

## TRADEMARK ASSIGNMENT

Electronic Version v1.1  
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|   |  |                |                            |
|---|--|----------------|----------------------------|
| SUBMISSION TYPE:  | NEW ASSIGNMENT                               |                |                            |
| NATURE OF CONVEYANCE:   | ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL |                |                            |
| CONVEYING PARTY DATA  |  |                |                            |
| Name  | Formerly                                     | Execution Date | Entity Type                |
| Barjan Products, L.L.C.   |  | 12/13/2005     | LIMITED LIABILITY COMPANY: |
| RECEIVING PARTY DATA  |  |                |                            |
| Name:   | Barjan Products Acquisition, LLC             |                |                            |
| Street Address:   | 7800 51ST Street West                        |                |                            |
| City:   | Rock Island                                  |                |                            |
| State/Country:  | ILLINOIS                                     |                |                            |
| Postal Code:  | 61201-7398                                   |                |                            |
| Entity Type:  | LIMITED LIABILITY COMPANY: DELAWARE          |                |                            |
| PROPERTY NUMBERS Total: 1   |  |                |                            |
| Property Type   | Number                                       | Word Mark      |                            |
| Registration Number:  | 2346968                                      | WILSON         |                            |
| CORRESPONDENCE DATA   |  |                |                            |
| Fax Number:   | (216)348-5474                                |                |                            |
| Phone:  | 216-348-5400                                 |                |                            |
| Email:  | ip@mcdonaldhopkins.com                       |                |                            |
| <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i> |  |                |                            |
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| Address Line 2:   | Suite 2100                                   |                |                            |
| Address Line 4:   | Cleveland, OHIO 44114                        |                |                            |
| ATTORNEY DOCKET NUMBER:   | BARJAN PRODUCTS                              |                |                            |
| NAME OF SUBMITTER:  | Todd A. Benni                                |                |                            |
| Signature:  | /Todd A. Benni/                              |                |                            |

CH \$40.00 2346968

Date:

02/20/2012

**Total Attachments: 88**

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**SALE AGREEMENT PURSUANT TO ARTICLE 9  
OF THE UNIFORM COMMERCIAL CODE**

**by and among**

**BARJAN PRODUCTS ACQUISITION, LLC**

**as Buyer,**

**HELLER FINANCIAL, INC.**

**as Agent for the Lenders under the Barjan Credit Agreements,**

**BARJAN HOLDING COMPANY**

**as borrower under the Barjan Holding Credit Agreement,**

**and**

**BARJAN PRODUCTS, L.L.C.**

**as Borrower under the Credit Agreement.**

**Dated as of December 13, 2005**

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**SALE AGREEMENT PURSUANT TO ARTICLE 9 OF  
THE UNIFORM COMMERCIAL CODE**

This SALE AGREEMENT PURSUANT TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE (the "Agreement") is entered into as of December \_\_, 2005, by and among Barjan Products Acquisition, LLC, a Delaware limited liability company ("Buyer"), Heller Financial, Inc., a Delaware corporation ("Agent"), in its capacity as administrative agent for itself and the other financial institutions party to the Credit Agreement (as hereinafter defined) from time to time as lenders thereunder (collectively, the "Lenders"), Barjan Holding Company, a Delaware corporation ("Barjan Holding"), as the borrower under the Barjan Holding Credit Agreement (as hereinafter defined), and Barjan Products, L.L.C., a Delaware limited liability company and a wholly-owned subsidiary of Barjan Holding ("Borrower," and together with Barjan Holding the "Barjan Parties"), as the borrower under the Credit Agreement (as hereinafter defined).

**RECITALS**

A. Pursuant to that certain Amended and Restated Credit Agreement, dated as of May 14, 2004 (as heretofore or hereafter amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Borrower, Agent and the Lenders, as well as certain other documents, instruments and agreements executed pursuant thereto or in connection therewith (together with, and as defined in, the Credit Agreement, the "Barjan Loan Documents"), Agent and the Lenders made loans to, and made other financial accommodations to or for the benefit of, Borrower (all such loans and other financial accommodations being herein referred to collectively as the "Loans"). The Loans and all other liabilities and obligations of Borrower to Agent and the Lenders under the Loan Documents, howsoever created, arising or evidenced (collectively, the "Barjan Obligations"), are secured by a first priority, properly perfected security interest in favor of Agent (for the benefit of itself and the Lenders) in substantially all of Borrower's assets.

B. Agent and the Lenders have also made loans to, and made other financial accommodations to or for the benefit of, Barjan Holding pursuant to that certain Credit Agreement, dated as of May 14, 2004 (as heretofore or hereafter amended, restated, supplemented or otherwise modified from time to time, the "Barjan Holding Credit Agreement," and together with the Credit Agreement, the "Barjan Credit Agreements"), as well as certain other documents, instruments and agreements executed pursuant thereto or in connection therewith (together with the Barjan Holding Credit Agreement, the "Barjan Holding Loan Documents," and collectively with the Barjan Loan Documents, the "Loan Documents"). The loans and other liabilities and obligations of Barjan Holding to Agent and the Lenders under the Barjan Holding Loan Documents, howsoever created, arising or evidenced (collectively, the "Barjan Holding Obligations," and together with the Barjan Obligations, the "Obligations"), are secured by a first priority, properly perfected security interest in favor of Agent (for the benefit of itself and the Lenders) in substantially all of Barjan Holding's assets (other than its membership interests in Borrower, which Barjan Holding has pledged to Agent as security for the Barjan Obligations).

C. As a result of numerous continuing events of default in respect of the Obligations under each Barjan Credit Agreement, Agent and the Lenders have determined, and the Barjan Parties hereby acknowledge, that they are entitled under Sections 9-610 through 9-619 and 9-623 through 9-628 of the Uniform Commercial Code, as adopted in the State of Illinois, and solely to the extent applicable to the transactions contemplated hereby, as adopted in other states (the "UCC"), the Loan Documents and other applicable law to, among other things, sell and transfer to any Person for value all of the Barjan Parties' right, title and interest in and to: (i) any or all of the personal property subject to Agent's first priority properly perfected security interest, including the Subject Assets (as defined below) described in Section 4.1(a) hereof (all such assets are collectively referred to herein as the "Encumbered Assets") and (ii) certain assets that may be subject to Liens having priority over Agent's Lien as set forth on Schedule 4.1(b) attached hereto (Buyer to take such assets subject to such senior Liens, if any) in one or more sales pursuant to Article 9 of the UCC, and the Barjan Parties have agreed not to contest such actions as set forth in a certain Reaffirmation, Release and Consent Agreement by and among Agent, the Barjan Parties and Requisite Lenders (as defined in the Barjan Credit Agreements), dated as of even date herewith, a copy of which is attached hereto as Exhibit A (the "Reaffirmation Agreement").

D. Based on the foregoing, Agent and the Lenders desire to sell, transfer and deliver to Buyer, and Buyer desires to acquire from Agent and the Lenders for value in a private sale pursuant to Sections 9-610 through 9-619 and 9-623 through 9-628 of the UCC and on the terms and conditions hereinafter set forth, all of each Barjan Party's right, title and interest in and to the Subject Assets (as hereinafter defined), which shall be surrendered by the Barjan Parties to Buyer at the Closing (as hereinafter defined) free and clear of all Liens other than Permitted Liens. In connection with its acquisition of the Barjan Parties' right, title and interest in the Subject Assets, Buyer has also agreed to assume certain liabilities of Borrower as provided herein.

E. Concurrently with the Closing (as hereinafter defined), pursuant to the terms and conditions of that certain Real Estate Purchase Agreement, dated as of even date herewith, by and between the Barjan Parties, Barjan Canada ULC, a Canadian Company and a wholly-owned subsidiary of Borrower ("Barjan Canada"), and Buyer (the "Real Estate Purchase Agreement"), Buyer (i) is acquiring from Borrower all of Borrower's right, title and interest in and to certain real estate commonly known as 2751 Morton Drive, East Moline Industrial Park, East Moline, Rock Island County, Illinois (the "Land"), all buildings, improvements and appurtenances located thereon (the "Improvements"), and all estates, rights, privileges, easements and appurtenances owned by the Barjan Parties and in any way appurtenant to the Land and the Improvements (together with the Land and Improvements, the "Real Property") and (ii) is acquiring from the Barjan Parties and Barjan Canada, as applicable, certain other assets on which Agent may not have a Lien, or with respect to which Sections 9-610 through 9-619 and 9-623 through 9-628 of the UCC may not apply to any Lien of Agent thereon (collectively, the "Remaining Assets," and together with the Real Property, the "REPA Assets"), in each case free and clear of all Liens (including, without limitation, Agent's Lien thereon) other than "Permitted Liens," as such term is defined in the Real Estate Purchase Agreement.

## AGREEMENT

**NOW THEREFORE**, in consideration of the mutual promises and agreements set forth herein, Buyer, each Barjan Party and Agent, on behalf and for the benefit of itself and the Lenders, hereby agree as follows:

1. Incorporation of Recitals.

The Recitals set forth above are incorporated into, and form an integral part of, the agreements among the parties contained in this Agreement.

2. Definitions.

Whenever used in this Agreement, the following terms and phrases have the following respective meanings:

“Accounting Firm” has the meaning given to such term in Section 4.10(d).

“Acquired Contracts” has the meaning given to such term in Section 4.1(a)(x).

“Affiliate” means, with respect to any Person, (i) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, ten percent (10%) or more of the stock or other equity interests having ordinary voting power in the election of directors or managers (or Persons to comparable governing bodies) of such Person, (ii) each Person that controls, is controlled by or is under common control with such Person or any Affiliate of such Person and (iii) each of such Person’s officers, directors, managers, joint venturers and partners; provided, however, that neither Agent nor any Lender shall be, or shall be deemed, an Affiliate of any Barjan Party for any purpose, including, without limitation, for the purposes of this Agreement, any other agreements executed in connection herewith or any transactions contemplated hereby or thereby. For the purpose of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“Affiliated Group” means an affiliated group as defined in Section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law) of which any Barjan Party is or has been a member; provided, however, that neither Agent nor any Lender shall be, or shall be deemed, a member of any Affiliated Group for any purpose, including, without limitation, for the purposes of this Agreement, any other agreements executed in connection herewith or any transactions contemplated hereby or thereby.

“Agent” has the meaning given to such term in the preamble to this Agreement.

“Agreed Adjustments” has the meaning given to such term in Section 4.10(c).

“Alternative Transaction” means any sale, transfer, disposition, merger, consolidation, stock sale, share exchange, plan of reorganization, plan of liquidation, recapitalization, business combination or similar transaction or series of transactions pursuant to which either (i)

ownership of any material portion of the Purchased Business is transferred outside the ordinary course of business to one or more Persons other than Buyer or any Affiliate of Buyer or (ii) existing owners of or the Lenders to the Barjan Parties effect a reorganization of their existing interests; provided, however, that, solely for purposes of Section 12.2 hereof, any wind-down liquidation of Borrower's assets to a third-party liquidator and/or multiple unaffiliated purchasers (none of which operate or, subsequent to such liquidation, will operate, any portion of the Purchased Business as a going concern) either (i) after Borrower has ceased operation as a going concern or (ii) in connection with Borrower ceasing operations as a going concern shall not constitute an Alternative Transaction. For the avoidance of doubt, if such liquidation occurs as described in clause (ii) above and a material portion the Purchased Business is ultimately sold as a going concern, such sale shall constitute an Alternative Transaction.

"Assignment and Assumption Agreement" means an Assignment and Assumption Agreement with respect to the Assumed Liabilities, dated as of the Closing Date, by and between the Barjan Parties and Buyer, substantially in the form attached hereto as Exhibit B.

"Assumed Liabilities" has the meaning given to such term in Section 4.4(a).

"Assumed Working Capital Value" has the meaning given to such term in Section 4.9(a).

"Audited Financial Statements" has the meaning given to such term in Section 15.5.

"Balance Sheet Date" has the meaning given to such term in Section 15.5.

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

"Barjan Closing Taxes" has the meaning given to such term in Section 9(b).

"Barjan Canada" has the meaning given to such term in Recital E.

"Barjan Credit Agreements" has the meaning given to such term in Recital B.

"Barjan Financial Statements" has the meaning given to such term in Section 15.5.

"Barjan Holding" has the meaning given to such term in the preamble to this Agreement.

"Barjan Holding Credit Agreement" has the meaning given to such term in Recital B.

"Barjan Holding Loan Documents" has the meaning given to such term in Recital B.

"Barjan Holding Obligations" has the meaning given to such term in Recital B.

"Barjan Loan Documents" has the meaning given to such term in Recital A.

"Barjan Obligations" has the meaning given to such term in Recital A.

"Barjan Parties" has the meaning given to such term in the preamble to this Agreement.

"Barjan Real Property" has the meaning given to such term in Section 15.8(b).

“Bill of Transfer” means a Secured Party Bill of Transfer, dated as of the Closing Date, executed by Agent, on behalf of itself and the Lenders, in favor of Buyer, in the form attached hereto as Exhibit C.

“Borrower” has the meaning given to such term in the preamble to this Agreement.

“Borrower Employee Benefit Plan” means any “employee benefit plan” (as defined in Section 3(3) of ERISA), or any other benefit plan, program or arrangement of any kind, at any time maintained, sponsored or contributed to or required to be contributed to by any Barjan Party or any ERISA Affiliate, or with respect to which any Barjan Party or any ERISA Affiliate has any Liability or potential Liability.

“Business Records” has the meaning given to such term in Section 4.1(a)(v).

“Buyer” has the meaning given to such term in the preamble to this Agreement.

“Buyer Letter of Credit” has the meaning given to such term in Section 13.10.

“Closing” has the meaning given to such term in Section 8.

“Closing Date” has the meaning given to such term in Section 8.

“Closing Purchase Price” has the meaning given to such term in Section 4.9(b)(i).

“Closing Date Working Capital Value” has the meaning given to such term in Section 4.10(b).

“COBRA” means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code or any similar state Law.

“Code” means the Internal Revenue Code of 1986.

“Confidentiality Agreement” means that certain Confidentiality Agreement, dated as of April 29, 2005, by and between Houlihan Lokey Howard & Zukin Capital and Monomoy, on behalf of itself and its Affiliates (including Buyer).

“Contracts” means contracts, agreements, arrangements or commitments of any kind to which any Barjan Party is a party, whether written or oral, including all Leases or other leases, licenses, supply and/or distribution arrangements, joint venture agreements and arrangements, sales agreements, sales orders, purchase agreements, purchase orders, confidentiality agreements, service, maintenance, vendor, customer and service agreements and all other contracts and business arrangements or rights.

“Credit Agreement” has the meaning given to such term in Recital A.

“Creditor Payment” has the meaning given to such term in Section 4.4(c).

“Customer Due Diligence” has the meaning given to such term in Section 16.

“Deadline” has the meaning given to such term in Section 22.1(f).

“Debt Financing” has the meaning given to such term in Section 13.6.

“Deposits” has the meaning given to such term in Section 4.1(a)(viii).

“Des Plaines Facility” means Borrower’s former facility located at 501 South Wolf Road, Des Plaines, Illinois.

“Distribution Assignment and Assumption Agreement” means an assumption and assignment agreement with respect to the Victor Distribution, License and Non-Compete Agreement, dated as of the Closing Date, by and between Borrower and Buyer, substantially in the form attached hereto as Exhibit D.

“Encumbered Assets” has the meaning given to such term in Recital C.

“Environmental and Safety Requirements” means all applicable Laws concerning public health and safety, worker health and safety, pollution or protection of the environment.

“Environmental Permits” has the meaning given to such term in Section 15.20(b).

“Equipment” has the meaning given to such term in Section 4.1(a)(iii).

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any Person which is or has ever been under common control, or which is or has ever been treated as a single employer, with any Barjan Party under Section 414 of the Code.

“Estimated Closing Date Working Capital Value” has the meaning given to such term in Section 4.9(a).

“Excluded Assets” has the meaning given to such term in Section 4.2.

“Excluded Contracts” has the meaning given to such term in Section 4.2(k).

“Excluded Liabilities” shall have the meaning given to such term in Section 4.5.

“Expense Reimbursement” means all actual, reasonable and documented out-of-pocket expenses (including, without limitation, professional fees and work fees of its advisors, attorneys and its potential lenders and other financing sources concerning this transaction) incurred by Buyer in connection with the transactions contemplated by this Agreement and the other Transaction Documents up to an aggregate maximum amount of \$500,000.

“Final Closing Statement” has the meaning given to such term in Section 4.10(b).

“Final Order” means an Order as to which the time to file an appeal, a motion for rehearing, reargument, revocation or reconsideration or a petition for writ of certiorari has expired and no such appeal, motion or petition is pending.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time.

“Hazardous Substances” means any pollutants, contaminants, chemicals, toxic or otherwise hazardous materials, and any other substances or wastes with respect to which Liability or standards of conduct are imposed under any Environmental and Safety Requirements, including, without limitation, noise, odors, radiation, petroleum and petroleum-related products, friable materials containing more than one percent (1%) asbestos, by weight, and lead-based paint.

“Hired Employees and Agents” has the meaning given to such term in Section 23.1.

“Improvements” has the meaning given to such term in Recital E.

“Initial Overbid Amount” means \$100,000.

“Intellectual Property” means all of the following in any jurisdiction throughout the world: (i) patents, patent applications, patent rights, patent disclosures and inventions (whether or not patented); (ii) Internet domain names, trademarks, service marks, trade dress and trade names and registrations and applications for registration thereof together with all of the goodwill associated therewith; (iii) copyrights (registered or unregistered) and registrations and applications for registration thereof and mask works (as defined in 17 U.S.C. § 901); and (iv) all Trade Secrets and other confidential information.

“Interested Purchaser” has the meaning given to such term in Section 12.1.

“Inventory” has the meaning given to such term in Section 4.1(a)(i).

“Joint IP” means all of the following used in the Victor Business immediately prior to the closing of the sale of the Victor Assets to the Victor Buyer: (i) copyrights and mask works (as defined in 17 U.S.C. § 901), whether registered or unregistered, and registrations and pending applications for registration thereof and (ii) Trade Secrets and other confidential information. For purposes of clarification, Joint IP shall not include any (i) Internet domain names, trademarks, service marks, trade dress, trade names and registrations and applications for registration thereof, together with all the common law rights and goodwill associated therewith, (ii) patents and patent applications or (iii) any Intellectual Property licensed by Borrower to the Victor Buyer under the Victor Distribution, License and Non-Compete Agreement.

“Knowledge of the Barjan Parties” or “the Barjan Parties’ Knowledge” means the actual knowledge of any of Mark Essig, Sandy McKay, Karen Butler, Mark Hemphill and Donald Paddock after making reasonable inquiry and exercising reasonable diligence with respect to the particular matter in question.

“Land” has the meaning given to such term in Recital E.

“Latest Balance Sheet” has the meaning given to such term in Section 15.5.

“Latest Financial Statements” has the meaning given to such term in Section 15.5.



“Law” means all applicable federal, state, local and foreign statutes, laws, rules, regulations, codes, ordinances, requirements and other provisions having the force or effect of law, all judicial and administrative Orders and determinations and all common law and all agreements with or of federal, state, local and foreign governmental and regulatory authorities.

“Leased Real Property” has the meaning given to such term in Section 15.8(b).

“Leases” has the meaning given to such term in Section 15.8(b).

“Lenders” has the meaning given to such term in the preamble to this Agreement.

“Letters of Credit” means the letters of credit listed on Schedule 14.13 hereto, as the same were in effect as of the date hereof or as subsequently amended with the prior written consent of Buyer, which were issued on behalf of Borrower by Agent for the benefit of the respective parties listed next to each such letter of credit on Schedule 14.13.

“Letter of Credit Draws” means any and all draws on the Letters of Credit made by the beneficiaries thereof and satisfied by Agent on and after the date hereof through the Closing.

“Liability” means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and regardless of when or by whom asserted).

“Lien” means any mortgage, pledge, security interest, encumbrance, claim, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, any precautionary lien on account of a leasehold interest and the existence or filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction, or under any similar provision of any Law and including any lien or charge arising by Law, which secures or is intended to secure the payment of a debt (including any Tax) or the performance of an obligation.

“Loans” has the meaning given to such term in Recital A.

“Loan Documents” has the meaning given to such term in Recital B.

“Marketing Materials” has the meaning given to such term in Section 4.1(a)(vi).

“Material Adverse Effect” means any effect or change that has, or that could reasonably be expected to have, a material adverse effect on (i) the financial condition, business, value, operations or results of operations of the Purchased Business, the Subject Assets or the REPA Assets, taken as a whole, or (ii) the binding nature, validity or enforceability of this Agreement or any other Transaction Documents; provided that none of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect: (a) general economic conditions, except to the extent such conditions cause a disproportionate and negative effect on or change to the industry of which the Purchased Business is a part, (b) the existence of any default or event of default under any of the Barjan Credit Agreements (but not including the underlying cause of such default or event of default), (c) any exercise of any rights or remedies by Agent as a result of any such default or

event of default under any of the Barjan Credit Agreements that is (x) an Alternative Transaction or (y) not otherwise inconsistent with the terms hereof, does not otherwise directly or indirectly result in a breach by any Barjan Party hereunder and does not affect any Barjan Party's or Agent's ability to consummate the transactions contemplated hereby.

"Mechanicsburg Facility" means Borrower's facility located at 5050 Louise Drive, Mechanicsburg, Pennsylvania.

"Monomoy" shall mean Monomoy Capital Partners, LLC.

"Obligations" has the meaning given to such term in Recital B.

"Order" means any decree, order, injunction, rule, judgment or consent of or by any court or governmental entity (whether preliminary or final).

"Order for Relief" shall mean (i) in the event a voluntary bankruptcy petition has been filed by one or more of the Barjan Parties, the filing of the petition(s) for relief commencing such bankruptcy case(s) or (ii) in the event an involuntary bankruptcy proceeding is commenced against one or more of the Barjan Parties, an order for relief entered by the court with jurisdiction over the bankruptcy case(s) in accordance with Rule 1013 of the Federal Rules of Bankruptcy Procedure.

