

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
THE WECK CORPORATION		11/18/2010	CORPORATION: NEW YORK

RECEIVING PARTY DATA

Name:	AMERICAS RETAIL FLAGSHIP FUND LLC
Street Address:	158 West 27th St
Internal Address:	12th Floor
City:	New York
State/Country:	NEW YORK
Postal Code:	10001
Entity Type:	LIMITED LIABILITY COMPANY: DELAWARE

PROPERTY NUMBERS Total: 11

Property Type	Number	Word Mark
Registration Number:	0947721	GRACIOUS HOME
Registration Number:	3264838	GRACIOUS HOME
Registration Number:	3351200	GRACIOUS HOME
Registration Number:	3351201	GRACIOUS HOME
Registration Number:	3351202	GRACIOUS HOME
Registration Number:	3351209	GRACIOUS HOME
Registration Number:	3828911	GRACIOUS HOME
Registration Number:	3807720	GRACIOUS HOME EST. 1963
Registration Number:	3351799	GRACIOUS HOME
Registration Number:	3408659	GRACIOUS HOME
Registration Number:	2152208	LOOK NO FURTHER

CORRESPONDENCE DATA

Fax Number: 2125363901

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.*

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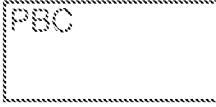
ATTORNEY DOCKET NUMBER:	0815975.00001
NAME OF SUBMITTER:	Andrew L. Reibman
Signature:	/Andrew L. Reibman/
Date:	12/14/2012

**Total Attachments: 67**

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EXECUTION VERSION

ASSET PURCHASE AGREEMENT

AMONG

THE WECK CORPORATION,

WEST WECK, LLC,

GRACIOUS HOME.COM, LLC,

WECK CHELSEA, LLC

AND

AMERICAS RETAIL FLAGSHIP FUND LLC

Dated as of November 18, 2010

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<b>EXHIBIT</b>	<b>EXHIBIT NAME</b>
A	Bill of Sale and Assignment and Assumption Agreement
B	Sale Order
C	Deposit Escrow Agreement
D	Inventory Service Instructions
E	Vehicles
F	Notes Term Sheet
G	Lease Renewal / Amendment Term Sheets



## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “**Agreement**”) is made and entered into as of November 18, 2010 by and among The Weck Corporation, West Weck, LLC, Gracious Home.com, LLC, and Weck Chelsea, LLC (each a “**Seller**” and collectively, “**Sellers**”), and Americas Retail Flagship Fund LLC or its designees and assigns (the “**Purchaser**”).

### PRELIMINARY STATEMENT

**WHEREAS**, Sellers operate the Business (as hereinafter defined);

**WHEREAS**, on August 13, 2010, the Sellers filed a voluntary petition with the Bankruptcy Court initiating cases under chapter 11 of the Bankruptcy Code and have continued in the possession of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code;

**WHEREAS**, prior to or simultaneously with the execution by Purchaser of this Agreement, Purchaser has executed and delivered to the Sellers an escrow agreement, in substantially the form attached hereto as Exhibit C (the “**Deposit Escrow Agreement**”), and on or prior to November 19, 2010, Purchaser will deliver to the Escrow Agent under such Deposit Escrow Agreement, the amount of One Million One Hundred Thirty Five Thousand Dollars (\$1,135,000);

**WHEREAS**, Purchaser desires to purchase from the Sellers, and each of the Sellers desire to sell to Purchaser, substantially all of the assets of the Business, and Purchaser will assume certain liabilities, in each case pursuant to, inter alia Sections 363 and 365 of the Bankruptcy Code and the applicable Federal Rules of Bankruptcy Procedure and on the terms and subject to the conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions hereof, the parties, intending to be legally bound, hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.1 Definitions. Unless otherwise defined herein, the terms defined in the introductory paragraph and the Recitals to this Agreement shall have the respective meanings specified therein, and the following terms shall have the meanings specified below:

“**Affiliate**” means “affiliate” as defined in Rule 405 promulgated under the Securities Act of 1933, as amended.

“**Agreement**” has the meaning set forth in the preamble and shall include all Schedules and Exhibits hereto.

“**Allocation Statement**” has the meaning set forth in Section 2.6.

“**Alternative Transaction**” means a transaction or series of transactions involving a sale, transfer or other disposition of a material portion of the Sellers’ stock or assets to another purchaser or purchasers other than the Purchaser.

“**Ancillary Documents**” means, collectively, the Deposit Escrow Agreement, the Adjustment Escrow Agreement, the Assignment and Assumption Agreements, the Notes and the Transition Services Agreement.

“**Apportionment Date**” has the meaning set forth in Section 2.8.

“**Assignment and Assumption Agreements**” means the bill of sale and assignment and assumption agreement to be executed at Closing by Purchaser and the Sellers in substantially the form attached hereto as Exhibit A and any other document or instrument of transfer (including without limitation Trademark assignments and transfer documentation) executed at the Closing in order to transfer any Purchased Assets to the Purchaser or to evidence Purchaser’s assumption of any Assumed Liabilities.

“**Assigned Contracts**” means the Leases and the Other Contracts assumed and assigned pursuant to this Agreement.

“**Assumed Liabilities**” has the meaning set forth in Section 2.3.

“**Auction**” means an auction conducted in accordance with the Bidding Procedures, at which the Debtors will consider Qualified Proposals for the Purchased Assets submitted by Qualified Bidders.

“**Avoidance Actions**” has the meaning set forth in the definition of Excluded Assets.

“**Bankruptcy Code**” means The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. Sections 101, *et seq.*

“**Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York, or any other court, having jurisdiction over the Cases from time to time.

“**Benefit Arrangement**” means any “employee benefit plan” as defined in Section 3(3) of ERISA (whether or not subject to ERISA) and any other plan, program, agreement, arrangement, obligation or practice, whether or not legally enforceable, including, without limitation, any plan, program, agreement, arrangement, obligation or practice providing pension, profit sharing, severance, welfare, fringe benefit, employee loan, retirement, medical or welfare benefits, severance, stay or retention bonuses or compensation, executive or incentive compensation, sick leave, vacation pay, plant closing benefits, disability or retirement benefits, deferred compensation, bonus, stock option or purchase or other stock-based benefits, tuition reimbursement or scholarship, employee discount, meals, travel, or vehicle allowances, any plans subject to Section 125 of the Code, as amended, and any plans or arrangements providing benefits or payments in the event of a change of control, change in ownership or effective control or sale of assets (i) established, sponsored, maintained, or contributed to, or required to be

contributed to, by the Sellers or any ERISA Affiliate, on behalf of any current or former director, employee, agent, independent contractor or service provider of the Sellers, or their beneficiaries, or (ii) pursuant to which the Sellers or any ERISA Affiliate has any obligation (whether contingent or otherwise) with respect to any such persons.

"**Bidding Procedures**" means the bidding procedures attached to, and approved by, the Bidding Procedures Order, as amended.

"**Bidding Procedures Order**" means the order of the Bankruptcy Court entered on October 22, 2010 "Approving Stalking Horse Selection, Bidding Procedures, Notice of Auction Related Thereto, Scheduling Sale Hearing and Granting Related Relief", as amended by a further order of the Bankruptcy Court to be entered prior to the Designation Time to provide that the initial bidding increment at the Auction shall be an amount equal to \$250,000 plus the Break-Up Fee plus the Expense Reimbursement, and the bidding thereafter shall continue in minimum increments of at least \$100,000 higher than the previous bid.

"**Break-Up Fee**" means an amount equal to Two Hundred Eighty Three Thousand Seven Hundred Fifty Dollars (\$283,750), which shall constitute an allowed administrative expense under Section 503(b)(1) of the Bankruptcy Code and shall be paid as set forth in Section 9.5(c).

"**Business**" means the housewares, hardware, home furnishings and other related business in four geographical store locations (under five leases) and an Electronic Commerce-based business, together with a corporate office and warehouse facilities, all operating under the name "Gracious Home" but excluding for all purposes the Former Operations.

"**Business Day**" means a day, other than a Saturday or a Sunday, on which the New York Stock Exchange is open for business in The City of New York.

"**Capped Assumed Liabilities**" shall mean the Assumed Liabilities described in clauses (c), (d), (f) and (g) of Section 2.3.

"**Cases**" means the Chapter 11 cases of each of the Sellers pending in the Bankruptcy Court and being jointly administered for procedural purposes as Case Nos. 10-14349, 10-14350, 10-14351 and 10-14353 in the Bankruptcy Court.

"**Cash Purchase Price**" has the meaning set forth in Section 2.2.

"**Closing**" has the meaning set forth in Section 9.1.

"**Closing Date**" has the meaning set forth in Section 9.1.

"**Closing Date Working Capital**" shall mean: (i) the value as of the Closing Date of the Purchased Assets constituting only current assets, minus (ii) the value as of the Closing Date of the Assumed Liabilities constituting only Sellers' current liabilities (provided, that the amount of Capped Assumed Liabilities to be included in the calculation of Closing Date Working Capital shall not exceed \$1,800,000 in the aggregate; and provided further that (x) accrued payroll and payroll related obligations that are apportioned pursuant to Section 2.8 and (y) accrued sales taxes shall not be included as current liabilities to be included in the calculation of Closing Date

Working Capital and shall not be an Assumed Liability). Certain principles to be applied in the computation of Closing Date Working Capital are set forth on Schedule 2.4(a) annexed hereto. In addition, for clarification purposes only, Schedule 2.4(a) includes an example setting forth the manner in which Closing Date Working Capital shall be computed.

“**Closing Date Statement**” has the meaning set forth in Section 2.4(f).

“**Code**” means the Internal Revenue Code of 1986, as heretofore or hereafter amended.

“**Committee**” means the Official Committee of Unsecured Creditors appointed in the Cases.

“**Confidentiality Agreement**” has the meaning set forth in Section 5.3.

“**Corporate Office**” means the corporate offices of the Sellers located at 632 Broadway, Suite 401, New York, New York 10012.

“**Cost**” with respect to any unit of Inventory and any unit sold that generates Gross Rings means the AS400 VAI System “Average Cost” calculated as the sum of the total cost of all such units on hand divided by the total number of such units on hand. For the avoidance of doubt, Cost does not include inbound freight paid by the Sellers, storage costs and customs duties.

“**Cure Costs**” means (a) the amount necessary for Sellers to pay to a landlord in order for Purchaser to assume a Lease under Section 365 of the Bankruptcy Code, as such amount is determined by the Sale Order or other order of the Bankruptcy Court, and (b) the amount necessary for Sellers to pay to the other parties to any of the Other Contracts in order for Purchaser to be able to assume such Other Contract under Section 365 of the Bankruptcy Code, as such amount is determined by the Sale Order or Cure Order or as such amount was or is determined by another order of the Bankruptcy Court.

“**Cure Order**” has the meaning set forth in Section 5.6(b).

“**Damages**” means losses, amounts paid in settlement, Taxes, claims, damages, Liabilities, obligations, judgments, settlements and reasonable out-of-pocket costs and reasonable expenses and attorneys’ fees; provided, however, that Damages shall not include (i) any incidental or consequential damages or (ii) any special or punitive damages.

“**Deposit**” means the One Million One Hundred Thirty Five Thousand Dollars (\$1,135,000) deposited by the Purchaser in escrow pursuant to the Deposit Escrow Agreement on the date hereof.

“**Deposit Escrow Agreement**” means the deposit escrow agreement among the parties hereto and the Escrow Agent, dated the date hereof, in substantially the form attached hereto as Exhibit C.

“**Designation Time**” means 5:00 p.m. EDT on November 27, 2010.

**“Electronic Commerce”** means information, communication or commerce via any Internet web sites, including www.gracioushome.com, co-branded web sites or pages, comparison shopping web sites, search engines, Facebook and other social networks, twitter, mobile devices, in-store or other kiosks, or other electronic means, channels, interfaces or services.

**“Equipment and Fixtures”** means, to the extent owned or leased by Sellers and used in the Business, (i) building operating systems and equipment, other systems and equipment (including, all point of sale, ticketing, sensormatic, phone and security systems and equipment), furniture, furnishings, fixtures, trade fixtures and improvements, including items leased by the Sellers, in each case only to the extent assignable, (ii) laptop, desktop and other computers, mobile devices, servers, data storage devices, routers, hubs, switches, communications lines and all other tangible computing, networking, communications and other information technology equipment and (iii) to the extent assignable, any rights of the Sellers to the warranties, licenses and other similar rights with respect to the foregoing in clauses (i) and (ii).

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

**“ERISA Affiliate”** means any Person that is a member of a “controlled group of corporations” with, or is under “common control” with, or is a member of the same “affiliated service group” with the Business, in each case, as defined in Sections 414(b), (c), (m) or (o) of the Code.

**“Escrow Agent”** shall mean Hahn & Hessen LLP.

**“Estimated Closing Date Working Capital”** has the meaning set forth in Section 2.4(a).

**“Excluded Assets”** means:

(a) any cash, cash equivalents and marketable securities of the Sellers (including for this purpose all (i) collected funds received in bank accounts of the Sellers and (ii) cash held in escrow, including the Deposit and any other escrow established hereunder), other than (x) cash held in the Stores in an amount not to exceed \$50,000 in the aggregate for all Stores and (y) cash held as security for Leases, including as a result of draws on letters of credit or conversion of letters of credit previously given as security for such Leases or otherwise held as security for Leases;

(b) any capital stock or equity interest held by or on behalf of any Seller in any other Seller or any other Person (including, without limitation all shares of capital stock of Appliance Dealers Cooperative and all shares of Class A common stock and Class B common stock of True Value Company and any promissory notes or bonds issued by True Value Company that are held by or on behalf of any Seller);

(c) Tax refunds and Tax attributes related to any taxable period (or portion thereof) ending on or prior to the Closing Date;

(d) any assets of any Benefit Arrangement maintained by any Seller or any of its Affiliates, unless such Benefit Arrangement is to be assumed by Purchaser or to the extent

that any assets relating to any Benefit Arrangement are transferred to any plan maintained by Purchaser, in each case on terms mutually agreed upon by Sellers and Purchaser prior to the Closing Date;

(e) all insurance policies and other agreements and all rights thereunder, other than insurance rights respecting occurrences (such as casualties) prior to the Closing Date;

(f) all rights under Excluded Contracts and all letters of credit, letters of credit proceeds and deposits related to any Excluded Contract or any other Excluded Asset or any Excluded Liability;

(g) all rights of the Sellers under this Agreement, any Ancillary Document or any other agreement between any Sellers and Purchaser;

(h) intercompany claims of Sellers;

(i) all deposit and bank accounts of Sellers;

(j) any asset of any Sellers that would constitute Purchased Assets (other than Leases) (if owned by such Seller on the Closing Date) that is conveyed or otherwise disposed of during the period from the date hereof until the Closing Date (1) in the ordinary course of the Business and not in violation of the terms of this Agreement, including Section 5.1 hereof or (2) as otherwise expressly permitted by the terms of this Agreement;

(k) all air conditioners subject to floor financing arrangements;

(l) any Permits that are not legally assignable;

(m) all Tax Returns of Sellers and all books and records (including working papers) related thereto, all books and records that Sellers are required by law to retain (provided, however, that Purchaser shall be entitled to access to such excluded books and records upon reasonable request to the Sellers), all documents and agreements relating to the Cases, and copies of any other books and records made at the request of the Sellers or the Committee (i.e., the originals shall constitute Purchased Assets but not any such requested copies thereof);

(n) all security deposits and utility deposits (in each case, other than with respect to the Assigned Contracts), all customs and import-duties bonds, and to the extent they relate to any Excluded Asset or any Excluded Liability and are not included as a Current Asset in the calculation of Closing Date Working Capital, any instruments, other prepaid assets, unbilled costs and fees, tax assets and accounts;

(o) all claims and causes of action under Sections 544, 545, 547, 548, 549, 550, or 553 of the Bankruptcy Code, and any other claims or causes of action belonging to Sellers or their estate (collectively, “**Avoidance Actions**”), other than those specifically described in Section 5.4 and those relating to the Purchased Assets;

(p) all of Sellers’ rights and causes of action arising under Section 502 and 503 of the Bankruptcy Code and Rule 3007 thereunder;

(q) all of Sellers' certificates of incorporation and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates and other documents relating to the organization, maintenance and existence of any Seller as a corporation, limited liability company or other entity,

(r) any loans or notes payable to any Seller from any employee of any Seller other than a Transferred Employee;

(s) goods that have been placed in the Stores on consignment as set forth on Schedule 1.1(a);

(t) the lease for the demised premises relating to the Former Operations and the lease for the Corporate Office; and

(t) all rights, including the rights of offset and recoupment, claims or causes of action that relate solely to any of the foregoing Excluded Assets, any Excluded Liability or any contract or agreement that either is not assumed by or assigned to the Purchaser or which has expired prior to the Closing Date.

