Seller is hereby authorized, empowered and directed to assume, assign, sell and otherwise transfer the Assets and the Assigned Contracts to the Buyer pursuant to and in accordance with the terms and conditions of the Agreement, and, except as otherwise explicitly provided in the

Agreement, title to the Assets and the Assigned Contracts shall pass to the Buyer at the Closing Date free and clear of any and all liens (including mechanics', materialmens' and other consensual and non-consensual liens and statutory liens), security interests, encumbrances and claims (including, but not limited to, any "claim" as defined in Section 101(5) of the Bankruptcy Code), reclamation claims, mortgages, deeds of trust, pledges, covenants, restrictions, hypothecations, charges, indentures, loan agreements, instruments, contracts, leases, licenses, options, rights of first refusal, offsets, recoupment, rights of recovery, judgments, orders and decrees of any Court or foreign or domestic governmental entity, claims for reimbursement, contribution, indemnity or exoneration, assignment, preferences, debts, charges, suits, rights of recovery, interests, products liability, alter-ego, environmental, successor liability, tax liabilities including any claims of the California State Board of Equalization, the California Franchise Tax Board and the California Employment Development Department, causes of action and claims, to the fullest extent of the law, in each case whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, or known or unknown, whether arising before, on, or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise, and interests (collectively, the "Liens and Claims"), with all such Liens and Claims upon the Assets and Assigned Contracts to be unconditionally released, discharged and terminated, with any valid Liens and Claims to attach only to the proceeds of the transaction with the same priority, validity, force and effect as they existed with respect to the Assets and Assigned Contracts before the Closing Date except as specifically set forth in the Agreement.

E. Pursuant to 11 U.S.C. § 365(b), (c) and (f), the Seller is authorized to assume and assign the Assigned Contracts to the Buyer. In connection with such assumption and

assignment, the Cancilla Cure Claim (and any other cure claims with respect to the Assigned Contracts under section 365 of the Bankruptcy Code) shall be paid by the Buyer in full on the Closing Date.

F. The assumption, assignment, sale and transfer of the Assets and the Assigned Contracts to the Buyer pursuant to the Agreement constitutes a legal, valid and effective transfer and shall vest the Buyer with all right, title and interest of the Seller in and to the Assets and Assigned Contracts so transferred.

G. This Order and the Agreement shall be binding upon, and shall inure to the benefit of, the Debtors and the Buyer, and their respective successors and permitted assigns, including without limitation, any chapter 11 or 7 trustee hereinafter appointed for the Debtors.

H. This Court shall retain exclusive jurisdiction to enforce the provisions of this Order and the Agreement and to resolve any dispute(s) concerning this Order, the Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Agreement and this Order including, but not limited to, interpretation of the terms, conditions and provisions thereof, and the status, nature and extent of the Assets and the Assigned Contracts, and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the assumption, assignment, sale and transfer of the Assets and the Assigned Contracts free and clear of Liens and Claims.

I. On the Closing Date, each creditor of the Debtors is authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release its Liens and Claims against or in the Assets and the Assigned Contracts, if any, as such Liens and Claims may have been recorded or may otherwise exist.

J. On February 6, 2009, this Court entered that certain Final Order (1) Authorizing The Debtors To Use Cash Collateral and (2) Granting Adequate Protection to Prepetition

Lenders [Docket No. 132] (the "Final Cash Collateral Order"). The Buyer shall, on the Closing Date, wire the Purchase Price (and any other cash proceeds payable under the Agreement on the date such amounts become payable thereunder), net of any amounts payable to third parties as set forth on the closing statement for the sale, directly to the Prepetition Senior Agent (as defined in the Final Cash Collateral Order) for application to the Prepetition Senior Indebtedness (as defined in the Final Cash Collateral Order) in accordance with the terms and conditions of the Final Cash Collateral Order.

K. Each and every federal, state, and local governmental agency, recording office or department and all other parties, persons or entities is hereby directed to accept this Order for recordation as conclusive evidence of the free and clear, unencumbered transfer of title to the Assets and the Assigned Contracts conveyed to Buyer.

L. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Liens and Claims against or in the Assets and Assigned Contracts shall not have delivered to the Debtors before the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens and Claims that the person or entity has with respect to the Assets and the Assigned Contracts or otherwise, the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets and Assigned Contracts.

M. Effective upon the Closing Date (after all payments required hereunder have been made), all parties and/or entities asserting Liens and Claims and/or contract rights against the Assets and Assigned Contracts are hereby permanently enjoined and precluded from, with respect to such Liens and Claims: (i) asserting, commencing or continuing in any manner any action against the Buyer or any of its subsidiaries, affiliates, successors, or assigns, or any of

their respective directors, officers, agents, members, partners, representatives and employees or any lender to any of the foregoing entities (all such persons and entities including, without limitation, such lenders are collectively referred to as the "Protected Parties") or against any Protected Parties' assets or properties, including without limitation the Assets and Assigned Contracts; (ii) the enforcement, attachment, collection or recovery, by any manner or means, of any judgment, award or decree or order against the Protected Parties or any properties or assets of the Protected Parties, including without limitation the Assets and Assigned Contracts; (iii) creating, perfecting or enforcing any encumbrance of any kind against the Protected Parties or any properties or assets of the Protected Parties, including without limitation the Assets and Assigned Contracts; (iv) asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Protected Parties; and (v) taking any action, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Order or the Agreement.

N. The provisions of this Order authorizing the assumption, assignment and sale of the Assets and Assigned Contracts free and clear of Liens and Claims shall be self-executing, and neither the Debtors, the Buyer nor any other party shall be required to execute or file releases, termination statements, assignments, cancellations, consents or other instruments to effectuate, consummate and/or implement the provisions hereof with respect to such assumption, assignment and sale; *provided, however*, that this paragraph shall not execute such parties from performing any and all of their respective obligations under the Agreement.

O. Consummation of the Agreement and the transactions contemplated therein and thereby do not effect a de facto merger or consolidation of the Debtors or any of them and the Buyer or result in the continuation of the Seller's business under the Buyer's control. The Buyer is not the alter ego of, a successor in interest to, or a continuation of the Debtors or any of them,

nor is the Buyer otherwise liable for the Debtors' debts and obligations except pursuant to this order or the Agreement or the other agreements, instruments and documents entered into in connection with the transaction approved hereby.

P. All entities that may be in possession of some or all of the Assets and Assigned Contracts to be conveyed to the Buyer on the Closing Date are hereby directed to surrender possession of the Assets and Assigned Contracts to the Buyer on the Closing Date.

Q. Nothing contained in any Chapter 11 plan confirmed in this case or order confirming any such plan shall conflict with or derogate from the provisions of the Agreement or the terms of this Order.

R. The Agreement does not constitute a *sub rosa* chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford, and is not in violation of creditors' and equity security interest holders' voting rights.

S. The assumption, assignment, sale and transfer of the Assets and Assigned Contracts to the Buyer constitutes a purchase by the Buyer of the Assets and Assigned Contracts in good faith for fair value within the meaning of section 363(m) of the Bankruptcy Code, and the Buyer is entitled to the protections of section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Agreement and to assume, assign and sell the Assets and Assigned Contracts to the Buyer shall not affect the validity of the assumption, assignment and sale to the Buyer, unless such authorization is duly stayed pending such appeal before the Closing Date.

T. The assumption, assignment and sale approved by this Order is not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code. The consideration provided by the Buyer for the Assets and Assigned Contracts under the Agreement shall be deemed to constitute reasonably equivalent value and fair consideration.

U. As provided by Fed. R. Bankr. P. 6004(h), 6006(d) and 7062, this Order shall be effective and enforceable immediately upon its entry, and shall not be subject to any stay.

Dated: March 23, 2009

The Honorable Mary F. Walrath

**EXHIBIT A**

**Agreement**

# ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (the "**Agreement**") is made and entered into as of this 11th day of February, 2009, by and between FMI Products, LLC, a California limited liability company (the "**Buyer**"), on the one hand, and DESA FMI, LLC, a Florida limited liability company, DHP Holdings II Corporation, a Delaware corporation, DESA LLC, a Florida limited liability company, DESA Heating, LLC, a Florida limited liability company, and DESA IP LLC, a Florida limited liability company (individually and collectively, the "**Seller**" and together with Buyer, the "**Parties**") and a Debtor and Debtor in Possession under Case No. 08-13422 – MFW (Jointly Administered) (the "**Case**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

## RECITALS

A. Seller is engaged, among other things, in the business of manufacturing vented and vent free gas fireplace systems, vented and vent free gas log sets, wood burning fireplaces and stoves, and other hearth related products and accessories for distribution to distributors, installing contractors, specialty hearth dealerships, manufactured housing and other specialty (marine /RV) original equipment manufacturers (such business which, for the avoidance of doubt shall exclude, without limitation, except only to the extent Scheduled pursuant to a Schedule contemplated by Section 1.1 below, all relationships, customers, customer lists, contracts, interests, goodwill, tangible property, intangible property, and other assets owned or held by any Seller for use in the business heretofore operated by Seller under the name "Desa Heating" or similar names, or otherwise outside of the Seller's contractor business, is referred to herein as the "**Transferred Business**").

B. Seller wishes to sell to Buyer pursuant to Sections 363 and 365 of Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") substantially all of the assets used in connection with and arising out of the operation of the Business at the price and on the other terms and conditions specified in detail below and Buyer wishes to so purchase and acquire such assets from Seller.