"Permits" has the meaning given to such term in Section 4.1(a)(vii).

"Permitted Liens" means those Liens set forth on Schedule 2(a) attached hereto to which the corresponding Subject Assets shall remain subject after the Closing in accordance with and to the extent provided under applicable law notwithstanding any provision herein to the contrary.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity or a governmental entity or any department, agency or political subdivision thereof.

"Post-Closing Consideration" means all cash consideration, if any, payable to Agent pursuant to Section 4.10(e).

"Post-Closing Escrow Account" means the deposit account in the name of the Post-Closing Escrow Agent in which the Post-Closing Escrow Fund shall be deposited, held and disbursed pursuant to the terms of the Post-Closing Escrow Agreement and Section 4.10.

"Post-Closing Escrow Agent" means the escrow agent named in the Post-Closing Escrow Agreement, including any successor thereto.

"Post-Closing Escrow Agreement" means the agreement to be entered into as of the Closing Date, substantially in the form of Exhibit E attached hereto.

"Post-Closing Escrow Fund" means the Purchase Price Hold-Back deposited into the Post-Closing Escrow Account pursuant to Section 4.9(d) (including any accrued interest or

investment income thereon) and held in escrow by the Post Closing Escrow Agent under the terms of the Post Closing Escrow Agreement to secure Buyer's obligation to pay Agent the Post-Closing Consideration, if any, pursuant to Section 4.10.

"Preliminary Closing Statement" has the meaning given to such term in Section 4.10(a).

"Preliminary Working Capital Determination" has the meaning given to such term in Section 4.10(a).

"Proceeds Assignment Agreement" has the meaning given to such term in Section 14.12.

"Purchase Price" means the Closing Purchase Price plus the Post-Closing Consideration, if any, payable to Agent under Section 4.10(e).

"Purchase Price Deposit Amount" means \$750,000.

"Purchase Price Deposit Escrow Agent" means the escrow agent named in the Purchase Price Deposit Escrow Agreement, including any successor thereto.

"Purchase Price Deposit Escrow Agreement" means the Purchase Price Deposit Escrow Agreement to be entered into as of even date herewith, substantially in the form of Exhibit F attached hereto.

"Purchase Price Deposit Escrow Fund" means the Purchase Price Deposit Amount, together with any accrued interest or investment income thereon, held by the Purchase Price Deposit Escrow Agent pursuant to the terms of the Purchase Price Deposit Escrow Agreement.

"Purchase Price Hold-Back" means funds of Buyer in the amount of \$250,000 deposited into the Post-Closing Escrow Account by Buyer pursuant to Section 4.9(d).

"Purchased Business" means all of the Barjan Parties' businesses as of the date hereof, including, but not limited to, the trucker supply, entertainment and car wash businesses.

"Purchased Business Employees and Agents" has the meaning given to such term in Section 23.1.

"Reaffirmation Agreement" has the meaning given to such term in Recital C.

"Real Estate Purchase Agreement" has the meaning given to such term in Recital E.

"Real Estate Purchase Price" means the portion of the Purchase Price paid by Buyer for the Real Property pursuant to the Real Estate Purchase Agreement.

"Real Property" has the meaning given to such term in Recital E.

"Real Property Taxes" means all real property Taxes, personal property Taxes and similar ad valorem obligations.

"Receivables" has the meaning given to such term in Section 4.1(a)(ii).

“Related Party” means any officer, director, manager or Affiliate of any Barjan Party or any individual related by blood or marriage to any such Person.

“Remaining Assets” has the meaning given to such term in Recital E.

“REPA Assets” has the meaning given to such term in Recital E.

“REPA Assets Purchase Price” means the cash consideration to be paid by Buyer for the REPA Assets under the Real Estate Purchase Agreement.

“Required Permits” has the meaning given to such term in Section 15.19(b).

“Required Third-Party Approvals” has the meaning given to such term in Section 19.6.

“Review Period” has the meaning given to such term in Section 4.10(b).

“Sale Motion” has the meaning given to such term in Section 12.3.

“Section 363 Sale” has the meaning given to such term in Section 12.3.

“Section 363 Term Sheet” has the meaning given to such term in Section 12.3.

“Straddle Period” has the meaning given to such term in Section 9(a).

“Subject Assets” has the meaning given to such term in Section 4.1.

“Tax” or “Taxes” means any (i) federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, intangibles, documentary, stamp, sales, use, transfer, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall, profit, environmental, customs, duties, real property, personal property, capital stock, social security, Medicare, unemployment, disability, payroll, license, employee or other withholding or other tax of any kind whatsoever, including any interest, penalties or additions to tax or additional amounts in respect of the foregoing; (ii) Liability for the payment of any amounts of the type described in clause (i) arising as a result of being (or ceasing to be) a member of any Affiliated Group (or being included (or required to be included) in any Tax Return relating thereto); and (iii) Liability for the payment of any amounts of the type described in clause (i) as a result of any express or implied obligation to indemnify or otherwise assume or succeed to the Liability of any other Person.

“Tax Returns” means returns, declarations, reports, claims for refund, information returns or other documents (including any related or supporting schedules, statements or information) filed or required to be filed in connection with the determination, assessment or collection of Taxes of any party or the administration of any laws, regulations or administrative requirements relating to any Taxes.

“Third Party Approvals” has the meaning given to such term in Section 4.7.

“Topping Fee” means \$400,000.

"Trade Secrets" means trade secrets and confidential ideas, know-how, concepts, methods, processes, formulae, technology, algorithms, models, reports, data, customer lists, supplier lists, mailing lists, business plans and other documented and undocumented information and data in whatever form pertaining to sales, advertising, marketing, promotion, product planning, research, development, design, engineering, layout, drafting, manufacturing, quality control, equipment maintenance, standards, procedures, procurement, purchasing costs, shipping, publication, facilities and service, all of which derive value, monetary or otherwise, from being maintained in confidence.

"Transaction Documents" means collectively this Agreement, the Real Estate Purchase Agreement, the Purchase Price Deposit Escrow Agreement, the Bill of Transfer, the Assignment and Assumption Agreement, the Post-Closing Escrow Agreement, the Distribution Assignment and Assumption Agreement, the Victor Distribution, License and Non-Compete Agreement and all instruments, documents and agreements executed and/or delivered in connection herewith and therewith.

"Transferred Intellectual Property" means all of the Intellectual Property owned by or, in the case of Internet domain names, registered to, the Barjan Parties, including, without limitation the trade names "Barjan" and "Helpmate") and all trademarks set forth on Schedule 15.12(a) hereto and all rights related thereto.

"UCC" has the meaning given to such term in Recital C.

"Victor Assets" means all property and assets, tangible or intangible, personal or real, sold to the Victor Buyer and set forth on Schedule 15.9(c) attached hereto.

"Victor Business" means the business of selling and distributing after-market automotive products principally to mass merchandisers and major automotive specialty chains in the United States, Canada and elsewhere as previously conducted through Borrower's Victor division, which was sold prior to the date of this Agreement. The Purchased Business (or any part thereof) does not, in any event, include such business described in the first sentence of this definition.

"Victor Buyer" means the Person(s) that acquired the Victor Business from Borrower.

"Victor Distribution, License and Non-Compete Agreement" means that certain Distribution, License and Non-Compete Agreement, by and between Borrower and the Victor Buyer, substantially in the form attached hereto as Exhibit G.

"WARN" means the Worker Adjustment and Retraining Notification Act of 1988 and similar laws of any applicable jurisdiction relating to any plant closing or mass layoff.

"Working Capital Objection" has the meaning given to such term in Section 4.10(b).

"Working Capital" means as of any date, the difference between (i) the aggregate amount of the net current assets of the Purchased Business described by the categories of such assets set forth on the Working Capital Schedule minus (ii) the aggregate amount of the current liabilities

of the Purchased Business described by the categories of such liabilities set forth on the Working Capital Schedule.

“Working Capital Schedule” means the Working Capital Schedule attached hereto as Exhibit H.

3. Interpretation.

In this Agreement, unless a clear contrary intention appears:

(a) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(b) reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(c) “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section, subsection or other provision hereof;

(d) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; and

(e) references to documents, instruments or agreements (including this Agreement) shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

4. Purchase and Sale.

4.1 Sale and Purchase of Subject Assets.

Subject to the terms and conditions set forth herein, in consideration of the Purchase Price, pursuant to Sections 9-610 through 9-619 and 9-623 through 9-628 of the UCC, the Loan Documents and other applicable law, Agent, on behalf of itself and the Lenders, shall sell, assign and transfer to Buyer, and Buyer shall purchase, acquire and take assignment of, free and clear of all Liens except for Permitted Liens, all of each Barjan Party’s right, title and interest in and to all of its assets except the REPA Assets, which are addressed in the Real Estate Purchase Agreement, and the Excluded Assets (collectively, the “Subject Assets”), including all of the Barjan Parties’ right, title and interest in and to:

(a) all of the Encumbered Assets, whereupon all Agent’s Liens thereon and all Liens junior and/or subordinated to Agent’s Liens will be discharged by operation of law,

which Encumbered Assets include the following (in each case other than the Excluded Assets):

(i) all inventory of any kind or nature, whether or not prepaid and wherever located, held or owned by Borrower, including raw materials, work-in-process, finished goods, inventory in transit, service parts and supplies (collectively, the "Inventory");

(ii) all accounts receivable, notes receivable and other receivables (whether current or non-current), including, without limitation, any amounts received with respect to such receivables by any Barjan Party or Agent after the Closing Date (collectively, the "Receivables");

(iii) all furniture, fixtures, machinery, parts, office supplies, spare parts, computer hardware and all other tangible personal property and equipment of any kind, wherever located (collectively, the "Equipment");

(iv) all of the Transferred Intellectual Property, together with all income, royalties, damages and payments arising therefrom due or payable on or after the Closing Date (including damages and payments for past, present or future infringements or misappropriations thereof), the right to sue and recover for past infringements or misappropriations thereof and any and all corresponding rights that, now or hereafter, may be secured throughout the world;

(v) to the extent permitted by applicable Law, whether or not evidenced in writing, electronic data, computer software or otherwise, all lists and other information, including all information relating to the Purchased Business Employees and Agents, all manuals, all electronic data processing materials, all referral sources, lists, records and other information pertaining to suppliers and customers and all drawings, reports, studies, plans, books, ledgers, files and financial, business and accounting records of every kind (including all financial, business and marketing plans), in each case other than to the extent exclusively related to Excluded Assets or Excluded Liabilities (collectively, the "Business Records");

(vi) all signs and advertising, catalogs, marketing and promotional materials, all other printed or written materials and all telephone numbers and domain names of the Barjan Parties (collectively, the "Marketing Materials");

(vii) to the extent transferable in accordance with applicable Law, all permits, licenses, franchise certifications, orders, authorizations, approvals and other similar rights from governmental and quasi-governmental bodies and agencies (collectively, the "Permits"), and all data and records held by such bodies and agencies with respect thereto;

(viii) all advances, cash deposits (security and otherwise), rebates, prepayments, prepaid expenses, prepaid Taxes, posted bonds, deposits and

allowances, including those set forth on Schedule 4.1(a)(viii) attached hereto (collectively, the "Deposits");

(ix) all claims, causes of action, choses in action, rights of recovery, refunds (including all rights to any Tax refunds), reimbursement claims, all claims and rights to proceeds under any insurance policies (whether known or unknown or contingent or non-contingent), all indemnity rights and all rights of set-off (excluding commercial tort claims of the Barjan Parties, if any), in each case which do not exclusively relate to Excluded Assets or Excluded Liabilities;

(x) all of Borrower's rights existing under all Contracts, including confidentiality agreements signed by Qualified Bidders as well as those Contracts set forth on Schedule 4.1(a)(x) attached hereto, except for Excluded Contracts and Contracts exclusively related to the Excluded Assets or the Excluded Liabilities (collectively, the "Acquired Contracts");

(xi) all rights in respect of computer and data processing software and hardware and telecommunications software and hardware, wherever located and whether or not proprietary to any Barjan Party;

(xii) the right to bill and receive payment for products shipped or delivered and services performed but unbilled or unpaid as of the Closing;

(xiii) all interest in and to any joint venture, partnership, limited liability company or similar Persons relating to the Purchased Business, the current list of which is set forth on Schedule 4.1(a)(xiii), together with such Barjan Party's right, title and interest in and to any joint venture, partnership or operating agreements relating thereto (which also shall be listed on Schedule 4.1(a)(xiii)), and all distributions and allocations to which the Barjan Parties are entitled to receive pursuant thereto;

(xiv) all goodwill as a going concern and all other intangible property related to the Purchased Business; and

(b) all of the assets set forth on Schedule 4.1(b), which Buyer shall take free and clear of Agent's Lien thereon and all Liens junior and/or subordinated thereto by operation of law, but which Buyer shall take subject to Permitted Liens and, to the extent set forth on Schedule 2(a) attached hereto, Liens, if any, that were senior to Agent's Lien under applicable law immediately prior to the Closing.

#### 4.2 Excluded Assets.

Notwithstanding any provision to the contrary set forth herein, Agent and the Lenders are not selling, and Buyer is not purchasing from Agent and the Lenders, the Barjan Parties' right, title and interest in and to any of the following assets (such assets being referred to hereinafter collectively as the "Excluded Assets"), and as such shall not constitute Subject Assets, whether or not related to the Purchased Business:



- (a) except as described in Section 4.1(a)(viii), all cash, cash equivalents, certificates of deposit, bankers' acceptances, government securities and other investment securities (including, without limitation, all petty cash, deposit accounts, demand accounts and lock boxes in financial institutions and money market investments);
- (b) all Victor Assets and all other assets relating to the Victor Business that are set forth on Schedule 4.2(b) attached hereto;
- (c) all membership interests of Barjan Holding in Borrower;
- (d) all membership interests of Borrower in Barjan Canada and all assets and rights of Barjan Canada, which assets and rights (but not the membership interests) shall be conveyed to Buyer under the REPA;
- (e) each Barjan Party's certificate of formation or equivalent constitutory documents and all qualifications to conduct business as a foreign corporation or organization, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, equity interest transfer books and blank equity interest certificates and other documents relating to the organization, maintenance and existence of each Barjan Party as a corporation, limited liability company or unlimited liability company;
- (f) the rights of the Barjan Parties, Agent and the Lenders under or pursuant to this Agreement, the Confidentiality Agreement, the other Transaction Documents and any other agreements executed in connection herewith or therewith (excluding Borrower's rights under the Victor Distribution, License and Non-Compete Agreement, which shall be conveyed to Buyer pursuant to the terms of this Agreement), and any transactions contemplated hereby or thereby;
- (g) the rights of the Barjan Parties, Agent, and the Lenders under or pursuant to all agreements relating to the sale of any or all of the Victor Assets and any transactions contemplated thereby (excluding Borrower's rights under the Victor Distribution, License and Non-Compete Agreement, which shall be conveyed to Buyer pursuant to the terms of this Agreement);
- (h) subject to Section 4.1(a)(ix), all Tax Returns of the Barjan Parties and their Affiliates;
- (i) the REPA Assets, it being understood that Buyer is acquiring such assets under the Real Estate Purchase Agreement;
- (j) the Leases and subleases relating to the Mechanicsburg Facility and the Des Plaines Facility and the related security deposits;
- (k) those Contracts set forth on Schedule 4.2(k) attached hereto (collectively, the "Excluded Contracts");

(l) all assets maintained pursuant to or in connection with the Borrower Employee Benefit Plans;

(m) all assignments of claims arising in tort, including, without limitation, all commercial tort claims (it being understood that to the extent not subject to Article 9, all such assets are included in the REPA Assets transferred to Buyer pursuant to the Real Estate Purchase Agreement);

(n) Internet domain names to the extent they cannot be subject to a security interest under Article 9 of the UCC (it being understood that to the extent not subject to Article 9, all such assets are included in the REPA Assets transferred to Buyer pursuant to the Real Estate Purchase Agreement);

(o) all assets and properties of any Barjan Party located outside the United States (it being understood that all such assets are included in the REPA Assets transferred to Buyer pursuant to the Real Estate Purchase Agreement);

(p) to the extent not otherwise referenced in this Section 4.2, all right, title and interest of the Barjan Parties in and to the assets identified in Section 9-109(d) of the UCC as not being subject to Article 9 of the UCC (it being understood that all such assets are included in the REPA Assets transferred to Buyer pursuant to the Real Estate Purchase Agreement); and

(q) the assets listed on Schedule 4.2(q) attached hereto.

On or before three (3) business days prior to the Closing Date, Buyer may elect, by giving written notice to Agent and Borrower, to exclude from the sale and purchase hereunder any assets otherwise included in the Subject Assets, and from and after the giving of any such notice the definition of "Excluded Assets" in this Section 4.2 and the Schedules referenced in this Section 4.2 shall each be amended to the extent necessary to include as Excluded Assets all of the assets Buyer so elects to exclude from the Subject Assets; provided that no such exclusions shall result in any reduction of the Purchase Price or any reduction in the Assumed Liabilities, except that Liabilities in connection with Contracts that were previously Acquired Contracts, but which have been so excluded from the Subject Assets in accordance with this paragraph, shall become Excluded Liabilities. For the avoidance of doubt, any exclusion from the sale and purchase hereunder of any assets at the election of Buyer pursuant to this Section 4.2 shall not cause a breach of Section 15 hereof or Section 4 of the Real Estate Purchase Agreement.

#### 4.3 Acknowledgements.

(a) It is the express intent of the parties hereto that the sale of the Subject Assets contemplated hereby be consummated as a private sale pursuant to Sections 9-610 through 9-619 and 9-623 through 9-628 of the UCC and all other applicable laws.

(b) Each Barjan Party hereby approves and consents to the terms of this Agreement and the sale of the Subject Assets to Buyer under the terms and conditions set forth herein. Each Barjan Party acknowledges and agrees that this Agreement, the other Transaction Documents and the transactions described herein and therein are

commercially reasonable and that, subject to the terms and conditions hereof and thereof, Buyer is taking all of each Barjan Party's right, title and interest in and to the Subject Assets pursuant to Section 9-617(a) of the UCC. Each Barjan Party hereby waives (i) any right to notice of the disposition of the Subject Assets required under Section 9-611 of the UCC or otherwise and (ii) any right to redeem any of the Subject Assets.

#### 4.4 Limited Assumption of Liabilities.

(a) Subject to the terms and conditions set forth in this Agreement, Buyer shall assume from Borrower and agree to pay, discharge and perform when due, and the Barjan Parties shall have no further obligation or responsibility for, only those Liabilities specifically set forth on Schedule 4.4 hereto and only to the extent described therein (collectively, the "Assumed Liabilities"). Notwithstanding anything set forth in this Agreement to the contrary, the Barjan Parties and Agent, on behalf of the Lenders, hereby acknowledge and agree that Buyer is not assuming any liabilities other than the Assumed Liabilities.

(b) Agent and the Lenders shall not assume, nor shall Agent and/or the Lenders be deemed to have assumed, any Liability or other obligation of Borrower whatsoever.

(c) If Buyer, in its sole and absolute discretion, elects to make any payment to, or any agreement to pay, any creditor of Borrower on or after the Closing Date (each, a "Creditor Payment"), Buyer shall use commercially reasonable efforts to give Borrower and Agent prompt written notice of the making of any such Creditor Payment or agreement to make such Creditor Payment (including the amount thereof), and the making of any such Creditor Payment or any agreement to pay such Creditor Payment shall not reduce the Purchase Price or constitute an assumption by Buyer of any other Liabilities of the Barjan Parties that are not otherwise Assumed Liabilities. Buyer shall have no right to payment or reimbursement from the Barjan Parties, Agent or the Lenders as a result of making or agreeing to make any Creditor Payment; provided that nothing in this sentence shall alter any liability of the Barjan Parties, Agent or the Lenders for any breach by such Person of a representation, warranty or covenant made herein.