**“Excluded Contracts”** means all contracts and real property leases to which a Seller is a party and that are not Assigned Contracts.

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

**“Executory Contracts”** means all Assigned Contracts entered into by or assigned to a Seller which are executory and unexpired as of the Closing Date.

**“Expense Reimbursement”** means the reimbursement of all of Purchaser's documented, out of pocket costs and expenses, including without limitation the fees and expenses of its attorneys, consultants and accountants, in an aggregate amount not to exceed \$50,000.00, which shall constitute an allowed administrative expense under Section 503(b)(1) of the Bankruptcy Code, and which is payable as set forth in Section 9.5(c).

**“Final Inventory”** means (a) the Inventory as of the Inventory Date less (b) Inventory sold that generates Gross Rings (as defined in Section 2.4(d) hereof) between the Inventory Date and the Closing plus (c) any additional Inventory delivered to the Warehouse after the Inventory Date or in transit to the Sellers or among the Sellers' facilities on the Inventory Date to the extent title to such Inventory has passed to Sellers as of the Closing Date, in each case, for the avoidance of doubt, including adequate reserves pursuant to Sellers' policies to the extent in accordance with GAAP.

**“Final Closing Adjustment”** has the meaning set forth in Section 2.4(f).

**“Final Closing Date Working Capital”** has the meaning set forth in Section 2.4(f).

**“Final Order”** means an action taken or order issued by the applicable Governmental Agency as to which: (i) no request for stay of the action or order is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute or regulation, it is passed, including any extensions thereof; (ii) no petition for rehearing or reconsideration of the action or order, or protest of any kind, is pending before the Governmental Agency and the time for filing any such petition or protest is passed; (iii) the Governmental Agency does not have the action or order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (iv) the action or order is not then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed, including any extensions thereof.

**“Former Operations”** means all operations and Liabilities of the businesses formerly operated at the leased premises located at 55 West 25<sup>th</sup> Street, New York, New York and 1217 E. Third Avenue, New York, New York.

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

**“Governmental Agency”** means (a) any international, foreign, federal, state, county, local or municipal governmental or administrative agency or political subdivision thereof, (b) any governmental authority, board, bureau, commission, department or instrumentality, (c) any court or administrative tribunal, (d) any non-governmental agency, tribunal or entity that is vested by a governmental agency with applicable jurisdiction or (e) any arbitration tribunal or other non-governmental authority with applicable jurisdiction.

**“Gross Rings”** has the meaning set forth in Section 2.4.

**“Higher or Better Offer”** has the meaning set forth in Section 7.3.

**“Intellectual Property”** means, collectively, all intellectual property rights of every kind throughout the world, including all U.S., foreign and multinational (i) patents, Trademarks, copyrights, licenses and know-how (including, without limitation, trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures, as well as other inventions, works of authorship, confidential information, technology, software (in source code or object code), and documentation, data and databases, and web sites), (ii) all registrations or applications to register the foregoing, (iii) all goodwill associated with any of the foregoing, (iv) all embodiments of any of the foregoing to, and (v) all rights to sue and to damages arising from the past or current infringement, misappropriation or other violation of any of the foregoing.

**“Inventory”** has the meaning set forth in Section 3.12.

**“Inventory Count”** has the meaning set forth in Section 2.4.

**“Inventory Date”** has the meaning set forth in Section 2.4.



“**IRS**” means the Internal Revenue Service of the United States Department of the Treasury.

“**KEIP**” means the Sellers’ key employee incentive plan.

“**KEIP Obligations**” means any and all obligations of the Sellers under the KEIP.

“**Leased Property**” means all of the Sellers’ right, title and interest, as tenant or sub-tenant, under the Leases set forth on Schedule 1.3.

“**Leases**” means those real property leases, together with all amendments, extensions, modifications, replacements, or supplements thereto, more particularly described on Schedule 1.3, which schedule the Purchaser can revise by adding or removing leases anytime up until the Designation Time; provided that in no event may Purchaser add the leased property located at 632 Broadway, Suite 401, New York, New York 10012 to such schedule. After the Designation Time, the term "Lease" or "Leases" shall not include any real property leases that are removed from Schedule 1.3 by Purchaser in accordance with the terms hereof, and any such real property leases that are removed from Schedule 1.3 by Purchaser in accordance with the terms hereof shall be deemed Excluded Assets.

“**Liability**” means any liability or obligation (whether known or unknown, asserted or unasserted, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due), including any liability for Taxes.

“**Material Adverse Change**” means a material adverse change with respect to the results of operations, properties, operations or financial condition of the Business or the condition of the Purchased Assets (other than the Excluded Assets), taken as a whole, in each case except for any such change (a) resulting from any changes in any applicable law, or in generally accepted accounting principles, which take effect after the date hereof; (b) affecting generally the industries or markets in which the Business operates; (c) in general economic or political conditions or the financing, currency or capital markets in general or changes in currency exchange rates or currency fluctuations; (d) resulting from any natural disaster or any acts of terrorism, sabotage, military action or war (whether or not declared) or any escalation or worsening thereof, (e) resulting from any act or omission of the Sellers taken at the written direction of the Purchaser; or (f) resulting from the filing of the Cases; provided, that in the case of clauses (a) through (d) above, that such changes do not have a unique or materially disproportionate impact on the Sellers or the Business or a substantial portion of the Purchased Assets.

“**On-Order Merchandise**” means any Inventory set forth on Schedule 1.1(b), as such Schedule may be amended by Sellers from time to time in the ordinary course consistent with past practices on or prior to the day immediately preceding the Closing Date, that has previously been ordered in the ordinary course of business consistent with past practice but has neither been paid for nor received at the Stores and the Warehouse as of the Inventory Date.

“**Other Contracts**” means all agreements, and all extensions, amendments, modifications, enhancements, replacements, substitutions and supplements thereto or thereof, that are listed on

Schedule 1.4 as such Schedule may be amended by the Purchaser from time to time on or prior to the Designation Time, it being understood that Purchaser may add or remove any contract from Schedule 1.4 on or prior to the Designation Time. "Other Contracts" includes, without limitation, all licenses and other agreements granting any right, title or interest in or to Intellectual Property, and all extensions, amendments, modifications, enhancements, replacements, substitutions and supplements thereto or thereof, except as excluded on Schedule 1.4, and, for the avoidance of doubt, subject to the provisions of this Agreement relating to Assigned Contracts, including Sections 5.6, 6.1, 6.2, 6.3 and 6.4. After the Designation Time, the term "Other Contract" or "Other Contracts" shall not include any agreements, extensions, amendments, modifications, enhancements, replacements, substitutions and supplements thereto or thereof removed from Schedule 1.4 by Purchaser in accordance with the terms hereof, and any agreements, extensions, amendments, modifications, enhancements, replacements, substitutions and supplements thereto or thereof removed from Schedule 1.4 by Purchaser in accordance with the terms hereof shall be deemed Excluded Assets.

**"Permit"** means any permit, approval, authorization, license, variance or permission required by a Governmental Agency under any applicable law that are now or hereafter held by the Sellers pertaining to the operation by the Sellers of the Business.

**"Permitted Liens"** means, (i) with respect to Leases, any Lien on the underlying property which is not prohibited under the applicable Lease, and, in each case, which does not adversely affect the lease of the applicable demised premises and the use and enjoyment thereof by the tenant thereunder and (ii) the financing arrangements with respect to the two Vehicles identified on Exhibit E as being subject to a financing arrangement.

**"Person"** means any individual, partnership, corporation, cooperative, trust, association, limited liability company, Governmental Agency or other entity.

**"Preliminary Statement"** has the meaning set forth in Section 2.4(a).

**"Purchase Price"** has the meaning set forth in Section 2.2.

**"Purchased Assets"** means all of the Sellers' right, title and interest in and to the business, properties, assets, goodwill, rights and claims of whatever kind and nature, real or personal, tangible or intangible, known or unknown, actual or contingent and wherever situated, as the same may exist on the Closing Date and are related to the Business other than the Excluded Assets. Without limiting the generality of the foregoing, the Purchased Assets shall include, without limitation, all right, title, and interest of the Sellers in, to and under the following:

- (a) all assets owned by or used by the Sellers in connection with the operation of the Stores or with Electronic Commerce operations of the Sellers;
- (b) all assets located at the Corporate Office;
- (c) all Leases assumed and assigned pursuant to this Agreement and all Leased Property and (to the extent owned by the Sellers or leased by Sellers pursuant to an

Assigned Contract) buildings, fixtures, and improvements thereon and other appurtenances thereto and rights in respect of any of the foregoing items in this clause (c);

(d) all Inventory, all Vehicles and all other tangible personal property related to the Business;

(e) all Equipment and Fixtures located in the Stores, the Corporate Office or the Warehouse, and all Signage;

(f) all of the Intellectual Property owned or purported to be owned by Sellers;

(g) all credit card, accounts and notes receivable (including, without limitation, (i) accounts receivable arising under house accounts and (ii) amounts in the process of collection charged on credit cards) for sales through 11:59 p.m., Eastern Time, on the date preceding the Closing Date (“**Purchased Receivables**”);

(h) all information, customer lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, pictures, images, marketing information, product information and other content, recorded knowledge, surveys, engineering reports, test reports, manuals, materials standards, processing standards, performance standards, catalogs, computer and automatic machinery software and programs, licenses and agreements pertaining to software (to the extent assignable) and the like pertaining to the operation by the Sellers of the Business;

(i) all accounting information which pertains to the Business and all media in which or on which any of the information or knowledge or data or records which pertain to the Business may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data, and all books and records relating to the Business (including such books and records as are contained in computerized storage media), including books and records related to inventory, purchasing, accounting, sales, maintenance, repairs, marketing, banking, Intellectual Property, shipping records, personnel files for Transferred Employees (to the extent assignable) and all files, customer and supplier lists, records, literature and correspondence related to the Business; provided, however, that the Sellers shall be entitled to make and retain copies of such books and records to the extent they relate to Excluded Assets or Excluded Liabilities or are otherwise required in the administration of the estates of the Sellers and their affiliates and the Cases;

(j) all right, title and interest in, to and under the Assigned Contracts;

(k) to the extent legally assignable, all Permits;

(l) (i) cash as maintained in the Stores’ cash registers in an amount not to exceed \$50,000 in the aggregate for all Stores and cash held as security for Leases, (ii) cash required under the Cure Order or the Sale Order for restoration obligations under Leases assumed and assigned pursuant to this Agreement, whether as cash deposited with landlords or as a result of draws on letters of credit or conversion of letters of credit previously given as security for such Leases or any other letters of credit that are converted into cash prior to Closing, in each case together with accrued interest thereon, and (iii) deposits provided to credit card companies in connection with Gracious Home private label credit cards;

(m) all other assets related to the Business conducted by the Sellers in the Stores, at the Warehouse and in Electronic Commerce that are not otherwise described above;

(n) the following, to the extent that they relate to any Assumed Liability or Purchased Asset: claims, deposits under Assigned Contracts (including, without limitation, to the extent assignable, letters of credit outstanding for security deposits under Leases and any private label credit card agreement assigned to Purchaser), prepayments, prepaid assets, landlord build out allowances, refunds (excluding Tax refunds), causes of action, rights of recovery, rights of setoff and rights of recoupment as of the Closing Date; and

(o) all goodwill, telephone numbers (including any vanity telephone numbers), facsimile numbers and e-mail addresses associated with the Purchased Assets, together with the right to represent to third parties that the Purchaser is the successor to the Business.

**“Purchased Receivables”** has the meaning set forth in the definition of Purchased Assets.

**“Purchaser”** has the meaning set forth in the preamble.

**“Purchaser’s Knowledge”** shall mean the actual knowledge of the Chief Executive Officer and Chief Financial Officer of Purchaser.

**“Qualified Bidder”** shall have the meaning ascribed to such term in the Bidding Procedures, provided, however, that, notwithstanding anything to the contrary in the Bidding Procedures, the Purchaser shall be deemed a Qualified Bidder.

**“Qualified Proposal”** shall have the meaning ascribed to such term in the Bidding Procedures, provided, however, that, notwithstanding anything to the contrary in the Bidding Procedures, this Agreement shall be deemed a Qualified Proposal.

**“RGIS”** shall mean RGIS Inventory Specialists (or any other similar entity agreed to by Purchaser and the Sellers).

**“Sale Hearing”** has the meaning ascribed to it in the Bidding Procedures Order.

**“Sale Motion”** means the motion or motions filed by Sellers pursuant to the provisions of sections 363 and 365 of the Bankruptcy Code to obtain the Sale Order, approve the transactions contemplated by this Agreement, and obtain the Bidding Procedures Order.

**“Sale Order”** means an order of the Bankruptcy Court, in the form attached hereto as Exhibit B (other than immaterial changes made after the date hereof and agreed to by the Sellers and Purchaser, which agreement (to such immaterial changes) shall not be unreasonably withheld by either party), (i) authorizing, among other things, the sale of the Purchased Assets to the Purchaser free and clear of liens, claims, interests, and encumbrances, and the assignment of the Assigned Contracts to the Purchaser, in accordance with the terms and conditions of this Agreement and pursuant to, among others, sections 363 and 365 of the Bankruptcy Code and (ii) waiving the fourteen (14) day stay under Bankruptcy Rules 6004(h) and 6006(d).

**"Sales Tax Amount"** means the amount of use or sales taxes due calculated based on the portion of the Purchase Price allocated to the relevant assets as determined by the parties or the Allocation Independent Accounting Firm, as applicable, pursuant to Section 2.6.

**"Schedules"** means the various Schedules referred to in this Agreement delivered separately to Purchaser on or before the date of this Agreement.

**"Sellers"** has the meaning set forth in the preamble.

**"Sellers' Knowledge"** shall mean the actual knowledge of Natan Wekselbaum, Jordan Smilowitz and Jim Linsalata.

**"Sellers' Employees"** means the employees of the Sellers.

**"Signage"** means all signs affixed to the buildings or storefronts at the locations that are the subject of the Leases and any additional signs in Sellers' possession located in storage, the Warehouse or otherwise.

**"Special Order Merchandise"** means all items of Inventory specially ordered prior to the Closing Date for a customer at the Stores or in Electronic Commerce pursuant to binding agreements, invoices or other legal documentation.

**"Stores"** means the premises described in the Leases and all fixtures or leasehold improvements thereon, used or held for use by any of the Sellers in the Business.

**"Tax Return"** means any report, return, information return or other information required to be supplied to a taxing authority in connection with Taxes.

**"Tax"** or **"Taxes"** means all federal, state, local and foreign taxes, including income, gross receipts, excise, employment, sales, use, transfer, license, payroll, franchise, severance, stamp, withholding, Social Security, unemployment, disability, real property, personal property, registration, alternative or add-on minimum, estimated or other tax, including any interest, penalties or additions thereto, whether disputed or not.

**"Third Party Sale"** has the meaning set forth in Section 9.5(c).

**"Trademark"** means any trademark, service mark, trade name, logo, slogan, Internet domain name or other designation of source or origin, any registration, reservation or application for any of the foregoing, together with the goodwill symbolized by any of the foregoing.

**"Transaction Taxes"** has the meaning set forth in Section 10.1.

**"Transferred Employees"** has the meaning set forth in Section 11.1(a).

**"Vehicles"** means the vehicles listed on Exhibit E.

**"Warehouse"** means the warehouse of the Sellers located at 60-31 Woodside Commercial Condominium Unit 1, Woodside, New York 11377.

"**WARN Act**" means all notice and other requirements under the Worker Adjustment and Retraining Notification Act of 1988 or any similar law of New York State relating to plant closings and layoffs.