**NOW, THEREFORE,** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Transfer of Assets.

1.1 Purchase and Sale of Assets. On the Closing Date, as hereinafter defined, in consideration of the covenants, representations and obligations of Buyer hereunder, and subject to the conditions hereinafter set forth, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller the following assets, wherever located,

whether or not identified or disclosed on Seller's books and records (collectively, the "Property"):

1.1.1 Leases and Contracts. Seller's right, title and interest in and to (i) the lessee's interest under those real property leases for Seller's facilities located in Santa Ana, California and Russellville, Alabama and more particularly described on Schedule 1.1.1-1 attached to this Agreement and incorporated herein by this reference (collectively, the "Real Property Leases"), (ii) the lessee's interest under those equipment, personal property and intangible property leases, rental agreements, licenses, contracts, agreements and similar arrangements described on Schedule 1.1.1-2 attached to this Agreement and incorporated herein by this reference (collectively, the "Other Leases"), and (iii) those other contracts, leases, orders, purchase orders, licenses, contracts, agreements and similar arrangements described on Schedule 1.1.1-3 attached to this Agreement and incorporated herein by this reference (collectively, the "Other Contracts" and together with the "Other Leases," the "Other Leases and Contracts").

1.1.2 Improvements. The improvements, and appurtenances to such improvements, located on the real property (collectively, the "Real Property") occupied by Seller under the Real Property Leases, including, without limitation, buildings, outside storage areas, driveways, walkways and parking areas, but in all events only to the extent of Seller's interest in the same (collectively, the "Improvements").

1.1.3 Personal Property. All of those items of equipment and tangible personal property owned by any Seller, located at the Real Property and listed or described in Schedule 1.1.3 attached to this Agreement and incorporated herein by this reference and all other tangible personal property now or hereafter owned by any Seller and used exclusively in connection with the Transferred Business, including, without limitation, all such furniture, vehicles, machinery, equipment, tools, spare parts, computers, fixtures and furnishings located at or on the Real Property (collectively, the "Personal Property"). As used in this Agreement, the Personal Property shall not include the Inventory. The Personal Property shall also expressly exclude any equipment or other tangible property held by any Seller pursuant to a lease, rental agreement, contract, license or similar arrangement (a "Contract") where Buyer does not assume the underlying Contract relating to such personal property at the Closing.

1.1.4 Intangible Property. All intangible personal property owned or held by any Seller and used exclusively in connection with the Transferred Business, but in all cases only to the extent of such Seller's interest and only to the extent transferable, together with all books, records and like items to the extent pertaining to the Transferred Business (Buyer hereby acknowledging that such books, records and like items are not maintained separately from those relating to the other businesses and activities of the entities comprising Seller), including, without limitation, the " the goodwill of the Transferred Business and "know how" and, to the extent listed on Schedule 1.1.4 -1 attached hereto and incorporated herein by this reference, patents (and any related assignments of applications therefor executed and delivered by any Seller pursuant to Section 4.2.10 hereof), processes, trademarks, trade names (but only to the extent of the applicable Seller's rights to use and exploit the same in the United States of America and Canada (collectively, the "Acquired Markets") and for use in selling to those

customers located outside the Acquired Markets who are identified on Schedule 1.1.4-2 attached hereto and incorporated herein by this reference), domain names, service marks, catalogues, customer lists and other customer data bases, correspondence with present or prospective customers and suppliers, advertising materials, software programs, and telephone exchange numbers identified with the Transferred Business (collectively, the "Intangible Property"). As used in this Agreement, Intangible Property shall in all events exclude, (i) any materials containing privileged communications or information about employees, disclosure of which would violate an employee's reasonable expectation of privacy and any other materials which are subject to attorney-client or any other privilege, (ii) any software or other item of intangible property held by any Seller pursuant to a license or other Contract where Buyer does not assume the underlying Contract relating to such intangible personal property at the Closing, and (iii) any right, title or interest in or to Seller's "Vanguard" and "Comfort Glow" trademarks and those related trademarks described on Schedule 1.1.4-3 attached hereto and incorporated herein by this reference (collectively, the "Retained Marks").

1.1.5 Receivables. All instruments, receivables, accounts receivable and unbilled costs and fees attributable to the Transferred Business described on Schedule 1.1.5 attached hereto and incorporated herein by this reference and, subject to Section 1.2, all causes of action relating or pertaining to the foregoing (collectively, the "Receivables").

1.1.6 Inventory. (i) All supplies, goods, materials, work in process, inventory and stock in trade, wherever located, owned and held by any Seller for use in connection with the operation of the Transferred Business identified on Schedule 1.1.6 (i) (collectively, the "Transferred Business Inventory"), and (ii) all those other supplies, goods, materials, work in process, inventory and stock in trade located at the Real Property and identified on Schedule 1.1.6 (ii) and Schedule 1.1.6(ii)(a) attached hereto and incorporated herein by this reference (collectively, the "Unrelated Inventory"); provided that the Unrelated Inventory shall be included among the Property acquired by Buyer at the Closing only in the event that Seller elects (which election to include or exclude the Unrelated Property shall be at Seller's sole option) by written notice to Buyer, which shall be given, if at all, not later than three (3) business days prior to the Closing that the Unrelated Inventory will be so included (Seller's right to make such election with respect to the Unrelated Inventory is referred to herein as the "Unrelated Inventory Election" and any election by Seller to include the Unrelated Inventory in the Property is referred to as an "Inclusion Election"). If Seller fails to send any such notice, Seller shall be deemed to have elected not to include the Unrelated Inventory in the Property.

1.1.7 Seller Deposits. All deposits and prepaid amounts held by or paid to third parties under the Real Property Leases, Other Leases and Contracts or otherwise exclusively in connection with the Business to the extent paid or deposited by any Seller prior to the date (the "Petition Date") on which the Chapter 11 petition was filed initiating the Case and listed on Schedule 1.1.7 attached hereto and incorporated herein by this reference, but in any case specifically excluding any such amounts held by or paid to third parties in connection with any Excluded Assets (collectively, the "Seller Deposits").

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Property shall be limited to the items specifically identified or described in Section 1.1 above and shall in any event exclude all of the following (collectively, the "**Excluded Assets**"): (i) those items excluded pursuant to the provisions of Section 1.1 above; (ii) all cash or cash equivalents; (iii) each Seller's rights under this Agreement and all cash and non-cash consideration payable or deliverable to the Seller pursuant to the terms and provisions hereof; (iv) insurance proceeds, claims and causes of action with respect to or arising in connection with (A) any Contract which is not assigned to Buyer at the Closing, or (B) any item of tangible or intangible property not acquired by Buyer at the Closing; (v) any Real Property Lease, Other Lease, or Other Contract to which any Seller is a party which is not listed or described on Schedules 1.1.1-1, 1.1.1-2, or 1.1.1-3, (vi) all securities, whether capital stock or debt, of any Seller or any other entity; (vii) all rights and claims in or to any refunds or credits of or with respect to any taxes, assessments or similar charges paid by or on behalf of any Seller, in each case to the extent applicable to any period prior to the Closing; (viii) tax records, minute books, stock transfer books and corporate seals of each Seller; (ix) any letters of credit or similar financial accommodations issued to any third party(ies) for the account of any Seller; (x) all preference or avoidance claims and actions of any Seller, including, without limitation, any such claims and actions arising under Sections 544, 547, 548, 549, and 550 of the Bankruptcy Code; (xi) all rights to use and exploit any Seller's rights in such Seller's tradenames anywhere and everywhere worldwide, other than the Acquired Marks, (xii) the Retained Marks, and (xiii) those assets, if any, listed on Schedule 1.2 attached hereto and incorporated herein by this reference. Prior to or promptly following the Closing (but in no event later than four (4) weeks thereafter), Seller shall either (i) cause, at Seller's sole cost and expense, all supplies, goods, materials, work in process, inventory and stock in trade of Seller not constituting part of the Transferred Business Inventory, including the Unrelated Inventory in the event that Seller does not exercise the Unrelated Inventory Election, to be removed from the Real Property (collectively, the "**Excluded Inventory Items**"), or (ii) authorize Buyer, in writing, to dispose of some or all of the Excluded Inventory Items, in which latter event, Buyer shall pay over to Seller (in immediately available good funds) within two (2) weeks following such disposition an amount equal to the excess, if any, of the amounts realized in connection therewith over and above the sum of $5,000, plus Buyer's direct costs incurred with respect to such disposition.)

1.3 Instruments of Transfer. The sale, assignment, transfer, conveyance and delivery of the Property to Buyer shall be made by assignments, bill of sale, and other instruments of assignment, transfer and conveyance provided for in Section 3 below and such other instruments as may reasonably be requested by Buyer to transfer, convey, assign and deliver the Property to Buyer, but in all events only to the extent that the same do not impose any monetary obligations upon any Seller or in any other respect increase in any material way the burdens imposed by the other provisions of this Agreement upon any Seller.

2. Consideration.

2.1 Purchase Price.

2.1.1 Subject only to the adjustment provisions set forth below in Section 2.4 and the net adjustment (plus or minus) between Buyer and Seller resulting from the

prorations contemplated by Section 3.6, the cash consideration to be paid by Buyer to Seller for the Property (the "**Purchase Price**") shall be $4,700,000.00.