#### 4.5 Liabilities Not Assumed.

Borrower shall retain, and Buyer shall not assume, be deemed to have assumed or become obligated in any manner with respect to any Liability of Borrower or any of its respective Affiliates of any nature whatsoever, whether express or implied, fixed or contingent, liquidated or unliquidated, known or unknown, due or to become due, except for the Assumed Liabilities (the "Excluded Liabilities"), including the following:

(a) except to the extent specifically included in the Assumed Liabilities, any and all Liabilities under any Acquired Contract arising or accruing prior to the Closing, including all Liabilities arising from the breach or default (or any act or omission which, with or without notice or lapse of time or both, would constitute a breach or default) by

Borrower or any of its Affiliates on or prior to the Closing of any term, covenant or provision of any of the Acquired Contracts;

(b) any and all Liabilities of Borrower or its Affiliates now existing or which may hereafter exist by reason of, or in connection with, any alleged negligence or willful misconduct on or prior to the Closing;

(c) any and all Liabilities of Borrower arising out of or relating to products and/or services of Borrower or any of its Affiliates to the extent provided, distributed, serviced and/or sold prior to the Closing (including any product liability and product warranty claims and any product certification claims or liabilities);

(d) any and all Liabilities of Borrower or its Affiliates (including, without limitation, fines, penalties and interest) now existing or which may hereafter exist by reason of any violation or alleged violation of Law by Borrower or any of its Affiliates (or by any employee, agent or independent contractor of any of the foregoing) relating to the ownership, use or operation of the Purchased Business or the Subject Assets, or to any event or circumstance occurring or existing, on or prior to the Closing;

(e) any and all Liabilities of Borrower incurred in connection with the assignment or transfer of any of the Acquired Contracts pursuant to this Agreement, including in connection with obtaining any necessary consents for such assignment or transfer; provided, however, that Buyer shall assume all Liabilities under the Acquired Contracts that accrue after the Closing Date;

(f) except to the extent specifically included in the Assumed Liabilities, any and all Liabilities for accounts payable, accrued expenses, other current liabilities or the deferred portion of the purchase price for any of the Subject Assets or the REPA Assets (excluding any Post-Closing Consideration payable by Buyer under this Agreement or the Purchase Price under the Real Estate Purchase Agreement (as such term is defined therein));

(g) any and all Liabilities for any environmental liabilities arising from the release of Hazardous Substances on, at or underlying any of the Real Property prior to the Closing, or any other environmental liabilities of Borrower except for Liabilities arising after the Closing with respect to the Real Property and Leased Real Property;

(h) except to the extent specifically included in the Assumed Liabilities, any and all Liabilities of Borrower or its Affiliates representing indebtedness for money borrowed, long-term debt or revolving credit loans;

(i) except to the extent specifically included in the Assumed Liabilities, any and all Liabilities (A) relating to or arising under or in connection with any "employee benefit plan" (as defined in Section 3(3) of ERISA) or any other benefit plan, program or arrangement of any kind at any time maintained, sponsored or contributed or required to be contributed to by Borrower or any ERISA Affiliate (including the Pfingsten Partners 401(k) Plan), or with respect to which Borrower or any ERISA Affiliate has any Liability

or potential Liability, or (B) pertaining to the employment or service with, or termination from employment or service with, Borrower or any ERISA Affiliate, of any Person;

(j) any and all Liabilities relating to or arising under any of (i) Barjan Holding's Retention Bonus Plan, dated as of May 14, 2004, (ii) Barjan Holding's Transaction Bonus Plan, dated as of May 14, 2005, (iii) the Retention Agreements between Barjan Holdings and any of Edward Carpenter, Jack Bigham or Mark Essig and (iv) any Incentive Award Agreement between Barjan Holding and any current or former employee or independent contractor of Borrower or any of its Affiliates;

(k) except as specifically included in the Assumed Liabilities, liabilities for utilities, rents, Real Property Taxes and other payments due in connection with the Barjan Real Property, in each case relating to periods prior to the Closing Date;

(l) Liabilities for Taxes, whether or not accrued, assessed or currently due and payable, (i) of the Barjan Parties whether or not related to the Purchased Business or (ii) relating to the operation or ownership of the Purchased Business or the Subject Assets or the REPA Assets, in each case for any Tax period (or portion thereof) ending on or prior to the Closing Date;

(m) Liabilities for any legal, accounting, investment banking, brokerage or similar fees or expenses incurred by Borrower, Agent or any of their Affiliates, including in connection with, resulting from or attributable to the transactions contemplated by this Agreement;

(n) Liabilities arising out of or relating to any grievance by current or former employees or agents of Borrower or any of its predecessors or Affiliates, whether or not the affected employees or agents are Hired Employees and Agents with respect to periods prior to the Closing Date;

(o) Liabilities of Borrower or any of its predecessors or Affiliates to any shareholder or Affiliate of any such Person;

(p) Liabilities to indemnify, reimburse or advance amounts to any officer, director, employee or agent of Borrower or any of its Affiliates, except for expense reimbursements owed to any Hired Employees or Agents to the extent arising in the ordinary course of business;

(q) any Liability to distribute, or otherwise apply all or any part of the consideration received hereunder to any shareholder, officer, director or employee of any of the Barjan Parties or to any other Person, except as otherwise expressly provided in Section 4.9 hereof;

(r) except as specifically included in the Assumed Liabilities, all Liabilities resulting from, caused by or arising out of, or which relate to, directly or indirectly, the conduct of any of the Barjan Parties or the ownership, lease or use of any of the Subject Assets or the REPA Assets or any properties or assets previously used by the Barjan Parties or any of their Affiliates, including any amounts due or which may become due or

owing under the Leased Real Property or the Acquired Contracts with respect to any period prior to the Closing;

(s) any or all Liabilities or obligations arising from an applicable abandoned property, escheat or similar law; and

(t) any or all Liabilities (i) arising from the Victor Assets, (ii) owed or owing to the Victor Buyer (except under the Victor Distribution, License and Non-Compete Agreement) or (iii) arising from the Victor Business as conducted any time prior to the date hereof.

The parties acknowledge and agree that disclosure of any Liability on any Schedule to this Agreement shall not create an Assumed Liability or other Liability of Buyer, except where such disclosed Liability has been expressly assumed by Buyer as an Assumed Liability in accordance with the provisions of Section 4.4 hereof.

#### 4.6 Limitation of Representations and Warranties of Agent.

This Agreement contains certain express representations, warranties, covenants, agreements and undertakings of Agent, on behalf and for the benefit of itself and the Lenders. Except to the extent Agent, on behalf of itself and the Lenders, has expressly and specifically made or given representations, warranties, covenants, agreements or other undertakings in this Agreement (as signified by "Agent shall," "Agent agrees," "Agent acknowledges," "Agent represents and warrants" or similar words), Agent and the Lenders specifically disclaim (and Buyer expressly agrees that none of Agent or the Lenders are making or giving) any representation, warranty, covenant, agreement or undertaking, express or implied, in connection with this Agreement, the Real Estate Purchase Agreement, the Subject Assets, the REPA Assets or any other matter relating hereto or thereto, including, without limitation, as to the following matters:

(a) non-infringement of any of the copyrights, trademarks, trade names, patents or other Intellectual Property which may be owned or licensed by Borrower;

(b) the quantity or quality on the Closing Date of any specific assets, rights or interests constituting Subject Assets or REPA Assets; or

(c) the condition, quality, suitability, value, merchantability or fitness for a particular purpose of any of the Subject Assets, the REPA Assets, the Purchased Business or any aspect of Borrower's financial condition, businesses, prospects or operations.

EXCEPT TO THE EXTENT AGENT, ON BEHALF OF ITSELF AND THE LENDERS, HAS EXPRESSLY AND SPECIFICALLY MADE OR GIVEN REPRESENTATIONS, WARRANTIES, COVENANTS, AGREEMENTS OR OTHER UNDERTAKINGS IN THIS AGREEMENT, BUYER AND THE BARJAN PARTIES EACH ACKNOWLEDGE AND AGREE THAT: (A) THE SALE OF THE SUBJECT ASSETS AND THE REPA ASSETS TO BUYER IS WITHOUT ANY REPRESENTATIONS, WARRANTIES, COVENANTS, AGREEMENTS OR UNDERTAKINGS BY AGENT OR THE LENDERS AS TO ITEMS, OWNERSHIP, TITLE, CONDITION, QUANTITY, QUALITY OR ANY OTHER MATTERS WHATSOEVER; (B) AGENT AND THE LENDERS ARE SELLING TO BUYER ALL

ACCOUNTS RECEIVABLE INCLUDED IN THE SUBJECT ASSETS WITHOUT RECOURSE TO AGENT OR ANY LENDER WITH RESPECT TO THE COLLECTABILITY OF ANY SUCH ACCOUNTS RECEIVABLE OR THE CREDITWORTHINESS OF ANY OBLIGOR WITH RESPECT TO ANY SUCH ACCOUNTS RECEIVABLE OR ANY OTHER ASPECT OF ANY SUCH ACCOUNTS RECEIVABLE OR THEIR VALUE; (C) AGENT AND THE LENDERS MAKE NO REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERTAKING AS TO THE VALUE, IF ANY, OF THE SUBJECT ASSETS BEING TRANSFERRED HEREBY OR THE REPA ASSETS BEING TRANSFERRED PURSUANT TO THE TERMS OF THE REAL ESTATE PURCHASE AGREEMENT; (D) AGENT AND THE LENDERS MAKE NO REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERTAKING CONCERNING THE POSSIBLE INFRINGEMENT OF ANY COPYRIGHTS, TRADEMARKS, TRADE NAMES PATENTS OR OTHER INTELLECTUAL PROPERTY ARISING OUT OF THE USE BY BUYER OF ANY OF THE SUBJECT ASSETS OR THE REPA ASSETS; (E) AGENT AND THE LENDERS MAKE NO REPRESENTATIONS, WARRANTIES, COVENANTS, AGREEMENTS OR UNDERTAKINGS THAT ALL OR ANY PORTION OF THE SUBJECT ASSETS OR THE REPA ASSETS ARE MERCHANTABLE (IN THE SENSE OF AN IMPLIED WARRANTY OF MERCHANTABILITY UNDER THE UCC OR OTHERWISE) OR FIT FOR A PARTICULAR PURPOSE; (F) AGENT AND THE LENDERS HAVE NOT MADE ANY REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERTAKING REGARDING THE STATUS OR ASSIGNABILITY OF ANY CONTRACTS, INTELLECTUAL PROPERTY OR OTHER INTANGIBLE PROPERTY AND (G) THE SOLE REPRESENTATIONS, WARRANTIES, COVENANTS, AGREEMENTS AND UNDERTAKINGS OF AGENT AND THE LENDERS REGARDING THE SUBJECT ASSETS AND THE REPA ASSETS ARE THOSE EXPRESSLY AND SPECIFICALLY MADE IN THIS AGREEMENT. EXCEPT IN THE CASE OF AGENT'S OR ANY LENDER'S FRAUD, AGENT AND THE LENDERS SHALL HAVE NO LIABILITY OR OBLIGATION WHATSOEVER TO BUYER OR ANY OTHER PERSON WITH RESPECT TO ANY REPRESENTATION, WARRANTY, COVENANT, AGREEMENT, UNDERTAKING, LIABILITY OR OBLIGATION OF ANY BARJAN PARTY OR ANY AFFILIATE OF ANY BARJAN PARTY UNDER THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR APPLICABLE LAW, INCLUDING ANY REPRESENTATION, WARRANTY OR COVENANT MADE OR GIVEN BY ANY BARJAN PARTY UNDER SECTION 15 OR ANY LIABILITY OR OBLIGATION WHATSOEVER FOR THE FAILURE TO OBTAIN ANY THIRD PARTY APPROVALS; PROVIDED, HOWEVER, THAT NOTHING HEREIN SHALL SUPERSEDE AGENT'S COVENANTS AND AGREEMENTS SET FORTH IN THIS AGREEMENT AND THE CONDITIONS SET FORTH IN SECTION 19.3 OR THE REPRESENTATIONS, WARRANTIES, COVENANTS, AGREEMENTS AND UNDERTAKINGS OF AGENT AND THE LENDERS IN SECTIONS 12.1 AND 14.

#### 4.7 Third Party Approvals.

Buyer acknowledges that it is aware that the assignment and transfer of certain of the Contracts, Intellectual Property or other intangible property used in or useful to Borrower in the operation of the Purchased Business as contemplated hereby may require third-party approvals and consents (the "Third-Party Approvals"). The Barjan Parties shall use commercially reasonable

efforts to obtain all Third-Party Approvals, and shall give all required third-party notices in connection with the matters contemplated by this Agreement; provided, however, that, other than with respect to any transfer or other fees, penalties or premiums in connection with the transfer and assignment of all Contracts under which any Barjan Party licenses Intellectual Property, such cooperation shall not include any requirement of any Barjan Party, Agent or any Lender to make any payment or offer or grant any accommodation (financial or otherwise) to any third party. Except as otherwise expressly provided in this Section 4.7, the Barjan Parties shall not have any liability whatsoever to Buyer arising out of or relating to the failure to obtain any Third-Party Approvals that may be required so long as such parties have not otherwise breached any of their representations and warranties in Section 15, as applicable; provided, however, that nothing stated herein shall supersede the conditions set forth in Section 19.6 or the obligations of Agent and Borrower under Section 12.1 or of the Barjan Parties under this Section 4.7. Buyer shall cooperate with the Barjan Parties in any reasonable manner in connection with their obtaining any Third-Party Approvals; provided, however, that such cooperation shall not include any requirement of Buyer to make any payment or offer or grant any accommodation (financial or otherwise) to any third party.

#### 4.8 Agent and Lender Consent to Borrower's Sale of REPA Assets.

Subject to the terms and conditions set forth in this Agreement, the Real Estate Purchase Agreement, the Reaffirmation Agreement and the other instruments, documents and agreements executed and/or delivered in connection herewith and therewith, Agent and the Lenders have (pursuant to their execution of the Reaffirmation Agreement) expressly consented to Buyer's purchase of the REPA Assets and agreed to release Agent's Lien on the REPA Assets; provided that such purchase of the REPA Assets is consummated concurrently with the Closing contemplated by this Agreement and the other Transaction Documents and the full Closing Purchase Price is received by Agent (except as otherwise provided in Section 4 of the Reaffirmation Agreement).

#### 4.9 Purchase Price and Payments.

(a) The parties hereto agree and understand that the Purchase Price is based, in part, on the Working Capital on the Closing Date being \$18,754,509 (the "Assumed Working Capital Value"). Not more than three (3) days prior to the Closing Date, Borrower and Buyer shall prepare a good faith joint estimate of (i) the Working Capital as of the close of the business on the day immediately preceding the Closing Date (the "Estimated Closing Date Working Capital Value") and (ii) the amount of the Purchase Price to be paid by Buyer to Agent at the Closing pursuant to Section 4.9(b), each in reasonable detail and prepared in good faith on a basis consistent with that employed by Borrower in preparation of the Latest Balance Sheet.

(b) In consideration for acquiring all of each Barjan Party's right, title and interest in and to the Subject Assets and the REPA Assets, subject to the terms and conditions hereof, Buyer shall assume the Assumed Liabilities and pay to Agent (for the benefit of itself and the Lenders) the Purchase Price in immediately available funds as and when due as provided below (it being understood that the Purchase Price includes the full purchase price payable by Buyer for the REPA Assets pursuant to the Real Estate



Purchase Agreement) (except as otherwise provided in Section 4 of the Reaffirmation Agreement):

(i) at the Closing, an amount in immediately available funds (the "Closing Purchase Price") equal to (A) \$19,100,000, (B) plus all Letter of Credit Draws, (C) minus the Purchase Price Hold-Back, (D) minus the amount, if any, by which the Assumed Working Capital Value exceeds the Estimated Closing Date Working Capital Value, (E) plus the amount, if any, by which the Estimated Closing Date Working Capital Value exceeds the Assumed Working Capital Value, (F) minus the amount contemplated in Section 9(b) and (G) minus the amount, if any, contemplated by Section 7.2(A) of the Real Estate Purchase Agreement; and

(ii) all Post-Closing Consideration, if any, as determined pursuant to Section 4.10.

It is understood that a portion of the Closing Purchase Price shall be paid as provided in Section 7(b).

(c) Notwithstanding any provision herein to the contrary, except as expressly set forth in Sections 4.9 and 4.10, the assumption of the Assumed Liabilities by Buyer hereunder shall neither constitute consideration paid by Buyer for the Subject Assets hereunder nor in any way reduce the Purchase Price to be paid to Agent hereunder.

(d) Subject to and upon the terms of this Agreement and the Post-Closing Escrow Agreement, at the Closing, Buyer shall pay into the Post-Closing Escrow Account maintained by the Post-Closing Escrow Agent the Purchase Price Hold-Back in immediately available funds to be held by the Post-Closing Escrow Agreement in order to secure Buyer's obligation, if any, to pay Agent the Post Closing Consideration as calculated pursuant to Section 4.10. The Post-Closing Escrow Fund shall be disbursed, from time to time, by the Post-Closing Escrow Agent in accordance with the Post-Closing Escrow Agreement and the terms of Section 4.10.

#### 4.10 Calculation of Post-Closing Consideration.

(a) Within twenty (20) days after the Closing Date, Buyer shall prepare and deliver to Agent and Borrower a written statement (the "Preliminary Closing Statement") setting forth Buyer's final determination of the Working Capital as of the close of business on the date immediately preceding the Closing Date (the "Preliminary Working Capital Determination"). The Preliminary Closing Statement shall be prepared by Buyer in good faith on a basis consistent with that employed by Borrower in preparation of the Working Capital Schedule. Buyer shall allow Agent, Borrower and their respective representatives reasonable access at all reasonable times after the Closing Date to copies of the non-privileged books, records and accounts of the Purchased Business necessary to review and determine the Working Capital and make available to Agent, Borrower and their respective representatives such non-privileged information as any such party reasonably requests in order to examine the accuracy of the Preliminary Closing Statement and the Preliminary Working Capital Determination.

(b) Within twenty (20) days after the date the Preliminary Closing Statement and the Preliminary Working Capital Determination are delivered by Buyer to Agent and Borrower (the "Review Period"), Agent shall complete its examination thereof and may deliver to Buyer a written report setting forth any proposed adjustments to any amounts set forth in the Preliminary Working Capital Determination, which report shall specify in reasonable detail the nature of any disagreement with Buyer's determination (the "Working Capital Objection"). In the event that Agent does not so object within such 20-day period, the Preliminary Closing Statement and Preliminary Working Capital Determination shall be final and binding as the "Final Closing Statement" and "Closing Date Working Capital Value," respectively, for purposes of this Agreement. In the event that Agent submits a Working Capital Objection, any component of the Preliminary Working Capital Determination not specifically disputed in the Working Capital Objection shall be deemed final and binding upon the parties for purposes of this Agreement, except to the extent, and only to the extent, that there are corollary ramifications on the calculation of items Agent does not dispute arising from items Agent does dispute, or Agent's rationale for the dispute, in the Working Capital Objection.

(c) If Agent disputes any items on the Preliminary Closing Statement or the Preliminary Working Capital Determination, Buyer and Agent shall use their reasonable efforts to resolve by written agreement (the "Agreed Adjustments") any differences with respect to the Preliminary Closing Statement and Preliminary Working Capital Determination and, in the event Agent and Buyer so resolve all such differences, the Preliminary Closing Statement and Preliminary Working Capital Determination, in each case as adjusted by the Agreed Adjustments, shall be final and binding as the "Final Closing Statement" and "Closing Date Working Capital Value," respectively, for purposes of this Agreement.

(d) If Buyer and Agent are unable to resolve all such disputes within ten (10) business days after Agent delivers the Working Capital Objection to Buyer pursuant to Section 4.10(b) (or such later date as Buyer and Agent shall agree in writing), then solely those matters identified in the Working Capital Objection that remain in dispute shall be finally and conclusively determined by Deloitte & Touche LLP or another independent accounting firm of recognized national standing selected by Buyer and Agent, which firm shall not be the regular accounting firm of Buyer, Monomoy, Borrower or Agent (the "Accounting Firm"). The parties shall instruct the Accounting Firm to make a final determination of the Working Capital existing as of the opening of business on the Closing Date promptly, but not later than fifteen (15) days after its acceptance of its appointment, based on the provisions set forth in this Agreement, and to render a written report solely as to those matters identified in the Working Capital Objection that remain in dispute, which report shall thereupon be conclusive and binding upon the parties. The Preliminary Closing Statement and Preliminary Working Capital Determination, in each case after giving effect to any Agreed Adjustments and to the resolution of disputed matters by the Accounting Firm, shall be final and binding as the "Final Closing Statement" and "Closing Date Working Capital Value," respectively, for purposes of this Agreement. The Accounting Firm shall allocate its costs and fees between Buyer and Agent in inverse proportion to the percentage of the contested amount awarded to each such Person. For example, if the Accounting Firm awards Agent 60

percent (60%) of the aggregate contested amount and Buyer 40 percent (40%) of the aggregate contested amount, Agent shall pay 40 percent (40%) of the Accounting Firm's fees and expenses and Buyer shall pay 60 percent (60%) of the Accounting Firm's fees and expenses. In acting hereunder, the Accounting Firm shall be entitled to the privileges and immunities of arbitrators.

(e) Within five (5) business days after the Closing Date Working Capital Value is finally determined pursuant to this Section 4.10:

(i) if the Closing Date Working Capital Value exceeds the Estimated Closing Date Working Capital Value, (A) Buyer shall pay to Agent by wire transfer in immediately available funds an amount equal to the lesser of (x) such difference and (y) \$250,000, and (B) Buyer and Agent shall jointly instruct the Post-Closing Escrow Agent to distribute the Post-Closing Escrow Fund to Agent; and

(ii) if the Estimated Closing Date Working Capital Value exceeds the Closing Date Working Capital Value, Buyer and Agent shall jointly instruct the Post-Closing Escrow Agent (A) to distribute an amount of the Post-Closing Escrow Fund equal to the amount of such excess to Buyer and (B) to distribute the balance, if any, of the Post-Closing Escrow Fund to Agent.

Any payments received by Agent pursuant to (i) or (ii) above are referred to as "Post-Closing Consideration."

(f) Buyer, Borrower, Agent and the Lenders each acknowledge and agree that in the absence of fraud, the Purchase Price adjustments calculated pursuant to this Section 4.10 cannot result in (i) an increase or decrease in the Closing Purchase Price at the Closing and (ii) Post-Closing Consideration in an amount greater than the sum of the Purchase Price Hold-Back plus any amount owing to Agent from Buyer under Section 4.10(e)(i)(A).

(g) Borrower shall fully cooperate with, and otherwise assist, Agent with all matters related to the determination and enforcement of the Estimated Closing Date Working Capital Value, the Closing Purchase Price, the Preliminary Working Capital Determination, the Closing Date Working Capital Value and all other adjustments to the Purchase Price made pursuant to this Section 4.10.

#### 4.11 Attachment of Agent Liens to Proceeds.

Except as otherwise provided in Section 4 of the Reaffirmation Agreement, the Closing Purchase Price and Post Closing Consideration, if any, shall be paid as and when due hereunder in immediately available funds to an account designated by Agent. Borrower acknowledges that all amounts payable by Buyer in consideration for the Subject Assets hereunder and for the Real Property pursuant to the Real Estate Purchase Agreement, constitute proceeds of Agent's and the Lenders' collateral, and Agent's Lien on the Subject Assets shall immediately attach to and be perfected in the proceeds of the sale of the Subject Assets. Borrower shall have no rights in, and no Lien of Agent or any Lender shall attach to, any portion of the Purchase Price Deposit Escrow

Fund until such time, if any, as the Purchase Price Deposit Escrow Fund is distributed to Agent pursuant to the Purchase Price Deposit Escrow Agreement and Sections 4.9 and 7(b) hereof.