## ARTICLE II

### SALE AND PURCHASE OF PURCHASED ASSETS AND ASSUMPTION OF ASSUMED LIABILITIES

Section 2.1 Purchase and Sale of Purchased Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, (a) the Sellers shall sell, assign, convey, transfer and deliver to Purchaser or its designees the Purchased Assets to be purchased at the Closing, all free and clear of all mortgages, liens, security interests, charges, easements, leases, subleases, licenses, sublicenses, covenants, rights of way, options, claims, restrictions or encumbrances of any kind (collectively, "**Liens**") other than Permitted Liens, and free and clear of all Excluded Liabilities; and (b) in exchange therefor, Purchaser shall pay the Purchase Price and accept, assume and agree to pay, perform or otherwise discharge, in accordance with the respective terms and subject to the respective conditions thereof, the Assumed Liabilities assumed at the Closing. After the Closing, Purchaser shall be entitled to exercise all rights attached or accruing to the Purchased Assets purchased at the Closing.

Section 2.2 Purchase Price. The total consideration for the Purchased Assets (the "**Purchase Price**") is comprised of (i) a cash payment of Eleven Million Three Hundred Fifty Thousand Dollars (\$11,350,000), subject to adjustment pursuant to the terms of this Agreement (the "**Cash Purchase Price**"), plus (ii) notes in the aggregate amount of One Million Dollars (\$1,000,000), the terms of which shall be reasonably agreed among the parties substantially in accordance with the term sheet set forth as Exhibit F hereto (the "**Notes**"), plus (iii) certain transition services to be provided by Purchaser and/or Affiliates of Purchaser to Sellers valued at One Hundred Thousand Dollars (\$100,000) pursuant to a transition services agreement to be mutually agreed among the parties prior to the Closing (the "**Transition Services Agreement**"), plus (iv) the assumption of Assumed Liabilities.

Section 2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, from and after the Closing, Purchaser will assume and pay, perform, discharge and be responsible solely for the following liabilities of the Sellers (the "**Assumed Liabilities**"):

- (a) all Liabilities for On-Order Merchandise;
- (b) all Liabilities of any of the Sellers accruing or arising from and after the Closing Date under any and all Assigned Contracts;
- (c) all Liabilities for (1) customer deposits received by Sellers subsequent to October 31, 2005, (2) customer credits issued subsequent to October 31, 2005, (3) customer gift cards and certificates issued by Sellers subsequent to October 31, 2005, and (4) Special Order Merchandise ordered subsequent to October 31, 2005, and (5) customer returns or replacement

of purchased Inventory and Special Order Merchandise, and all Liabilities related to claims or returns for floor financing or consignment goods, in the case of each of clauses (1) through (4) as and to the extent identified in Schedule 2.3(c), which schedule shall be updated by the Sellers at Closing to reflect any changes resulting in the ordinary course of business consistent with past practice;

(d) all Benefit Arrangements relating to the Transferred Employees, but excluding, for the avoidance of doubt, the KEIP Obligations and any Liabilities under any multi-employer Benefit Arrangement in each case to the extent the agreements relating to such Benefits Arrangements are identified in Schedule 2.3(d);

(e) other obligations related to Transferred Employees as set forth in Article XI of the Agreement, but excluding, for the avoidance of doubt, the KEIP Obligations, to the extent identified in Schedule 2.3(e), which schedule shall be updated by the Sellers at Closing to reflect any changes resulting in the ordinary course of business consistent with past practice;

(f) in addition to and not in limitation of Section 2.3(a) above, accounts payable obligations incurred for services rendered and goods sold to the Sellers relating to the Business from and after the Petition Date which are incurred in the ordinary course of the Business; but excluding, for the avoidance of doubt, any fees and expenses incurred in connection with the Cases, including, but not limited to, (x) the fees and expenses of the professionals employed by the Sellers or the Committee and (y) fees payable by Sellers to the United States Trustee pursuant to 28 U.S.C. § 1930;

(g) Liabilities relating to the financing arrangements with respect to the two Vehicles identified on Exhibit E as being subject to a financing arrangement; and

(h) any liabilities and obligations of Sellers that are not described in the preceding clauses (a) through (f), but that are included in the Closing Date Statement and included in the calculation of Final Closing Date Working Capital.

(i) Notwithstanding the preceding clauses (a) through (h), Assumed Liabilities shall not include (i) Liabilities with respect to (y) Taxes arising on or prior to the Closing Date, or (z) income or similar Taxes of Sellers regardless when arising, in each case other than payroll Taxes actually withheld by Sellers in the ordinary course of business consistent with past practice, (ii) Liabilities arising under any multi-employer Benefit Arrangement, (iii) Liabilities of the Sellers relating to any litigation or legal proceeding pending on the Closing Date, (iv) (1) customer deposits received by Sellers on or prior to October 31, 2005, (2) customer credits issued on or prior to October 31, 2005, (3) customer gift cards and certificates issued by Sellers on or prior to October 31, 2005, and (4) Liabilities for Special Order Merchandise ordered on or prior to October 31, 2005, (v) Liabilities with respect to the operation or termination of the Former Operations, and (vi) all Cure Costs payable by the Sellers pursuant to Section 5.7 hereof and all other obligations of the Sellers under the Assigned Contracts arising prior to the Closing Date and required to be performed thereunder prior to the Closing Date; and all such Liabilities shall constitute Excluded Liabilities (as defined in the last sentence of this paragraph). In addition, the amount of Capped Assumed Liabilities to be assumed by the Purchaser shall

not exceed \$1,800,000 in the aggregate, and, subject to Section 2.4 (a) below, any Capped Assumed Liabilities in excess of \$1,800,000 in the aggregate shall constitute Excluded Liabilities. All the Liabilities and obligations of the Sellers of whatever kind or nature, known or unknown, fixed or contingent, accrued or unaccrued, other than the Assumed Liabilities, are hereinafter referred to as the “**Excluded Liabilities**”. Purchaser shall not assume or pay, perform, discharge or be responsible for any of the Excluded Liabilities, and Sellers shall retain all right, title, interest to, in and under all of the Excluded Liabilities. The sale of the Purchased Assets is made free and clear of any bulk transfer statutes or similar laws.

#### Section 2.4 Adjustment of Purchase Price.

(a) On the Closing Date, Purchaser shall deposit or cause to be deposited Seven Hundred Fifty Thousand Dollars (\$750,000) (the “**Purchase Price Escrow Amount**”) and Fifty Thousand Dollars (\$50,000) (the “**Sales Tax Escrow Amount**”) with the Escrow Agent, such deposit (together with interest and other income thereon) to constitute the purchase price escrow fund (the “**Purchase Price Escrow Fund**”) and the Sales Tax escrow fund (the “**Sales Tax Escrow Fund**”), respectively, which amounts shall be available to compensate Purchaser pursuant to the obligations of Sellers pursuant to this Section 2.4 and Section 10.1 below, and be governed by the terms set forth herein and in an Adjustment Escrow Agreement to be mutually agreed among the parties prior to the Closing (the “**Adjustment Escrow Agreement**”).

(b) At least one (1) Business Day prior to the Closing Date, Sellers shall deliver to Purchaser a statement (the “**Preliminary Statement**”) of Sellers’ good faith estimate of the Closing Date Working Capital (the “**Estimated Closing Date Working Capital**”). The Preliminary Statement shall include, among other things, a detailed listing of the current liabilities that are included in the calculation of Estimated Closing Date Working Capital. In the event that the estimated Capped Assumed Liabilities exceed \$1,800,000, the parties shall mutually agree on which of the Capped Assumed Liabilities in excess of \$1,800,000 shall be deemed Excluded Liabilities, subject to the final calculation of Assumed Liabilities included in the determination of Final Working Capital (and, if the amount of Capped Assumed Liabilities has changed, final agreement by the parties on which of the Capped Assumed Liabilities in excess of \$1,800,000 shall be Excluded Liabilities). The Purchase Price shall be (i) decreased by an amount equal to the amount by which the Estimated Closing Date Working Capital is less than \$7,500,000, and (ii) increased by an amount equal to fifty percent (50%) of the amount by which Estimated Closing Date Working Capital is more than \$8,250,000; provided that the Purchase Price shall not be increased for any amounts by which Estimated Closing Date Working Capital is more than \$9,000,000. Any increase to the Purchase Price payable pursuant to clause (ii) of the preceding sentence shall be deposited with the Escrow Agent in the Purchase Price Escrow Fund. The Purchase Price shall be subject to further adjustment after the Closing Date based on the calculation of Closing Date Working Capital, as provided below.

(c) Prior to the Closing, Purchaser’s auditors and Sellers’ representatives shall observe a “financial” and “SKU” inventory (defined as a listing which summarizes the inventory on a detailed basis providing SKU number, quantity on hand, and inventory at Cost) of the Inventory in the Stores and the Warehouse (the “**Inventory Count**”) conducted in accordance with inventory procedures mutually agreed upon by Purchaser, on the one hand, and the Sellers,



on the other hand, as set forth in the Instructions to be delivered to RGIS prior to the Inventory Count annexed hereto as Exhibit D. The date that the Inventory Count is taken in a Store or the Warehouse shall be referred to as to such Store or the Warehouse as the “**Inventory Date**”. The Inventory Count shall be taken by RGIS. Each Store shall be closed during the Inventory Count at such Store (which shall be taken after regular business hours on the day that the Sale Order is entered) and neither Sellers nor Purchaser shall enter such Store without each having a representative present during such period; provided, however, that the Inventory Count may be done during regular business hours in non-selling areas (stockrooms and fixed displays). The Inventory Count at the Warehouse shall be taken during the day with all Warehouse shipping and receiving operations suspended during the Inventory Count at the Warehouse. Beginning at 12:01 a.m. on the first Inventory Date and ending following the completion of the Inventory Count, Sellers shall not, and shall cause their respective employees, agents and representatives not to, transfer any Inventory to or from the Warehouse to any Store or among the Stores.

(d) From the Inventory Date of each Store through 11:59 PM Eastern Time on the date preceding the Closing Date, Sellers shall keep a strict count of gross register receipts less applicable sales tax within such Store. “**Gross Rings**” means the aggregate amount of such receipts for all Stores for such period. Sellers also shall keep a strict count of Inventory delivered to the Sellers’ Warehouse and Stores after the Inventory Date or in transit between the Warehouse and the Stores on the Inventory Date.

(e) As soon as reasonably practicable following the Inventory Count, but in no event more than one (1) Business Day prior to the anticipated Closing Date, Sellers shall submit a report, including work papers and any other back-up data (including, if requested by Purchaser, register receipts), to Purchaser, prepared by RGIS at the conclusion of the Inventory Count. The Inventory Count by RGIS shall be final and binding upon the parties unless objected to within five (5) Business Days after receipt by Purchaser or Sellers; any such objection shall set forth each objection(s) in detail. Any objections so raised by Purchaser shall be resolved in connection with the determination of the Final Closing Adjustment. The Purchaser, on the one hand, and Sellers (using funds that do not constitute Purchased Assets), on the other, each shall bear 50% of all costs and expenses of performing the physical inventory, including without limitation, the fees of RGIS, direct labor costs, supplies, payroll, accounting, data processing and other expenses related thereto.

(f) As promptly as practicable, but no later than thirty (30) days, after the Closing Date, the Sellers shall deliver to Purchaser a schedule (the “**Closing Date Statement**”) (i) stating in reasonable detail the computation of the actual Closing Date Working Capital, the components of which were prepared in accordance with Schedule 2.4(a), including the valuation of the Final Inventory, the components of which reflect the results of the Inventory Count (as conducted pursuant to Section 2.4(c) of this Agreement) and (ii) calculating the amount, if any, by which the Purchase Price shall be adjusted in accordance with Section 2.4(b) and (h) (the “**Final Closing Adjustment**”).

(g) Following the delivery of the Closing Date Statement, the Sellers shall give Purchaser and Purchaser’s independent accountants access at all reasonable times and upon reasonable notice to all work papers, schedules, memoranda and other documents prepared or reviewed by the Sellers or by RGIS and/or Sellers’ auditor (and, in the case of RGIS and/or

Sellers' auditor, during the course of RGIS' and/or Sellers' auditor's engagement, as applicable, with respect to the Sellers and the Business) in connection with the preparation of the Closing Date Statement and shall request that RGIS and/or Sellers' auditor communicate with Purchaser and its representatives with respect to the Sellers and the Business. Purchaser shall have forty-five (45) days following delivery to Purchaser of the Closing Date Statement during which to notify the Sellers in writing of any dispute of any item contained in the Closing Date Statement, which notice shall set forth the basis for such dispute and the adjustments to specific items in the Closing Date Statement proposed by the Sellers (the "**Working Capital Dispute Notice**"). Following the later of delivery of a Working Capital Dispute Notice and payment in full of the Sales Tax Amount by Sellers, Purchaser and Sellers shall deliver joint instructions to the Escrow Agent instructing the Escrow Agent to release amounts, if any, held in the Purchase Price Escrow Fund that exceed the Final Closing Adjustment proposed by Purchaser in such Working Capital Dispute Notice. If Purchaser fails to notify the Sellers in writing of any such dispute relating to the Closing Date Statement within such forty-five (45) day period, the Closing Date Statement, and the calculation of the Final Closing Adjustment, shall be deemed to be the "**Final Closing Date Working Capital**" and "**Final Closing Adjustment**" for the purposes of this Section 2.4. For a period of fifteen (15) days following the delivery of the Working Capital Dispute Notice to the Sellers, Purchaser and Sellers shall attempt to resolve in good faith the amounts disputed in the Working Capital Dispute Notice. Amounts resolved by such attempts within such fifteen (15) day period shall be deemed to have been finally determined for purposes of determining the Final Closing Adjustment. Purchaser shall provide Sellers and Sellers' independent accountants access at all reasonable times and upon reasonable notice to all work papers, schedules, memoranda and other documents necessary to prepare the Closing Statement, calculate the Final Closing Adjustment and review or resolve Purchaser's dispute.

(h) If Purchaser and the Sellers are unable to resolve any such dispute prior to the end of such fifteen (15) day period, the Bankruptcy Court shall resolve such dispute and such determination shall be final and binding on the parties to this Agreement. The Bankruptcy Court may not make any determination with respect to any items not set forth in the Working Capital Dispute Notice (or otherwise resolved by Purchaser and the Sellers) and any items set forth in the Working Capital Dispute Notice shall be resolved based on the determination of the Bankruptcy Court and shall be deemed to be the Final Closing Date Working Capital and Final Closing Adjustment.

(i) Determination of Working Capital Purchase Price Adjustment.

(i) If Estimated Closing Date Working Capital was less than \$7,500,000, and Final Closing Date Working Capital is:

(1) Less than \$7,500,000, but greater than Estimated Closing Date Working Capital, Purchaser shall pay to Sellers an amount equal to the difference between Final Closing Date Working Capital and Estimated Closing Date Working Capital;

(2) Less than \$7,500,000 and equal to Estimated Closing Date Working Capital, there shall be no adjustment to the Purchase Price;

(3) Less than \$7,500,000 and less than Estimated Closing Date Working Capital, the Escrow Agent shall release to the Purchaser an amount from the Purchase Price Escrow Fund equal to the difference between Estimated Closing Date Working Capital and Final Closing Date Working Capital, and to the extent that such amount from the Purchase Price Escrow Fund is insufficient to cover such difference, Sellers shall pay Purchaser the shortfall;

(4) Greater than \$7,500,000 but less than \$8,250,000, Purchaser shall pay to Sellers an amount equal to the difference between \$7,500,000 and Estimated Closing Date Working Capital; or

(5) Greater than \$8,250,000, Purchaser shall pay to Sellers an amount equal to (i) the difference between \$7,500,000 and Estimated Closing Date Working Capital, plus (ii) fifty percent (50%) of the difference between (A) the lesser of \$9,000,000 and Final Closing Date Working Capital and (B) \$8,250,000.