2.1.2 The Purchase Price shall be paid as follows:

(a) Concurrently with the mutual execution and delivery of this Agreement (the date of such mutual execution and delivery is sometimes referred to herein as the "**Execution Date**"), Buyer shall deposit into an escrow (the "**Escrow**") with an escrow agent (the "**Escrow Holder**") reasonably designated by Seller an amount equal to $250,000.00 (the "**Good Faith Deposit**") in immediately available, good funds (funds delivered in this manner are referred to herein as "**Good Funds**"), pursuant to an escrow agreement (the "**Pre-Closing Escrow Agreement**") to be executed and delivered by Buyer, each Seller and the Escrow Holder on or before the Execution Date. In turn, the Escrow Holder shall immediately deposit the Good Faith Deposit into an interest-bearing account. The Good Faith Deposit shall become nonrefundable upon the termination of the transaction contemplated by this Agreement by reason of Buyer's default of any obligation hereunder (a "**Buyer Default Termination**"), it being agreed that Seller shall not have the right to so terminate this Agreement unless Buyer has failed to cure the applicable default within three (3) business days following its receipt of written notice thereof from any Seller. At the Closing, the Good Faith Deposit (and any interest accrued thereon) shall be credited and applied toward payment of the Purchase Price. In the event the Good Faith Deposit becomes nonrefundable by reason of a Buyer Default Termination, Escrow Holder shall immediately disburse the Good Faith Deposit and all interest accrued thereon to Seller to be retained by Seller for its own account, it being agreed that upon so receiving the full amount of the Good Faith Deposit, Seller shall have no further right or remedy against Buyer by reason of Buyer's default and the termination of this Agreement by reason thereof. If the transactions contemplated herein terminate by reason of (A) Seller's material default under this Agreement, it being agreed that Buyer shall not have the right to so terminate this Agreement unless no Seller has cured the applicable default within three (3) business days following its receipt of written notice thereof from Buyer, or (B) the failure of one or more of the conditions to Seller's obligations set forth in Sections 4.1.8 and 4.1.9, below, or (C) the failure of a condition to Buyer's obligations hereunder (including the conditions set forth in Sections 4.2.7 and 4.2.8, below), the Escrow Holder shall return to Buyer the Good Faith Deposit (together with all interest accrued thereon), but less Buyer's one-half share of the Escrow Holder's escrow fees and charges.

(b) On the Closing Date, Buyer shall (A) cause the Escrow Holder to deliver the Good Faith Deposit (together with all accrued interest thereon) to Seller, and (B) (i) pay and deliver, in Good Funds, (i) subject to those adjustments to be made at Closing pursuant to Section 2.4 below and the net adjustment (plus or minus) between Buyer and Seller resulting from the Closing prorations contemplated by Section 3.6, a portion of the Purchase Price in the amount of $4,200,000.00 to Seller, and (ii) deposit with Escrow Holder a portion of the Purchase Price in the amount of $250,000 (the "**Holdback**"). The Holdback shall be held for a period of sixty (60) days following the Closing (the "**Post-Closing Escrow Period**") and disbursed by Escrow Holder pursuant to an escrow agreement in form and content consistent with the provisions of Section 2.4 hereof (the "**Post Closing Escrow Agreement**") to be executed and delivered by Buyer, Seller and Escrow Holder at the Closing. Buyer's recourse to the sums

comprising the Holdback shall be Buyer's sole and exclusive recourse and remedy against the parties comprising Seller by reason of any reduction of the Purchase Price pursuant to Section 2.4 below and any costs incurred by Buyer on account of any defaults by Seller of their obligations under the Transition Services Agreement (as defined in Section 3.3.4, below). At the end of the Post-Closing Escrow Period, Buyer and Seller shall determine the net amount payable by Buyer or Seller on account of any adjustments to the Purchase Price contemplated by Section 2.4 below but not made at the Closing and any amounts payable to Buyer on account of any defaults by the applicable parties comprising Seller under the Transition Services Agreement, and, subject to the limitation on Buyer's remedies pursuant to the immediately preceding sentence, shall make a cash adjustment between them and give such joint written instructions to the Escrow Holder as are appropriate to accomplish such net adjustment.

2.2 Assumed Liabilities. Buyer shall, effective as of the Closing Date, be assigned the applicable Seller's interest under the Real Property Leases and Other Leases and Contracts to be assigned by any Seller under this Agreement and shall assume all of the following liabilities and obligations (collectively, the "**Assumed Liabilities**"): (i) of any Seller accruing under the Real Property Leases and under the Other Leases and Contracts on and after the Closing Date; provided that Buyer shall pay all cure amounts owing under any of the Real Property Leases and Other Leases and Contracts as of the Closing which the Bankruptcy Court may order to be paid as a condition to the applicable Seller's assumption and assignment to Buyer of any Real Property Lease or Other Lease or Contract, (ii) all liabilities and obligations of any Seller as of the Closing to those employees listed on Schedule 2.2(ii) hereto (collectively, the "**Relevant Employees**") for accrued vacation, sick pay and bonus, provided, however, if the Closing occurs and Buyer or any of its affiliates hires, retains, contracts with or otherwise compensates, within twelve (12) months following the Closing Date, any employee of any Seller terminated or discharged by Seller during the Pendency Period (as defined below), such employee shall be deemed to have been a Relevant Employee for purposes of this Section 2.2(ii) as though such individual had been listed on Schedule 2.2(ii) on the execution date of this Agreement, (iii) sales commissions earned by, and/or payable to, those employees and other parties, if any, listed on Schedule 2.2(iii) hereto (collectively, the "**Relevant Sales Representatives**") as of the Petition Date (collectively, "**Prepetition Commissions**"), (iv) all liabilities and obligations of each Seller as of the Petition Date with respect to customer program accruals for returns, volume rebates and cooperative advertising, and (v) all obligations arising in connection with the use and operation of the Property from and after the Closing Date; and (vi) any such additional liabilities and obligations as may be set forth or described on Schedule 2.2(vi) hereto. Other than the liabilities and obligations of Seller expressly assumed by Buyer hereunder, Buyer is not assuming and shall not be liable for any liabilities or obligations whatsoever of any Seller.

2.3 Purchase Price Allocation. Not later than five (5) days prior to the Closing Date, Buyer shall prepare and deliver to Seller for their review and consideration a schedule (the "**Allocation Schedule**") allocating the Purchase Price among the various assets comprising the Property in accordance with Treasury Regulation 1.1060-1 (or any comparable provisions of state or local tax law) or any successor provision. If Seller disagrees with or raises objections to the Allocation Schedule, Buyer and Seller will negotiate in good faith to resolve such objections.

If the Parties are able to agree upon the allocation of the Purchase Price, Buyer and each Seller shall report and file all tax returns (including any amended tax returns and claims for refund) consistent with such mutually agreed Purchase Price allocation, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Buyer and each Seller shall file or cause to be filed any and all forms (including U.S. Internal Revenue Service Form 8594), statements and schedules with respect to such allocation, including any required amendments to such forms. If, on the other hand, the Parties are unable mutually to agree upon the manner in which the Purchase Price should be allocated, Buyer and each Seller shall be free to make their own respective allocations of the Purchase Price for tax purposes. Notwithstanding any other provisions of this Agreement, in the event the Parties mutually agree upon the allocation of the Purchase Price, the provisions of this Section 2.3 shall survive the Closing.

2.4 Purchase Price Adjustment.

2.4.1 Seller and Buyer acknowledge and agree that the Purchase Price has been based on (i) the Receivables having a face value of $ 3,079,000.00 (the "A/R Benchmark") as of the Closing, and (ii) the Property including Transferred Business Inventory valued at $3,150,000.00 (the "Transferred Business Inventory Benchmark") as of the Closing. Not later than three (3) business days prior to the Closing Date, Seller shall deliver to Buyer a statement of projected Receivables, Transferred Business Inventory and, if Seller makes the Inclusion Election, the Unrelated Inventory, as of the Closing Date, prepared in accordance with generally accepted accounting principles and applicable Seller's historical accounting practices, in each case as consistently applied, as of the Closing Date (the "Preliminary Closing Statement"). To the extent feasible, the Seller shall update the Preliminary Closing Statement to reflect actual transactions occurring to the Closing Date, which updated Preliminary Closing Statement shall be subject to Buyer's review and reasonable approval (the Preliminary Closing Statement, as so updated and reasonably approved, the "Closing Statement"). The fees and expenses of Seller's accountants involved in the preparation, updating and refinement of the Closing Statement shall be borne solely by Seller, and the fees and expenses of Buyer's accountants involved in reviewing and responding to the Closing Statement shall be borne solely by Buyer. The Closing Statement shall be conclusive and binding upon Buyer and Seller.

2.4.2 In the event that the face value of the Receivables on the Closing Date as determined in the manner provided herein (x) is less than the A/R Benchmark, the Purchase Price shall be decreased by an amount equal to 67% of the amount of such shortfall (such amount, the "Receivables Shortfall Reduction"), or (y) is greater than the A/R Benchmark, the Purchase Price shall be increased by an amount equal to 67% of the amount of such excess Receivables (such amount, the "Excess Receivables Bump").

2.4.3 In the event that the value of the Transferred Business Inventory included in the Property transferred to Buyer on the Closing Date, as finally determined in the manner provided herein (x) is less than the Transferred Business Inventory Benchmark (the amount by which such Transferred Business Inventory value is less than the Transferred Business Inventory Benchmark, the "Inventory Shortfall"), the Purchase Price shall be decreased, on a dollar-for-dollar basis, by an amount equal to such Inventory Shortfall, or (y) is greater than the Transferred

Business Inventory Benchmark (the amount by which such Transferred Business Inventory value exceeds the Transferred Business Inventory Benchmark, the "**Excess Inventory Amount**"), the Purchase Price shall be increased, on a dollar-for-dollar basis, by an amount equal to the Excess Inventory Amount.