5. Agent and the Lenders Assume No Liabilities.

Buyer and the Barjan Parties each agree that, to date, neither Agent nor any Lender has assumed any Liability with respect to any of the Subject Assets, the REPA Assets or the Excluded Assets, and Agent and the Lenders under no circumstances assume or shall assume any Liability with respect to any of such assets; provided, however, that nothing in this Section 5 shall in any way limit or otherwise modify any Liability of Agent or the Barjan Parties to Buyer arising from any breach of such Persons' respective representations and warranties under this Agreement or any other Transaction Documents.

6. Other Liens and Obligations Remain Outstanding.

All loans and other Liabilities of Barjan Holding under the Barjan Holding Loan Documents and, except to the extent of cash received from Buyer and actually and indefeasibly applied by Agent and the Lenders to the Loans and other Obligations, all Obligations of Borrower under the Loan Documents, shall remain outstanding, and neither Agent nor any Lender releases, but instead specifically reserves all security interests, liens and other encumbrances and rights related thereto in all other collateral described in the Loan Documents or the Barjan Holding Loan Documents, as the case may be, which are not included in the Subject Assets or REPA Assets being sold to Buyer pursuant to this Agreement, the Real Estate Purchase Agreement and the other Transaction Documents.

7. Purchase Price Deposit.

(a) No later than the first (1<sup>st</sup>) business day following the date of this Agreement, Buyer shall deposit with the Purchase Price Deposit Escrow Agent the Purchase Price Deposit Amount by wire transfer of immediately available funds to be held as the Purchase Price Deposit Escrow Fund in an account established pursuant to the Purchase Price Deposit Escrow Agreement, which amount shall be disbursed pursuant to this Section 7 and the Purchase Price Deposit Escrow Agreement.

(b) At the Closing, the Purchase Price Deposit Escrow Fund shall be applied toward the Closing Purchase Price payable by Buyer to Agent pursuant to Section 4.9 in accordance with joint written directions to the Purchase Price Deposit Escrow Agent provided by Buyer and Agent.

(c) If this Agreement is terminated by Agent pursuant to Section 22.1(e) or by Agent or any Barjan Party pursuant to Section 22.1(j), Agent may deliver to the Purchase Price Deposit Agent and Buyer a written notice which (i) states that Agent or Barjan Party, as applicable, has terminated this Agreement pursuant to Section 22.1(e) and/or (j), as applicable, (ii) states that Agent is entitled to the Purchase Price Deposit Escrow Fund and (iii) requests that the Purchase Price Deposit Escrow Agent disburse the Purchase Price Deposit Escrow Fund (minus any accrued interest or investment income thereon) to Agent in the manner indicated in such notice (any notice delivered by Agent pursuant to this Section 7(c) shall be accompanied by evidence which is reasonably satisfactory to

the Purchase Price Deposit Escrow Agent that a copy of such notice has been given to Buyer). If Buyer does not dispute such notice in writing to Agent, Borrower and the Purchase Price Deposit Escrow Agent within ten (10) days of Buyer's receipt of a copy of such notice, then the Purchase Price Deposit Escrow Agent shall release such amount to Agent and shall release the accrued interest and investment income to Buyer. However, if Buyer timely objects to such notice in writing as provided in the immediately preceding sentence, the Purchase Price Deposit Escrow Agent shall not disburse any amount until a final determination or settlement of the dispute. The sole recourse of Agent, the Lenders and the Barjan Parties with respect to breach of this Agreement or the Real Estate Purchase Agreement by Buyer shall be pursuant to Sections 22.1(e) and 22.1(j), Section 9.1 of the Real Estate Purchase Agreement and this Section 7(c), and none of Agent, any Lender nor the Barjan Parties shall be entitled to any recovery from Buyer except for a release of the Purchase Price Deposit Amount pursuant to this Section 7(c) with respect to a breach by Buyer of this Agreement and/or the Real Estate Purchase Agreement. For the avoidance of doubt, and without limiting any other provision herein, Agent shall be entitled to the Purchase Price Deposit Escrow Fund pursuant to this Section 7(c) if (i) the Closing has not occurred on or prior to the Deadline only because Buyer has not obtained the funds necessary to pay the Purchase Price and deliver the Buyer Letter of Credit (other than because of an action or omission by any Barjan Party or Agent in material breach of this Agreement or the Real Estate Purchase Agreement); (ii) all of the closing conditions in Section 19 other than Sections 19.1, 19.10, 19.11, 19.12 and 19.17 (except to the extent related to Section 8.1 or 8.2(a) of the Real Estate Purchase Agreement) have been satisfied or waived; and (iii) Agent and/or the Barjan Parties, as applicable, have executed and tendered for Buyer's signature each of the agreements that are the subject of the closing conditions in Sections 19.1, 19.10, 19.11, 19.12 and 19.17. If Agent is entitled to the Purchase Price Deposit Escrow Fund pursuant to the immediately preceding sentence, and the Closing has not occurred on or prior to the Deadline, Buyer shall not be entitled to any Expense Reimbursement or Topping Fee under Sections 12.1 and 12.2, respectively.

(d) If this Agreement is terminated for any reason other than as specified in Section 7(c) above, Buyer may deliver to the Purchase Price Deposit Agent and Agent a written notice which (i) states that this Agreement has been terminated other than by Agent pursuant to Section 22.1(e) or by Agent or any Barjan Party pursuant to Section 22.1(f), (ii) states that Buyer is entitled to the Purchase Price Deposit Escrow Fund and (iii) requests that the Purchase Price Deposit Escrow Agent disburse the Purchase Price Deposit Escrow Fund in its entirety (including any accrued interest or investment income thereon) to Buyer in the manner indicated in such notice (any notice delivered by Buyer pursuant to this Section 7(d) shall be accompanied by evidence which is reasonably satisfactory to the Purchase Price Deposit Escrow Agent that a copy of such notice has been given to Agent). If Agent does not dispute such notice in writing to Buyer and the Purchase Price Deposit Escrow Agent within ten (10) days after Agent's receipt of a copy of such notice, then the Purchase Price Deposit Escrow Agent shall release such amount to Buyer. However, if Agent timely objects to such notice in writing as provided in the immediately preceding sentence, the Purchase Price Deposit Escrow Agent shall not disburse any amount until a final determination or settlement of the dispute.

8. Closing Time and Place.

The transfer and delivery of all payments, documents and instruments necessary to consummate the transactions contemplated by this Agreement and the other Transaction Documents (the "Closing") shall be held at the offices of Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606 (or such other location as is mutually agreed upon by the parties). The date on which the Closing occurs is referred to herein as the "Closing Date." For the avoidance of doubt, the parties shall use commercially reasonable efforts to cause the Closing to occur on or before December 30, 2005; provided, however, that if the closing conditions set forth in Sections 19, 20 and 21 have not been satisfied on or before such date, the Closing shall occur as soon as reasonably possible thereafter but in no event sooner than the second business day after satisfaction of the closing conditions set forth in Sections 19, 20 and 21 (in each case, unless otherwise agreed by Agent, the Barjan Parties and Buyer). The closing of all transactions contemplated by the Real Estate Purchase Agreement, including, without limitation, Buyer's purchase of the REPA Assets and Agent's delivery to Buyer of the Reaffirmation Agreement, shall occur (subject to the conditions therein) concurrently with the Closing.

9. Taxes.

(a) Except as specifically included in the Assumed Liabilities, the Barjan Parties shall be liable for (i) all Taxes relating to the Purchased Business attributable to taxable years or periods ending on or prior to the Closing Date and, with respect to any Tax period that includes, but does not end on, the Closing Date (any such Period, a "Straddle Period"), all Taxes relating to the portion of such Straddle Period ending on and including the Closing Date and (ii) any other Taxes otherwise imposed on any Barjan Party. Buyer shall be liable for and pay (i) all Taxes applicable to the Purchased Business, the Subject Assets, the REPA Assets and the Assumed Liabilities that are attributable to taxable years or periods beginning after the Closing Date and (ii) with respect to any Straddle Period, all Taxes relating to the portion of such Straddle Period beginning after the Closing Date.

(b) Notwithstanding anything in Section 9(a) to the contrary, any sales Tax, use Tax, real property transfer or gains Tax, asset transfer Tax, documentary stamp Tax or similar Tax attributable to the sale or transfer of the Purchased Business, the Subject Assets or the Assumed Liabilities shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Agent. With respect to any Taxes that are referred to in this Section 9(b), the portion for which the Barjan Parties are responsible (the "Barjan Closing Taxes") shall be deducted from the Closing Purchase Price to be paid by Buyer to Agent pursuant to Section 4.9, Buyer shall use such funds to satisfy the Barjan Closing Taxes and neither Agent, the Lenders nor the Barjan Parties shall have any further responsibility or liability for such amounts. The Barjan Parties and Buyer each agree to, at no cost to the other party, timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns with respect to, such Taxes.

(c) After the Closing Date, each of the Barjan Parties and Buyer shall (and shall cause their respective Affiliates to): (i) provide reasonable assistance to the other

party in preparing any Tax Returns which include the Purchased Business and which such other party is responsible for preparing and filing; (ii) cooperate in preparing for any audits of, or disputes with taxing authorities regarding, any Tax Returns of the Purchased Business or the Subject Assets; (iii) make available to the other party and to any governmental entity as reasonably requested all information, records and documents in the possession of such party relating to Taxes of the Purchased Business or the Subject Assets for taxable periods for which the other party may have a liability under this Section 9; and (iv) furnish the other with copies of all correspondence received from any governmental entity in connection with any Tax audit or information request with respect to any such taxable period; provided that in each case the requesting party shall reimburse the other party only for such other party's reasonable, documented out-of-pocket expenses incurred in connection with complying with this Section 9(c).

10. [Intentionally Omitted]
11. [Intentionally Omitted]
12. Expense Reimbursement; Topping Fee.

12.1 Expense Reimbursement.

Agent shall be obligated to pay to Buyer the Expense Reimbursement if (a) the bankruptcy court denies the Barjan Parties' motion to approve Buyer as the "stalking horse" bidder, or approves any other Person (other than any Affiliate of Buyer) as the "stalking horse" bidder, with respect to a Section 363 Sale or (b) this Agreement is terminated either (i) by Buyer pursuant to Section 22.1(c), (d), (h) or (j); (ii) by any Barjan Party or Agent pursuant to Section 22.1(d); (iii) by Buyer, Agent or any Barjan Party pursuant to Section 22.1(f) if the conditions set forth in Section 19.6 have not been satisfied; or (iv) by any Barjan Party or by Agent for any reason other than pursuant to Sections 22.1(e), (g) or (j) and, with respect to clause (iv) only, an Alternative Transaction is consummated on or before nine (9) months from the effective date of the such termination. Upon becoming due, the Expense Reimbursement shall be payable by Agent to Buyer out of the first \$500,000 of collateral proceeds thereafter received by Agent (for the benefit of itself and the Lenders) prior to any application thereof to the claims of Agent and the Lenders against the Barjan Parties under the Barjan Credit Agreements and other Loan Documents and free and clear of Agent's Lien thereon, generated from the consummation of the Alternative Transaction or a disposition of any of the Subject Assets (including a liquidation thereof), other than proceeds received pursuant to the collection of receivables in the ordinary course of business; provided that, to the extent not previously paid, Agent shall pay the Expense Reimbursement to Buyer on and after May 1, 2006 out of any other amounts (other than payments of interest or principal on the revolver, payments of interest on the term loans or payments of fees and expenses under the Credit Agreement, in each case in the ordinary course of business) Agent receives for the benefit of itself and the Lenders for application to the claims of Agent and Lenders against the Barjan Parties under the Barjan Credit Agreements and other Loan Documents. The Barjan Parties expressly consent to the payment of the Expense Reimbursement by Agent to Buyer in accordance with this Section 12.1.

12.2 Topping Fee.

Agent shall be obligated to pay to Buyer the Topping Fee (in addition to any Expense Reimbursement provided in Section 12.1) if (a) any Barjan Party, Buyer or Agent terminates this Agreement pursuant to Section 22.1(d) and Borrower or Agent enters into a binding written agreement with respect to any Alternative Transaction; (b) Borrower or Agent terminates this Agreement (other than termination pursuant to Section 22.1(e), (g) or (j)) and an Alternative Transaction is consummated on or before nine (9) months from the effective date of such termination; (c) Buyer terminates this Agreement under Section 22.1(j) or (h) and an Alternative Transaction is consummated on or before nine (9) months from the effective date of such termination; or (d) the bankruptcy court denies the Barjan Parties' motion to approve Buyer as the "stalking horse" bidder, or approves any other Person (other than any Affiliate of Buyer) as the "stalking horse" bidder, with respect to a Section 363 Sale and an Alternative Transaction on financial terms that, in the aggregate, are no less favorable to the Barjan Parties and Agent than those set forth in Section d(ii)(B) of the Section 363 Term Sheet is consummated on or before nine (9) months from the entry of the bankruptcy court's order denying the motion to approve Buyer as the "stalking horse" bidder or approving any other Person (other than any Affiliate of Buyer) as the "stalking horse" bidder, as applicable, with respect to a Section 363 Sale. Upon becoming due, the Topping Fee shall be payable by Agent to Buyer out of the first \$400,000 of collateral proceeds thereafter received by Agent (for the benefit of itself and the Lenders) prior to any application thereof to the claims of Agent and the Lenders against the Barjan Parties under the Barjan Credit Agreements and other Loan Documents and free and clear of Agent's Lien thereon, generated from the consummation of the Alternative Transaction or a disposition of any of the Subject Assets (including a liquidation thereof), other than proceeds received pursuant to the collection of receivables in the ordinary course of business; provided that, to the extent not previously paid, Agent shall pay the Topping Fee to Buyer on and after May 1, 2006 out of any other amounts (other than payments of interest or principal on the revolver, payments of interest on the term loans or payments of fees and expenses under the Credit Agreement, in each case in the ordinary course of business) Agent receives for the benefit of itself and the Lenders for application to the claims of Agent and the Lenders against the Barjan Parties under the Barjan Credit Agreements and other Loan Documents. The Barjan Parties expressly consent to the payment of the Topping Fee by Agent to Buyer in accordance with this Section 12.2.

### 12.3 Intervening Bankruptcy.

In the event that prior to the Closing Date an Order for Relief has been entered in a case or proceeding under the Bankruptcy Code in which one or more of the Barjan Parties is a debtor, the Barjan Parties will use commercially reasonable efforts to file a motion pursuant to Section 363 of the Bankruptcy Code (the "Sale Motion") (and Agent shall support such Sale Motion and shall oppose any motion inconsistent with such Sale Motion) as soon as practicable, but in any event within fourteen (14) days after such Order for Relief seeking (a) authority to sell the Subject Assets and REPA Assets to Buyer, or to another Person making the highest or otherwise best offer for the Subject Assets, following a properly noticed auction (the "Section 363 Sale") and (b) approval of bidding procedures and overbid protections with respect to such Section 363 Sale, in each case as set forth in Exhibit I attached hereto (the "Section 363 Term Sheet"). The Sale Motion shall be on terms and conditions reasonably acceptable to Buyer. Subject to the satisfaction of the Barjan Parties' and Agent's obligations in this Section 12.3, Barjan Parties shall propose Buyer as, and Buyer agrees to be, the "stalking horse" bidder with respect to the Section 363 Sale under the terms of a mutually acceptable Asset Purchase Agreement, which



contains terms substantially similar to those set forth herein and in the Real Estate Purchase Agreement (including the Section 363 Term Sheet).

12.4 [Intentionally Omitted]

13. Representations, Warranties and Covenants of Buyer.

Buyer represents, warrants and covenants to Borrower, Agent and each Lender that, as of the date hereof and as of the Closing Date:

13.1 Organization and Power of Buyer.

Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has limited liability company power and authority (a) to purchase the Subject Assets under applicable law, (b) to purchase the REPA Assets under applicable law, (c) to assume the Assumed Liabilities under applicable law, (d) to execute and deliver this Agreement, the Real Estate Purchase Agreement and the other Transaction Documents and (e) to carry out and perform all of the actions required of it pursuant to the terms of this Agreement, the Real Estate Purchase Agreement and the other Transaction Documents.

13.2 Approval; Binding Effect.

Buyer has obtained all necessary limited liability company authorizations and approvals required for the execution and delivery of this Agreement, the Real Estate Purchase Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except to the extent that such enforcement is limited by principles of equity and laws relating to bankruptcy and creditors' rights. All limited liability company approvals of Buyer, if any, required to consummate the transactions provided for in this Agreement, the Real Estate Purchase Agreement and the other Transaction Documents will have been obtained prior to the Closing. Neither the execution and delivery of this Agreement, the Real Estate Purchase Agreement or the other Transaction Documents nor the consummation of the transactions contemplated hereby and thereby will result in a breach of, or constitute a default (or with notice or lapse of time or both result in a breach of or constitute a default) under, or otherwise give any person or entity the right to terminate, any material license, contract or other agreement or instrument to which Buyer is a party. Neither the execution and delivery by Buyer of this Agreement, the Real Estate Purchase Agreement or the other Transaction Documents nor the consummation of the transactions contemplated hereby and thereby will (a) violate or conflict with any provision of the articles of incorporation, by-laws, operating agreement or any other organizational documents of Buyer, (b) violate or conflict with any provision of any law, rule, regulation, order, permit, certificate, writ, judgment, injunction, decree, determination, award or other decision of any court, government, governmental agency or instrumentality, domestic or foreign, or arbitration by which Buyer is bound or affected or (c) result in a breach or violation of any license, contract or other agreement or instrument to which Buyer is party. The execution and delivery of this Agreement, the Real Estate Purchase Agreement and the other Transaction Documents, and the consummation of the transactions contemplated hereby and

thereby, are within the authority of the individual who shall execute this Agreement on behalf of Buyer.

### 13.3 Brokers.

Except as set forth on Schedule 13.3 attached hereto, there are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Buyer. Buyer acknowledges and agrees that it shall be solely liable for all such brokerage commissions, finders' fees and similar compensation set forth on Schedule 13.3, and none of Borrower, Agent or any Lender shall have any responsibility whatsoever with respect to such fees and compensation.

### 13.4 Litigation.

There are no actions, suits, proceedings, Orders or investigations pending or, to the knowledge of Buyer, threatened against Buyer at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which would adversely affect Buyer's performance under this Agreement, the Real Estate Purchase Agreement or any other Transaction Documents or the consummation of the transactions contemplated hereby or thereby.

### 13.5 Assumption of Liabilities.

At the Closing, Buyer shall assume, satisfy, and pay all of the Assumed Liabilities; provided that Buyer's obligation with respect to any Assumed Liability shall be no greater than Borrower's obligation with respect thereto had the Assumed Obligation not been assumed by Buyer.

### 13.6 Delivery of Financing Commitment Letter.

Buyer has delivered to Agent and Borrower copies of commitment letters or similar agreements with respect to any debt financing (the "Debt Financing") and equity contribution required to consummate the transactions contemplated by this Agreement and the other Transaction Documents.

### 13.7 Good Faith.

Buyer is acting in good faith (as such term is defined in Section 9-102(a)(43) of the UCC) in connection with this Agreement, the Real Estate Purchase Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby.

### 13.8 Confidentiality of Employee Records.

To the extent any employee records are conveyed as a part of the Subject Assets, Buyer agrees to maintain and preserve those documents as confidential to the extent required by any applicable federal, state or local law or regulation.

### 13.9 WARN.

With respect to the Purchased Business Employees and Agents, Buyer will have full responsibility under WARN and any other similar Law of any jurisdiction relating to any plant closing or mass layoff caused by Buyer on or after the Closing Date. For purposes of this Section 13.9, a plant closing or mass layoff will be deemed to have been caused by Buyer on or after the Closing Date if such plant closing or mass layoff would not have occurred but for (a) Buyer's failure to make offers of employment to a sufficient number of Purchased Business Employees and Agents in accordance with Section 23.1 to avoid liability under WARN, (b) Buyer's failure to employ a sufficient number of the Purchased Business Employees and Agents on the Closing Date in accordance with Section 23.1 to avoid liability under WARN and/or (c) Buyer's failure to employ a sufficient number of the Purchased Business Employees and Agents thereafter to avoid liability under WARN.

13.10 Letters of Credit. As soon as practicable following the Closing, Buyer shall cause all of the Letters of Credit to be fully released and/or terminated and the originals of which returned to Agent and marked as "Cancelled." As security for the foregoing obligation, at the Closing, Buyer shall issue a stand-by letter of credit in favor of Agent (for the benefit of itself and the Lenders) in an amount equal to the aggregate undrawn face amounts of all Letters of Credit (the "Buyer Letter of Credit"). Agent shall have the right to draw on the Buyer Letter of Credit immediately upon, and in the amount of, any draw on a Letter of Credit by the beneficiary thereof. Buyer acknowledges and agrees that a draw on a Letter of Credit shall be the only condition to Agent's right to draw on the Buyer Letter of Credit in the amount of such draw on the Letter of Credit. Upon the release and/or termination of any Letter of Credit and return thereof to Agent marked as "Cancelled," Agent agrees that the face amount of the Buyer Letter of Credit shall be reduced by the face amount of such released and/or terminated Letter of Credit. Upon the release and/or termination of all Letters of Credit and the return of same to Agent marked as "Cancelled," Agent shall fully release and/or terminate the Buyer Letter of Credit and return the original of same to Buyer marked as "Cancelled."

### 13.11 Pre-Closing Actions.

Buyer shall use its commercially reasonable efforts to take or cause to be taken the actions and do or cause to be done the things necessary, proper and advisable to fulfill or obtain the fulfillment of the conditions set forth in Sections 20 and 21 of this Agreement which are under the control or influence of Buyer.