(ii) If Estimated Closing Date Working Capital was greater than or equal to \$7,500,000 but less than \$8,250,000, and Final Closing Date Working Capital is:

(1) Less than \$7,500,000, the Escrow Agent shall release to the Purchaser an amount from the Purchase Price Escrow Fund equal to the difference between \$7,500,000 and Final Closing Date Working Capital, and to the extent that such amount from the Purchase Price Escrow Fund is insufficient to cover such difference, Sellers shall pay Purchaser the shortfall;

(2) Greater than or equal to \$7,500,000 and less than \$8,250,000, there shall be no adjustment to the Purchase Price;

(3) Greater than \$8,250,000, Purchaser shall pay to Sellers an amount equal to fifty percent (50%) of the difference between (A) the lesser of Final Closing Date Working Capital and \$9,000,000 and (B) \$8,250,000; or

(4) equal to Estimated Closing Date Working Capital, there shall be no adjustment to the Purchase Price.

(iii) If Estimated Closing Date Working Capital was greater than \$8,250,000, and Final Closing Date Working Capital is:

(1) Less than \$7,500,000, the Escrow Agent shall release to the Purchaser an amount from the Purchase Price Escrow Fund equal to (i) 50% of the difference between \$8,250,000 and the lesser of Estimated Closing Date Working Capital and \$9,000,000 and (ii) the difference between \$7,500,000 and Final Closing Date Working Capital, and to the extent that such amount from the Purchase Price Escrow Fund is insufficient to cover such difference, Sellers shall pay Purchaser the shortfall;

(2) At least \$7,500,000 but less than \$8,250,000, the Escrow Agent shall release to Purchaser an amount from the Purchase Price Escrow Fund equal to (i) fifty percent (50%) of the difference between the lesser of \$8,250,000 and \$9,000,000 and (ii) Estimated Closing Date Working Capital;

(3) Greater than \$8,250,000 and less than Estimated Closing Date Working Capital, the Escrow Agent shall release to the Purchaser an amount from the Purchase Price Escrow Fund equal to fifty percent (50%) of the difference between Estimated Closing Date Working Capital and Final Closing Date Working Capital, and to the extent that such amount from the Purchase Price Escrow Fund is insufficient to cover such difference, Sellers shall pay Purchaser the shortfall;

(4) Equal to Estimated Closing Date Working Capital, there shall be no adjustment to the Purchase Price; or

(5) Greater than \$8,250,000 and greater than Estimated Closing Date Working Capital, Purchaser shall pay to Sellers an amount equal to fifty percent (50%) of the difference between (A) Estimated Closing Date Working Capital and (B) the lesser of Final Closing Date Working Capital and \$9,000,000.

(iv) Amounts remaining in the Purchase Price Escrow Fund following payment of any amounts payable pursuant to this Section 2.4(j) shall be released to Sellers to such account or accounts designated by Sellers. Purchaser and Sellers shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to deliver the applicable amounts due to Purchaser and/or Sellers pursuant to the this Section 2.4(j).

(j) Any payments to be made pursuant to the Final Closing Adjustment shall be made within three (3) Business Days after the final determination of the Final Closing Adjustment under this Section 2.4.

Section 2.5 Deposit and Purchase Price Escrow Fund. The Deposit shall be held pursuant to the terms of the Deposit Escrow Agreement and this Agreement. The Purchase Price

Escrow Fund shall be held pursuant to the terms of the Adjustment Escrow Agreement and this Agreement.

Section 2.6 Allocation of Purchase Price. As soon as reasonably practicable after the date hereof, but in no event more than fifteen (15) days after the Closing Date, Purchaser will deliver to Sellers and the Committee a statement setting forth an allocation of the Purchase Price in accordance with applicable law (the “**Allocation Statement**”). Sellers shall notify Purchaser within 5 days after the receipt of the draft Allocation Statement if Sellers consider the amount allocated to any Purchased Assets to be inconsistent with applicable Tax law (including any determination of fair market value). Sellers and Purchaser shall attempt to resolve any disagreement in good faith. If Sellers and Purchaser fail to reach agreement as to an alternative allocation within 10 days following Sellers' receipt of the Allocation Statement, the dispute with respect to the Allocation Statement shall promptly be presented to an accounting firm mutually chosen by the parties (the “**Allocation Independent Accounting Firm**”) for a decision that shall be rendered in a timely manner in order to permit the timely filing of all applicable forms with the Internal Revenue Service and other Tax authorities. The Allocation Independent Accounting Firm's review shall be final and binding on all parties. The fees, costs and expenses incurred in connection therewith shall be shared equally by Sellers (using funds that do not constitute Purchased Assets) and Purchaser. Each of Sellers and Purchaser shall (i) timely file all forms (including any use and sales tax forms and IRS Form 8594) and Tax Returns required to be filed in connection with the Allocation Statement, (ii) be bound by such allocation for purposes of determining Taxes, (iii) prepare and file, and cause its Affiliates to prepare and file, its Tax Returns on a basis consistent with such allocation and (iv) take no position, and cause its Affiliates to take no position, inconsistent with such allocation on any applicable Tax Return, in any audit or proceeding before any taxing authority, in any report made for Tax, financial accounting or any other purposes, or otherwise, unless otherwise required pursuant to a final determination. Each of Purchaser, on the one hand, and Sellers, on the other hand, will provide the other with copies of IRS Form 8594 and any required exhibits thereto, consistent with the allocation determined pursuant to this Section 2.6 no later than 30 days prior to the due date, without extension, of the first income tax return required to be filed after the closing by either party. In the event that the allocation set forth on the Allocation Statement is disputed by any taxing authority, the party receiving notice of such dispute shall promptly notify the other party hereto concerning the existence of, material developments regarding, and resolution of such dispute.

Section 2.7 Sale at Closing Date. The sale, transfer, assignment and delivery by the Sellers of the Purchased Assets to Purchaser, and the assumption by Purchaser of the Assumed Liabilities, as herein provided shall be effected on the Closing Date by the execution and delivery of the Assignment and Assumption Agreements.

Section 2.8 Apportionments; Deposits. The following are to be apportioned as of 12:00 midnight on the day preceding the Closing Date (the “**Apportionment Date**”) to the extent such (a) are valid postpetition claims or are subject to non-avoidable liens and (b) are not current assets or current liabilities that are included in the computation of Closing Date Working Capital: rent (including percentage rent and additional rent) under any of the Leases, water, sewer and utility charges and real estate taxes, to the extent payable under the Leases and such other apportionment and adjustments as are customarily apportioned in transactions of this nature,

including insurance premiums payable to landlords for Leased Property, any merchant association dues and amounts payable under Assigned Contracts, and any payroll and payroll related obligations, including any employment-related benefits owed to all Transferred Employees. With respect to payroll and payroll related obligations, for any pay period that begins prior to Closing and ends thereafter, if the majority of the pay period falls prior to Closing, Sellers will be responsible for causing all of the payroll and payroll related obligations to be provided to employees for the entire pay period, and if the majority of the pay period falls after Closing, Purchaser will be responsible for causing all of the payroll and payroll related obligations to be provided to employees for the entire pay period (in each case subject to adjustments to the Cash Purchase Price pursuant to the second following sentence). To the extent items of apportionment such as percentage rent based on sales are dependent on performance variables subsequent to the Closing Date, then apportionment shall be calculated based upon results in the prior year unless more current information is available for such calculation. The Cash Purchase Price shall be adjusted by the net aggregate amount of such other apportionment, with such net adjustment, if any, being paid in cash to the party entitled to it. Except as otherwise provided herein, all apportionment shall be made on the basis of actual bills. All apportionment shall be final and there shall be no re-apportionment based upon subsequent receipt of the final bills, except to the extent that such final bills are received by Sellers or Purchaser prior to the payment of the Final Adjustment Payment, in which case the apportionment shall be based on the final bill received. Any apportionments that are not made on the Closing Date shall be made after the Closing Date and paid at the same time as the Final Closing Adjustment. Any apportionments for which Sellers seek payment at the Closing shall be identified by Sellers in writing at least two Business Days prior to the Closing Date. In addition, to the extent that a landlord has applied any security deposit given by Sellers in connection with a Lease (including, without limitation, by drawing on a letter of credit given as security for such Lease), Sellers shall make the payment required by the Cure Order or the Sale Order, in order for such Lease to be assumed and assigned, and any such payment shall constitute a security deposit under such Lease.

Section 2.9 Casualty and Condemnation. To the extent applicable and not otherwise adjusted for pursuant to Section 2.4 hereof, in the event of any damage or destruction by reason of any casualty to any of the Purchased Assets after the date hereof and prior to the Closing Date, or if prior to the Closing Date there shall be any taking by condemnation or eminent domain of any of the Purchased Assets, the Sellers shall (i) in the case of damage or destruction, pay over to Purchaser at Closing any insurance proceeds received by the Sellers prior to the Closing Date and assign to Purchaser all of the Sellers' right, title and interest in and to any additional proceeds related to such damage or destruction and (ii) in the case of condemnation or eminent domain, pay over to Purchaser all awards received by the Sellers on account of such condemnation or eminent domain prior to the Closing Date and assign to Purchaser all of the Sellers' right to receive any additional awards related to such condemnation or eminent domain; provided, that if all such casualties and takings by condemnation or eminent domain constitute, collectively, a Material Adverse Change, Purchaser shall have the right to terminate this Agreement prior to the Closing Date.

Section 2.10 Bond Cancellation. The parties hereto acknowledge and agree that, on the Closing Date, the Sellers may terminate or otherwise cancel their customs and import-duties bonds.

Section 2.11 Disclaimer of Additional Representations and Warranties; Schedules.

(a) The Purchaser acknowledges that except as expressly set forth in Article III of this Agreement and the Schedules hereto, the Sellers make no representations or warranties whatsoever, express or implied, with respect to the Business, or its operations, assets (including, without limitation, the Purchased Assets), liabilities (including, without limitation, the Assumed Liabilities) or conditions, including, with respect to the Purchased Assets. Purchaser will accept the Purchased Assets at the Closing “AS IS” and “WHERE IS” on the date hereof and in their present condition, subject to reasonable use, wear and tear between the date hereof and the Closing Date.

(b) Notwithstanding anything to the contrary contained in this Agreement, no matter primarily relating to any of the Excluded Assets or Excluded Liabilities is required to be disclosed on any Schedule. In addition, any item disclosed on any one Schedule shall be deemed to be disclosed on each Schedule, where relevant. Disclosure of an item in any Schedule shall not be deemed to be an admission that such item is material.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES OF THE SELLERS**

Subject to Section 12.1, the Sellers represent and warrant to the Purchaser as follows:

Section 3.1 Authority of Sellers. Each Seller is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization. Each Seller has full corporate or other organizational power and authority to execute and deliver this Agreement and each of the Ancillary Documents to which it is a party, and the execution and delivery by each Seller of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate or other organizational action on the part of each Seller, and this Agreement constitutes, and each of the Ancillary Documents upon its execution will constitute, the legal, valid and binding obligation of each Seller enforceable in accordance with its terms, subject to issuance of the Sale Order and the expiration, or waiver by the Bankruptcy Court of the 14-day period set forth in Bankruptcy Rules 6004(h) and 6006(d). Subject to any necessary authorization from the Bankruptcy Court, each Seller has full corporate or other organizational power and authority to own its properties and to carry on the business presently being conducted by it.

Section 3.2 No Conflict or Violation. The execution, delivery and performance by each of the Sellers of this Agreement and the Ancillary Documents to which such Seller is a party do not and will not violate or conflict with any provision of the Certificate of Incorporation or By-laws (or equivalent documents) of such Seller and, assuming issuance of the Sale Order and the expiration, or waiver by the Bankruptcy Court of the 14-day period set forth in Bankruptcy Rules 6004(h) and 6006(d), do not and will not (i) violate, in any material respect, any provision of law, or any order, judgment or decree of any court or other Governmental Agency applicable to such Seller, or (ii) violate or result in a material breach of or constitute (with due notice or lapse of time or both) a material default under any Assigned Contract, loan

agreement, mortgage, security agreement, indenture or other instrument or agreement to which such Seller is a party or by which it is bound or to which any of the Purchased Assets is subject.

Section 3.3 Consents and Approvals. No consent, approval, authorization, order, registration or qualification of or with any court or governmental agency or body having jurisdiction over the Sellers or any of their properties is required for the execution and delivery by the Sellers of this Agreement or the Ancillary Documents and performance of and compliance by the Sellers with all of the provisions hereof and thereof and the consummation of the transactions contemplated herein and therein, except the entry of the Sale Order and the expiration, or waiver by the Bankruptcy Court, of the 14-day period set forth in Bankruptcy Rules 6004(h) and 6006(d). No consent, approval or authorization of any Person (other than a court or governmental agency) is required in connection with the execution and delivery of this Agreement or the Ancillary Documents or the consummation by the Sellers of the transactions contemplated herein and therein, except for any consent, approval, authorization, order, registration or qualification which, if not made or obtained, has not and would not reasonably be expected, individually or in the aggregate, (i) to prohibit, materially delay or materially and adversely impact the Sellers' performance of their obligations under this Agreement or the Ancillary Documents, or (ii) materially and adversely impact the benefits Purchaser expects to receive under this Agreement or the Ancillary Documents or impair Purchaser's ability, following the Closing, to run the Business in the manner in which it is currently conducted and in which it has been conducted in the preceding twelve (12) months, but excluding any conduct relating to the Former Operations.

Section 3.4 Compliance with Law. The Sellers (i) have complied in all material respects with all laws, regulations, orders and other legal requirements applicable to the Business or the Purchased Assets, (ii) to Sellers' Knowledge, have not received notice of any material violation of any law, regulation, order or other legal requirement and (iii) are not in default in any material respect under any order, writ, judgment, award, injunction or decree of any Governmental Agency, applicable to the Business or the Purchased Assets.

Section 3.5 Sufficiency and Title to the Purchased Assets. The Purchased Assets constitute all of the assets or property used or held for use by the Sellers in the Business, except for the Excluded Assets, and, except as set forth on Schedule 3.5, the Sellers have good and valid title to each of the Purchased Assets that are owned by the Sellers and good and valid leasehold title to the Leases. The entry of the Sale Order and the delivery to the Purchaser of the instruments of transfer of ownership contemplated by this Agreement will vest good and valid title to the Purchased Assets in the Purchaser, free and clear of all interests in the Purchased Assets including all Liens thereon, other than Permitted Liens or as set forth on Schedule 3.5. The Purchased Assets, taking into account any leases or contracts that Purchaser elects not to take by the Designation Time, comprise all the assets employed by the Sellers in connection with the Business. The Purchased Assets, together with the Excluded Assets, are sufficient for the conduct of Business immediately following the Closing in substantially the same manner as it is currently conducted and has been conducted for the previous twelve (12) months, but excluding any conduct relating to the Former Operations.

Section 3.6 Assigned Contracts. True and complete copies of the Leases and of the Other Contracts listed on Schedule 1.4 have been made available by the Sellers to Purchaser or



will be made available by the Sellers to Purchaser prior to the Designation Time. At the Closing, the Sellers shall have cured any and all defaults or have provided adequate assurance that they will cure any and all defaults with respect to Assigned Contracts as provided in section 365 of the Bankruptcy Code and as required by the Bankruptcy Court so that at the Closing, there shall be no defaults under any of the Assigned Contracts. Except as set forth on Schedule 3.6 and for the Cure Costs that are required to be paid under section 365 of the Bankruptcy Code to assign the Assigned Contracts to the Purchaser, which shall be paid by the Sellers, neither the Sellers nor, to the Sellers' Knowledge, any other party under any of the Assigned Contracts has commenced any action against the other or given or received any written notice of any default or violation under any Assigned Contract which was not withdrawn or dismissed, except only for those defaults which will be cured prior to the Closing in accordance with the Sale Order (or which need not be cured under the Bankruptcy Code to permit the assumption and assignment of Assigned Contracts). To Sellers' Knowledge, other than as set forth on Schedule 1.3, no circumstance exists which, with notice, the passage of time or both, would reasonably be expected to constitute a default by Sellers under any of the Leases. Each of the Leases and other Assigned Contracts is or will be at the Closing valid, binding and in full force and effect as against each Seller party thereto. Except for the Assigned Contracts and any other contract that is listed on Schedule G to the Schedules and Statement of Financial Affairs filed by the Sellers with the Bankruptcy Court on September 27, 2010, as amended from time to time on or before the date of this Agreement, no Seller is a party to or bound by any material contract relating to the Business.

Section 3.7 Intellectual Property.