2.4.4 If, and only if, Seller makes the Inclusion Election, the Purchase Price shall be increased, on a dollar-for-dollar basis, by an amount equal to 27% of the value of the Unrelated Inventory on the Closing Date as reflected in the Closing Statement.

2.4.5 The Purchase Price shall be decreased by an amount equal to the sum of the following items to the extent included among the Assumed Liabilities (and only to such extent): (i)accrued but unpaid payroll of salaried and hourly Relevant Employees (and associated payroll taxes, worker's compensation premiums and other payroll burden and benefits as offered to employees from time to time) to the extent attributable to the period from December 29, 2008 to the Closing Date (the "**Pendency Period**"), (ii) any accrued but unpaid sales commissions owing to the Relevant Sales Representatives with respect to sales occurring during the Pendency Period, and (iii) accrued but unpaid travel and incidental expenses of Relevant Employees attributable to the Pendency Period to the extent the same have been approved by management consistent with past practices.

(b) increased or decreased, as applicable, in an amount equal to the net aggregate increase or decrease, as applicable, during the Pendency Period of (i) vacation accruals of the Relevant Employees, (ii) Prepetition Commissions, and (iii) the applicable Seller's customer program accruals for returns, volume rebates and cooperative advertising.

2.4.6 During the period (the "**Collection Period**") commencing upon the Closing and continuing until the earlier of (i) the 180th day following the Closing, and (ii) the date on which Receivables remaining uncollected total less than $150,000.00, Buyer shall, at Buyer's cost and expense, use commercially reasonable, diligent efforts to collect the Receivables (it being understood and agreed that such obligations shall not require Buyer to bring any action or proceeding against any customer or to refer any Receivables for collection). Weekly during the Collection Period, Buyer shall provide to Seller written reports setting forth in reasonable detail the results of its collection activities. In the event that during the Collection Period, Buyer collects Receivables (but in all events excluding any accounts receivable generated by virtue of Buyer's activities and operation of the Business post-Closing) in an amount greater than the sum of (i) $2,055,000.00, minus the amount of the Receivables Shortfall Reduction if there was a Receivables Shortfall Reduction and a related Purchase Price adjustment at the Closing, or (ii) $2,055,000 plus the amount of the Excess Receivables Bump if there was an Excess Receivables Bump and a related Purchase Price adjustment at the Closing (the result of the computation performed pursuant to clause (i) or (ii), as applicable, the "**A/R Collection Threshold**"), then Buyer shall pay to Seller, without offset or deduction of any kind, an amount equal to 80% of such collections over and above the A/R Collection Threshold, such amounts to be paid over to Seller within three (3) business days following receipt after the amounts so collected total in excess of $2,500 over and above the A/R Collection Threshold and promptly following receipt if and when such amounts total in excess of $50,000 over and above the A/R Collection Threshold.

3. Closing Transactions.

3.1 Closing Conference. The Closing of the transactions provided for herein (the "Closing") shall take place at the offices of Pachulski Stang Ziehl & Jones LLP, located in Wilmington, Delaware.

3.2 Closing Date. The Closing shall be held upon the second (2nd) business day following the satisfaction or waiver of the last of the conditions set forth in Sections 4.1 and 4.2 below,. In the event the conditions to Closing have not been satisfied or waived by March 23, 2009 (the "Outside Date"), then any Party who is not in default hereunder may terminate this Agreement. Alternatively, the Parties may mutually agree to an extended Closing Date. Until this Agreement is either terminated or the Parties have agreed upon an extended Closing Date, the Parties shall diligently continue to work to satisfy all conditions to Closing and the transaction contemplated herein shall close as soon as such conditions are satisfied or waived.

3.3 Seller's Deliveries to Buyer at Closing. On the Closing Date, the parties comprising Seller shall make the following deliveries to Buyer:

3.3.1 An Assignment and Assumption of Leases and Contracts substantially in the form and content attached as Exhibit "A" hereto, duly executed by the applicable parties comprising Seller, pursuant to which each such Seller assigns to Buyer its interest in the Real Property Leases and Other Contracts and Leases (the "Assignment of Leases").

3.3.2 A bill of sale, duly executed by the applicable parties comprising Seller in the form and on the terms of the bill of sale attached hereto as Exhibit "B," pursuant to which such Seller transfers the Personal Property, the Inventory and the Receivables and, if Seller makes the Inclusion Election, the Unrelated Inventory, to Buyer (the "Bill of Sale").

3.3.3 A counterpart assignment of intangible property, duly executed by the applicable parties comprising Seller, in the form and content of the assignment of intangible property attached as Exhibit "C" hereto, pursuant to which each such Seller assigns to Buyer its interest, if any, in and to the Intangible Property (the "Assignment of Intangible Property").

3.3.4 A counterpart of a transition services agreement (the "Transition Services Agreement") between Buyer and the applicable parties comprising Seller, duly-executed by each such Seller, pursuant to which such parties comprising Seller will (i) render certain transition services to Buyer during the sixty (60) day period immediately following the Closing (the "Transition Period"), it being understood and agreed that Buyer shall bear and be responsible for all costs necessarily incurred by any Seller in rendering such services (by way of example only, in the event that Buyer requires only a portion of the time of a particular employee of Seller during the Transition Period, but Seller requires no services of that employee during the Transition Period, Buyer shall be responsible for all of Seller's costs (whether or not relating to the time Buyer actually utilizes such employee's services) of making the employee available during the Transition Period) (ii) undertake to turnover to Buyer amounts received by any Seller post-Closing on account of Receivables and any accounts receivables generated by Buyer's

post-Closing activities, with each recipient Seller being obligated to turn such amounts over to Buyer within three (3) business days following receipt after the amounts so collected total in excess of $2,500 and promptly following receipt if and when such amounts total in excess of $50,000, and (iii) grant to Buyer a license to use until December 31, 2009, the Retained Marks.

3.3.5 A counterpart of the Post-Closing Escrow Agreement, duly-executed by the applicable Sellers.

3.3.6 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by the applicable Sellers to Buyer at the Closing.

3.4 Buyer's Deliveries to Seller at Closing. On the Closing Date, Buyer shall make or cause the following deliveries to Seller:

3.4.1 That portion of the Purchase Price to be delivered by Buyer directly to Seller at the Closing under Section 2.1 (and Buyer shall cause Escrow Holder to deliver the Good Faith Deposit to Seller as contemplated in Section 2.1.2(b) hereof).

3.4.2 A counterpart of the Assignment of Leases, duly executed by Buyer.

3.4.3 A counterpart of the Assignment of Intangible Property, duly executed by Buyer.

3.4.4 A counterparts of the Transition Services Agreement, duly-executed by Buyer.

3.4.5 A counterpart of the Post-Closing Escrow Agreement, duly-executed by Buyer.

3.4.6 A counterpart of a license agreement (the "Continuing Use License") in form and content mutually satisfactory to Buyer and the applicable parties comprising Seller pursuant to which Buyer shall grant to Seller and its successors and assigns a royalty-free, perpetual and freely transferable non-exclusive license to use the Intangible Property described on Schedule 3.4.6 attached hereto and incorporated herein by this reference.

3.4.7 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Buyer to Seller at the Closing.

3.5 Sales, Use and Other Taxes. Any sales, purchases, transfer, stamp, documentary stamp, use or similar taxes under the laws of the states in which any portion of the Property is located, or any subdivision of any such state, which may be payable by reason of the sale of the Property under this Agreement or the transactions contemplated herein shall be borne and timely paid by Buyer.

3.6 Prorations. Rent, current taxes, prepaid advertising, utilities and other items of expense (including, without limitation, any prepaid insurance, maintenance, tax or common area or like payments under the Real Property Leases or Other Leases and Contracts, or any of them) relating to or attributable to the Transferred Business and/or the Property shall be prorated between Seller and Buyer as of the Closing Date. All liabilities and obligations due in respect of periods prior to or as of the Closing Date shall be paid in full or otherwise satisfied or discharged by any Seller and all liabilities and obligations due in respect of periods after the Closing Date shall be paid in full or otherwise satisfied by Buyer; provided, however, the provisions of this Section 3.6 are subject to Buyer's obligations to assume liabilities and obligations pursuant to Section 2.2, above. Rent shall be prorated on the basis of a thirty (30) day month.

3.7 Possession. Right to possession of the Property shall transfer to Buyer on the Closing Date. The applicable parties comprising Seller shall transfer and deliver to Buyer on the Closing Date such keys, locks and safe combinations and other similar items as Buyer may reasonably require to obtain occupation and control of the Property, and shall also make available to Buyer at their then existing locations the originals of all documents in Seller's possession that are required to be transferred to Buyer by this Agreement.

4. Conditions Precedent to Closing.

4.1 Conditions to Seller' Obligations. Seller' obligation to make the deliveries required of Seller at the Closing Date and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction or waiver by Seller of each of the following conditions:

4.1.1 All of the representations and warranties of Buyer contained herein shall continue to be true and correct at the Closing in all material respects.

4.1.2 Buyer shall have executed and delivered to Seller the Assignment of Leases and Assignment of Intangible Property.

4.1.3 Buyer shall have delivered, or shall be prepared to deliver to Seller at the Closing, all cash and other documents required of Buyer to be delivered at the Closing.