## 14. Representations, Warranties and Covenants of Agent.

Agent, on behalf of itself and the Lenders, represents, warrants and covenants to Buyer that, as of the date hereof and as of the Closing Date:

### 14.1 Organization of Agent.

Agent is a corporation, duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Agent has power and authority on behalf of itself and the Lenders (a) to convey Borrower's right, title and interest in and to the Subject Assets under applicable law in accordance with the terms of this Agreement, (b) to execute and deliver this Agreement and the

other Transaction Documents to which it is a party and (c) to carry out all of the actions required of it pursuant to the terms of this Agreement and the other Transaction Documents to which it is a party.

#### 14.2 Approval; Binding Effect.

Agent has obtained all necessary authorizations and approvals required for the execution and delivery of this Agreement and the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Agent and constitutes the legal, valid and binding obligation of Agent and the Lenders, enforceable against Agent and the Lenders in accordance with its terms, except to the extent that such enforcement is limited by principles of equity and laws relating to Agent's or any Lender's bankruptcy and creditors' rights against Agent or any Lender with respect to Agent's or any Lender's bankruptcy. All approvals of Agent, if any, required to consummate the transactions provided for in this Agreement and the other Transaction Documents to which it is a party will have been obtained prior to the Closing. Agent has the absolute and unrestricted right, power, authority and capacity to sell, on behalf of the Lenders, the Barjan Parties' right, title and interest in and to the Subject Assets and to enter into this Agreement and the other Transaction Documents to which it is a party. Neither the execution and delivery by Agent of this Agreement or the other Transaction Documents to which it is a party nor the consummation of the transactions contemplated hereby or thereby will (a) violate or conflict with any provision of the articles of incorporation, by-laws, operating agreement or any other organizational documents of Agent or (b) violate or conflict with any provision of any law, rule, regulation, order, permit, certificate, writ, judgment, injunction, decree, determination, award or other decision of any court, government, governmental agency or instrumentality, domestic or foreign, or arbitration by which Agent is bound or affected. The execution of this Agreement and the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby are within the authority of the individual who shall execute this Agreement on behalf of Agent.

#### 14.3 Security Interest; Approvals.

Agent, for the benefit of itself and the Lenders, has a valid, first priority, properly perfected and enforceable Lien on all of the Subject Assets described in Section 4.1(a) and the corresponding schedules referenced therein.

#### 14.4 No Transfer of Interest.

Agent has not heretofore sold, assigned, transferred or subordinated (other than with respect to certain of the Permitted Liens pursuant to applicable law) any of its Liens in the Subject Assets being purchased hereunder.

#### 14.5 Valid Obligations.

All of the Obligations of the Barjan Parties to Agent and the Lenders under the Barjan Credit Agreements and other Loan Documents are valid, binding and enforceable, and the Barjan Parties are in default of such Obligations in a manner that vests in Agent and the Lenders the right to convey, subject to the terms and conditions of this Agreement and the other Transaction

Documents, all of each Barjan Party's right, title and interest in and to the Subject Assets to Buyer pursuant to Section 9-617(a) of the UCC. As of December 5, 2005, the aggregate amount of the outstanding Barjan Obligations under the Credit Agreement was greater than \$28,151,955.13, and the aggregate amount of the outstanding Barjan Holding Obligations under the Barjan Holding Credit Agreement was greater than \$26,805,123.40.

14.6 Brokers.

Agent has not retained, utilized or been represented by any broker or finder in connection with the transactions contemplated by this Agreement.

14.7 Accounts Receivable.

All payments of Receivables included in the Subject Assets received by Agent after the Closing, if any, shall be delivered to Buyer.

14.8 Good Faith.

Agent, on behalf of itself and the Lenders, is acting in good faith (as such term is defined in Section 9-102(a)(43) of the UCC) in connection with this Agreement and the transactions contemplated hereby.

14.9 Deficiency Claim.

At the Closing, the aggregate amount of the Barjan Obligations which are secured by first priority, valid, properly perfected and enforceable Liens on the Encumbered Assets shall exceed the aggregate gross proceeds resulting from the sale of the Subject Assets and the REPA Assets by an amount greater than the amount set forth on Schedule 14.9.

14.10 Liens.

Agent, on behalf of itself and the Lenders, hereby agrees and acknowledges that after the consummation of the transactions contemplated by this Agreement, the Real Estate Purchase Agreement and the other Transaction Documents and expressly subject to the terms and conditions set forth in the Reaffirmation Agreement (which conditions shall include the receipt by Agent of the Closing Purchase Price in immediately available funds at Closing), neither Agent nor any Lender shall hold any Lien in or to any of the Subject Assets or REPA Assets being transferred to Buyer pursuant hereto or thereto and shall take all reasonable steps and sign all documents necessary or appropriate to release or otherwise extinguish such Liens.

14.11 Compliance With the UCC.

The sale by Agent (on behalf of the Lenders) of each Barjan Party's right, title and interest in and to the Subject Assets contemplated hereby shall be conducted and consummated by Agent as a private sale pursuant to and in strict accordance with Sections 9-610 through 9-619 and 9-623 through 9-628 of the UCC and all other applicable Laws. To the extent not waived by such parties in writing to the satisfaction of Agent and Buyer, Agent, on behalf of the Lenders, shall, not less than ten (10) days prior to the Closing Date, send notices with respect to the sale

pursuant to Article 9 of the UCC contemplated hereby to (a) any secondary obligor (as defined in the UCC), (b) any person from whom Agent has received before the notification date (as defined in Section 9-611(a) of the UCC) an authentication notification of a claim of an interest in Subject Assets and (c) any secured party or lienholder pursuant to Sections 9-611(c)(3)(B) (by compliance with Sections 9-611(e)) and 9-611(c)(3)(C) of the UCC.

14.12 Assignment of Proceeds.

Concurrently with the execution of this Agreement, each Lender (including Heller Financial, Inc. in its capacity as a Lender) shall agree, severally according to its Pro Rata Share (as defined in the Credit Agreement), but not jointly, to (a) assign to Buyer pursuant to an assignment agreement substantially in the form attached hereto as Exhibit J (each, a “Proceeds Assignment Agreement”), its rights in and claims to any proceeds it actually receives from the Barjan Parties’ estates solely and directly as a result of payments made by Buyer to the Barjan Parties’ estates pursuant to a Final Order against Buyer in connection with any legal challenge to the transactions consummated pursuant to this Agreement and the other Transaction Documents (i) under chapter 5 of the Bankruptcy Code or its statutory equivalent in another jurisdiction or (ii) under any fraudulent conveyance or similar Law; (b) assign to Buyer its rights to enforce any claims under clause (a) above; and (c) not to consent to the use of any of its cash collateral for the investigation, prosecution or analysis of or inquiry into any of the Transaction Documents or the transactions effectuated thereby or hereby. Buyer may assign such Proceeds Assignment Agreement in connection with a collateral assignment pursuant to a loan agreement. Any lender taking possession of such Proceeds Assignment Agreement pursuant to a collateral assignment may assign such Proceeds Assignment Agreement.

14.13 Letters of Credit. Schedule 14.13 attached hereto sets forth (a) each Letter of Credit that supports obligations of the Purchased Business, (b) the beneficiary of each Letter of Credit and (c) the face amount of each Letter of Credit.

14.14 Agent Commercially Reasonable Efforts.

Agent shall use its commercially reasonable efforts to take or cause to be taken all actions and do or cause to be done all things necessary, proper or advisable (including, but not limited to, voting all securities under Agent’s control in favor of the transactions) to consummate the transactions contemplated by this Agreement and to fulfill or obtain the fulfillment of the conditions set forth in Sections 12.3, 19 and 21 of this Agreement which are under the control or influence of Agent; provided, however, that nothing in this Section 14.14 shall obligate Agent or any Lender to convert any shares of Series B Non-Voting Preferred Stock of Barjan Holding into shares of Series B Voting Preferred Stock of Barjan Holding.

14.15 Agent and Lender Consent Pursuant to Reaffirmation Agreement.

Except with respect to the obligations of each Lender under Sections 14.12 and 26.8(c) hereof and under any Proceeds Assignment Agreement, upon the execution and delivery of the Reaffirmation Agreement by at least Requisite Lenders under, and as defined in, the Credit Agreement, Agent has all right, power and authority necessary under the Credit Agreement and any other agreements among such parties related thereto to consent to this Agreement and the

transactions contemplated hereby and to enter into and consummate this Agreement and to release Agent's Lien on all of the REPA Assets (it being understood that Agent's Lien all of the Subject Assets shall be discharged by operation of Law pursuant to the UCC), and such authorization and consent, and the release of Agent's Lien contained therein, shall be valid, binding and in full force and effect upon the Closing.

15. Representations, Warranties and Covenants of the Barjan Parties.

Each of the Barjan Parties represents, warrants and covenants to Buyer and Agent, jointly and severally, that as of the date hereof and as of the Closing Date:

15.1 UCC Notice and Sale.

Notice to the Barjan Parties for the disposition of the Subject Assets required under Sections 9-611 of the UCC, other applicable Law or otherwise has, by the Barjan Parties' execution of this Agreement, been acknowledged and waived in accordance with Section 9-624(a) of the UCC, and the Barjan Parties' consent to Agent's and the Lenders' conveyance of the Barjan Parties' right, title and interest in and to the Subject Assets to Buyer pursuant to Section 9-617(a) of the UCC and on the terms and conditions set forth herein. Each Barjan Party further covenants and agrees to surrender possession of the Subject Assets to Buyer at the Closing under the terms and conditions of this Agreement and the other Transaction Documents.

15.2 Organization and Corporate Power.

Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Barjan Holding is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Schedule 15.2 attached hereto sets forth all jurisdictions in which each Barjan Party, primarily with respect to the Purchased Business or the Subject Assets, is qualified to do business as a foreign corporation or organization. Except as set forth on Schedule 15.2, such jurisdictions are the only ones in which the ownership or leasing of the Subject Assets or the conduct of the Purchased Business requires such qualification.

15.3 Subsidiaries and Affiliates.

Except as set forth in Schedule 15.3 attached hereto, in connection with its operation of the Purchased Business, no Barjan Party owns, directly or indirectly, any stock, partnership interest, member interest, joint venture interest or other similar interest in any other Person.

15.4 Authorization; No Breach.

(a) The execution, delivery and performance of this Agreement and the other Transaction Documents to which any Barjan Party is a party, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all requisite limited liability company, corporate or unlimited liability company, as the case may be, action on the part of such Barjan Parties that are party to such Transaction Documents, and, subject to the notice referenced below in this subsection (a), no other such proceedings on the part of any such Barjan Party are necessary to authorize the

execution, delivery and performance of this Agreement and the other Transaction Documents to which such Barjan Party is a party. This Agreement constitutes, and the other Transaction Documents, when duly executed and delivered, shall constitute, valid and binding obligations of the Barjan Parties that are party thereto, enforceable in accordance with their respective terms, except to the extent enforceability is limited by applicable bankruptcy, insolvency or similar Laws affecting creditors' rights and remedies or by equitable principles. Upon the Closing, Barjan Holding shall give notice to its common stockholders who did not consent in writing to this Agreement and the transactions contemplated hereby and thereby pursuant to Section 228 of the General Corporation Law of the State of Delaware.

(b) Except as set forth on Schedule 15.4(b) attached hereto, the execution, delivery and performance of this Agreement and the other Transaction Documents by Borrower and the consummation of the transactions contemplated hereby and thereby do not and shall not (with or without the giving of notice, the passage of time, or both): (i) conflict with or result in any breach of any of the terms, conditions or provisions of, (ii) constitute a default or event of default under, (iii) result in a violation of, (iv) give any third party the right to terminate, modify or accelerate any obligation under, (v) result in the creation of any new Lien upon any of the Subject Assets pursuant to or (vi) require any authorization, consent, permit, license, accreditation, approval, exemption or other action by or notice to, declaration to or filing with any third party, court or other governmental body under the provisions of (A) any Barjan Party's certificate of formation, certificate of incorporation or similar formation documents or such Barjan Party's by-laws, limited liability company agreement or similar documents, (B) any indenture, mortgage or other material Contract to which any Barjan Party is bound or which affects the Purchased Business or the Subject Assets or (C) any Law, Order or Permit to which the Purchased Business or the Subject Assets are subject.

#### 15.5 Financial Statements.

Schedule 15.5 attached hereto sets forth (a) the audited consolidated balance sheet of Borrower as of December 31, 2003 and 2004 and the related statements of operations and cash flows for the twelve-month periods then ended (the "Audited Financial Statements") and (b) the unaudited consolidated statement of assets and liabilities ("Latest Balance Sheet") of Borrower related to the Purchased Business as of October 31, 2005 (the "Balance Sheet Date") and the related statements of income for the ten-month period then ended (collectively, the "Latest Financial Statements," and together with the Audited Financial Statements, the "Barjan Financial Statements"). The Audited Financial Statements fairly present the financial condition and results of operations of Borrower and Barjan Canada and, except to the extent disclosed on Schedule 15.5 attached hereto, the Latest Financial Statements fairly present the financial condition and results of operations of Borrower and Barjan Canada with respect to the Purchased Business, each as of the time and for the period referred to therein and the Barjan Financial Statements have been prepared in accordance with GAAP consistently applied throughout the periods indicated, except, with respect to the Latest Financial Statements, for the absence of footnotes and recurring year-end adjustments which footnotes and adjustments would not be, individually or in the aggregate, material to the financial condition or results of operations of the Purchased Business.



15.6 Undisclosed Liabilities.

Borrower has no Liabilities with respect to the Purchased Business, except for (a) Liabilities set forth on the Latest Balance Sheet, (b) Liabilities incurred by Borrower in the ordinary course of the Purchased Business since the Balance Sheet Date (none of which are Liabilities resulting from a breach of Contract, breach of warranty or product liability claim or lawsuit or environmental claim), (c) Liabilities set forth on Schedule 15.6 attached hereto, (d) Liabilities arising from any Contract referenced on Schedule 15.11(a) attached hereto or arising from any Contract not required to be set forth thereon (but not Liabilities for breaches thereof), (e) Excluded Liabilities and (f) other Liabilities that are not, in the aggregate, material to the Purchased Business.

15.7 Absence of Certain Developments.

Except as set forth on Schedule 15.7 attached hereto or as otherwise expressly contemplated herein, since the Balance Sheet Date, there has been no Material Adverse Effect, the Barjan Parties have conducted the Purchased Business only in the ordinary course of business and no Barjan Party has, with respect to the Purchased Business, the REPA Assets or the Subject Assets:

(a) sold, leased (as lessor), assigned, transferred or otherwise disposed of (including any transfers by a Barjan Party to any of its stockholders or holders of other ownership interests or Affiliates), mortgaged, pledged or imposed or suffered to be imposed any Lien on any of its material tangible assets, except with respect to Inventory sold, assigned or transferred in the ordinary course of the Purchased Business, or canceled without fair consideration any material debt or claim owing to or held by it (including the settlement of any claims or litigation);

(b) sold, assigned, licensed, transferred or encumbered any Intellectual Property or other material intangible assets;

(c) with respect to Purchased Business Employees and Agents, other than in the ordinary course of the Purchased Business, committed to, made or granted any bonus or any wage, commission or salary increase, made or granted any increase in the benefits provided under any employee benefit plan or arrangement, amended or terminated any existing employee benefit plan or arrangement or adopted any new employee benefit plan or arrangement;

(d) created, incurred or assumed, or agreed to create, incur or assume, any indebtedness for borrowed money or entered into, as lessee, any capitalized lease obligations (as defined in Statement of Financial Accounting Standards No. 13);

(e) prepared or filed any Tax Return materially inconsistent with past practice or, on any such Tax Return, taken any position, made any election, or adopted any method that is materially inconsistent with positions taken, elections made or methods used in preparing or filing similar Tax Returns in prior periods;

(f) made any capital expenditures or commitments therefor in excess of \$75,000 in the aggregate or which are not in the ordinary course of the Purchased Business;

(g) waived any rights of material value, whether or not in the ordinary course of the Purchased Business;

(h) suffered any damage, destruction or casualty loss to its assets in excess of \$75,000, whether or not covered by insurance;

(i) entered into, made or permitted any material amendment or termination of any Acquired Contract, or any other Contract that would have been an Acquired Contract but for such amendment or termination;

(j) entered into any other material transaction, other than in the ordinary course of the Purchased Business consistent with past practice;

(k) made any loans or advances to, or guarantees for the benefit of, any Person; or

(l) amended or modified its certificate of incorporation or formation, bylaws, limited liability company agreement or any other constitutive documents.

#### 15.8 Real Property.

(a) The Real Property is the only real property owned by the Barjan Parties and Borrower does not hold any option to acquire any real property for use primarily in the Purchased Business. Except as set forth on Schedule 15.8(a) attached hereto, Borrower owns good and marketable fee simple title, free and clear of all Liens other than Agent's Lien and the Permitted Liens, to the Real Property. Except as set forth on Schedule 15.8(a), Borrower has not leased or otherwise granted to any Person the right to use or occupy such Real Property or any portion thereof and there are no outstanding options, rights of first offer or rights of first refusal to purchase such Real Property or any portion thereof or interest therein.

(b) Schedule 15.8(b) sets forth the address of each parcel of real property or other interest in real property leased, subleased, or licensed to the Barjan Parties or in which any Barjan Party is otherwise granted a right to use or occupy to be acquired by Buyer from the Barjan Parties under the terms of the Real Estate Purchase Agreement or this Agreement, as applicable (the "Leased Real Property," and together with the Real Property, the "Barjan Real Property"), and a true and complete list of all leases, including all amendments, extensions, renewals, guaranties and other agreements with respect thereto, (each a "Lease" and collectively the "Leases") for the Leased Real Property (including the date and name of the parties to such Lease). The Barjan Parties have delivered to Buyer and Agent a true and complete copy of each such Lease (and the related documents listed hereinabove), and in the case of any oral Lease, a written summary of the material terms of such Lease. Except as set forth on Schedule 15.8(b), with respect to each of the Leases: (i) such Lease is legal, valid, binding, enforceable

against the Barjan Parties that are party thereto and, to the Barjan Parties' Knowledge, each other party thereto and in full force and effect; (ii) the Barjan Parties' possession and quiet enjoyment of the Leased Real Property under such Lease has not been disturbed and, to the Knowledge of the Barjan Parties, there are no disputes with respect to such Lease, no breach or default exists under any lease and no event has occurred which, upon giving of notice or lapse of time or both, could reasonably be expected to constitute such a breach or default; (iii) no security deposit or portion thereof deposited with respect to such Lease has been applied in respect of a breach or default under such Lease which has not been redeposited in full; (iv) no Barjan Party owes or will in the future owe any brokerage commissions or finder's fees with respect to such Lease; (v) no Barjan Party has subleased, licensed or otherwise granted any Person the right to use or occupy such Leased Real Property or any portion thereof; (vi) no Barjan Party has collaterally assigned or granted any Lien (other than Agent's Lien) in such Lease or any interest therein; and (vii) there are no Liens on the estate or interest created by such Lease.

(c) To the Knowledge of the Barjan Parties, no Barjan Party has received from any governmental authority written notice of any violation by any Barjan Party of any zoning building, fire or health code or other statute, ordinance, rule or regulation applicable to the Barjan Real Property and there is no action, proceeding or investigation pending against any Barjan Party or the Barjan Real Property before any court or governmental department, commission, board, agency or instrumentality with respect thereto.

(d) There is no condemnation, expropriation or other proceeding in eminent domain pending or, to the Barjan Parties' Knowledge, threatened, affecting the Real Property or any portion thereof or interest therein. There is no injunction, decree, order, writ or judgment outstanding, nor any claims, litigation, administrative actions or similar proceedings pending against any of the Barjan Parties or, to the Barjan Parties' Knowledge, pending against any other Person or threatened, relating to the ownership, lease, use or occupancy of the Leased Real Property or any portion thereof, or the operation of the Purchased Business thereon.

#### 15.9 Subject Assets; Title; Sufficiency of Assets.

(a) The Barjan Parties own good and marketable title to, or a valid leasehold interest in, all of the tangible Subject Assets, free and clear of all Liens, except for (i) Agent's Lien; (ii) the Liens described on Schedule 15.9(a) attached hereto and (iii) Permitted Liens. As of the date hereof, the obligations secured by the Liens set forth on Schedule 19.18 do not exceed the respective amounts set forth on Schedule 19.18.

(b) Except as set forth on Schedule 15.9(b) attached hereto, the Subject Assets and REPA Assets (together with any assets leased under material Contracts set forth on Schedule 15.11(a)) constitute all the tangible assets and properties necessary for the operation of the Purchased Business as presently conducted and consistent with past practices. Except as set forth on Schedule 15.9(b), the Subject Assets are in operating condition and repair (subject to normal wear and tear) and include all of the tangible

assets sufficient to operate the Purchased Business as operated by the Barjan Parties as of the date of this Agreement and consistent with past practices.

(c) A complete list of all Victor Assets sold to the Victor Buyer is set forth on Schedule 15.9(c). Except as set forth on Schedule 15.9(c), as of the Balance Sheet Date, the Barjan Parties used the Victor Assets sold to the Victor Buyer exclusively in the Victor Business.