(a) The Sellers own, or possess valid and enforceable rights to use all Intellectual Property used or held for use in connection the Business in all material respects, including all of the Intellectual Property that is set forth on Schedule 3.7(a) (collectively, "**Sellers Intellectual Property**"). All applications to register and registrations of Intellectual Property, and all material unregistered Trademarks, used in the Business are listed in Schedule 3.7(a), and all of the foregoing:

- (i) are valid, enforceable and in full force and effect;
- (ii) have not lapsed, expired or been abandoned (provided that the foregoing will not be deemed a representation that any registration for any Trademarks of Sellers will issue upon application therefor);
- (iii) are not the subject of any refusal, opposition, cancellation or other challenge to ownership, use, registrability, validity or enforceability before the United States Patent and Trademark Office, domain name registrar or any other applicable Intellectual Property offices, registrars or other authorities or before any court, arbitrator, mediator or other tribunal;
- (iv) are exclusively owned by the Sellers;

(v) have one of the Sellers listed in the records of the appropriate Intellectual Property offices, registrars or other authorities as the sole owner of record for each application or registration included in Sellers Intellectual Property;

(vi) have had paid in full all fees (including all registration, maintenance, renewal and annuity fees) necessary to maintain such Intellectual Property as active and which are due on or prior to the Closing Date, and all necessary documents in connection with such Intellectual Property have been filed with the appropriate Intellectual Property offices, registrars or other authorities for the purposes of maintaining the registration of such Intellectual Property through three (3) months after the Closing Date; and

(vii) no third parties have any right, title or interest in or to such Intellectual Property.

(b) Schedule 3.7(b) sets forth a complete and accurate list of all contracts, agreements or other arrangements pursuant to which any right, title or interest in or to any Sellers Intellectual Property is granted, assigned or otherwise transferred to or from any of the Sellers, other than generally commercially available, off-the-shelf software having an acquisition price of less than One Thousand Dollars (\$1,000.00) in the aggregate for all use by the Sellers. Effective upon the Closing, all of the rights, title and interests in and to the Sellers Intellectual Property shall be assigned and transferred to the Purchaser free and clear of all Liens of any kind. The Sellers have not received any written notice in the past three (3) years that they are in default (or with the giving of notice or lapse of time or both, would be in default) under any material contract relating to any Sellers Intellectual Property.

(c) Except as set forth on Schedule 3.7(c), (i) to the knowledge of the Sellers, no Sellers Intellectual Property rights owned by the Sellers are being infringed, misappropriated or otherwise violated by any other Person in any material respect and (ii) the conduct of the Sellers' businesses as conducted has not infringed, misappropriated or otherwise violated in any respect any Intellectual Property rights of any other Person in any material respect. The Sellers have not received any written notice of any claim of infringement, misappropriation, or violation of any Intellectual Property rights of others, and have not sent to any third parties any notice of any claim of infringement, misappropriation or violation of any Intellectual Property, in the past twenty-four (24) months. Except as set forth on Schedule 3.7(c), no consent to use, co-existence agreement or other accommodation has been entered into by the Sellers with respect to the ownership or use of any Trademark that includes or is confusingly similar to "GRACIOUS" or "GRACIOUS HOME" for any goods or services of a type that has been marketed or sold in the Business or is currently contemplated to be sold in the Business or in connection with retail store services, nor have Sellers acquiesced in the use by any third party of any Trademark confusingly similar to "GRACIOUS" or "GRACIOUS HOME". Except as set forth on Schedule 3.7(c), the Sellers have (i) required each third party contractor who has developed for the benefit of the Sellers any Intellectual Property related to any Trademark that includes "GRACIOUS" or "GRACIOUS HOME" or any logo or logo related artwork in the past thirty-six (36) months, together with any such Intellectual Property created prior to the past thirty-six (36) months that is used or expected to be used in the Business as operated on the date hereof, to enter into agreements assigning the Intellectual Property therein to the Sellers and (ii) used commercially

reasonable efforts to obtain assignments of all Intellectual Property developed by third party contractors on behalf of the Sellers.

(d) The Sellers (1) have not experienced any material disruption in their information systems during the past two (2) years; (2) have not experienced, to the Sellers' Knowledge, any unauthorized disclosure or use of any personal information of employees, customers or other individuals (including credit card information, social security numbers and any personally identifiable information) nor of any material confidential information of the Business, (3) have used commercially reasonable efforts to maintain the security and integrity of their information systems and the confidentiality of all material confidential information of the Business and (4) complied in all material respects with (I) all applicable laws and regulations regarding data protection and the privacy and security of personal information, (II) their privacy and security policies and any similar commitments to customers, and (III) all applicable credit card, financial transaction and other security standards, including PCI DSS.

Section 3.8 Litigation. Except as set forth on Schedule 3.8, other than in connection with the Cases, there are no actions, causes of action, claims, suits or proceedings (“**Proceedings**”) pending or, to Sellers’ Knowledge, threatened against any of the Sellers with respect to the Business or affecting the operation of the Business or the ownership or use of the Purchased Assets, at law or in equity, or before or by any Governmental Agency, which (i) relates to or involves more than \$50,000, (ii) seeks to restrain or enjoin the consummation of or would materially and adversely affect, the transactions contemplated hereby, (iii) could reasonably be expected to materially and adversely impact the Business or (iv) could reasonably be expected to result in a Material Adverse Change. Except as set forth Schedule 3.8, none of the Proceedings listed on Schedule 3.8 as to which there is at least a reasonable possibility of adverse determination would have, if so determined, individually or in the aggregate, a material and adverse effect on the Business or the Purchased Assets. Except as set forth on Schedule 3.8, to Sellers’ Knowledge, there are no unasserted claims of the type that would be required to be disclosed on Schedule 3.8 that if asserted would have at least a reasonable possibility of an adverse determination and, if so determined, would have, individually or in the aggregate, a Material Adverse Change.

Section 3.9 Tax Matters. There is no Lien affecting any of the Purchased Assets that arose in connection with any failure or alleged failure to pay any Tax which will attach (or continue to attach) to the Purchased Assets on or after the Closing.

Section 3.10 Employee Matters and Labor Relations. Except as set forth on Schedule 3.10:

(a) The Sellers are not parties to, or bound by, any material collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization.

(b) The Sellers are not the subject of any material proceeding asserting that they have committed an unfair labor practice or sex, age, race or other discrimination or seeking to compel them to bargain with any labor organization as to wages or conditions of employment.

(c) There are no current or, to the Sellers' Knowledge, threatened organizational activities or demands for recognition by a labor organization seeking to represent employees of the Sellers and no such activities have occurred during the past 12 months.

(d) No material grievance, arbitration, litigation or complaint or, to the Sellers' Knowledge, investigations relating to labor or employment matters is pending or threatened against the Sellers.

(e) The Sellers have complied and are in compliance in all material respects with all applicable laws (domestic and foreign), agreements, contracts, and policies relating to employment, employment practices, wages, hours, and terms and conditions of employment and are not engaged in any material unfair labor practice as determined by the National Labor Relations Board (or any foreign equivalent).

(f) The Sellers have complied in all material respects with their payment obligations to all employees of the Sellers in respect of all wages, salaries, commissions, bonuses, benefits and other compensation due and payable to such employees under any agreement, plan, program or any statute or other law.

(g) Schedule 3.10(g) sets forth a list of all officers and other employees of and consultants to the Sellers whose current annual salary is \$75,000 or more, together with the current job title or relationship to the Sellers and the current annual salary (including bonus) for each such person, including a description of applicable bonus or benefit plans.

(h) Schedule 3.10(h) sets forth a complete and accurate list of each Benefit Arrangement. Prior to the Designation Time, the Sellers will have made available or delivered to the Purchaser a true, correct and complete copy (in each case, if applicable) of each (i) Benefit Arrangement set forth on Schedule 3.10(h), including any amendment thereto; (ii) summary plan description; (iii) trust, insurance, annuity or other funding contract related thereto; (iv) the most recent financial statements and actuarial or other valuation reports prepared with respect thereto; and (v) the two (2) most recent annual reports on Form 5500 required to be filed with the IRS with respect thereto.

(i) Each Benefit Arrangement has been administered in accordance with its terms and operated in compliance with ERISA, the Code and all other applicable laws. Other than the KEIP, the Sellers do not have a contract, plan or commitment, whether legally binding or not, to create any additional Benefit Arrangement, or any plan, agreement or arrangement that would be an Benefit Arrangement if adopted or to modify any existing Benefit Arrangement, except as required by applicable law. There are no limitations or restrictions on the right of the Sellers or, after the consummation of the transactions contemplated hereby, the Purchaser, to merge, amend or terminate any Benefit Arrangement.

(j) No Benefit Arrangement provides benefits, including without limitation, death or medical benefits (whether or not insured), beyond retirement or termination of service, other than (i) coverage mandated solely by applicable law, (ii) death benefits or retirement

benefits under any “employee pension benefit plan” (as defined in Section 3(2) of ERISA) or (iii) benefits, the full costs of which are borne by the participant or his or her beneficiary.

(k) With respect to each Benefit Arrangement intended to be “qualified” within the meaning of Section 401(a) of the Code, (i) each such Benefit Arrangement has been determined to be so qualified and has received a favorable determination letter from the IRS with respect to its qualification, (ii) the trusts maintained thereunder have been determined to be exempt from taxation under Section 501(a) of the Code, and (iii) no event has occurred that could reasonably be expected to result in disqualification or adversely affect such exemption.

(l) Neither the Sellers nor any of its ERISA Affiliates have at any time during the last six (6) years contributed to or had any obligation to contribute to: (i) a plan subject to Title IV or Section 302 of ERISA or Sections 412 or 4971 of the Code; (ii) a “multiemployer plan” (within the meaning of Section 3(37) of ERISA); (iii) a “multiple employer plan” (within the meaning of Section 413(c) of the Code); (iv) any “voluntary employees’ beneficiary association” (within the meaning of Section 501(c)(9) of the Code); or (v) any “multiple employer welfare arrangement” (within the meaning of Section 3(40) of ERISA). Neither the Sellers nor any of its ERISA Affiliates have incurred any withdrawal liability that has not been satisfied in full.

(m) There are no pending, threatened or anticipated actions, suits, disputes or claims by or on behalf of any Benefit Arrangement, by any employee or beneficiary covered under any such Benefit Arrangement, or otherwise involving any such Benefit Arrangement (other than routine claims for benefits).

(n) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will, either alone or in combination with another event, (i) entitle any current or former employee, officer or director of the Sellers or the Business to severance pay, unemployment compensation or any other payment, except as expressly provided in this Agreement or as described on Schedule 3.10(n), or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee, officer or director, other than in the case of clauses (i) and (ii) such entitlements, accelerations or increases that are not Assumed Liabilities.

Section 3.11 Insurance. The Sellers have insurance covering its properties, operations, personnel and businesses, including, without limitation, business interruption insurance, which insurance is in amounts and insures against such losses and risks as are customary and reasonable for companies whose businesses are similar to the Sellers’. The material insurance policies maintained with respect to Business are set forth on Schedule 3.11. All such policies are in full force and effect, all premiums due and payable thereon have been paid (other than retroactive or retrospective premium adjustments that are not yet, but may be, required to be paid with respect to any period ending prior to the Closing Date), and no written notice of cancellation or termination has been received with respect to any such policy which has not been replaced on substantially similar terms prior to the date of such cancellation. The Sellers (i) have

not received written notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made to continue such insurance or (ii) do not have any reason to believe that they shall not be able to renew their existing insurance coverage as and when such coverage expires or to obtain similar coverage at reasonable cost from similar insurers as may be necessary to continue their Business.

Section 3.12 Inventory. Subject to any reserve therefor included in the Financial Statements, as of the date hereof and as of the Closing, all Inventories (including On-Order Merchandise) consisted of items of a quality usable or saleable in the normal course of business consistent with past practices and were in quantities reasonably sufficient for the normal operation of the Business in accordance with past practices. Since September 30, 2010 except for the Former Operations, the Sellers have continued to replenish their Inventory and to dispose of out-of-season and slow-moving inventory in a normal and customary manner consistent with past practices of the Business. The Sellers maintain policies, practices and procedures with respect to the adequate security and safeguard of Inventory and other assets (including, with respect to employee and third party theft and other loss); the Sellers have not made any material changes to such policies, practices and procedures during the year ended on the date hereof. The term “**Inventory**” means the inventories of finished goods or products located at the Stores or the Warehouse (including in-transit inventory for which title has passed to Sellers), and including bags, boxes and selling and other supplies that are included in the Sellers’ “Perpetual Inventory”, in each case used, useable or otherwise saleable in the ordinary course of the business of the Sellers consistent with past practice, stated at the lower of Cost or market, in accordance with GAAP (including with respect to reserves), but excluding, for the avoidance of doubt, (i) goods owned by third parties that have been placed in the Stores on consignment; (ii) air conditioners subject to floor financing arrangements that are subject to return to third parties; and (iii) Equipment and Fixtures. At the Closing all Inventory will be located at the Stores or the Warehouse, or, to the extent title to such Inventory has passed to Purchaser, in transit to the Warehouse or to the Stores.

Section 3.13 Receivables. All accounts and notes receivable of the Sellers reflected on the unaudited combined balance sheet set forth on Schedule 3.13 (the “**Balance Sheet**”), to the extent uncollected on the date hereof, and the accounts and notes receivable arising subsequent to the date of the Balance Sheet, (a) arose or will arise from bona fide sales transactions in the ordinary course of business, consistent with past practice, and are payable on ordinary trade terms, (b) to the Sellers’ Knowledge, are valid and binding obligations of the respective debtors, enforceable in accordance with their respective terms, (c) to the Sellers’ Knowledge, are not subject to any valid set offs or counterclaims and (d) are fully collectible in a manner consistent with past practice, subject to amounts reserved therefor in the Balance Sheet or, with respect to those receivables that arose from and after September 30, 2010, reserved therefor on the books of the Sellers (in a manner consistent with past practice) from and after September 30, 2010. Since September 30, 2010, there have not been any material write offs as uncollectible of any of the Sellers’ accounts receivable, except for write offs in the ordinary course of business consistent with past practice.

Section 3.14 Absence of Changes or Events. Except as set forth on Schedule 3.14, taking into account the Cases and excluding the Former Operations, since September 30, 2010 (the “**Balance Sheet Date**”):

(a) there have not been any changes, events or developments that have had or would reasonably be expected individually or in the aggregate to have a Material Adverse Change;

(b) the Business has been conducted in the ordinary course and in substantially the same manner as previously conducted; and

(c) none of the Sellers has taken any action that, if taken after the date of this Agreement, would constitute a violation of Section 5.1.

Section 3.15 Suppliers. Schedule 3.15 lists the names of the top 20 suppliers and vendors of the Business, by volume in dollars of purchases from such suppliers and vendors, for each of the fiscal year ended December 31, 2009 and the ten (10) months ended October 31, 2010, and the aggregate expenditures attributable to each in such periods. Except as set forth on Schedule 3.15, during the period beginning 180 days prior to the date hereof, none of such suppliers has indicated in writing or orally to the Sellers any intent to discontinue or alter in a manner adverse to the Business the terms of such supplier's or vendor's relationship with the Business either before or following the Closing, or make any claim that the Business has breached its obligations to such supplier or vendor other than a failure to pay or to pay on a timely basis, and to the Sellers' Knowledge, no such breach has occurred.

Section 3.16 Customers. The Business does not have any customer to whom it made more than 1% of its total sales during the most recent full fiscal year.

Section 3.17 Financial Statements. The Balance Sheet and the combining statement of income for the nine months ended September 30, 2010 for the Weck Corporation and Affiliates d/b/a Gracious Home (the "**Financial Statements**") have been prepared from the books and records of the Business and fairly present in all material respects the financial condition of the Business as of the respective dates thereof and for the respective periods indicated.

Section 3.18 Brokers. No broker, investment banker or other person is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Sellers (except for Triton Equity Partners, LLC, whose fee or commission shall be borne by the Sellers (using funds that do not constitute Purchased Assets) subject to Bankruptcy Court approval or by the landlord at the 1131 Third Avenue store location).