4.1.4 Buyer shall have delivered to Seller appropriate evidence of all necessary limited liability company action by Buyer in connection with the transactions contemplated hereby, including, without limitation: (i) certified copies of resolutions duly adopted by Buyer's managers approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by Buyer of this Agreement; and (ii) a certificate as to the incumbency of officers of Buyer executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated by this Agreement.

4.1.5 Seller shall have determined, on or before the date which is twenty-one (21) days following the Execution Date, that it will not incur any liability under the

Worker Adjustment and Retraining Notification Act in connection with the consummation of this transaction. In the event that Seller delivers written notice to Buyer disapproving the condition set forth in this Section 4.1.5 on or before the Waiver Date, then this Agreement shall terminate, the Good Faith Deposit (net only of Buyer's share of the escrow cancellation fees) and all interest accrued thereon shall be paid to Buyer in accordance with the provisions of Section 2.1.2(a) above, and the Parties shall thereupon be discharged of and from any further liability or obligation hereunder. If Seller delivers written notice to Buyer approving the conditions set forth in this Section 4.1.5 on or prior to the Waiver Date or fails to deliver written notice to Buyer approving the condition set forth in this Section 4.1.5 on or before the Waiver Date, then Buyer shall conclusively be deemed to have waived the condition set forth in this Section 4.1.5 and such condition shall cease to be of any further force or effect whatsoever.

4.1.6 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.1.7 Buyer shall have substantially performed or tendered performance of each and every material covenant on Buyer's part to be performed which, by its terms, is required to be performed at or before the Closing.

4.1.8 On or before the date which is twenty one (21) days following the Execution Date (the "**Waiver Date**"), Buyer and Seller shall have agreed on the form and substance of (i) the Transition Services Agreement and Continuing Use License to be executed and delivered at the Closing, and (ii) the Post-Closing Escrow Agreement to be executed and delivered at the Closing. In the event that Seller delivers written notice to Buyer disapproving the condition set forth in this Section 4.1.8 on or before the Waiver Date, then this Agreement shall terminate, the Good Faith Deposit (net only of Buyer's share of the escrow cancellation fees) and all interest accrued thereon shall be paid to Buyer in accordance with the provisions of Section 2.1.2(a) above, and the Parties shall thereupon be discharged of and from any further liability or obligation hereunder. If Seller delivers written notice to Buyer approving the conditions set forth in this Section 4.1.8 on or prior to the Waiver Date or fails to deliver written notice to Buyer approving the condition set forth in this Section 4.1.8 on or before the Waiver Date, then Buyer shall conclusively be deemed to have waived the condition set forth in this Section 4.1.8 and such condition shall cease to be of any further force or effect whatsoever.

4.1.9 The Bankruptcy Court shall have entered the Approval Order (as defined in Section 8.2.1 below) in accordance with Section 8.2.1 below and the Approval Order shall not have been stayed as of the Closing Date.

4.2 Conditions to Buyer's Obligations. Buyer's obligation to make the deliveries required of Buyer at the Closing, and to otherwise close the transaction contemplated herein, shall be subject to the satisfaction or waiver by Buyer of each of the following conditions:

4.2.1 Seller shall have substantially performed or tendered performance of each and every covenant on Seller's part to be performed which, by its terms, is capable of performance before the Closing.

4.2.2 All representations and warranties of Seller contained herein shall continue to be true and correct at the Closing in all material respects.

4.2.3 Seller shall have executed and be prepared to deliver to Buyer the Assignment of Leases and Contracts; the Bill of Sale; and the Assignment of Intangible Property.

4.2.4 Seller shall have delivered, or shall be prepared to deliver to Buyer at the Closing, all other documents required of Seller to be delivered at the Closing.

4.2.5 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.2.6 The Bankruptcy Court shall have entered the Approval Order in accordance with Section 8.2.1 below and the Approval Order shall not have been stayed as of the Closing Date.

4.2.7 On or before the Waiver Date, (i) Buyer and Seller shall have agreed on the form and substance of the Transition Services Agreement and Continuing Use License to be executed and delivered at the Closing, and (ii) Buyer, Seller and Escrow Holder shall have agreed on the form and substance of the Post-Closing Escrow Agreement to be executed and delivered at the Closing.

4.2.8 On or before the Waiver Date, the landlords under the Real Property Leases shall either have consented in writing to Buyer's assumption of the Real Property Leases or agreed to enter into new leases with Buyer for the facilities covered by the Real Property Leases, in either case, on terms and conditions satisfactory to Buyer in its sole discretion.

4.2.9 At the Closing, the applicable parties comprising Seller and Seller affiliates, on the one hand, and those current and former employees listed on Schedule 4.2.9 attached hereto, on the other, shall have released each other in writing from ongoing obligations under employment, compensation, and separation agreements; provided, however, nothing in this Section 4.2.9 contemplates that Seller or any of Seller's affiliates will release or terminate any of such current or former employees' obligations to Seller or any such affiliate in the nature of confidentiality or non-compete agreements to the extent that the same relate to any business of Seller or any of its affiliates other than the Transferred Business or to data, records, or other "confidential" or proprietary information of such other businesses.

4.2.10 At the Closing, to the extent that any Seller is listed as the inventor on the patent applications described on Schedule 4.2.10 attached hereto, such Seller shall have assigned to Buyer, in a customary manner, that Seller's rights in and to such patent applications.

In the event that Buyer delivers written notice to Seller disapproving the conditions set forth in Section 4.2.7 or 4.2.8 on or before the Waiver Date, then this Agreement shall terminate, the Good Faith Deposit (net only of Buyer's share of the escrow cancellation fees) and all interest accrued thereon shall be paid to Buyer in accordance with the provisions of Section 2.1.2(a) above, and the Parties shall thereupon be discharged of and from any further liability or obligation hereunder. If Buyer delivers written notice to Seller approving the conditions set forth in Sections 4.2.7 and 4.2.8 on or prior to the Waiver Date or fails to deliver written notice to Seller approving the condition set forth in Section 4.2.7 and/or 4.2.8 on or before the Waiver Date, then such Buyer shall conclusively be deemed to have waived such conditions and such conditions shall cease to be of any further force or effect whatsoever.

4.3 Termination. Except as otherwise provided with respect to Sections 4.1.8, 4.2.7 and 4.2.8 above, (i) if any of the above conditions is neither satisfied nor waived on or before the date by which the condition is required to be satisfied, a Party who is not then in default hereunder may terminate this Agreement by delivering to the other written notice of termination, and (ii) any waiver of a condition shall be effective only if such waiver is stated in writing and signed by the waiving party; provided, however, that the consent of a Party to the Closing shall constitute a waiver by such party of any conditions to Closing not satisfied as of the Closing Date.

5. Seller Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer:

5.1 Organization, Standing and Power. Subject to the applicable provisions of bankruptcy law, each Seller has all requisite power and authority to own, lease and operate its properties, to carry on its business as now being conducted and, upon obtaining the Approval Order, will have the power and authority to execute, deliver and perform this Agreement and all writings relating hereto.

5.2 Authorization of Seller. Subject to the Seller obtaining the Approval Order, the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Seller do not and will not: (i) conflict with or result in a breach of the articles of incorporation or the by-laws of any Seller; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which any Seller is a party or by which any Seller or its assets or properties may be bound.

6. Buyer's Warranties and Representations. In addition to the representations and warranties contained elsewhere in this Agreement, Buyer hereby makes the following representations and warranties to Seller:

6.1 Organization, Standing and Power. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California. Buyer has all requisite limited liability company power and authority to own, lease and operate its properties, to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto.

6.2 Authorization of Buyer. The execution, delivery and performance of this Agreement and all writings relating hereto by Buyer have been duly and validly authorized. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer do not and will not: (i) conflict with or result in a breach of the articles of organization or operating agreement of Buyer; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a party or by which Buyer or its assets or properties may be bound.

7. "AS IS" Transaction. Buyer hereby acknowledges and agrees that no Seller makes any representations or warranties whatsoever, express or implied, with respect to any matter relating to the Property (including, without limitation, income to be derived or expenses to be incurred in connection with the Property, the physical condition of any personal property comprising a part of the Property or which is the subject of any Other Lease or Contract to be assumed by Buyer at the closing, the environmental condition or other matter relating to the physical condition of any real property or improvements which are the subject of any Real Property Lease to be assumed by Buyer at the Closing or any other real property or improvements comprising a part of the Property, the zoning of any such real property or improvements, the value of the Property (or any portion thereof), the transferability of Property, the terms, amount, validity, collectibility or enforceability of any assumed liabilities or Real Property Lease or Other Lease or Contract, the merchantability or fitness of the Personal Property or any other portion of the Property for any particular purpose, or any other matter or thing relating to the Property or any portion thereof). Without in any way limiting the foregoing, each Seller hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Property. Buyer further acknowledges that Buyer has conducted an independent inspection and investigation of the physical condition of all portions the Property and all such other matters relating to or affecting the Property as Buyer deemed necessary or appropriate and that in proceeding with its acquisition of the Property, Buyer is doing so based solely upon such independent inspections and investigations. Accordingly, except only for such surviving representations, Buyer will accept the Property at the Closing "AS IS, "WHERE IS," and "WITH ALL FAULTS." Notwithstanding the foregoing, at or prior to the Closing, Seller shall, at Seller's sole cost and expense, cause all supplies, goods, materials, work in process, inventory and stock in trade of any Seller (other than the Transferred Business Inventory and Unrelated Inventory) to be removed from the Real Property.