15.10 Tax Matters.

Except as set forth on Schedule 15.10 attached hereto:

(a) Barjan Holding has timely filed all material Tax Returns that it was required to file and paid all Taxes shown which have become due pursuant to such Tax Returns or pursuant to any assessment which has become payable;

(b) Borrower has timely filed all material Tax Returns that it was required to file relating to any taxable year or period ending after December 31, 2001, and paid all Taxes shown which have become due pursuant to such Tax Returns or pursuant to any assessment which has become payable;

(c) all such Tax Returns are complete and accurate in all material respects and disclose all material Taxes required to be paid;

(d) all such Tax Returns have been examined by the relevant governmental entity or the period for assessment of the Taxes in respect of which such Tax Returns were required to be filed has expired;

(e) neither Borrower nor Barjan Holding is currently the beneficiary of any extension of time within which to file any Tax Return;

(f) to the Knowledge of the Barjan Parties, no claim has ever been made by a Governmental Authority in a jurisdiction where any Barjan Party does not file Tax Returns that such Barjan Party is or may be subject to taxation by that jurisdiction;

(g) there are no Liens for Taxes (other than Taxes not yet due and payable) upon any of the Subject Assets;

(h) the Barjan Parties have withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor or other third party, and all Forms W-2 and 1099 (or any other applicable form) required with respect thereto have been properly completed and timely filed in all material respects;

(i) there is no action, suit, investigation, audit, claim or assessment pending or threatened in writing concerning any Tax Liability of any Barjan Party with respect to the Purchased Business or the Subject Assets; and

(j) no Barjan Party has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

15.11 Contracts and Commitments.

(a) Except as set forth on Schedule 15.11(a) or the other Schedules attached hereto, no Barjan Party is party to any oral or written:

(i) Contracts under which a Barjan Party is lessee of or holds or operates any personal property for which the annual rental exceeds \$75,000;

(ii) Contracts under which any Barjan Party is lessor or licensor of, or permits any third party to hold or operate any property, real or personal, related to the Purchased Business, for which the annual rental exceeds \$75,000;

(iii) Contract for the purchase or sale of real property;

(iv) Contract or group of related Contracts with the same party for the purchase or sale of raw materials, commodities, supplies, products or other personal property (excluding purchase order contracts entered into in the ordinary course of the Purchased Business) or for the furnishing or receipt of services under which the undelivered balance of such products and services has a selling price in excess of \$75,000;

(v) Contract or group of related Contracts with the same party continuing over a period of more than three (3) months from the date or dates thereof, not terminable by Borrower upon thirty (30) days or less notice without penalty or involving more than \$50,000 in annual consideration;

(vi) Contract which limits or restricts any Barjan Party from freely engaging in any business anywhere in the world;

(vii) Contracts pursuant to which any Barjan Party licenses Intellectual Property from any Person, or Contracts pursuant to which any Barjan Party has licensed or granted the right to use any Transferred Intellectual Property to any Person, or any Contract affecting any Barjan Party's ability to use or disclose Intellectual Property;

(viii) Contracts which include any non-solicitation, exclusive territory or exclusive product, sales, supply or dealings provisions;

(ix) Contracts including any most favored pricing provision or any performance or similar guaranty in respect of performance of a contractual obligation of a third party;

(x) consignment, sales representative, distributor, dealer, manufacturer's representative, sales agency, advertising representative or advertising or public relations Contract, not terminable by Borrower upon thirty

(30) days or less notice without penalty or involving more than \$50,000 in annual consideration;

(xi) guarantee of any obligation, including the obligations of customers, suppliers, officers, directors, employees, Affiliates or others;

(xii) Contract which provides for, or relates to, the incurrence of indebtedness for borrowed money (including any interest rate or non-U.S. currency swap, cap, collar, hedge or insurance agreements, or options or forwards on such agreement, or other similar agreement for the purpose of managing the interest rate and/or non-U.S. exchange risk associated with its financing);

(xiii) Contract with any of the Purchased Business Employees and Agents;

(xiv) Contracts for the purchase, licensing or development of any Intellectual Property that is currently being used or intended to be used in connection with the Purchased Business;

(xv) power of attorney;

(xvi) Contract under which a Barjan Party has advanced or loaned any other Person amounts in the aggregate exceeding \$50,000; or

(xvii) other Contract material to the Purchased Business, whether or not entered into in the ordinary course of the Purchased Business.

(b) Except as specifically disclosed on Schedule 15.11(b) attached hereto:

(i) each of the Acquired Contracts listed on Schedule 15.11(a) attached hereto constitutes a valid and binding obligation of Borrower and, to the Knowledge of the Barjan Parties, of the other parties thereto, and each of such Acquired Contracts is in full force and effect;

(ii) no Contract required to be disclosed on Schedule 15.11(a) attached hereto has been breached, terminated or cancelled by any Barjan Party or, to the Knowledge of the Barjan Parties, by any other parties thereto, and there is no anticipated breach of any such Contract;

(iii) the Barjan Parties have performed all material obligations under the Contracts required to be listed on Schedule 15.11(a) attached hereto required to be performed by such parties and, to the Knowledge of the Barjan Parties, each other party to the Acquired Contracts required to be listed on Schedule 15.11(a) has performed all material obligations under such Contracts required to be performed by such other party;

(iv) there is no material default or material breach under any Acquired Contract set forth on Schedule 15.11(a) attached hereto by any Barjan Party or, to

the Knowledge of the Barjan Parties, the other party to such Acquired Contract, or any event which, upon giving of notice or lapse of time or both, would reasonably be expected to constitute such a breach or default; and

(v) except in connection with satisfying its obligations set forth in Section 4.7 attached hereto, no Barjan Party is currently renegotiating, amending or modifying any of the Acquired Contracts or paying liquidated damages in lieu of performance thereunder.

(c) Schedule 15.11(c) attached hereto sets forth each Acquired Contract of the Barjan Parties which is secured (in whole or in part) by a deposit, letter of credit or guarantee and the nature and amount of such security.

(d) Except as set forth on Schedule 15.11(d), Buyer has been supplied with a true and correct copy of all written Acquired Contracts which are referred to on Schedule 15.11(a) attached hereto, together with all amendments, exhibits, attachments, waivers or other changes thereto and a complete and accurate summary of all oral Contracts which are referred to on Schedule 15.11(a) attached hereto.

#### 15.12 Intellectual Property; Software.

(a) Schedule 15.12(a) attached hereto sets forth a complete and accurate list of all of the following that are owned by (or, in the case of Internet domain names, registered to) any Barjan Party: (i) patents and patent applications; (ii) Internet domain names; (iii) registrations of trademarks or service marks and applications for the same; (iv) registrations for copyrights and mask works and applications for the same and (v) material unregistered Intellectual Property. The Barjan Parties own all of the Intellectual Property set forth on Schedule 15.12(a) (except in the case of Internet domain names, which are registered to a Barjan Party), free and clear of all Liens, except for (A) Agent's Lien; (B) Liens described on Schedule 15.9(a) attached hereto; (C) Permitted Liens; and (D) an undivided, joint ownership interest in the Joint IP, which other joint ownership interest of was assigned by the Barjan Parties to the Victor Buyer. The Transferred Intellectual Property include all of the Intellectual Property owned by the Barjan Parties that is reasonably necessary for the operation of the Purchased Business as conducted as of the date hereof (except for Excluded Assets). No Intellectual Property transferred by the Barjan Parties to the Victor Buyer was used since December 31, 2004 in any aspect of the Purchased Business (other than the Joint IP and Intellectual Property licensed by the Victor Buyer to Borrower that is the subject of the Victor Distribution, License and Non-Compete Agreement).

(b) Schedule 15.12(b) attached hereto contains a complete and accurate list of all material software owned by or licensed to the Barjan Parties, provided that Schedule 15.12(b) does not list (i) mass market software licensed to any Barjan Party for less than \$10,000 per year that is commercially available and subject to "shrink-wrap" or "click-through" license agreements or (ii) software in or used to control or operate any of the machinery or equipment used by the Barjan Parties, except software in or used to control or operate such machinery or equipment that is separately licensed.

(c) Schedule 15.12(c) attached hereto contains a complete and accurate list of (i) all agreements, contracts, licenses and sublicenses pursuant to which any Barjan Party has granted any third party a license to use any Transferred Intellectual Property and such license is still in force or (ii) all material agreements, contracts, licenses and sublicenses that are still in force pursuant to which any Barjan Party has received from a third party a license to use any Intellectual Property for use in the conduct of the Purchased Business as of December 31, 2004.

(d) Except as set forth on Schedule 15.12(d) attached hereto:

(i) all maintenance fees that have become due for the registrations for the Transferred Intellectual Property identified on Schedule 15.12(a) have been paid, all applications to register any unregistered Transferred Intellectual Property so identified are still pending and have not been expressly abandoned by the Barjan Parties, and, to the knowledge of the Barjan Parties, all registrations and applications of the Transferred Intellectual Property are without challenge of any kind;

(ii) the registrations for the Transferred Intellectual Property identified on Schedule 15.12(a) have not been cancelled by the governmental entity that issued such registrations or by a court of competent jurisdiction, and such registrations have not been expressly abandoned by the Barjan Parties;

(iii) the Barjan Parties have not granted any third party the right to bring actions for infringement or misappropriation in the Transferred Intellectual Property, other than with respect to the Victor Buyer's rights in the Joint IP;

(iv) to the Knowledge of the Barjan Parties, none of the Transferred Intellectual Property has been misused by any Barjan Party (as such term is used with respect to patent and copyright Law as applicable);

(v) no claim by any other Person is currently outstanding or, to the Knowledge of the Barjan Parties, threatened against any Barjan Party contesting the validity, enforceability, use or ownership of any of the material Transferred Intellectual Property;

(vi) to the Knowledge of the Barjan Parties, no Barjan Party has infringed, misappropriated or otherwise violated any Intellectual Property of any other Person;

(vii) no Barjan Party has received any written notices within the past thirty-six (36) months regarding any of the foregoing; and

(viii) to the Knowledge of the Barjan Parties, the Transferred Intellectual Property has not been infringed, misappropriated or otherwise violated by other Persons within the past thirty-six (36) months.



(e) Prior to the Closing, the Barjan Parties shall pay and satisfy any and all transfer or other fees, penalties or premiums required in connection with the transfer and assignment to Buyer at Closing of all Contracts under which any Barjan Party licenses Intellectual Property.

15.13 Litigation.

Except as set forth on Schedule 15.13 attached hereto:

(a) there are no actions, suits, arbitrations, material grievances or other proceedings of any kind, Orders or investigations pending (and during the three (3) years preceding the date hereof, there have not been) or, to the Knowledge of the Barjan Parties, currently threatened against the Purchased Business, at Law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign;

(b) there are no actions, suits, arbitrations, grievances or other proceedings pending in which any Barjan Party is the plaintiff; and

(c) there is no action, suit or proceeding pending or, to the Knowledge of the Barjan Parties, threatened which questions the legality or propriety of the transactions contemplated by this Agreement.

15.14 Brokerage.

Except as set forth on Schedule 15.14 attached hereto, there are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of any Barjan Party. Each Barjan Party acknowledges and agrees that it shall be solely liable for all such brokerage commissions, finders' fees and similar compensation set forth on Schedule 15.14.

15.15 Employee Relations.

(a) Except as set forth on Schedule 15.15(a) attached hereto, each Barjan Party has complied in all material respects with all applicable laws relating to the employment of labor, including provisions thereof relating to wages, hours, equal opportunity, immigration and the payment of social security and other Taxes. There are no material claims, actions, grievances, arbitrations or other proceedings or investigations pending or, to the Knowledge of the Barjan Parties, threatened against any Barjan Party with respect to or by any employee or former employee of any Barjan Party. No Barjan Party has engaged in any unfair labor practices, and no Barjan Party has received notice of any threatened unfair labor practice charge or complaint or representation proceeding before the National Labor Relations Board or any other governmental authority or union organizing or decertification activity.

(b) No Barjan Party is a party to any collective bargaining agreement and to the Knowledge of the Barjan Parties, there is no organizational effort presently made or threatened by or on behalf of any labor union with respect to its employees.

(c) No Barjan Party has received notice of any material employment-related charge or material complaint against any Barjan Party before the Equal Employment Opportunity Commission or the Department of Labor or any other governmental authority.

(d) Except as set forth on Schedule 15.15(d) attached hereto, to the Knowledge of the Barjan Parties, during the last three (3) years, no Barjan Party, nor any officer, employee or agent or other Person acting on behalf of any Barjan Party, has been involved in any transaction or other situation which may be generally characterized as a "conflict of interest," including direct or indirect interests in the business of competitors, suppliers or customers of the Barjan Parties or which involved or involves (i) the use of corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to political activity; (ii) the making of any direct or indirect unlawful payments to government officials or others from corporate funds or the establishment or maintenance of any unlawful or unrecorded funds; (iii) the violation of any of the provisions of The Foreign Corrupt Practices Act of 1977; or (iv) the receipt of any illegal discounts or rebates or any other violation of the antitrust laws.

(e) Except as set forth on Schedule 15.15(e) attached hereto, to the Knowledge of the Barjan Parties, during the last three (3) years, no Barjan Party nor any officer, employee or agent or other Person acting on behalf of any Barjan Party has, directly or indirectly, given or agreed to give any gift or similar benefit (other than with respect to bona fide payments for which adequate consideration has been given) to any customer, supplier, governmental employee or other Person who is or may be in a position to help or hinder the Purchased Business (or assist any Barjan Party in connection with any actual or proposed transaction) (i) which reasonably might subject a Barjan Party to any damage or penalty in any civil, criminal or governmental litigation or proceeding or (ii) which, if not continued in the future, would have a Material Adverse Effect.

#### 15.16 Related Party Transactions.

Except as described on Schedule 15.16 attached hereto:

(a) no Barjan Party is a party to any Contract or transaction with any Related Party;

(b) no Related Party has any interest, directly or indirectly, in any Subject Assets, the REPA Assets or other property used primarily by the Purchased Business; and

(c) with respect to the Purchased Business, no Related Party provides, directly or indirectly, any services to any of the Barjan Parties.

15.17 Employee Benefit Plans.

(a) Schedule 15.17(a) attached hereto sets forth an accurate and complete list of each Borrower Employee Benefit Plan. With respect to each Borrower Employee Benefit Plan, to the extent reasonably requested by Buyer, the Barjan Parties have provided or made available to Buyer true and complete copies of (i) all documents pursuant to which each Borrower Employee Benefit Plan is maintained, funded and administered and (ii) the most recent Internal Revenue Service determination letter, if applicable.

(b) No Barjan Party nor any ERISA Affiliate maintains, contributes to or has any Liability or potential Liability with respect to any "multiemployer plan" (as defined in Section 3(37) of ERISA).

(c) No Barjan Party nor any ERISA Affiliate maintains, sponsors, contributes to or has any Liability or potential Liability with respect to any pension plan subject to Section 302 or Title IV of ERISA or Section 412 of the Code.

(d) Each Borrower Employee Benefit Plan has been maintained, administered and funded in all material respects in compliance with its terms and with the requirements prescribed by any and all applicable Laws, including ERISA and the Code, and there are no pending or, to the Knowledge of the Barjan Parties, threatened actions, suits, audits, investigations or claims with respect to any Borrower Employee Benefit Plan (other than routine claims for benefits) which reasonably could result in any material Liability to Buyer.

(e) No Borrower Employee Benefit Plan provides medical, life insurance, death benefits or any other welfare-type benefits with respect to former employees, directors, contractors or agents (including retirees and dependents of former employees, directors, contractors, agents and retirees) of Borrower or any ERISA Affiliate, other than benefits that are required to be provided pursuant to COBRA. Borrower and its ERISA Affiliates have complied and are in compliance in all material respects with the requirements of COBRA.

(f) Each Borrower Employee Benefit Plan that is intended to meet the requirements of a qualified plan under Section 401(a) of the Code has received a determination from the Internal Revenue Service that such Borrower Employee Benefit Plan is so qualified, or in the case of a prototype plan of a kind for which the Internal Revenue Service will only issue a letter to the provider of the prototype document, has received a copy of such letter from such provider, and there are no facts or circumstances that could adversely affect the qualified status of such Borrower Employee Benefit Plan.

15.18 Insurance.

Schedule 15.18 attached hereto lists and contains a description of each insurance policy maintained by any Barjan Party, including the type and amount of coverage. Except as set forth on Schedule 15.18, (a) no Barjan Party has self-insurance or co-insurance programs, (b) current premiums and any other obligations under such insurance have been paid and all such policies

are valid and enforceable and in full force and effect on the date hereof and no Barjan Party is in default with respect to its obligations under any such insurance policies and (c) no Barjan Party has received any notice within the last ninety (90) days threatening suspension, revocation, modification or cancellation of any insurance policy or a material increase in any premium in connection therewith or informing any Barjan Party that any coverage listed on Schedule 15.18 attached hereto will or may not be available in the future on substantially the same terms as now in effect. No Barjan Party has been denied insurance coverage within the past 3 years. To the Knowledge of the Barjan Parties, the insurance coverage of each Barjan Party is of a kind and type routinely carried by Persons of similar size engaged in similar lines of business. The reserves set forth on the Latest Balance Sheet are adequate to cover all anticipated Liabilities with respect to self-insurance.

15.19 Compliance with Laws; Permits.

Except as set forth on Schedule 15.19 attached hereto:

(a) each Barjan Party has, with respect to the Purchased Business and the Subject Assets, complied in all material respects with all applicable Laws and Orders primarily relating to the operation of the Purchased Business, and no notices have been received by, and to the Knowledge of the Barjan Parties, no claims have been filed against, any Barjan Party alleging a violation of any such Laws or Orders; and

(b) Borrower holds all material permits which are necessary to entitle Borrower to own or lease, operate and use the Subject Assets and to carry on and conduct the Purchased Business substantially as conducted as of the date of this Agreement (the "Required Permits"). Schedule 15.19(b) attached hereto sets forth a list of all of such Required Permits. Except as set forth on Schedule 15.19 and other than with respect to the expiration of any Required Permit in accordance with its terms, to the Knowledge of the Barjan Parties, (i) Borrower has fulfilled and performed its material obligations under each Required Permit required to be listed on Schedule 15.19(b), and no event has occurred or condition or state of facts exists which constitutes or, after notice or lapse of time or both, would constitute a breach or default under any such Required Permits or which permits or, after notice or lapse of time or both, would permit revocation or termination of any such Required Permit and (ii) no notice of cancellation, of default or of any dispute concerning any Required Permits, has been received by any Barjan Party.

15.20 Environmental and Safety Matters.

Except as set forth on Schedule 15.20 attached hereto:

(a) the Barjan Parties are, and since December 31, 2001 have been, in compliance in all material respects with all Environmental and Safety Requirements;

(b) without limitation to the foregoing, all permits, licenses, authorizations and other approvals necessary under Environmental and Safety Requirements for the ownership or operation of the Subject Assets or the Purchased Business ("Environmental Permits"), are in full force and effect and no suspension or cancellation of any Environmental Permit is pending or, to the Knowledge of the Barjan Parties, threatened;

(c) no Barjan Party has received any written or oral notices, reports or other information of any material violation or alleged material violation of, material non-compliance or alleged material non-compliance with or any material Liability or potential material Liability under any Environmental and Safety Requirements that are currently unresolved as of the date of this Agreement;

(d) no Barjan Party has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, or released any Hazardous Substance, or owned or operated any property or facility (and no such property or facility is contaminated by any such substance) so as to give rise to any material Liability, including any material Liability for response costs, corrective action costs, personal injury, property damage, natural resources damages or attorneys fees, or any investigative, corrective or remedial obligations, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") or any other Environmental and Safety Requirements;

(e) no Barjan Party has, either expressly or by operation of law, assumed or undertaken any material Liability, including any obligation for corrective or remedial action, of any other Person relating to Environmental and Safety Requirements;

(f) no Barjan Party nor, to the Knowledge of the Barjan Parties, any predecessor or Affiliate of any Barjan Party has manufactured, sold, marketed, installed or distributed products containing asbestos; and

(g) the Barjan Parties have furnished or made available to Buyer all environmental reports, audits and other material environmental documents relating to the Subject Assets, the Purchased Business, the Mechanicsburg Facility and any properties or facilities formerly owned or operated by Borrower or its predecessors in connection with the Purchased Business, which are in its possession, custody or control.

#### 15.21 Receivables; Inventory.

(a) All of the Receivables have arisen from bona fide transactions in the ordinary course of the Purchased Business. All Receivables reflected on the Latest Balance Sheet and to be reflected on the Final Closing Statement accurately reflect the amount due to Borrower with respect to the Purchased Business and are and will be collectible in the ordinary course of the Purchased Business at the aggregate recorded amounts thereof, net only of applicable allowances for doubtful accounts and other ordinary reserves relating to rebates, sales returns and allowances, freight discounts and unapplied lockbox amounts reflected or to be reflected on the Latest Balance Sheet or the Final Closing Statement, as applicable.

(b) The Inventory of Borrower (including raw materials, work-in-process, finished goods and other materials) (i) are in merchantable and useable condition, subject to normal allowances, (ii) are reflected in the Latest Balance Sheet and will be reflected in the Final Closing Statement at the lower of cost or market in accordance with GAAP, as applied by Borrower on a consistent basis, and (iii) are, in the case of finished goods,

of a quality and quantity saleable in the ordinary course of the Purchased Business and, in the case of all other inventory are of a quality and quantity useable in the ordinary course of the Purchased Business. The inventory write-off policies of the Purchased Business, and the amounts reflected on the Closing Balance Sheet and in the Closing Date Working Capital Value are appropriate for the nature of the products sold and the marketing methods used by the Purchased Business.

15.22 Relationships with Customers.

The Barjan Parties have provided Buyer with a true and accurate list of the names and addresses of the top twenty (20) customers of Borrower and Barjan Canada (by dollar volume of sales to such customers) for the 12-month period ended October 31, 2005. Except as set forth on Schedule 15.22 attached hereto, Borrower and Barjan Canada have not received any written or oral notices or have any reason to believe that any of the customers listed on Schedule 15.22 intends to stop, materially decrease the rate of or materially change the terms (whether related payment, price or otherwise) with respect to buying materials, products or services from Borrower or Barjan Canada (whether as a result of the consummation of the transactions contemplated hereby or otherwise).

15.23 Barjan Holding's Business.

Barjan Holding does not own, hold, possess or have any interest in any assets other than, or conduct any business other the holding of, all of the equity interests in Borrower.