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to the Sellers as follows:

Section 4.1 Authority of Purchaser. Purchaser is a limited liability company, validly existing, and in good standing under the laws of the State of Delaware. Purchaser has full organizational power and authority to execute and deliver this Agreement, and the execution and delivery by Purchaser of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of Purchaser,

and this Agreement constitutes the legal, valid and binding obligation of Purchaser enforceable in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, moratorium, or similar laws from time to time in effect which affect creditors' rights generally, and by legal and equitable limitations on the enforceability of specific remedies. Purchaser has full corporate or other organizational power and authority to own its properties and to carry on the business presently being conducted by it.

Section 4.2 No Conflict or Violation. The execution, delivery and performance by Purchaser of this Agreement and the Ancillary Documents do not and will not violate or conflict with any provision of the Certificate of Formation or Limited Liability Company Operating Agreement of Purchaser and do not and will not violate any provision of law, or any order, judgment or decree of any court or other Governmental Agency applicable to Purchaser, or violate or result in a material breach of or constitute (with due notice or lapse of time or both) a default under any loan agreement, mortgage, security agreement, indenture or other instrument to which Purchaser is a party or by which it is bound, other than, in each case, such violations or conflicts that would not reasonably be expected, individually or in the aggregate, to materially delay or impair Purchaser's ability to consummate the transactions contemplated hereby.

Section 4.3 Consents and Approvals. No consent, approval, authorization, order, registration or qualification of or with any court or governmental agency or body or other entity or Person, other than the Bankruptcy Court, is required to be obtained or made by the Purchaser for the execution and delivery by the Purchaser of this Agreement or the Ancillary Documents to which it is a party and performance of and compliance by the Purchaser with all of the provisions hereof and thereof and the consummation of the transactions contemplated herein and therein, except for any consent, approval, authorization, order, registration or qualification which, if not made or obtained, has not and would not reasonably be expected, individually or in the aggregate, to prohibit, materially delay or materially and adversely impact the Purchaser's performance of its obligations under this Agreement.

Section 4.4 Availability of Funds. At Closing, Purchaser will have access to funds under available lines of credit and other committed funds from lending sources, which cash and funding, taken together, are and will be sufficient to allow it to pay the Purchase Price at the times and in the manner set forth in this Agreement and to satisfy all its other obligations under this Agreement. The financial information provided to Sellers by Purchaser in accordance with the Bidding Procedures Order is true and correct; provided that Purchaser makes no representations or warranties with respect to information provided by the Sellers and incorporated in the financial information of Purchaser.

Section 4.5 Litigation. There are no actions, causes of action, claims, suits, proceedings, orders, writs, injunctions, or decrees pending or, to the Purchaser's Knowledge, threatened against Purchaser at law or in equity or before or by any Governmental Agency, which seeks to restrain or enjoin the consummation of the transactions contemplated hereby or that shall otherwise materially adversely affect the ability of Purchaser to perform its obligations hereunder.

Section 4.6 Brokers. All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by Purchaser without the intervention of any other



Person acting on its behalf in such manner as to give rise to any valid claim by any such Person against the Sellers or their Affiliates for a finder's fee, brokerage commission or other similar payment based on an arrangement with Purchaser.

Section 4.7 Adequate Assurances Regarding Executory Contracts. Purchaser believes in good faith that it is and will be capable of satisfying the conditions contained in sections 365(b)(1)(c) and (f) of the Bankruptcy Code with respect to the Executory Contracts.

## ARTICLE V

### CERTAIN COVENANTS OF THE SELLERS

Each Seller covenants with Purchaser that from and after the date hereof through the Closing Date:

Section 5.1 Conduct of Business Before the Closing Date. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing, the Sellers shall, except to the extent (x) expressly contemplated by this Agreement, or (y) with the prior order of the Bankruptcy Court *sua sponte* or on motion by a third party, notice of which order or motion shall be promptly delivered by the Sellers to Purchaser, use reasonable best efforts consistent with past practice and policies to preserve the Business, keep available the services of its present officers and employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees, creditors, lessors and others having business dealings with it, to the end that its goodwill and ongoing businesses shall not be substantially impaired at the Closing. Without the prior written consent of Purchaser or unless otherwise ordered by the Bankruptcy Court *sua sponte* or on motion by a third party, notice of which order or motion shall be promptly delivered by the Sellers to Purchaser, between the date hereof and the Closing Date, the Sellers shall not, except as required or expressly permitted pursuant to the terms hereof, make any material change in the Purchased Assets or the Business as it relates to the Purchased Assets, or enter into any transaction respecting the Business, other than in any such case in the ordinary course of the Business consistent with the Sellers' past practices taking into account the Cases (including past mark-down practices), and shall continue to operate the Stores and the Business as it relates to the Purchased Assets in the ordinary course of the Business taking into account the Cases (in furtherance and not in limitation of the foregoing, Sellers are permitted to remove cash from the cash registers after the close of business each day, and Purchaser acknowledges and agrees that the maximum amount of cash left in the Stores after the close of business on the day prior to the Closing shall be an amount not to exceed \$50,000 in the aggregate for all Stores). Without limiting the generality of the foregoing, unless otherwise consented to in writing by Purchaser the Sellers shall, consistent with their past practices taking into account the Cases, where applicable:

(a) Perform all of their material post-petition obligations under the Leases and Other Contracts in accordance with their terms, except for obligations which are not required to be performed under the Bankruptcy Code or which are being disputed by the Sellers in good faith (with notice of such dispute promptly delivered by Sellers to Purchaser);

(b) Comply in all material respects with all statutes, laws, ordinances, rules and regulations applicable to the Purchased Assets and Assumed Liabilities except where compliance is being disputed by the Sellers in good faith or excused by the Bankruptcy Code or other applicable law;

(c) Not remove, agree to remove, sell or agree to sell or otherwise transfer or permit any Person or entity to remove any Equipment, Machinery and Fixtures from the Stores, except for replacements and refurbishments required in the ordinary course of business and Excluded Assets;

(d) Not amend or modify or terminate any of the Leases or Other Contracts or agree or consent to any amendments or modifications or terminations thereof, except as contemplated by this Agreement;

(e) Not change, in any material respect, any of their methods or procedures relating to accounting for the Cost of inventory in the Business;

(f) Promptly notify Purchaser if the Sellers receive any notices from any lessor, Governmental Agency, insurance company or any other entity indicating any material default or the need for any material repairs, alterations or improvements or any other matter that could reasonably be expected to materially and adversely affect the Purchased Assets, or that any of the Leased Properties are or may be in violation of any law, and cause compliance at the Sellers' cost, except where compliance is being disputed by the Sellers in good faith or excused by the Bankruptcy Code or other applicable law;

(g) Promptly notify Purchaser if the Sellers receive any notices of or otherwise become aware of any condemnation proceedings affecting the Stores;

(h) Not enter into any material agreements that would be binding on the Purchaser or affect any of the Purchased Assets after the Closing Date, other than (A) in the ordinary course of business consistent with past practice and (B) involving amounts payable by the Business not in excess of \$50,000 individually or \$100,000 in the aggregate; provided that the foregoing limitations in clause (B) shall not apply to purchase orders;

(i) Promptly notify Purchaser of any order of the Bankruptcy Court entered in the Cases that affects or will affect the operation of the Business or the Purchased Assets and promptly deliver a copy of any such order to Purchaser; provided that the Sellers shall deliver to Purchaser prior to filing, and as early in advance as is practicable to permit adequate and reasonable time for Purchaser and its counsel to review and comment, copies of all proposed pleadings, motions, notices, statements schedules, applications, reports and other papers to be filed by the Sellers with the Bankruptcy Court to the extent the same relate to or affect the transactions contemplated by this Agreement;

(j) Maintain all occurrence-based forms of insurance with respect to the Purchased Assets as in effect on the date hereof;

(k) Not grant to any employee any increase in compensation or benefits, or enter into, adopt, establish, amend, extend, renew or terminate any employment, consulting,

retention, severance, change in control, collective bargaining, bonus or other incentive compensation, profit sharing, deferred compensation, pension, retirement, vacation, health or other welfare, or other compensation or benefit plan, policy, agreement, trust, fund or arrangement with, for or in respect of any shareholder, officer, employee, director, member, consultant or affiliate or any collective bargaining agreement or other contract with any labor organization, union or association, other than the KEIP and with respect to the KEIP Obligations;

(l) Not incur or assume any indebtedness for borrowed money or guarantee any obligations or indebtedness of any other person, other than indebtedness and/or guarantees which will not be assumed by Purchaser following the Closing and will not impact the Purchased Assets following the Closing;

(m) Not permit, allow or suffer any of the Purchased Assets to become subjected to any Lien (other than Permitted Liens) of any nature whatsoever, other than in connection with court approved transactions with NewAlliance Bank and its Affiliates;

(n) Not waive any claims or rights of substantial value related to the Purchased Assets;

(o) Not pay, loan or advance any amount to, or sell, transfer or lease any of its assets to, or enter into any agreement or arrangement with any affiliates, other than, in each case, in connection with court approved transactions with NewAlliance Bank and its Affiliates;

(p) Not grant or acquire, agree to grant to or acquire from any other Person, or abandon, cancel or otherwise dispose of or permit to lapse, any right, title or interest in or to any Intellectual Property set forth on Schedule 3.7 nor, except in the ordinary course of business consistent with past practice, any other Sellers Intellectual Property; and, except in the ordinary course of business consistent with past practice and pursuant to adequate confidentiality, and except for disclosures necessary pursuant to the Chapter 11 filing, or to the Committee, to landlords under the Leases, to NewAlliance Bank and its Affiliates, or to other bidders in the auction (which disclosures will be pursuant to adequate confidentiality restrictions) not disclose to any third party (other than representatives of Purchaser) any material trade secrets or other confidential or proprietary information relating to the Business (including any customer lists, pricing or cost information or other confidential information);

(q) Not acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof or otherwise acquire any assets (other than Inventory) that are material;

(r) Not make or incur any capital expenditures which, in the aggregate, are in excess of \$25,000, except to the extent that such capital expenditures will not impact the Purchased Assets following the Closing and will not constitute an Assumed Liability;

(s) Not make any revaluations of any amount of its assets that are material, taken as a whole, including write downs of inventory, goodwill or intangible assets or write offs of accounts receivable, other than with respect to the Former Operations;

(t) Not pay, discharge or satisfy any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice or in accordance with their terms, of liabilities reflected or reserved against in, or contemplated by, the Balance Sheet or incurred in the ordinary course of business consistent with past practice or pursuant to an order of the Bankruptcy Court; and

(u) Not authorize any of, or commit or agree to take, whether in writing or otherwise, to do any of, the foregoing actions, or request the Bankruptcy Court to approve or authorize the Sellers to take or omit to take any action which would breach the Sellers' covenants under or any other provisions of this Agreement, or consent to any such approval or authorization, in each case as it relates to the Business.

Section 5.2 Consents and Approvals. The Sellers shall use reasonable best efforts to obtain entry of the Sale Order by the Bankruptcy Court. To the extent the Purchaser is the successful bidder, the Sellers shall not take any action which is intended, or fail to take any action the intent of which failure to act would result in the reversal, voiding, modification or staying of the Sale Order. From the date hereof until the Closing Date, the Sellers shall deliver to the Purchaser copies of all pleadings, motions, notices, statements, schedules, applications, reports and other papers that are filed in the Cases at the time of their filing, but with respect to any such papers that Sellers may file that relates, in whole or in part, to this Agreement, or the Purchaser or its agents or representatives, the Sellers shall use their reasonable efforts to provide such prior notice as may be reasonable under the circumstances before the filing of such papers.

Section 5.3 Advise of Changes; Consultation. The Sellers shall use all reasonable efforts to promptly advise the Purchaser orally (to be followed promptly by written confirmation) of the occurrence of any matter or event that is material to the Purchased Assets, taken as a whole. In connection with the continuing operation of the Business, between the date of this Agreement and the Closing, the Sellers shall use all reasonable efforts to consult in good faith on a regular basis with Purchaser to report material operational developments and the general status of ongoing operations pursuant to procedures reasonably requested by Purchaser. The Sellers acknowledge that any such consultation shall not constitute a waiver by Purchaser of any rights it may have under this Agreement, and that Purchaser shall not have any liability or responsibility for any actions of the Sellers or any of their employees with respect to matters that are the subject of such consultations.

Section 5.4 Information and Access. The Sellers will permit representatives of Purchaser to have full access during normal business hours after reasonable notice from Purchaser to the Sellers, and in a manner so as not to interfere with the normal operations, to all premises, properties, personnel, accountants, books, records, contracts and documents of or pertaining to the Business, including access to the landlords and their respective representatives or any of the mortgagees of such landlords under the Leases. Purchaser and each of its representatives will treat and hold as confidential such information in accordance with the terms and provisions of that certain Confidentiality Agreement, entered into on October 16, 2010, between an Affiliate of Purchaser and the Sellers, which Confidentiality Agreement remains in full force and effect. Purchaser shall reimburse the Sellers for any reasonable out of pocket costs incurred by the Sellers (but not for overhead or cost of salaries or benefits of Purchaser's

personnel) in providing such access. Purchaser shall indemnify, defend and hold harmless the Sellers, the lessors under the Leases and their respective Affiliates from and against any and all claims, demands, causes of action, losses, damages, liabilities, cost and expenses (including, without limitation, attorneys' fees and disbursements), suffered or incurred by such Persons in connection with (i) Purchaser's or Purchaser's representatives' entry upon the Leased Property, or (ii) any and all other activities undertaken by Purchaser or Purchaser's representatives with respect to the Leased Property pursuant to this Section 5.4. The parties hereto agree and acknowledge that the provisions of this Section 5.4 shall in no way affect the conditions set forth in Article VIII of this Agreement.

Section 5.5 Further Assurances. Upon the request of the Purchaser at any time after the Closing Date, the Sellers shall forthwith execute and deliver such documents and take such actions, at Purchaser's sole cost and expense, as Purchaser or its counsel may reasonably request to effectuate the purposes of this Agreement. In addition, Sellers hereby waive and agree not to bring (directly or indirectly or through the assignment to others) any claims for Avoidance Actions against Transferred Employees.

Section 5.6 Assignment of Contracts.

(a) Subject to the applicable provisions of the Sale Order and the other terms and conditions of this Agreement, at the Closing the Sellers shall assume and assign to Purchaser or its designees, and Purchaser or its designees shall take assignment of, all of each such Seller's title, right and interest in and to each such Assigned Contract, free and clear of any and all Liens, and free and clear of all Excluded Liabilities.

(b) Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Assigned Contract if, pursuant to Section 365 of the Bankruptcy Code, an assignment thereof requires the consent of a third party thereto and such consent is not obtained at or prior to the applicable Closing, in which case the provisions of Section 5.5 (Further Assurances) and Section 6.1 (All Reasonable Efforts) shall apply. For the purposes of this Agreement (including all representations and warranties of the Sellers contained herein), Sellers shall be deemed to have obtained all required consents in respect of the assignment of any Assigned Contract if, and to the extent that, pursuant to the Sale Order, the Sellers are authorized to assume and assign to Purchaser the Assigned Contracts pursuant to Section 365 of the Bankruptcy Code and any applicable Cure Cost has been satisfied as provided herein. Pursuant to the Bidding Procedures Order, each party to a proposed Assigned Contract other than the Sellers shall receive notice, at least 10 days prior to the Sale Hearing, of the proposed assumption and assignment of such Assigned Contract and the Cure Costs related thereto. Any objection to the proposed assumption, assignment or Cure Cost shall be heard and determined at the Sale Hearing. In the event that Purchaser elects, prior to the Designation Time, in accordance with this Agreement, not to assume an Assigned Contract set forth on Schedule 1.3 or Schedule 1.4 as of the date hereof, the Cash Purchase Price shall be reduced in an amount equal to fifty percent (50%) of the Cure Cost associated with such contract or lease, in each case as set forth in that certain Order Pursuant to Section 365 of the Bankruptcy Code Fixing the Cure Amounts of Various Unexpired Leases and Executory Contracts dated as of November 17, 2010 (the "**Cure Order**").