8. Actions Prior to Closing.

8.1 Access to Records and Properties of Seller. From and after the date of this Agreement until the Closing Date, Seller shall afford to Buyer's officers, independent public accountants, counsel, lenders, consultants and other representatives, reasonable access for examination at all reasonable times to the Property and all records pertaining to the Property or the Business. Buyer, however, shall not be entitled to access to any materials containing privileged communications or information about employees, disclosure of which might violate an employee's reasonable expectation of privacy. Buyer expressly acknowledges that nothing in this Section 8.1 is intended to give rise to any contingency to Buyer's obligations to proceed with the transactions contemplated herein.

8.2 Bankruptcy Court Approvals.

8.2.1 Bankruptcy Court Approval of Sale Procedures.

(a) Promptly following the Execution Date (and in no event later than three (3) days thereafter), the Seller will make a motion (the "Sale Motion") for an order (the "Approval Order") from the Bankruptcy Court which (i) approves the sale of the Property to Buyer on the terms and conditions set forth in this Agreement and authorizes the Seller to proceed with this transaction, (ii) includes a specific finding that Buyer is a good faith purchaser of the Property, (iii) states that the sale of the Property to Buyer shall be free and clear of all liens, claims, interests and encumbrances whatsoever (other than the Assumed Liabilities), (v) approves the applicable Seller's assumption and assignment of the pre-petition Real Property Leases and Other Leases and Contracts (collectively, the "Section 365 Contracts") pursuant to Section 365 of the United States Bankruptcy Code and orders the Buyer to pay any cure amounts payable to the other parties to the Section 365 Contracts as a condition to such assumption and assignment; provided, however, notwithstanding anything to the contrary in this Agreement, Buyer's obligation to close the transaction contemplated herein shall not be affected by the failure of the Approval Order to authorize assignment and assumption of certain Section 365 Contracts so long as the Approval Order authorizes the assignment and assumption of the Real Property Leases and those Other Leases and Contracts described on Schedule 8.2.1(a) hereto. Following the filing of the Sale Motion, Seller shall use reasonable efforts to obtain the Approval Order. Both Buyer's and Seller's obligations to consummate the transactions contemplated in this Agreement which the Buyer and Seller may hereafter enter into shall be conditioned upon the Bankruptcy Court's entry of the Approval Order. If the Bankruptcy Court refuses to issue the Approval Order or to approve any third party purchaser at the hearing on the Sale Motion, a third party purchaser for the Property or any material portion thereof is approved by the Bankruptcy Court at the hearing on the Sale Motion, then this transaction shall automatically terminate and the Seller and the Buyer shall be relieved of any further liability or obligation hereunder. In the event that a third party (an "Upset Purchaser" and the underlying agreement between the Upset Purchaser and Seller, the "Upset Agreement") is approved by the Bankruptcy Court as the purchaser of the Property at the hearing on the Sale Motion, however, notwithstanding anything to the contrary in this Agreement, this Agreement shall not terminate, but rather shall become a "back-up bid" which shall remain open for acceptance by Seller for a period of five (5) days following the closing date specified in the Upset Agreement , but subject and subordinate in all respects to the rights of the Upset Purchaser under the Upset Agreement; provided, however, this Agreement shall automatically terminate if the Approval Order is for any reason whatsoever

not entered by the Bankruptcy Court on or before March 11, 2009, or the Closing does not occur by the Outside Date. Upon entry of the Approval Order in accordance with the provisions of this Section 8.2.1(a) (such entry date being referred to herein as the "**Sale Approval Date**"), the condition set forth in this Section 8.2.1(a) shall conclusively be deemed satisfied.

(b) As part of the Sale Motion, the Seller shall also request and use reasonable good faith efforts to obtain from the Bankruptcy Court an order which approves the following bidding procedures and expense reimbursements (the "**Bidding Procedures**"): (i) Buyer will be entitled to receive from the Seller a payment in the amount of $150,000.00, in cash or other immediately available good funds in the event that (xx) the transaction contemplated herein fails to close by reason of Seller's material breach hereof, or (yy) Buyer is not approved by the Bankruptcy Court as the purchaser of the Property and the Property (or any material portion thereof) is thereafter sold to any third party for consideration in excess of the Purchase Price and other consideration provided for herein notwithstanding the Buyer's willingness and ability to consummate the transactions contemplated by this Agreement, which payment shall be made to the Buyer concurrently with the consummation of such third party sale, (ii) all third party offers to be considered at the hearing on the Sale Motion shall be in writing, accompanied by a deposit (in the form of a cashier's check or other cash equivalent) in the amount of $250,000 and delivered to the Seller no later than twenty-four (24) hours prior to such hearing, together with satisfactory evidence of such third party's financial ability to perform its obligations under such offer, (iii) no prospective purchaser will be permitted to bid at the Sale Hearing unless such party has been deemed "financially qualified" by the Seller, (iv) no prospective purchaser who bids for the Property at the hearing on Buyer's acquisition of the Property shall be entitled to purchase the Property unless such prospective purchaser offers to purchase the Property for consideration at least $200,000.00 greater than the consideration set forth in this Agreement (including all cash, non-cash consideration and assumed liabilities) and otherwise on terms at least as favorable to the Seller as those set forth in this Agreement, and (v) after any initial overbid, all further overbids must be in increments of at least $50,000.00. Should overbidding take place, the Buyer shall have the right, but not the obligation, to participate in the overbidding and to be approved as the overbidder at the hearing on the Sale Motion based upon any such overbid. The entry of an order of the Bankruptcy Court approving the Bidding Procedures shall not be a condition precedent to Buyer's obligations under this Agreement.

8.3 Activities of Seller Pending Closing. Pending the Closing or any earlier termination of this transaction, Seller shall:

(i) provide Buyer with reasonable access to customers, suppliers, and employees of the Transferred Business, for the purpose of informing such parties of the pending transaction contemplated herein; provided, however, Seller shall have the right, in Seller's determination, to be present for and participate in any such meetings or communications with such parties.

(ii) Except as otherwise provided herein or as required pursuant to any provision of the Bankruptcy Code and provided that Seller has adequate funding for such activities during such period, operate the Transferred Business in the ordinary course consistent

with an interim budget mutually agreed upon by Seller and Buyer on or prior to the Execution Date, but taking into account that each Seller is a debtor in bankruptcy.

(iii) Not sell any of the Property, except Transferred Business Inventory and Unrelated Inventory in the normal course or as otherwise required by bankruptcy law or order of the Bankruptcy Court..

9. Miscellaneous.

9.1 Damage and Destruction; Condemnation. Seller shall promptly notify Buyer of the occurrence of any material damage to or destruction of the Property that occurs prior to the Closing Date. In the event of any uninsured damage to or destruction of the Property prior to the Closing Date the cost of which to repair would total $ 50,000.00 or less, then such damage or destruction shall have no effect whatsoever on the Purchase Price or Buyer's or Seller' obligation to close. Should any uninsured damage or destruction to the Property occur prior to the Closing Date the cost of which to repair would total more than $50,000.00 but less than $500,000.00, then unless Seller causes the same to be repaired and restored in all material respects prior to the Closing Date (in which case the Purchase Price shall be unaffected and the parties shall proceed with the Closing as though such damage, destruction or proceedings had never occured or been initiated), Buyer's sole remedy shall be to receive a dollar-for-dollar reduction in the Purchase Price in an amount equal to the sum of (i) the cost of such repairs, less (ii) the amount of any insurance proceeds with respect thereto assigned to Buyer at the Closing, and consummate the transaction contemplated herein. If any uninsured damage or destruction to the Property occurs prior to the Closing Date the cost of which to repair would total $500,000.00 or more, then irrespective of whether the same can be repaired and/or restored prior to the Closing Date, Buyer shall have the right and option to either (i) terminate the transaction contemplated herein, or (ii) elect to receive, as its sole and exclusive remedy by reason of such damage, destruction, a Purchase Price reduction in the amount of $500,000.00 and consummate the transaction contemplated herein as though the damage or destruction had never occurred or been initiated. In all other events or in the event that Buyer elects to consummate the purchase pursuant to clause (ii) above, (xx) all insurance or condemnation proceeds, including business interruption and rental loss proceeds, collected by or paid to Seller prior to the Closing Date, shall be credited against the Purchase Price on Buyer's account or the Purchase Price shall be adjusted by an amount agreed between Buyer and Seller, and (yy) all entitlement to all other insurance or condemnation proceeds arising out of such damage or destruction or proceedings and not collected prior to the Closing Date shall be assigned to Buyer at the Closing. Notwithstanding anything to the contrary in this Agreement, the risk of loss or damage to the Property shall unconditionally shift to the Buyer on the Closing Date. For avoidance of doubt, Buyer and Seller intend that the provisions of this Section 9.1 shall control over any right or remedy to which the Buyer may otherwise be entitled under this Agreement by reason of the occurrence of any event subject to this Section 9.1.

9.2 Attorneys' Fees. In the event that either party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing party in that action or proceeding shall be entitled to have and recover from the non-prevailing party all such fees, costs and expenses (including, without limitation, all court costs

and reasonable attorneys' fees) as the prevailing party may suffer or incur in the pursuit or defense of such action or proceeding.