15.24 Name Change.

In connection with the Closing, each Barjan Party shall change or withdraw its name, without cost to Buyer, so as not to include "Barjan" or any of the trade names included in the Transferred Intellectual Property or any derivatives of any of the foregoing or any name confusingly similar thereto and will similarly change or withdraw its name with the Secretary of State in each state where such Barjan Party presently is qualified to conduct business.

15.25 Pre-Closing Conduct and Operation of Purchased Business.

Except as otherwise expressly provided in this Agreement or as expressly consented to in writing by Buyer and Agent, from the date of this Agreement until the earlier at the termination of this Agreement or the Closing, each Barjan Party shall:

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

(b) subject to the terms hereof, execute such documents and use its commercially reasonable efforts to take or cause to be taken the actions and do or cause to be done the things necessary, proper and advisable to fulfill or obtain the fulfillment of the conditions set forth in Sections 19 and 20 of this Agreement which are under the control or influence of the Barjan Parties;

(c) provide, and cause its officers, directors, managers, employees, attorneys, accountants and other representatives to provide, to Buyer, its lenders and their respective accounting, legal and other representatives reasonable access during usual business hours and upon reasonable advance notice to the Purchased Business' facilities (but excluding for purposes of conducting any environmental investigation or physical inventory without consent of Borrower) and to any Barjan Party's officers and senior employees and to business, financial, legal, Tax, compensation and other data and information concerning the Purchased Business and its affairs and operations;

(d) maintain the Subject Assets and the REPA Assets in operating condition (ordinary wear and tear, casualty and condemnation excepted);

(e) maintain its books, accounts and records with respect to the Purchased Business in accordance with GAAP as used in the preparation of the Latest Balance Sheet and past custom and practice, to the extent consistent with GAAP (other than as referenced in Section 15.5 and Schedule 15.5 attached hereto);

(f) maintain applications and registrations for all Transferred Intellectual Property;

(g) continue all existing policies of insurance (or comparable insurance) of or for the benefit of Borrower in full force and effect and at least at such levels as are in effect on the date hereof (subject to reasonable adjustments to give effect to the sale of the Victor Assets which shall not include a change of benefits with respect to the Purchased Business), up to and including the Closing (and not take, or fail to take, any action that would enable the insurers under such policies to avoid Liability for claims arising out of occurrences prior to the Closing); and

(h) promptly inform Buyer and Agent in writing of the existence of, or the occurrence or non-occurrence of any event that would likely cause any (i) breach or inaccuracy in any of the representations and warranties contained in this Section 15, (ii) any breach of any covenant hereunder by a Barjan Party or (iii) a Material Adverse Effect since the date hereof which becomes known to any Barjan Party (with it being understood that the delivery of any notice pursuant to this Section 15.25(h) shall not (A) be deemed to amend or supplement any of the Schedules attached hereto, (B) be deemed to cure any breach of any representation, warranty, covenant or agreement or to satisfy any condition or (C) limit or otherwise affect the rights and remedies available hereunder to Buyer and Agent).

#### 15.26 Negative Covenants of Borrower.

Except as otherwise expressly provided herein (including as contemplated by the Victor Distribution, License and Non-Compete Agreement) or as expressly consented to in writing by Buyer and Agent from the date of this Agreement until the Closing, no Barjan Party shall:

(a) sell, lease, assign, convey, pledge, mortgage, license or otherwise dispose of or encumber any interest in any of the Subject Assets, other than sales of Inventory in the ordinary course of business and licenses of Transferred Intellectual Property granted

in the ordinary course of business in connection with the purchasing, procurement, or sales of goods, or permit, allow or suffer any of the Subject Assets to be subjected to any Lien, other than Liens which exist as of the date of this Agreement and Permitted Liens;

(b) terminate, modify, enter into or fail to renew any Contracts, commitments or Permits relating to the Purchased Business, or amend any existing, material Acquired Contracts or Permits relating to the Purchased Business, other than purchase orders and Contracts entered into in the ordinary course of business that are terminable by Borrower or Barjan Canada on sixty (60) days or less notice without penalty or Liability;

(c) implement any employee layoffs that could implicate WARN;

(d) incur any Liability, whether absolute, fixed or contingent, except in the ordinary course of business;

(e) induce directly or indirectly, or attempt to induce any employee, agent or other representative, associate, customer or supplier of Buyer to terminate, alter or suspend his, her or its relationship with Buyer, or in any other way directly or indirectly interfere with such relationship; and

(f) take any action that is inconsistent with such Barjan Party's obligations under this Agreement; or

(g) take any action that would (if taken after the Balance Sheet Date and prior to the date of this Agreement or the Closing Date) require disclosure pursuant to Section 15.7.

16. Customer Due Diligence.

Beginning on the date of this Agreement and within fifteen (15) business days thereafter, Buyer shall complete any and all discussions and meetings with the appropriate buying personnel of up to twenty (20) customers of the Purchased Business as determined by Buyer in order to confirm the status and nature of the relationship between such customers and the Purchased Business and otherwise to perform due diligence with respect to such customers as Buyer deems appropriate (the "Customer Due Diligence"), which meetings and discussions shall be coordinated in good faith between Buyer and Borrower.

17. Agreement Concerning Possession of Subject Assets.

Buyer acknowledges that neither Agent nor any Lender has been in possession or control of the Subject Assets or the REPA Assets. Neither Agent nor any Lender shall have any liability whatsoever to Buyer with respect to the occupancy of any Barjan Real Property or the possession of the Subject Assets, REPA Assets or Leased Real Property from and after the Closing.

18. Records and Documents.

(a) For two (2) years following the Closing Date, the Barjan Parties shall retain and grant to Buyer and its representatives, at Buyer's request and sole expense,



reasonable access to and the right to make copies of those financial records retained by the Barjan Parties as may be reasonably required by Buyer in connection with Buyer's defense of any third party claim, completion of any Tax Return or response to any Tax audit, primarily relating to the Purchased Business, Subject Assets and Assumed Liabilities. Notwithstanding the foregoing sentence, if during such time the Barjan Parties elect to dispose of such records, such parties shall first give Buyer (with a copy to Agent) sixty (60) days written notice, during which period Buyer shall have the right to obtain the records at its own cost and expense but without further consideration.

(b) For two (2) years following the Closing Date, Buyer shall retain and grant to the Barjan Parties, Agent or their representatives, at the Barjan Parties' or Agent's request and sole expense, reasonable access to and the right to make copies of those financial records transferred to Buyer hereunder as may be reasonably required by the Barjan Parties or Agent, as applicable, in connection with its or their defense of any third party claim, completion of any Tax Return or response to any Tax audit, primarily relating to the Victor Business, Excluded Assets and Excluded Liabilities. Notwithstanding the foregoing sentence, if during such time Buyer elects to dispose of such records, Buyer shall first give the Barjan Parties and Agent sixty (60) days written notice, during which period the Barjan Parties and Agent shall each have the right to obtain the records at its own cost and expense but without further consideration.

19. Buyer's Conditions to Closing; Deliveries to Buyer at Closing.

The obligation of Buyer to consummate the Closing shall be subject to the satisfaction, at or prior to Closing, of the following conditions:

19.1 Bill of Transfer.

Buyer shall have received the Bill of Transfer, duly executed by Agent, on behalf of itself and the Lenders.

19.2 Representations and Warranties True.

Each of the representations and warranties of the Barjan Parties and Agent contained in this Agreement that are qualified by materiality shall be true and correct in all respects, and each of the representations and warranties not so qualified shall be true and correct in all material respects (except that the representations and warranties in Section 14.9 shall be true and correct in all respects), in each case on and as of the Closing Date and with the same effect as though each such representation and warranty had been made or given on and as of the Closing Date, except for representations and warranties made as of a specific date, which shall be true and correct as of such specific date.

19.3 Compliance with Transaction Documents.

Each Barjan Party and Agent each shall have performed or complied in all material respects with each of the covenants and agreements required to be performed or complied with by it under this Agreement and the other Transaction Documents at or prior to the Closing.

19.4 No Material Adverse Effect.

Since the date of this Agreement, there shall not have occurred any events or changes in facts or circumstances affecting the Purchased Business that individually or in the aggregate have had or could reasonably be expected to have a Material Adverse Effect.

19.5 No Insolvency Proceeding.

There shall not have been commenced with respect to any Barjan Party or Agent any voluntary or involuntary case or other proceeding seeking to adjudicate such party a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of such party or its debts under any federal, state or other law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for such party or for any substantial part of its property.

19.6 Third-Party Consents.

The Barjan Parties shall have received or obtained all third party consents and approvals that are necessary for the assignment to Buyer of each material Acquired Contract set forth on Schedule 19.6 attached hereto, in each case on the terms required by such Acquired Contract or on such other terms as are reasonably satisfactory to Buyer (collectively, the "Required Third-Party Approvals").

19.7 License Agreement Transfer Fees.

Buyer shall have received evidence, satisfactory to Buyer, that all transfer or other fees, penalties or premiums in connection with the transfer and assignment of all Contracts under which any Barjan Party licenses Intellectual Property have been fully paid or otherwise fully satisfied.

19.8 No Orders Preventing Closing.

There shall not be in effect on the Closing Date any Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated hereby or that would materially impair the ability of Buyer to conduct the Purchased Business as conducted immediately prior to the Closing Date.

19.9 No Law Prohibiting Closing.

No Law shall be in effect or pending which would restrain, enjoin, prohibit or make illegal the consummation of the transactions contemplated hereby.

19.10 Victor Distribution, License and Non-Compete Agreement.

Buyer and Borrower shall have executed and delivered the Distribution Assignment and Assumption Agreement.

19.11 Post-Closing Escrow Agreement.

The Post-Closing Escrow Agent and Agent shall have executed and delivered the Post-Closing Escrow Agreement, and such agreement shall be in full force and effect.

19.12 Barjan Party Closing Deliveries.

At the Closing, the Barjan Parties shall have delivered to Buyer all of the following:

- (a) a certificate signed by an officer of each of the Barjan Parties, dated the date of the Closing, stating that the conditions specified in Sections 19.2, 19.3 and 19.4 have been satisfied as of the Closing;
- (b) certified copies of resolutions of the equity holders of each Barjan Party authorizing and approving this Agreement and the transactions contemplated hereby;
- (c) a certification pursuant to Treasury Regulation Section 1.1445-2(b)(2) that no Barjan Party is a foreign Person; and
- (d) such other documents or instruments as are required to be delivered at the Closing pursuant to the terms hereof or that Buyer reasonably requests prior to the Closing Date as reasonably necessary to effect (i) the transactions contemplated by this Agreement in accordance herewith and (ii) the transactions contemplated by the Debt Financing.

19.13 Outstanding Obligations.

The aggregate amount of Obligations outstanding under the Credit Agreement shall be greater than \$7,000,000.

19.14 Estoppel Certificates.

Borrower shall have obtained and delivered to Buyer landlords' estoppels, material landlords' lien waivers and, where applicable, landlords' consents dated no more than thirty (30) days prior to the Closing Date with respect to each Lease for real property that is an Acquired Contract hereunder and to the assignment of the leases corresponding thereto and to any leasehold mortgages or collateral assignments of leases corresponding thereto, each in form and substance reasonably satisfactory to Buyer and Buyer's lenders.

19.15 Non-Disturbance Agreements.

Borrower shall have obtained and delivered to Buyer a non-disturbance agreement with respect to each of the Leases that are assumed for the Leased Real Property in form and substance reasonably satisfactory to Buyer from each lender encumbering any real property underlying the Leased Real Property for such Lease.

19.16 Proceeds Assignment Agreement. Agent, Buyer and each Lender shall have executed the Proceeds Assignment Agreement in connection with the signing of this Agreement.

19.17 Closing under the Real Estate Purchase Agreement.

The conditions to Buyer's obligation to close the transactions contemplated by the Real Estate Purchase Agreement have been satisfied or waived, and the closing of all transactions contemplated by the Real Estate Purchase Agreement, including, without limitation, Buyer's purchase of the REPA Assets and Agent's delivery to Buyer of the Reaffirmation Agreement, shall be occurring concurrently with the Closing of this Agreement.

19.18 Permitted Liens.

The obligations secured by the Liens set forth on Schedule 19.18 shall not exceed the respective amounts set forth on Schedule 19.18.

All actions to be taken by Borrower, any other Barjan Party and Agent in connection with the consummation of the transactions contemplated by this Agreement and all certificates, instruments and other documents required to effect the transactions contemplated hereby reasonably requested by Buyer shall be reasonably satisfactory in form and substance to Buyer. Any conditions specified in this Section 19 may be waived only in writing by Buyer.

20. Agent's and the Lenders' Conditions to Closing; Deliveries to Agent at Closing.

The obligation of Agent on behalf of itself and the Lenders to consummate the Closing shall be subject to the satisfaction, at or prior to Closing, of the following conditions:

20.1 Representations and Warranties True.

Each of the representations and warranties of Buyer contained in this Agreement that are qualified by materiality shall be true and correct in all respects on and as of the Closing Date, and each of the representations and warranties of Buyer not so qualified shall be true and correct in all material respects, in each case on and as of the Closing Date and with the same effect as though each such representation and warranty had been made or given on and as of the Closing Date, except for representations and warranties made as of a specific date, which shall be true and correct as of such specific date.

20.2 Compliance with this Agreement.

Buyer shall have performed each of the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing.

20.3 No Insolvency Proceeding.

There shall not have been commenced with respect to Borrower or Buyer any voluntary or involuntary case or other proceeding seeking to adjudicate such party a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment,

protection, relief or composition of such party or its debts under any federal, state or other law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for such party or for any substantial part of its property.

20.4 No Orders Restraining Closing.

There shall not be in effect on the Closing Date any Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated hereby or that would materially impair the ability of Buyer to conduct the Purchased Business as conducted immediately prior to the Closing Date.

20.5 No Laws Prohibiting Closing.

No Law shall be in effect or pending which would restrain, enjoin, prohibit or make illegal the consummation of the transactions contemplated hereby.

20.6 Closing Deliveries to Agent.

At the Closing, Buyer shall have delivered to Agent all of the following:

- (a) the Closing Purchase Price in immediately available funds;
- (b) a certificate signed by an officer of Buyer, dated the date of the Closing, stating that the conditions specified in Sections 20.1 and 20.2 have been satisfied as of the Closing;
- (c) certified copies of resolutions of Buyer's board of directors authorizing and approving this Agreement and the transactions contemplated hereby;
- (d) a certification pursuant to Treasury Regulation Section 1.1445-2(b)(2) that Buyer is not a foreign Person;
- (e) the Buyer Letter of Credit; and
- (f) such other documents or instruments as are required to be delivered at the Closing pursuant to the terms hereof or that Agent reasonably requests prior to the Closing Date as reasonably necessary to effect the transactions contemplated by this Agreement in accordance herewith.

20.7 Post-Closing Escrow Agreement. The Post-Closing Escrow Agent, Buyer and Agent shall have executed and delivered the Post-Closing Escrow Agreement, and such agreement shall be in full force and effect.

20.8 Closing under the Real Estate Purchase Agreement.

The conditions to Agent's and the Lenders' obligation to close the transactions contemplated by the Real Estate Purchase Agreement have been satisfied or waived, and the closing of all

transactions contemplated by the Real Estate Purchase Agreement, including, without limitation, Buyer's purchase of the REPA Assets and Agent's delivery to Buyer of the Reaffirmation Agreement, shall be occurring concurrently with the Closing of this Agreement.

All actions to be taken by Buyer in connection with the consummation of the transactions contemplated by this Agreement and all certificates, instruments and other documents required to effect the transactions contemplated hereby reasonably requested by Agent shall be reasonably satisfactory in form and substance to Agent. Any conditions specified in this Section 20 may be waived only in writing by Agent.

21. The Barjan Parties' Conditions to Closing; Delivery to Borrower at Closing.

The obligation of the Barjan Parties to consummate the Closing shall be subject to the satisfaction, at or prior to Closing, of the following conditions:

21.1 Closing under the Real Estate Purchase Agreement.

The closing of all transactions contemplated by the Real Estate Purchase Agreement, including, without limitation, Buyer's purchase of the REPA Assets and Agent's delivery to Buyer of the Reaffirmation Agreement, shall be occurring concurrently with the Closing of this Agreement.

21.2 Assumption of Liabilities.

Buyer shall have assumed all of the Assumed Liabilities pursuant to the Assignment and Assumption Agreement.

21.3 No Orders Preventing Closing.

There shall not be in effect on the Closing Date any Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated hereby.

21.4 No Laws Prohibiting Closing.

No Law shall be in effect or pending which would restrain, enjoin, prohibit or make illegal the consummation of the transactions contemplated hereby.

Any conditions specified in this Section 21 may be waived only in writing by any Barjan Party.

22. Termination.

22.1 Termination Events.

This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written agreement of Buyer, Agent and the Barjan Parties;
- (b) by any of Agent, Buyer or the Barjan Parties if there shall be in effect any Final Order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;



(c) by Buyer if there has been a material misrepresentation or breach by any Barjan Party or Agent of any of their respective representations, warranties or covenants set forth in this Agreement and such party fails to cure such breach within ten (10) days following notification thereof by Buyer; provided that Buyer is not in material breach of any of its representations, warranties or covenants contained in this Agreement;

(d) by any of Buyer, the Barjan Parties or Agent if the Barjan Parties or Agent signs a written and binding agreement with respect to an Alternative Transaction;

(e) by Agent if there has been a material misrepresentation or breach by Buyer of any of its representations, warranties or covenants set forth in this Agreement that has resulted in a material adverse effect on Buyer or Borrower or their ability to consummate the transactions contemplated by this Agreement in accordance with its terms and such party fails to cure such breach within ten (10) days following notification thereof by Agent; provided that Agent is not in material breach of any of its representations, warranties or covenants contained in this Agreement;

(f) by any of Agent or Buyer if the transactions contemplated hereby have not been consummated on or before January 23, 2006 (which date may be extended by mutual written consent of Buyer and Agent) (the "Deadline"); provided that the party seeking termination pursuant to this subsection (f) is not in breach of any of its representations, warranties or covenants contained in this Agreement;

(g) by Agent at any time on or after two (2) business days following the date of this Agreement if Buyer has failed to deliver the Purchase Price Deposit Amount to the Purchase Price Deposit Escrow Agent to be held as the Purchase Price Deposit Escrow Fund;

(h) by Buyer, on the earlier to occur of (A) the fifteenth (15<sup>th</sup>) day after entry of an Order for Relief if the Sale Motion has not been timely filed, (B) the ninetieth (90<sup>th</sup>) day after entry of an Order for Relief if the Sale Motion has been filed and a Final Order in form and substance reasonably acceptable to Buyer approving the Sale Motion has not been entered or (C) rejection of this Agreement by one or more of the Barjan Parties under 11 U.S.C. § 365;

(i) by Buyer at any time within fifteen (15) business days after the date of this Agreement if Buyer is not satisfied in its sole discretion with the Customer Due Diligence;

(j) by Buyer or any Barjan Party, at any time which the party seeking to terminate this Agreement pursuant to this Section 22.1(j) has the right to terminate the Real Estate Purchase Agreement pursuant to Section 9.1 thereof or by Agent, at any time at which a Barjan Party has the right to terminate the Real Estate Purchase Agreement pursuant to Section 9.1 thereof; or

(k) by any Barjan Party, Buyer or Agent upon any termination of the Real Estate Purchase Agreement by any party thereto.



22.2 Effect of Termination.

In the event of termination of this Agreement by any of Agent, Buyer or any Barjan Party as provided above, this Agreement shall immediately become void and of no further force and effect; provided that: (a) Sections 12.1 and 12.2, 7(c)-(d) and 26 (other than Section 26.8) hereof shall each survive such termination indefinitely and (b) nothing in this Section 22 shall be deemed to release any party from any Liability for any breach by such party of the terms and provisions of this Agreement prior to such termination.

23. Employee and Related Matters.

23.1 Offer to Hire.

As of the Closing Date, Buyer shall offer employment or retention to substantially all employees and independent sales representatives of Borrower actively employed or engaged principally in the Purchased Business as of the Closing Date (but excluding any employees or independent sales representatives that were principally employed or engaged in the Victor Business immediately prior to the closing of the sale of the Victor Business to the Victor Buyer) (the "Purchased Business Employees and Agents") as determined by Buyer in its sole discretion, on terms and conditions as determined by Buyer in its sole discretion. All employees or independent sales representatives actively employed or engaged principally in the Purchased Business as of the date hereof are listed on Schedule 23.1 attached hereto. Purchased Business Employees and Agents who, on or immediately after the Closing Date, accept any offer from Buyer of employment or retention and become employees or independent sales representatives of Buyer shall be referred to herein as the "Hired Employees and Agents."

23.2 No Assumption of Plans.

Except to the extent expressly provided in Section 4.4, Buyer shall not assume any Borrower Employee Benefit Plan or any Liability or obligation thereunder or any Liability or obligation under the Transaction Bonus Plan, Retention Bonus Plan, Incentive Award Agreements or any other retention, incentive or separation agreement to which Borrower or any ERISA Affiliate is or at any time was a party or has or had any Liability.

23.3 Termination of Plan Participation.

As of the Closing Date, with respect to any qualified defined contribution plan of any Barjan Party maintained for the benefit of any of the Hired Employees and Agents, all Hired Employees and Agents shall cease participation in such Barjan Party plan and the Barjan Parties shall fully vest such Hired Employees and Agents in their account balances under any such qualified defined contribution plan. As soon as practicable after the Closing Date, each of the Hired Employees and Agents shall be permitted to elect a distribution of his account balance in such Barjan Party plan and shall be permitted to roll over such account to a qualified defined contribution plan of Buyer, including the ability to roll over any existing loan under such Barjan Party plan for sixty (60) days after the Closing Date.

#### 23.4 COBRA.

Nothing herein shall limit the obligations, if any, of Buyer or the Barjan Parties under COBRA with respect to employees or former employees of Borrower.

#### 24. Further Transfers; Transition Assistance.

(a) From and after the Closing Date, each party agrees to execute such other documents to evidence the transfer of the Subject Assets and the assumption of the Assumed Liabilities as reasonably requested by any other party in order to effectuate the purposes of this Agreement.