(c) Subject to Section 5.7(d), to the extent that any Assigned Contract is subject to a Cure Cost in accordance with the Cure Order, Sellers shall directly pay or otherwise provide for payment of such Cure Cost. In the event that the Sellers fail to pay such amount(s), Purchaser may, at any time at or prior to Closing, either (i) pay such amount(s) (on behalf of the Sellers) and offset such amount(s) against any amount(s) Purchaser may owe the Sellers or (ii) inform the Sellers that such contract will not be an Assigned Contract, notwithstanding that the Designation Time may have passed. The Sellers and Purchaser shall use all reasonable efforts to resolve all disputes with respect to Cure Costs prior to the Sale Hearing. The Sellers hereby agree and acknowledge that the foregoing provision is in addition to, and not in derogation of, any statutory or other remedy that Purchaser may have against the Sellers.

(d) To the extent that Purchaser enters into an amendment or renewal lease or replacement lease for the demised premises located at each of 1220 Third Avenue, New York, New York and 179 East 70<sup>th</sup> Street New York, New York, in each case with the existing landlords or, in the case of a replacement, one or more new landlords, any amounts that would have been paid by Sellers to the existing landlords of such premises in the event Purchaser assumed the existing Leases with respect to such premises under the assumption that such Leases would be renewed requiring the increased deposits set forth on Exhibit G, shall, to the extent required to be paid by tenant (whether as a deposit or a fee) under the terms of such renewal, amendment or replacement lease, be paid by Sellers to the applicable landlord under such renewed, amended or replacement lease; provided, however, that Sellers shall not be obligated to pay an amount in excess of \$500,000 in the aggregate pursuant to this Section 5.6(d) with respect to the assumption or assignment of the existing 1220 Third Avenue or 179 East 70<sup>th</sup> Street Leases and/or any amendments or renewals of leases for such premises or any new lease for premises replacing such leased premises.

#### Section 5.7 Cure of Defaults.

(a) Subject to Section 5.7(d) the Sellers shall, on or prior to the Closing, pay all Cure Costs with respect to Assigned Contracts as provided in the Cure Order or the Sale Order, so that such Assigned Contracts may be assumed by the Sellers and assigned to the Purchaser as applicable in accordance with the provisions of section 365 of the Bankruptcy Code.

(b) Purchaser may, by notice to Sellers prior to the Designation Time, assume the Cure Costs applicable to any or all Leases, and/or any or all Other Contracts, and offset the full amount of any such Cure Costs assumed against the Cash Purchase Price owed by Purchaser to Sellers.

(c) Purchaser reserves the right to increase the Purchase Price at any time prior to the start of the Auction, with such additional amounts, if any, together with the Purchase Price shall be deemed the "Purchase Price" for purposes of the Auction.

(d) Notwithstanding anything to the contrary herein, Sellers shall not be obligated to pay Cure Costs (and Purchaser may not offset any payment of such Cure Costs) with respect to any Assigned Contract that is not listed on Schedule 1.3 or Schedule 1.4 on the date hereof. If Purchaser adds contracts to Schedule 1.3 or Schedule 1.4 in accordance with this Agreement, Purchaser shall be responsible for paying Cure Costs relating to such added contract.

Section 5.8 Internet Address/Domain Name; Name Change Filings. At the Closing or as soon thereafter as is practicable, but in no event later than ten (10) business days from the Closing Date, Sellers will cooperate with Purchaser and perform all steps reasonably necessary to transfer to Purchaser all the domain name registrations listed on Schedule 3.7 or otherwise included in the Purchased Assets, and all telephone numbers included in the Purchased Assets. Sellers shall provide all reasonable required assistance to ensure no disruption to the Business in transferring the foregoing. On the Closing Date, Gracious Home.com, LLC shall file with the Secretary of State of the state of organization of such Seller an amendment to its each applicable Seller's articles of organization or similar organizational documents to change its name to a name which does not contain any of the Sellers' trade names listed on Schedule 3.7, and shall promptly provide Purchaser with evidence of such filing. In addition, Gracious Home.com, LLC shall, within 30 days after the Closing Date, take such actions and file such documents as are necessary to reflect such name change in all states in which such Seller is qualified to do business as a foreign limited liability company and will deliver to Purchaser copies of such documents evidencing such name change filings. Sellers shall not use the trade names listed on Schedule 3.7 after the Closing, except (i) as required for the Cases or to pursue rights and claims against third parties, (ii) in connection with filing of tax returns, insurance claims and any other necessary filings and (iii) in connection with publishing any notices required by the Bankruptcy Court. Purchaser hereby grants to Sellers a non-exclusive limited license and right to use the trade names and logos relating to and used in connection with the operation of the Business, solely to the extent necessary for, and solely for the purposes, set forth in the preceding sentence. Any such use shall be at the Sellers' sole risk, on an "as is, where is" basis with all representations and warranties disclaimed, and subject to compliance with any reasonable quality control requirements for Trademarks as Purchaser may require.

Section 5.9 Bidding Procedures. Sellers will conduct the Auction in accordance with the Bidding Procedures Order, including with respect to the Auction being conducted utilizing an initial bidding increment at the Auction of an amount equal to \$250,000 plus the Break-Up Fee plus the Expense Reimbursement, and the bidding increments thereafter in minimum increments of at least \$100,000 higher than the previous bid.

Section 5.10 Access to Stores. At least two Business Days prior to the Closing, the Sellers shall deliver to Purchaser a list of each Sellers' Employee who is responsible for opening and closing each Store.

## ARTICLE VI

### CERTAIN ADDITIONAL COVENANTS

Section 6.1 All Reasonable Best Efforts. Upon the terms and subject to the conditions herein provided, Purchaser, on the one hand, and each of the Sellers, on the other hand, shall use its respective reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties hereto in doing, all things necessary, proper or advisable under applicable laws and regulations to ensure that the conditions set forth in this Agreement are satisfied and to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including, without limitation, the following:

(a) Purchaser, on the one hand, and each of the Sellers, on the other hand, shall use its reasonable best efforts (including, in the case of the Sellers, petitioning the Bankruptcy Court pursuant to Sections 363 and 365 of the Bankruptcy Code) to obtain, at its own expense (which in case of Sellers, shall not include any funds that constitute Purchased Assets), any and all approvals, authorizations, consents and other actions by Governmental Agencies and other Persons that are necessary or appropriate for such party to consummate the transactions contemplated hereby, but that are not addressed by the Sale Order. Without limiting the generality of the foregoing, each Seller shall use its reasonable best efforts, considering the operation, force and effect of the Sale Order in authorizing such transfers, to obtain, at its own expense, any approvals, authorizations, consents and other actions by all parties necessary for the Sellers to transfer to Purchaser, as applicable, and Purchaser to receive, all assets associated with the Business which are Purchased Assets. Sellers will comply with the Sale Order in all respects.

(b) Each of the Sellers shall take all actions, including appropriate service and notice of pleadings, in form and substance reasonably satisfactory to Purchaser, needed to obtain a Sale Order that authorizes, orders and effects a sale of all of the Purchased Assets free and clear of all Excluded Liabilities and Liens, and the other orders contemplated herein.

(c) The Sellers shall notify, as required by the Bankruptcy Code and all rules promulgated thereunder, all parties entitled to notice of all motions, notices and orders referenced in this Agreement, as modified by any orders issued by the Bankruptcy Court. The Sellers shall timely notify all parties to the Assigned Contracts of the Cure Cost for each such contract or license, so as to enable any such party to object to the proposed Cure Costs and the Bankruptcy Court to determine such amounts at or prior to the Sale Hearing;

(d) Each Seller shall cooperate fully, following entry of the Sale Order approving the sale of the Purchased Assets to Purchaser or its designee, in the arrangements for the transfer of the Purchased Assets from the Sellers to Purchaser in an orderly fashion, free and clear of and from any and all Excluded Liabilities and Liens, and otherwise in accordance with the terms, provisions and conditions of this Agreement and all other agreements, documents and instruments executed and/or delivered in connection herewith, including to the extent reasonably practical, entering into any ancillary insolvency, restructuring or similar proceedings in any relevant non-U.S. jurisdiction.

(e) On or prior to November 24, 2010, Sellers shall facilitate discussions (i) between Purchaser and the landlords and their respective representatives in respect of Leased Property, including by permitting Purchaser, to discuss and negotiate such amendments to Leases as Purchaser may request and (ii) between Purchaser and landlords and their respective representatives in respect of potential replacement leases for the Properties, as Purchaser may reasonably request.

(f) Sellers will take all reasonable actions to transfer the Permits to Purchaser and, if there are Permits that cannot be legally transferred, Sellers will take all reasonable actions to assist Purchaser in applying for new Permits.



(g) Sellers shall use reasonable best efforts to transfer all Intellectual Property to Purchaser, and if there is Intellectual Property that requires the consent of a third party to be legally transferred, shall use all reasonable best efforts to obtain such consent.

(h) Without limiting the generality of the foregoing, the parties hereto shall furnish to each other such necessary information and reasonable assistance, as each may request in connection with each Seller's preparation and filing of applications, motion papers and filings, including the Sale Motion needed to obtain Bankruptcy Court approval of the transactions contemplated by this Agreement, and shall execute any additional instruments necessary to consummate the transactions contemplated hereby, whether before or after the Closing.

(i) Subject to applicable law and the instructions of any Governmental Agency, the Sellers and Purchaser each shall keep the other apprised of the status of matters relating to completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Purchaser or the Sellers, from any third party and/or any Governmental Agency with respect to such transactions.

(j) Not fewer than two (2) days prior to Closing or such earlier date as prescribed by applicable law, Sellers shall obtain any approvals and certificates required by any Governmental Agency and shall deliver any notices required by any Governmental Entity in connection with the sale of the Purchased Assets except to the extent that any such approval or certificate is not required by entry of the Sale Order.

Section 6.2 Adequate Assurances Regarding Assigned Contracts. With respect to each Assigned Contract, Purchaser shall use its best efforts provide adequate assurance as required under the Bankruptcy Code of the future performance of such Assigned Contract by Purchaser. Purchaser agrees that it will promptly take all actions as are reasonably required by the Sellers to assist in obtaining the Bankruptcy Court's entry of the Sale Order, such as furnishing affidavits, non-confidential financial information or other documents or information for filing with the Bankruptcy Court and making Purchaser's employees and representatives available to testify before the Bankruptcy Court, with respect to demonstrating adequate assurance of future performance by Purchaser under the Assigned Contracts.

Section 6.3 Performance Under Assigned Contracts. Purchaser agrees that from and after the Closing Date it shall take all actions necessary to satisfy its obligations under the terms and conditions of each of the Assigned Contracts.

Section 6.4 Further Assurances.

(a) Upon the request of the Sellers at any time after the Closing Date, the Purchaser shall forthwith execute and deliver such documents and take such actions, at Sellers' sole cost and expense (which for the avoidance of doubt shall not include any funds which constitute Purchased Assets), as the Sellers or their counsel may reasonably request to effectuate the purposes of this Agreement.

(b) Following the Closing, upon reasonable notice during hours to be determined by Purchaser, Purchaser shall permit Sellers to enter the Stores and the Warehouse to remove Excluded Assets, and shall do so in a manner not to interfere with the operations of the

Business. Sellers shall be responsible for any damage caused during such removal and shall have adequate insurance to cover any potential liability to Purchaser pursuant to this Section 6.4(b).

Section 6.5 Purchased Receivables. All cash, checks and other instruments tendered to the Sellers by any Person with respect to Purchased Receivables shall not constitute property of Sellers, shall be held in trust by Sellers for the benefit of the Purchaser and shall be remitted to the Purchaser by the Sellers on a weekly basis, and with respect to any cash, check or other instrument in excess of \$50,000, Sellers shall remit to Purchaser such cash, check or other instrument within two (2) Business Days of receipt thereof. Nothing in this Section 6.4 shall be deemed to limit in any respect any of Purchaser's rights to collect the Purchased Receivables directly from any Person.

Section 6.6 Letters of Credit. On or prior to the Closing Date, Sellers shall use reasonable best efforts to cause each landlord holding any existing letter of credit that has been issued as security for a Lease to convert such letter of credit into cash.

Section 6.7 Non-Disturbance Agreements. Sellers shall use reasonable best efforts to deliver to Purchaser a fully executed non-disturbance agreement for each Lease, in each case entered into by and among the landlord, tenant and the holder of each mortgage encumbering the fee underlying the premises demised under the respective Lease (each, a "**Secured Creditor**"), that inures to the benefit of Purchaser as assignee.

Section 6.8 Corporate Office. Seller shall grant Purchaser a license (the "**Headquarters License**") to use the leased property located at the Corporate Office for a term beginning on the Closing and terminating on the earlier of the end of the term of the lease underlying the Corporate Office (the "**Corporate Office Lease**") or thirty (30) days following notice from Purchaser to Sellers of Purchaser's intent to terminate such Headquarters License. Purchaser shall pay the rent in the amount of \$33,849 per month (which includes all required taxes payable as additional rent under the Corporate Office Lease) and covenants and agrees to use the premises for general office purposes only in accordance with the permitted uses of the Corporate Office Lease. Notwithstanding Purchaser's use of the leased premises in accordance with the Corporate Office Lease and payment of rent thereunder, Purchaser but shall not otherwise have any obligation to Sellers, the landlord of the Corporate Office Lease or any other Person to pay any fees, post any security, remove any alterations, restore the demised premises or to clean the premises after Purchaser vacates the premises or to take any other actions with respect to the property. Following termination of the Headquarters License in accordance with this Section 6.8, all cash deposited with landlord of the Corporate Office Lease or as a result of draws on letters of credit previously given as security for the Corporate Office Lease together with accrued interest thereon shall be the property of Sellers, and Purchaser shall make no claim on any such cash. Purchaser will indemnify Sellers for any willful misconduct or gross negligence of Purchaser with respect to Purchaser's use of the Corporate Office during the term of the Headquarters License but solely and to the extent such gross negligence or willful misconduct results in actual losses to Sellers.

Section 6.9 Schedules. Sellers shall deliver each schedule to this Agreement not provided to Purchaser prior to the execution of this Agreement on or prior to 5:00 p.m. EDT on

November 19, 2010, and Purchaser either shall provide its consent to the inclusion of such schedules or terminate in accordance with Section 9.4(j) on or prior to 5:00 p.m. EDT on November 23, 2010.

## ARTICLE VII

### CONDITIONS TO THE SELLERS' OBLIGATIONS

The obligations of the Sellers to consummate the transactions contemplated by this Agreement are subject to the satisfaction (unless waived in writing by the Sellers) of each of the following conditions on or prior to the Closing Date:

Section 7.1 Representations and Warranties. The representations and warranties of the Purchaser contained in Article IV hereof shall be true and correct in all material respects (without giving effect to any limitations as to materiality set forth therein) on and as of the Closing Date with the same force and effect as if made at and as of such date (or, in the case of representations and warranties made as of a specific date, as of such date). Purchaser shall have delivered to the Sellers a certificate signed by an officer of Purchaser, dated the Closing Date, to the foregoing effect.

Section 7.2 Compliance with Agreement. Purchaser shall have performed and complied in all material respects (and in all respects in the case of Article II hereof) with all covenants and conditions to be performed or complied with by it on or prior to the Closing Date. Purchaser shall have delivered to the Sellers a certificate signed by an officer of Purchaser, dated the Closing Date, to the foregoing effect.

Section 7.3 Higher or Better Offers. Sellers shall not have received and accepted an offer or offers for a sale of the Purchased Assets, the Excluded Assets or any combination thereof to any Person, which offer or offers are submitted in accordance and compliance with the terms and conditions of the Bidding Procedures Order, is (are) found by the Bankruptcy Court to be higher or better, either individually or in the aggregate, than any other offer(s) for the sale of the Purchased Assets, including without limitation the Purchase Price and any higher or better offer of Purchaser, and is (are) approved by the Bankruptcy Court (a "**Higher or Better Offer**").

Section 7.4 Entry of the Sale Order. (i) The Bankruptcy Court shall have entered the Sale Order; (ii) the Sale Order shall not be stayed; and (iii) the Sale Order shall not modify the terms and conditions of this Agreement or the transactions contemplated hereby in any way that adversely affects the Sellers.

Section 7.5 Employment Offers. Purchaser shall have offered employment to a sufficient number of employees to avoid causing the Sellers to incur any obligations or liabilities under the WARN Act, consistent with Section 11.1.

Section 7.6 No Legal Impediment to Closing. No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority, and no judgment, injunction, decree or order of any federal, state or foreign court shall have been issued, that prohibits the consummation of the transactions contemplated by this Agreement.