9.3 Reasonable Access to Records and Certain Personnel. Until the closing of the Bankruptcy Case, (i) the Buyer shall permit Seller's counsel and other professionals and counsel for any successor to Seller and their respective professionals (collectively, "Permitted Access Parties") reasonable access to those financial and other books and records relating to the Property or the Transferred Business that were included among the Property transferred to Buyer at the Closing, which access shall include (xx) the right of such Permitted Access Parties to copy, at such Permitted Access Parties' expense, such documents and records as they may request in furtherance of the purposes described above, and (yy) Buyer's copying and delivering to the relevant Permitted Access Parties such documents or records as they may request, but only to the extent such Permitted Access Parties furnish Buyer with reasonably detailed written descriptions of the materials to be so copied and the applicable Permitted Access Party reimburses the Buyer for the reasonable costs and expenses thereof, and (ii) Buyer shall provide the Permitted Access Parties (at no cost to the Permitted Access Parties) with reasonable access to Glenn Thomson, Allvert Cabrera, Melissa Scachetti, Mark Klein, John Gurrola during regular business hours to assist Seller and the other Permitted Access Parties in their post-Closing activities (including, without limitation, preparation of tax returns), provided that such access does not unreasonably interfere with the Buyer's business operations.

9.4 Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by any Party to the other may be effected by personal delivery in writing, or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as o the date of mailing. Mailed notices shall be addressed as set forth below, but each Party may change his address by written notice in accordance with this Section 9.4.

To Seller: 2701 Industrial Drive
Bowling Green, KY 42102
Attn: Craig S. Dean, Chief
Restructuring Officer

AND

c/o AEG Partners
200 West Madison Street, Suite 500
Chicago, IL 60614
Attn: Craig S. Dean

With a copy to: Pachulski, Stang, Ziehl & Jones LLP
150 California Street, 15th Floor
San Francisco, CA 94111
Attn: David M. Bertenthal, Esq.

To Buyer: FMI Products, LLC
2701 South Harbor Boulevard

Santa Ana, CA 92704
Attn: Mr. John Carrola

With a copy to: Arnold & Porter, LLP
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017
Attn: Gregory C. Fant, Esq.

9.5 Entire Agreement. This instrument, that certain Confidentiality Agreement dated *January 6, 2009*, between DHP Holdings II Corp, and others, on the one hand, and Mark Klein and FMI Products, LLC, on the other, and the documents to be executed pursuant hereto contain the entire agreement between the parties relating to the sale of the Property. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing, signed by the Party to be charged.

9.6 Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the parties hereto.

9.7 Closing Date. All actions to be taken on the Closing pursuant to this Agreement shall be deemed to have occurred simultaneously, and no act, document or transaction shall be deemed to have been taken, delivered or effected until all such actions, documents and transactions have been taken, delivered or effected.

9.8 Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive.

9.9 Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

9.10 Further Assurances. Each Party hereto will execute, acknowledge and deliver any further assurance, documents and instruments reasonably requested by any other Party for the purpose of giving effect to the transactions contemplated herein or the intentions of the Parties with respect thereto; provided that nothing herein shall be deemed to require any Party to execute or deliver any such further assurance, document or instrument to the extent that the same could in any material way increase the burdens, obligations or liabilities otherwise imposed upon such Party by this Agreement.

9.11 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

9.12 Brokerage Obligations. Seller and the Buyer each represent and warrant to the other that, such party has incurred no liability to any real estate broker or other broker or agent with respect to the payment of any commission regarding the consummation of the transaction contemplated hereby. It is agreed that if any claims for commissions, fees or other compensation, including, without limitation, brokerage fees, finder's fees, or commissions are ever asserted against Buyer or any Seller in connection with this transaction, all such claims shall be handled and paid by the party whose actions form the basis of such claim and such party shall indemnify, defend (with counsel reasonably satisfactory to the party entitled to indemnification), protect and save and hold the other harmless from and against any and all such claims or demands asserted by any person, firm or corporation in connection with the transaction contemplated hereby.

9.13 Payment of Fees and Expenses. Except as provided in Section 9.2 above, each party to this Agreement shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel, incurred in the negotiation, preparation and consummation of the Agreement and the transaction described herein.

9.14 Survival. The respective representations, warranties, covenants and agreements of Seller and Buyer herein, or in any certificates or other documents delivered prior to or at the Closing, shall not be deemed waived or otherwise affected by the Closing.

9.15 Assignments. This Agreement shall not be assigned by any Party hereto without the prior written consent of the other party hereto, which consent the Parties may grant or withhold in their sole and absolute discretion.

9.16 Binding Effect. Subject to the provisions of Section 9.15, above, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties hereto.

9.17 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of Delaware.

9.18 Good Faith. All parties hereto agree to do all acts and execute all documents required to carry out the terms of this Agreement and to act in good faith with respect to the terms and conditions contained herein before and after Closing.

9.19 Construction. In the interpretation and construction of this Agreement, the parties acknowledge that the terms hereof reflect extensive negotiations between the parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either party hereto.

9.20 Counterparts. This Agreement may be signed in counterparts. The parties further agree that this Agreement may be executed by the exchange of facsimile signature pages provided that by doing so the parties agree to undertake to provide original signatures as soon thereafter as reasonable in the circumstances.

9.21 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

9.22 Interpretation and Rules of Construction. In this Agreement, except to the extent that the context otherwise requires:

9.22.1 when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or a Schedule to, this Agreement unless otherwise indicated;

9.22.2 the headings and captions used in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

9.22.3 whenever the words "include," "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation";

9.22.4 the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

9.22.5 all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

9.22.6 the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

9.22.7 any law defined or referred to herein or in any agreement or instrument that is referred to herein means such law or statute as from time to time amended, modified or supplemented, including by succession of comparable successor laws;

9.22.8 references to a person are also to its permitted successors and assigns; and

9.22.9 the use of "or" is not intended to be exclusive unless expressly indicated otherwise.

**In Witness Whereof**, *Buyer and Seller* have executed this *Asset Purchase Agreement* as of the day and year first above written.

**BUYER:**

**FMI Products, LLC, a California limited liability company**

By: _____
Name: Mark Klein
Its: Manager

**SELLER:**

**DHP Holdings II Corporation, a Delaware corporation and Chapter 11 Debtor and Debtor in Possession**

By: _____
Name: _____
Its: _____

**DESA LLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession**

By: _____
Name: _____
Its: _____

**DESA Heating, LLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession**

By: _____
Name: _____
Its: _____

**DESA IPLLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession**

In Witness Whereof, Buyer and Seller have executed this Asset Purchase Agreement as of the day and year first above written.

**BUYER:**

**EMI Products, LLC, a California limited liability company**

By: _____
Name: Mark Klein
Its: Manager

***SELLER:***

***DHP Holdings II* Corporation, a Delaware corporation and Chapter 11 Debtor and Debtor in Possession**

By: _____
Name: Craig S. Desa
Its: Chief Restructuring Officer

**DESA I LLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession**

By: _____
Name: Craig S. Desa
Its: Chief Restructuring Officer

**DESA Heating, LLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession**

By: _____
Name: Craig S. Desa
Its: Chief Restructuring Officer

**DESA IPLLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession**

By: _____
Name: Craig S. Dean
Its: Chief Restructuring Officer

**DESA FMI, LLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession**

By: _____
Name: Craig S. Dean
Its: Chief Restructuring Officer

**Exhibit "A"-**
**And All Schedules**

**[TO BE ATTACHED]**

**AMENDMENT NO. 1**
**TO**
**ASSET PURCHASE AGREEMENT**

Reference is made to that certain Asset Purchase Agreement dated as of February 11, 2009 (the "Agreement") by and among FMI Products, LLC, a California limited liability company (the "Buyer"), on the one hand, and DESA FMI, LLC, a Florida limited liability company, DHP Holdings II Corporation, a Delaware corporation, DESA LLC, a Florida limited liability company, DESA Heating, LLC, a Florida limited liability company, and DESA IP LLC, a Florida limited liability company (collectively, the "Seller" and together with Buyer, the "Parties"), each such Seller being a Debtor and Debtor in Possession under Case No. 08-13422 – MFW (Jointly Administered) (the "Case") in the United States Bankruptcy Court for the District of Delaware, on the other hand. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Agreement. This amendment of the Agreement is hereinafter referred to as this "Amendment".

WHEREAS, the Agreement contemplates that certain matters will be mutually agreed to by the Parties by the Waiver Date and that certain determinations will be made by certain Parties by the Waiver Date.

WHEREAS, Buyer and Seller wish to extend the Waiver Date.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendment. As used in the Agreement, the term "Waiver Date" shall hereafter be deemed to mean and refer to close of business on March 6, 2009.

2. Effect of Amendment. Except as expressly set forth herein, this Amendment shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Agreement, all of which shall be unchanged. Whenever the Agreement is referred to in the Agreement or in any other agreements, documents and instruments, such reference shall be deemed to be to the Agreement as amended by this Amendment.

3. Headings. The headings contained in this Amendment are for reference purposes only and shall not affect in any way the meaning or interpretation of this Amendment.

4. Counterparts. This Amendment may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.[The remainder of this page has been intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the 3rd day of March, 2009.