(b) After the Closing, the Barjan Parties shall refer all customer inquiries with respect to the Purchased Business to Buyer and shall promptly, and in no event later than five (5) business days after the receipt thereof, remit all collections on Receivables received by them, if any, to Buyer.

(c) After the Closing, Buyer shall refer all customer inquiries with respect to the Victor Business to Borrower (or its designee) and shall promptly, but in no event later than five (5) business days after the receipt thereof remit all collections on accounts receivable, notes receivable and other receivables not included in the Receivables to Agent for the account of Borrower.

#### 25. Press Releases, Prior Notice.

Prior to the Closing, subject to the other provisions hereof, (a) Buyer, Agent and the Barjan Parties shall reasonably cooperate in the preparation of any press releases of the Barjan Parties and Buyer and to the extent practicable Buyer and the Barjan Parties may issue joint press releases to be made prior to the Closing and (b) Buyer and the Barjan Parties shall cooperate in the contacting of customers, suppliers and employees, regarding the transactions contemplated by this Agreement.

#### 26. General.

##### 26.1 General Expenses.

(a) All costs incurred with respect to the transfer and recording of vehicle titles, the registration of copyrights and any similar registrations in connection with the transfer of the Purchased Business, the Subject Assets or the Assumed Liabilities shall be borne one hundred percent (100%) by Buyer.

(b) Except as expressly provided herein, all expenses of the preparation, execution and consummation of this Agreement, the Real Estate Purchase Agreement, the other Transaction Documents and of the transactions contemplated hereby and thereby, including, without limitation, attorneys', accountants' and outside advisor's fees and disbursements, shall be borne by the party incurring such fees; provided, however, that nothing contained herein shall in any manner alter, limit, or modify Agent's or any Lender's right to have such fees and expenses reimbursed by Borrower or Barjan Holding

pursuant to the provisions of the Loan Documents or Barjan Holding Loan Documents, as the case may be.

26.2 Notice.

All notices, demands and other communications hereunder shall be in writing or by written telecommunication, and shall be deemed to have been duly given if delivered personally, if mailed by certified mail return receipt requested, if delivered by overnight courier, if mailed, postage prepaid, or if sent by written telecommunication, confirmation of receipt received, as follows:

If to Agent, to:

Heller Financial, Inc.  
c/o General Electric Commercial Financial Services, Inc.  
500 West Monroe, 16<sup>th</sup> Floor  
Chicago, Illinois 60661  
Attn: Patrick Hayes  
Fax: (312) 441-7030

With copies sent contemporaneously to:

GE Corporate Financial Services  
201 Merritt 7  
P.O. Box 5201  
Norwalk, Connecticut 06856-5201  
Attn: Douglas Taber  
Fax: (203) 956-4259

and

Latham & Watkins LLP  
233 South Wacker Drive, Suite 5800  
Chicago, Illinois 60606  
Attn: David S. Heller  
Fax: (312) 993-9767

If to Buyer, to:

c/o Monomoy Capital Partners  
152 West 57th Street, 9th Floor  
New York, NY 10019  
Attention: Daniel Collin  
Telecopy: (212) 699-4010

With a copy sent contemporaneously to:

Kirkland & Ellis LLP  
200 E. Randolph Drive  
Chicago, IL 60601  
Attention: Richard W. Porter, P.C. and Geoffrey A. Richards, Esq.  
Facsimile: (312) 861-2200

If to any Barjan Party, to:

Barjan Products, L.L.C.  
7800 51ST Street West  
Rock Island, IL 61201-7398  
Attention: CEO  
Facsimile: (309) 756-9363

With a copy sent contemporaneously to:

Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611  
Attention: Jeff J. Marwil and Jill Sugar Factor  
Facsimile: (312) 923-2719

### 26.3 Entire Agreement.

This Agreement and the related schedules, exhibits and agreements delivered in connection herewith (together with the Confidentiality Agreement) contain the entire understanding of the parties with respect to the subject matter hereof, supersede all prior agreements and understandings relating to the subject matter hereof, and shall not be amended except by a written instrument hereafter signed by all of the parties hereto.

### 26.4 Confidentiality.

If the transactions contemplated by this Agreement are not consummated, then the confidentiality obligations of Monomoy, Buyer and Borrower as set forth in the Confidentiality Agreement shall be governed by the terms thereof, and Buyer and Borrower acknowledge and agree they are bound by the Confidentiality Agreement as if Buyer and Borrower were original signatories thereto. If the transactions contemplated hereby are consummated, the Confidentiality Agreement shall terminate and Agent and the Barjan Parties shall maintain as confidential and shall not use or disclose (except as required by Law, court Order or as authorized in writing by Buyer) any confidential or proprietary information or materials relating to Buyer or solely to the Purchased Business (except with respect to the Excluded Assets or the Excluded Liabilities), and Buyer shall maintain as confidential and shall not use or disclose (except as required by Law, court Order or as authorized in writing by Borrower and Agent) any confidential or proprietary information or materials relating solely to any Excluded Assets or Excluded Liabilities. In the event Buyer or any Barjan Party is required by Law or court Order

to disclose any confidential information, such party shall promptly notify each other party hereto in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and shall cooperate with each other party to preserve the confidentiality of such information consistent with applicable Law. Notwithstanding any provision herein or in any other Transaction Document to the contrary, Agent's confidentiality obligations owed to Borrower shall be governed solely by the Credit Agreement and nothing herein or in any other Transaction Document shall in any way alter, amend or otherwise modify any such obligations.

26.5 Governing Law; Jury Trial Waiver.

The validity and construction of this Agreement shall be governed by the internal laws of the State of Illinois without regard to principles of conflicts of laws. THE BARJAN PARTIES, AGENT AND BUYER EACH HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE REAL ESTATE PURCHASE AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS. THE BARJAN PARTIES, AGENT AND BUYER EACH ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT, THE REAL ESTATE PURCHASE AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. THE BARJAN PARTIES, AGENT AND BUYER EACH WARRANT AND REPRESENT THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

26.6 Sections, Section Headings and Defined Terms.

All enumerated subdivisions of this Agreement are herein referred to as "sections" or "subsections." The headings of the sections and subsections are for reference only and shall not limit or control the meaning thereof. Capitalized terms contained in the exhibits or schedules to this Agreement, which are not otherwise defined in such exhibits or schedules, shall have the meanings ascribed to them in this Agreement.

26.7 Assignment.

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by any Barjan Party or Agent without the prior written consent of Buyer, except that, without the consent of Buyer, assignments may be made to any of the lenders (or agent therefor) from time to time party to any of the Barjan Credit Agreements in accordance with the terms thereof; provided that Borrower shall remain primarily liable to Buyer hereunder.

26.8 Survival; Lenders' Several Liability.

(a) The representations and warranties of the Barjan Parties set forth in this Agreement, the Real Estate Purchase Agreement, and in any certificates delivered at the Closing in connection with this Agreement shall survive the Closing.

(b) Subject to subsection (c) below, the representations and warranties of Agent set forth in Section 14 and in any certificates delivered at the Closing in connection with this Agreement shall survive the Closing.

(c) With respect to any and all claims for breaches of any covenant, warranty, representation or agreement of Agent under this Agreement or any other Transaction Document, Buyer hereby agrees to assert any and all such claims or otherwise seek recourse under this Agreement or any other Transaction Document directly against each Lender severally in proportion to each Lender's Pro Rata Share (as defined in the Credit Agreement), but not jointly. Buyer further agrees that each Lender's Liability to Buyer (including any Liability of Heller Financial, Inc. in its capacity as a Lender), if any, shall be several in proportion to its Pro Rata Share (as defined in the Credit Agreement) but not joint, and shall in no event be no more, in the aggregate for all such claims, than the proceeds indefeasibly paid to such Lender as a result of the transactions contemplated by this Agreement and the Real Estate Purchase Agreement. By execution of the Reaffirmation Agreement, each Lender (including Heller Financial, Inc. in its capacity as a Lender) shall agree to be severally, according to its Pro Rata Share (as defined in the Credit Agreement), but not jointly, liable for any breach of the representations, warranties and covenants of Agent set forth herein, with each Lender's Liability to Buyer (including any Liability of Heller Financial, Inc. in its capacity as a Lender), if any, being in any event no more, in the aggregate for all such claims, than the proceeds indefeasibly paid to such Lender as a result of the transactions contemplated by this Agreement and the Real Estate Purchase Agreement. For the avoidance of doubt, proceeds paid to any Lender as a result of the transactions contemplated by this Agreement or the Real Estate Purchase Agreement shall not be deemed defeasible for purposes of this Section 26.8 solely as a result of any claim or right to payment Buyer may have against such Lender under this Section 26.8.

(d) The representations and warranties of Buyer set forth in Section 13.9 hereof and in any certificates delivered at the Closing in connection with this Agreement shall survive the Closing.

26.9 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Any party hereto may execute and deliver a counterpart of this Agreement by delivering by facsimile or other electronic transmission a signature page of this Agreement signed by such party, and any such facsimile or similar electronic signature shall be treated in all respects as having the same effect as an original signature. Any party delivering by facsimile or other electronic transmission

a counterpart executed by it shall promptly thereafter also deliver a manually signed counterpart of this Agreement.

26.10 Amendment and Waiver.

This Agreement may be amended, and any provision of this Agreement may be waived, so long as any such amendment or waiver is set forth in a writing executed by each party hereto. No course of dealing between or among the parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any party under or by reason of this Agreement.

26.11 Risk of Loss.

Except with respect to a violation of any of the representations and warranties made herein by Agent and the Barjan Parties, the risk of any loss that may occur with respect to any of the Subject Assets and the REPA Assets being purchased hereunder shall be borne by Buyer immediately upon and at all times after the consummation of the Closing, and Agent, the Lenders and the Barjan Parties shall have no liability whatsoever to Buyer for any loss or damage to the Subject Assets or the REPA Assets being purchased hereunder that may occur on and after consummation of the Closing.

26.12 Limited Responsibility.

Each party hereto acknowledges and agrees that it is the mutual intent of the parties hereto that the obligations, representations, warranties and undertakings under this Agreement and the other Transaction Documents or as a result hereof or of the transactions contemplated hereby or thereby are and be limited to only those expressly set forth herein, and not enlarged by implication, operation of law or otherwise. Without limiting the generality of the foregoing, Agent and the Lenders shall have no responsibility, liability or any other obligation whatsoever to Buyer, the Barjan Parties or any other Person for any breach by the Barjan Parties or any other Person of any of their respective representations, warranties, covenants or other person or entity in connection with this Agreement, the Real Estate Purchase Agreement or other Transaction Documents or the transactions contemplated hereby or thereby. Nothing herein limits in any respect the remedies any party may have with respect to fraud.

26.13 No Strict Construction.

This Agreement and all other agreements and documents executed in connection herewith have been prepared through the joint efforts of all of the parties hereto. Neither the provisions of this Agreement or any such other agreements and documents nor any alleged ambiguity therein shall be interpreted or resolved against any party on the ground that such party's counsel drafted this Agreement or such other agreements and documents, or based on any other rule of strict construction. Each party hereto represents and declares that it has carefully read this Agreement and all other agreements and documents executed in connection herewith, and that it knows the contents thereof and signs the same freely and voluntarily. The parties hereto hereby acknowledge that they have been represented by legal counsel of their own choosing in negotiations for and preparation of this Agreement and all other agreements and documents

executed in connection herewith and that each of them has read the same and had their contents fully explained by such counsel and is fully aware of their contents and legal effect.

26.14 No Third-Party Beneficiaries.

This Agreement is for the sole benefit of the parties hereto, the Lenders and their respective permitted successors and assigns, and nothing herein expressed or implied shall give or be construed to give any Person (other than the parties hereto, the Lenders and their respective permitted successors and assigns) any legal or equitable rights hereunder or by reason of this Agreement.

26.15 Schedules and Exhibits.

The Schedules and Exhibits to this Agreement are an integral part hereof and are incorporated herein by reference.

[SIGNATURE PAGES BEGIN ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly respective officers as of the date and the year first above written.

**AGENT:**

**HELLER FINANCIAL, INC.**

By: *P. Hayes*

Name: *Pamela Hayes*

Its: *SVP*

**BUYER:**

**BARJAN PRODUCTS ACQUISITION, LLC**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**BARJAN HOLDING:**

Barjan Holding Company

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**BORROWER:**

Barjan Products, L.L.C.

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly respective officers as of the date and the year first above written.

**AGENT:**

**HELLER FINANCIAL, INC.**


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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**BUYER:**

**BARJAN PRODUCTS ACQUISITION, LLC**

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

Name: *Daniel Collin* \_\_\_\_\_

Its: \_\_\_\_\_

**PURCHASE PRICE DEPOSIT ESCROW**  
**AGENT:**

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Purchase Price Deposit  
Escrow Agent**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly respective officers as of the date and the year first above written.

**AGENT:**

**HELLER FINANCIAL, INC.**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**BUYER:**

**BARJAN PRODUCTS ACQUISITION, LLC**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**BARJAN HOLDING:**

Barjan Holding Company

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**BORROWER:**

Barjan Products, L.L.C.

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**LIST OF SCHEDULES  
TO  
SALE AGREEMENT PURSUANT TO ARTICLE 9 OF  
APPLICABLE UNIFORM COMMERCIAL CODE**

|              |  |
|--------------|--|
| 2(a)         | Permitted Liens                          |
| 4.1(a)(viii) | Deposits                                 |
| 4.1(a)(x)    | Acquired Contracts                       |
| 4.1(a)(xiii) | Interests in Other Persons               |
| 4.1(b)       | Subject Assets Subject to Senior Liens   |
| 4.2(b)       | Retained Victor Assets                   |
| 4.2(k)       | Excluded Contracts                       |
| 4.2(q)       | Other Excluded Assets                    |
| 4.4          | Assumed Liabilities                      |
| 12.4         | Borrower Financial Criteria              |
| 13.3         | Buyer Brokers                            |
| 14.9         | Deficiency Claim                         |
| 14.13        | Letters of Credit                        |
| 15.2         | Organization and Corporate Power         |
| 15.3         | Subsidiaries and Affiliates              |
| 15.4(b)      | Authorization; No Breach                 |
| 15.5         | Financial Statements                     |
| 15.6         | Undisclosed Liabilities                  |
| 15.7         | Absence of Certain Developments          |
| 15.8(a)      | Title to Real Property                   |
| 15.8(b)      | Leased Real Property                     |
| 15.9(a)      | Liens on Tangible Assets                 |
| 15.9(b)      | Tangible Subject Assets                  |
| 15.9(c)      | Victor Assets                            |
| 15.10        | Tax Matters                              |
| 15.11(a)     | Contracts                                |
| 15.11(b)     | Validity of Contracts                    |
| 15.11(c)     | Secured Acquired Contracts               |
| 15.11(d)     | Acquired Contracts Not Provided to Buyer |
| 15.12(a)     | Intellectual Property                    |
| 15.12(b)     | Software                                 |
| 15.12(c)     | Third Party Licenses                     |
| 15.12(d)     | Transferred Intellectual Property        |
| 15.13        | Litigation                               |
| 15.14        | Barjan Parties Brokerage                 |
| 15.15(a)     | Employment Compliance                    |
| 15.15(d)     | Conflicts of Interest                    |
| 15.15(e)     | Gifts                                    |
| 15.16        | Related Party Transactions               |
| 15.17(a)     | Employee Benefit Plans                   |
| 15.18        | Insurance                                |

15.19 Compliance with Laws  
15.19(b) Required Permits  
15.20 Environmental and Safety Matters  
15.22 Relationships with Customers  
19.6 Third-Party Consents  
19.18 Liens  
23.1 Current Employees and Independent Sales Representatives

**LIST OF EXHIBITS  
TO  
SALE AGREEMENT PURSUANT TO ARTICLE 9 OF  
APPLICABLE UNIFORM COMMERCIAL CODE**

- |                  |  |
|------------------|--|
| <u>Exhibit A</u> | Reaffirmation Agreement                                |
| <u>Exhibit B</u> | Assignment and Assumption Agreement                    |
| <u>Exhibit C</u> | Bill of Transfer                                       |
| <u>Exhibit D</u> | Distribution Assignment and Assumption Agreement       |
| <u>Exhibit E</u> | Post-Closing Escrow Agreement                          |
| <u>Exhibit F</u> | Purchase Price Deposit Escrow Agreement                |
| <u>Exhibit G</u> | Victor Distribution, License and Non-Compete Agreement |
| <u>Exhibit H</u> | Working Capital Schedule                               |
| <u>Exhibit I</u> | Section 363 Term Sheet                                 |
| <u>Exhibit J</u> | Proceeds Assignment Agreement                          |

#### SCHEDULE 4.4 – ASSUMED LIABILITIES

1. the accrued liabilities of Barjan Parties as of the Closing Date which shall be determined in the same fashion as the accrued liabilities were determined as of May 31, 2005 as included under the title “Accrued Liabilities” reflected on the Working Capital Schedule and as listed below:

| <u>Accrued Liabilities</u>       | <u>Account Number</u> |
|----------------------------------|-----------------------|
| FICA/Fed Wh Payable              | 01-210                |
| State Withholding - IN & CT      | 01-211                |
| Supplemental Ins Pyble           | 01-215                |
| S.E.P. Program                   | 01-216                |
| Credit Union W/H Payable         | 01-217                |
| Garnishments W/H                 | 01-218                |
| Misc W/H Deduction               | 01-219                |
| Sales Tax Payable                | 01-225                |
| CA Unemployment Payable          | 01-226                |
| Corp Income Tax Payable          | 01-229                |
| Accrued Wages                    | 01-230                |
| Accrued Vacation                 | 01-231                |
| Accrued Bonus                    | 01-232                |
| Accrued Commissions              | 01-233                |
| Accrued Retirement               | 01-234                |
| Accrued Work Comp Insurance      | 01-236                |
| Accrued Rebates                  | 01-238                |
| Accrued Group Insurance          | 01-239                |
| Accrued Group Insurance - Victor | (A)                   |
| 401K W/H                         | 01-240                |
| Flex Plan Payable                | 01-241                |
| Fringe Benefits Payable          | 01-243                |
| TA Unearned Discounts            | 01-246                |
| 401K Loan Prmts W/H              | 01-248                |

- (A) Buyer shall assume up to, but not more than, \$95,000 of the liability relating to the Accrued Group Insurance - Victor, which amount shall be deemed to be zero (\$0) as of the May 31, 2005 Working Capital Certificate. The amount of Accrued Group Insurance - Victor actually assumed shall be an amount not greater than \$95,000 reasonably estimated by Borrower and such amount shall be included in the Preliminary Working Capital Determination, the Estimated Closing Date Working Capital Value and the Closing Date Working Capital Value. Any amounts in excess of the lesser of (i) the amount reasonably estimated by Borrower or (ii) \$95,000 that may be accrued with respect to Accrued Group Insurance - Victor shall not be an Assumed Liability and shall not be included in the Preliminary Working Capital Determination, the Estimated Closing Date Working Capital Value and Closing Date Working Capital Value; instead, any amounts over the lesser of (i) the amount reasonably estimated by Borrower or (ii) \$95,000 shall be an Excluded Liability for all purposes hereunder.

2. the accounts payable (the "Accounts Payable") that are, and only to the extent, expressly set forth on Annex 1 to this Schedule to be delivered by Buyer to the Barjan Parties and Agent at Closing;

3. all obligations under the Acquired Contracts (but only to the extent such Contracts are assigned to Buyer) first arising after the Closing; and

4. all of Borrower's WARN liabilities, if any, arising from the consummation of the transactions contemplated by this Agreement and the other Transaction Documents.



**ANNEX 1 TO SCHEDULE 4.4 (ASSUMED LIABILITIES) – ACCOUNTS PAYABLE**

**[To be delivered by Buyer at Closing]**

## SCHEDULE 15.12(a)

### Intellectual Property

#### 1. Patents and Patent Applications

| Title               | Country | Patent No. |
|---------------------|---------|------------|
| Loaded Antenna      | U.S.    | 6,400,327  |
| Antenna (Design)    | U.S.    | D439,891   |
| Antenna Mast        | U.S.    | D329,433   |
| Base Loaded Antenna | U.S.    | 4,882,591  |

#### 2. Internet Domain Names

- barjan.com
- wilsonantenna.com

#### 3. Trademark Registrations and Applications

| Registration/Application | Name           | Number                  |
|--------------------------|----------------|-------------------------|
| Trademark registration   | ROAD SHADES    | U.S. Reg. No. 1,057,457 |
| Trademark registration   | WILSON         | U.S. Reg. No. 1,356,335 |
| Trademark registration   | AMAZER         | U.S. Reg. No. 1,044,751 |
| Trademark registration   | FRANCIS        | U.S. Reg. No. 1,044,750 |
| Trademark registration   | WHEELER DEALER | U.S. Reg. No. 1,046,284 |
| Trademark registration   | WILSON         | U.S. Reg. No. 2,346,968 |
| Trademark registration   | DIESEL         | Ohio Reg. No. TM8332    |

#### 4. Copyright Registrations and Applications

- Copyright for Barjan Products catalog, Reg. No. TX-u-820-368, registered September 29, 1997.
- Copyright for Barjan Products catalog, Reg. No. TX-u-617-701, registered September 23, 1996.
- Copyright for Barjan Products catalog, Reg. No. TX-u-698-815, registered August 2, 1995.

#### 5. Material Unregistered Intellectual Property

##### Tradenames

- Barjan
- Barjan Entertainment
- Barjan HD
- Diesel
- Francis

- Helpmate
- Helpmate Automotive
- Impulse Merchandisers
- Personal Essentials
- Rock River
- Tracker
- Trucker Tough
- Wilson

**Trademarks**

- Barjan
- Barjan Entertainment
- Impulse Merchandisers
- Tracker
- Trucker Tough