BUYER:

FMI Products, LLC, a
California limited liability company

By: _____
Name: Mark Klein
Its: Manager

SELLER:

DHP Holdings II Corporation, a Delaware corporation and Chapter 11 Debtor and Debtor in Possession

By: _____
Name: _____
Its: CRO

DHSA LLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession

By: _____
Name: _____
Its: CRO

DHSA Heating, LLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession

By: _____
Name: _____
Its: CRO

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PRIOR PAGE]

DESA IPLLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession

By: _____
Name: _____
Its: CEO

DESA FMI, LLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession

By: _____
Name: _____
Its: CEO

## AMENDMENT NO. 2 TO ASSET PURCHASE AGREEMENT

**THIS AMENDMENT NO. 2 TO ASSET PURCHASE AGREEMENT** (this "**Amendment**") is made and entered into as of the 18th day of March, 2009, and amends the Asset Purchase Agreement dated February 11, 2009, by and between FMI Products, LLC, a California limited liability company (the "**Buyer**"), on the one hand, and DESA FMI, LLC, a Florida limited liability company, DHP Holdings II Corporation, a Delaware corporation, DESA LLC, a Florida limited liability company, DESA Heating, LLC, a Florida limited liability company, and DESA IP LLC, a Florida limited liability company (individually and collectively, the "**Seller**" and together with Buyer, the "**Parties**") and a Debtor and Debtor in Possession under Case No. 08-13422 – MFW (Jointly Administered) (the "**Case**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

### RECITALS

A. The Parties entered into the Asset Purchase Agreement of the sale of the Transferred Business,[1] subject to higher or better bids at an auction to be held on March 9, 2009 (the "**Auction**") and bankruptcy court approval at a hearing scheduled for March 10, 2009 (the "**Sale Hearing**"). At the Auction, the Parties agreed to the changes set forth in this Amendment, which were set forth on the record of the Auction.

B. The bankruptcy court approved the sale of the Transferred Business to the Buyer, with such changes, at the Sale Hearing.

**NOW, THEREFORE,** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Section 1.1.4 of the Agreement is revised in its entirety as follows:

"Intangible Property. All intangible personal property owned or held by any Seller and used exclusively in connection with the Transferred Business, but in all cases only to the extent of such Seller's interest and only to the extent transferable, together with all books and financial and accounting Records, as defined below and like items to the extent pertaining to the Transferred Business (Buyer hereby acknowledging that such books, Records and like items are not maintained separately from those relating to the other businesses and activities of the entities comprising Seller), including, without limitation, the goodwill of the Transferred Business and "know how" and, to the extent listed on Schedule 1.1.4 -1 attached hereto and incorporated herein by this reference and in addition Patent for "Gas Operated Fireplace Module" - United States Patent 6,250,548, all of the Seller's right, title and interest in the patents (and any related assignments of applications therefor executed and delivered by any

[1] Capitalized terms not defined in this Amendment shall have the meanings given to such terms in the Agreement.

Seller pursuant to Section 4.2.10 hereof[2]), processes, trademarks, trade names (but only to the extent of the applicable Seller's rights to use and exploit the same in the United States of America and Canada (collectively, the **"Acquired Markets"**) and for use in selling to those customers located outside the Acquired Markets who are identified on **Schedule 1.1.4-2** attached hereto and incorporated herein by this reference), domain names, service marks, catalogues, customer lists and other customer data bases, correspondence with present or prospective customers and suppliers, advertising materials, software programs, and telephone exchange numbers identified with the Transferred Business (collectively, the **"Intangible Property"**). **"Record"** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. As used in this Agreement, Intangible Property shall in all events exclude, (i) any materials containing privileged communications or information about employees, disclosure of which would violate an employee's reasonable expectation of privacy and any other materials which are subject to attorney-client or any other privilege, (ii) any software or other item of intangible property held by any Seller pursuant to a license or other Contract where Buyer does not assume the underlying Contract relating to such intangible personal property at the Closing, and (iii) any right, title or interest in or to Seller's "Vanguard" and "Comfort Glow" trademarks and those related trademarks described on **Schedule 1.1.4-3** attached hereto and incorporated herein by this reference (collectively, the **"Retained Marks"**)."

2. The dollar amount set forth in Section 2.1.1 of the Agreement is revised to "$7,400,000.00" (and not $4,700,000.00 as set forth in the original version of the Agreement).

3. The dollar amount set forth in clause (B)(i) of Section 2.1.2(b) of the Agreement is revised to "$6,900,000.00" (and not $4,200,000.00 as set forth in the original version of the Agreement).

4. Section 2.4.2 of the Agreement is revised in its entirety as follows:

In the event that the face value of the Receivables on the Closing Date as determined in the manner provided herein (x) is less than the A/R Benchmark, the Purchase Price shall be decreased by an amount equal to 100% of the amount of such shortfall (such amount, the **"Receivables Shortfall Reduction"**), or (y) is greater than the A/R Benchmark, the Purchase Price shall be increased by an amount equal to 100% of the amount of such excess Receivables (such amount, the **"Excess Receivables Bump"**).

5. Section 2.4.6 of the Agreement is deleted.

6. Section 3.7 of the Agreement is revised in its entirety as follows:

Possession. Right to possession of the Property shall transfer to Buyer on the Closing Date. The applicable parties comprising Seller shall transfer and deliver to Buyer on the Closing

[2] Schedule 4.2.10, which lists the patent applications, has been revised to include Patent for "Artificial Embers For Use In A Gas Fired Log Set" – Pub. No. US 2007/02221206 A1 (Appl. No. 11/668,560) as agreed at the Auction, and to include more recent patent application identification numbers for certain of the patent applications listed on such Schedule 4.2.10.

Date such keys, locks, passwords and safe combinations and other similar items as Buyer may reasonably require to obtain occupation and control of the Property, and shall also make available to Buyer at their then existing locations the originals of all documents in Seller's possession that are required to be transferred to Buyer by this Agreement.

7. Section 4.2.8 of the Agreement is deleted.

8. Section 4.2.9 of the Agreement is revised in its entirety as follows:

4.2.9. At the Closing, the applicable parties composing Seller and Seller affiliates shall be deemed to have released those current and former employees listed on Schedule 4.2.9 attached hereto that the Buyer elects to continue to employ or subsequently employs, from ongoing obligations under employment, compensation, and separation agreements or agreements entered into in connection with employment with respect to any confidentiality or non-complete provisions with respect to the Transferred Business; provided, that the Buyer shall have the right to continue to enforce such confidentiality or non-complete provisions with respect to the Transferred Business in any such contract that has not been or is not rejected, and further provided, however, that nothing in this Section 4.2.9 contemplates that Seller or any of Seller's affiliates will release or terminate any of such current or former employees' obligations to Seller or any such affiliate in the nature of confidentiality or non-compete agreements to the extent that the same relate to any business of Seller or any of its affiliates other than the Transferred Business or to data, records, or other "confidential" or proprietary information of such other businesses.

9. The Debtors will not sell or assign the right to use the "Vanguard" name for the manufacture or sale of any of the products that both (a) utilize any of the Patents and Patent Applications being transferred and assigned to the Buyer and (b) currently are being manufactured by the Debtors in the Transferred Business (the "Vanguard Restricted Product"). After Closing, the Debtors will not sell any Vanguard Restricted Product for an aggregate sale price in excess of $100,000.00 without first obtaining an order from the Bankruptcy Court authorizing the Debtors to do so. The Debtors (i) are not transferring the "Vanguard" name (or any related names) or product lines to the Buyer, with the exception for the limited license granted to Buyer under the Transition Services Agreement to use the "Vanguard" name, (ii) retain all right, title and interest in the "Vanguard" name (and any and all related names) and product lines, and (iii) without limitation, shall have the right, power and privilege to use the "Vanguard" name (and any and all related names) for all purposes, including the manufacture and/or sale of products other than the Vanguard Restricted Product and to license, assign, sell or otherwise transfer such name and other product lines.

10. The Exhibits and Schedules to the Agreement agreed to by the Parties at the Auction (with the revised Schedule 4.2.10 referred to in paragraph 1 above) are attached to this Amendment.[3]

[3] The Exhibits and Schedules are not attached to the copy of this Amendment that will be filed on the docket in this case.

11. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

12. The Agreement, as amended by this Amendment, shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

13. All of the terms, covenants and conditions of the Agreement, as amended by this Amendment, shall continue in full force and effect.

14. The terms of this Amendment may not be amended, modified or waived except in a writing signed by all of the parties hereto.

**In Witness Whereof**, Buyer and Seller have executed this Amendment this March 13, 2009 as of the day and year first above written.

**BUYER:**

**FMI Products, LLC, a California limited liability company**

By: _____
Name: Mark Klein
Its: Manager

**SELLER:**

**DHP Holdings II Corporation, a Delaware corporation and Chapter 11 Debtor and Debtor in Possession**

By: _____
Name: _____
Its: _____

11. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

12. The Agreement, as amended by this Amendment, shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

13. All of the terms, covenants and conditions of the Agreement, as amended by this Amendment, shall continue in full force and effect.

14. The terms of this Amendment may not be amended, modified or waived except in a writing signed by all of the parties hereto.

**In Witness Whereof**, Buyer and Seller have executed this Amendment this March 13, 2009 as of the day and year first above written.

**BUYER:**

**FMI Products, LLC, a**
**California limited liability company**

**By:** _____
**Name: Mark Klein**
**Its: Manager**

**SELLER:**

**DHP Holdings II Corporation, a Delaware corporation and Chapter 11 Debtor and Debtor in Possession**

By: _____
Name: Barry S Dean
Its: CEO

**DESA LLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession**

By: _____

Name: Larry S. Dean

Its: CEO

**DESA Heating, LLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession**

By: _____

Name: Larry S. Dean

Its: CEO

**DESA IPLLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession**

By: _____
Name: Craig S. Dean
Its: CRO

**DESA FMI, LLC, a Florida limited liability company and Chapter 11 Debtor and Debtor in Possession**

By: _____
Name: Craig S. Dean
Its: CRO