Section 7.7 Execution of Agreements. The Purchaser shall have duly authorized and executed and delivered to Sellers this Agreement and each Ancillary Document to which it is a party.

## ARTICLE VIII

### CONDITIONS TO PURCHASER'S OBLIGATIONS

The obligation of Purchaser to consummate the transactions contemplated by this Agreement is subject to the satisfaction (unless waived in writing by Purchaser) of each of the following conditions on or prior to the Closing Date:

Section 8.1 Representations and Warranties. The representations and warranties of the Sellers, contained in Article III hereof shall be true and correct (without giving effect to any limitations as to materiality or Material Adverse Change set forth therein) on and as of the Closing Date with the same force and effect as if made on and as of such date (or, in the case of representations and warranties made as of a specific date, as of such date), except to the extent that any failure of such representations and warranties, individually or in the aggregate, to be true and correct has not caused, and would not reasonably be expected to cause, a Material Adverse Change. The Sellers shall have delivered to Purchaser a certificate signed by the Chairman, Chief Operating Officer or the Chief Financial Officer of the Sellers, dated the Closing Date, to the foregoing effect; provided, that none of such individuals shall have any personal liability arising out of or resulting from such certificate.

Section 8.2 Compliance with Agreement. The Sellers shall have performed and complied in all material respects with all covenants and conditions to be performed or complied with by them on or prior to the Closing Date. The Sellers shall have delivered to Purchaser a certificate signed by an executive officer of each of the Sellers, dated the Closing Date, to the foregoing effect.

Section 8.3 Entry of the Sale Order. (i) The Bankruptcy Court shall have entered the Sale Order; (ii) the Sale Order shall not be stayed; (iii) the Sale Order as entered by the Bankruptcy Court, shall not modify the terms and conditions of this Agreement or the transactions contemplated hereby in any way that adversely affects Purchaser, and (iv) the Sale Order shall have become a Final Order.

Section 8.4 Material Adverse Change. No Material Adverse Change shall have occurred since the date of this Agreement.

Section 8.5 No Legal Impediment to Closing. No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority, and no judgment, injunction, decree or order of any federal, state or foreign court shall have been issued, that prohibits the consummation of the transactions contemplated by this Agreement.

Section 8.6 Execution of Agreements. Each of the Sellers shall have duly authorized and executed and delivered to Purchaser this Agreement and each Ancillary Document to be executed by it.

## ARTICLE IX

### THE CLOSING; TERMINATION

Section 9.1 The Closing. The Closing of the purchase and sale of the Purchased Assets (the “**Closing**”) shall be held no later than two (2) Business Days after the latest of (i) entry of the Sale Order, (ii) the completion of the Inventory Count and (iii) the satisfaction or waiver by the appropriate party of each of the conditions precedent set forth in Articles VII and VIII; provided that in no event shall the Closing occur less than three (3) Business Days following the Auction (the date on which the Closing occurs, the “**Closing Date**”). The Closing shall be deemed to have occurred at 12:01 a.m., Eastern Time, on the Closing Date. The Closing shall be held at the offices of Hahn & Hessen LLP, 488 Madison Avenue, New York, New York 10022. At the Closing, all of the transactions provided for in Article II hereof shall be consummated on a substantially concurrent basis.

Section 9.2 Deliveries by Sellers. At the Closing, Sellers will deliver the following:

(a) Executed instructions directing the Escrow Agent to release the Deposit Amount to the Sellers;

(b) All duly executed deeds, bills of sale, assignment and assumption agreements with respect to the Purchased Assets and Assigned Contracts being purchased at the Closing and such other instruments of conveyance and assignment as Purchaser shall reasonably deem necessary or appropriate to vest in Purchaser (or its designee, as the case may be) all right, title and interest in, to and under the Purchased Assets and the Assigned Contracts (such documents to be in recordable form where appropriate);

(c) A certified copy of the Sale Order;

(d) The officer’s certificates required to be delivered pursuant to Section 8.1 and 8.2 hereof;

(e) Counterpart signatures to each Ancillary Document, duly executed by each Seller;

(f) Such other documents of assumption and adequate assurance as may be required by the Sale Order that the Purchaser shall have identified not later than the Designation Time;

(g) A duly executed Certificate of Non-Foreign Status of each Seller in the form and manner that complies with Section 1445 of the Code; provided, however, that, if the Sellers do not provide such certificates, Purchaser shall be entitled to withhold from the Purchase Price the amount required pursuant to Section 1445(a) of the Code and deposit such amounts with the Internal Revenue Service; and

(h) Such other documents as Purchaser may reasonably deem necessary or appropriate.

Section 9.3 Deliveries by Purchaser.

- (a) At the Closing, Purchaser will deliver the following:
- (b) Executed instructions directing the Escrow Agent to release the Deposit Amount to the Sellers;
- (c) To the Escrow Agent, pursuant to the Adjustment Escrow Agreement, the Purchase Price Escrow Amount and the Sales Tax Escrow Amount;
- (d) To the Sellers, the balance of the Cash Purchase Price, as adjusted pursuant to Section 2.4(b) and/or Section 2.8, and for the avoidance of doubt, less the Purchase Price Escrow Amount and the Sales Tax Escrow Amount, to an account or accounts designated by Sellers at least two (2) Business Days prior to the Closing;
- (e) The duly executed Notes;
- (f) A counterpart signature to each Ancillary Document, duly executed by Purchaser;
- (g) The officer's certificate required to be delivered pursuant to Section 7.1 and 7.2 hereof;
- (h) Such other documents of assumption and adequate assurance as may be required by the Sale Order; and
- (i) Such other documents as Sellers may reasonably deem necessary and appropriate.

Section 9.4 Termination. Anything in this Agreement to the contrary notwithstanding, this Agreement and the transactions contemplated hereby may be terminated (x) in any of the following ways at any time before the Closing with respect to subsections (a) through (h) of this Section 9.4 (any such termination shall be effected by the provision of written notice of termination by the terminating party to the other party), (y) by Purchaser delivering written notice to Sellers at or prior to 5:00 p.m. EDT on November 28, 2010, with respect to subsection (i) of this Section 9.4, or (z) by Purchaser delivering written notice to Sellers at or prior to 5:00 p.m. EDT on November 23, 2010 with respect to subsection (j) of this Section 9.4, and in no other manner:

- (a) By mutual written consent of Purchaser and the Sellers;
- (b) By Purchaser as provided in Section 2.9;
- (c) By Purchaser if (i) the Auction has not concluded on or before December 3, 2010 or (ii) the Sale Order has not been entered by the Bankruptcy Court on or before December 6, 2010; provided that such terminating party is not then in breach or default of any material obligation hereunder, which default is the cause of the Auction not occurring or the Sale Order not having been entered, as the case may be, on or before such date;

(d) By Purchaser or the Sellers, if the Closing has not occurred on or before December 13, 2010 (or at Purchaser's option, ten (10) days after the Sale Order is entered, if later); provided that such terminating party is not then in breach or default of any material obligation hereunder, which default is the cause of the Closing not occurring on or before such date;

(e) By the Sellers or Purchaser (if such terminating party is not then in default of any obligation hereunder) if the other party is in breach in any material respect of any of its representations made in this Agreement, or is in violation or default in any material respect of any of its covenants or agreements in this Agreement, provided that the terminating party shall have given written notice of such breach to the breaching party and the breaching party shall have failed to cure such breach within two (2) days after receipt of such notice;

(f) By Purchaser at any time after the occurrence of a Material Adverse Change;

(g) By the Sellers or Purchaser upon the entry into a definitive agreement for an Alternative Transaction, including, but not limited to, if a Higher or Better Offer is received and approved by a Bankruptcy Court order and consummated;

(h) By Purchaser if the Sellers withdraw or seek authority to withdraw the Sale Motion, or announce any stand-alone plan of reorganization or liquidation (or support any such plan filed by any other party);

(i) By Purchaser in the event any of the following conditions with respect to the Leases shall not have been satisfied on or prior to the Designation Time:

(1) With respect to the Leases for the demised premises located at each of 1220 Third Avenue, New York, New York and 179 East 70<sup>th</sup> Street New York, New York, the landlords for such premises shall have committed to execute a definitive renewal of each such Lease with Purchaser as evidenced by a written document reasonably acceptable to Purchaser, which renewal shall have economic terms which are no less favorable to the Purchaser than those economic terms set forth on the term sheet for renewal of such Leases set forth on Exhibit G hereto, and otherwise be on terms and conditions reasonably satisfactory to Purchaser;

(2) With respect to the Lease for the demised premises located at 60-31 Woodside Commercial Condominium Unit 1, Woodside, New York, the landlords for such premises shall have committed to execute a definitive amendment to such Lease with Purchaser as evidenced by a written document reasonably acceptable to Purchaser, which amendment shall have economic terms which are no less favorable to Purchaser than those economic terms set forth on Exhibit G hereto, and otherwise be on terms and conditions reasonably acceptable to Purchaser;

(3) With respect to the premises located at 1133 Third Avenue, New York, New York, landlords for such premises shall have committed to execute a definitive lease of such premises with Purchaser as evidenced by a written document reasonably acceptable to Purchaser, which lease shall have economic terms which are no less favorable to Purchaser than those economic terms set forth on Exhibit G hereto, and otherwise be on terms and conditions reasonably acceptable to Purchaser; provided that Purchaser shall have no right to terminate the Agreement pursuant to this clause (3) of Section 9.4(i) unless the Purchaser is also entitled to terminate the Agreement pursuant to clause (1) and clause (4) of this Section 9.4(i);

(4) Sellers shall have deposited with each applicable landlord, in cash, a sum equal to all amounts due under the Leases to be assumed by Purchaser in full satisfaction of the amounts to be delivered to landlord by (i) an assignee of Sellers, and (ii) Sellers including security deposits (including amounts due for any under-funded security deposits, any newly required security deposit as set forth in a Lease, or in an amendment or renewal thereof, and any restoration security deposits (or, in the case of a replacement lease for the premises located at 1220 Third Avenue, New York, New York and 179 East 70<sup>th</sup> Street New York, New York, amounts to be delivered to landlords by Purchaser or Sellers as security or restoration deposits), which amounts are more particularly set forth on Schedule 9.4(i)(4) hereof);

(5) Sellers shall have used their reasonable best efforts to cause all landlords under each Lease to waive or deem satisfied all guarantees required under the Leases, including good guy guarantees, corporate guarantees, limited guarantees and completion guarantees;

(6) Each letter of credit delivered by Sellers for security under the Leases shall have been converted by the Sellers and/or the landlords into cash for the full amount of such letters of credit (with such cash being considered a Purchased Asset for purposes of this Agreement);

(7) Sellers shall have used their reasonable best efforts to deliver to Purchaser a copy of a non-disturbance agreement for each Lease, in each case entered into by and among the landlord, tenant and each Secured Creditor with respect to such Lease, that inures to the benefit of Purchaser as assignee in form reasonably acceptable to Purchaser or as otherwise required under the applicable Lease; and

(8) The Bidding Procedures Order shall contain an express requirement that the initial bidding increment at the Auction is an amount equal to \$250,000 plus the Break-Up Fee plus the Expense Reimbursement, and



the bidding increments thereafter shall be in minimum increments of at least \$100,000 higher than the previous bid.

(j) By Purchaser if Purchaser elects not to consent to the inclusion in the Schedules to this Agreement of any schedules delivered by or on behalf of Sellers to Purchaser pursuant to Section 6.9 of this Agreement;

(k) By Purchaser if use of cash collateral by Sellers is terminated or is not permitted on terms consistent with those in existence on the date of this Agreement; or

(l) By Sellers if the Deposit has not been deposited with the Escrow Agent prior to 5:00 p.m. EDT on November 19, 2010.

Section 9.5 Effects of Termination. (a) In the event this Agreement is terminated pursuant to Section 9.4, except as provided in this Section 9.5 all further obligations of the parties hereunder shall terminate. If this Agreement is terminated as permitted by Section 9.4, termination shall be without liability of any party (or any stockholder, director, member, officer, employee, agent, consultant or representative or such party) to any other party to this Agreement; provided, however, that if such termination shall result from the willful failure of any party to perform a covenant of this Agreement (it being understood and agreed that the exercise by a party of a termination right in accordance with Section 9.4 is not a willful failure by such party to perform a covenant), such party shall be liable for any and all Damages incurred or suffered by the other party as a result of such failure to perform. The provisions of this Section 9.5 shall survive any termination hereof pursuant to Section 9.4.

(b) Except as specifically provided in Section 9.5(d) below, if this Agreement is terminated, the Sellers shall immediately direct the Escrow Agent to return the Deposit (including any interest earned thereon) to Purchaser.

(c) In the event that this Agreement is terminated pursuant to Sections 9.4(c) or (d), or this Agreement is terminated by Purchaser pursuant to Section 9.4(k), then the Sellers shall pay to the Purchaser the Expense Reimbursement. In the event that this Agreement is terminated pursuant to Sections 9.4(g) or (h) or is terminated by Purchaser pursuant to Section 9.4(e), then the Sellers shall pay to the Purchaser the Expense Reimbursement and the Break-Up Fee. In the event that this Agreement is terminated by Purchaser pursuant to Section 9.4(i)(1), (2) or (8) then the Sellers shall pay to Purchaser an amount equal to One Hundred Thousand Dollars (\$100,000) (the "**Other Fee**"); provided that in the event Sellers enter into an Alternative Transaction within thirty (30) days following termination of this Agreement under circumstances where Purchaser is entitled to the Other Fee, Sellers shall pay to Purchaser either the Expense Reimbursement and the Break-Up Fee, or, in the event the Other Fee has already been paid to Purchaser, the difference between (x) the sum of Break-Up Fee and the Expense Reimbursement and (y) the Other Fee. Each of the Break-Up Fee, the Expense Reimbursement and the Other Fee shall be paid as an administrative expense of the Sellers with priority over any and all other administrative expenses of the kind specified in Section 503(b) or 507(b) of the Bankruptcy Code subject solely to the Super-Priority granted to NewAlliance Bank pursuant to the Final Order Permitting The Use Of Cash Collateral And Granting Related Relief, dated as of October 22, 2010, and to the extent payable as the result of or in relation to an Alternative Transaction,

shall be payable from, and constitute a senior lien on, the proceeds of the Alternative Transaction, subject solely to the lien granted to NewAlliance Bank pursuant to the Final Order Permitting The Use Of Cash Collateral And Granting Related Relief, dated as of October 22, 2010.

(d) The parties agree that if the Purchaser materially breaches or fails to comply with any of its covenants, representations or warranties hereunder and the transactions provided for in this Agreement are not consummated due to such material breach or default of Purchaser, Sellers shall be entitled to the Deposit. The parties agree that the Deposit shall not preclude Sellers from asserting claims for additional monetary damages to which Sellers might otherwise be entitled, or from seeking specific performance of this Agreement.

## ARTICLE X

### TAXES; RECORDS

The parties hereto hereby covenant and agree as follows:

#### Section 10.1 Taxes Related to Purchase of Assets.

(a) Purchaser shall bear the cost of all state and local transfer, recording, stamp or other similar transfer taxes (collectively, "**Transaction Taxes**") that may be imposed by reason of the sale, transfer, assignment and delivery of the Purchased Assets, along with any recording and filing fees. Purchaser and the Sellers agree to cooperate to determine the amount of Transaction Taxes payable in connection with the transactions contemplated under this Agreement. Transaction Taxes shall not include any Taxes for which the Sellers are responsible under Section 10.2. Sellers shall bear the cost of any use or sales tax that may be imposed as a result of the transactions contemplated hereby or, together with Purchaser, jointly seek to establish a basis for an exemption therefrom, provided Purchaser will make the payment on Sellers' behalf in accordance with Section 10.1(b) below.

(b) Following final determination of the Sales Tax Amount, Purchaser and Sellers shall jointly instruct the Escrow Agent to release (i) the Sales Tax Amount to Purchaser for purposes of paying the Sales Tax Amount to the appropriate governmental agencies; provided, however, if the amount to be paid pursuant to the foregoing exceeds the amount on deposit in the Sales Escrow Fund, such excess shall be payable by Sellers to Purchaser for purposes of remitting to the appropriate governmental agencies on behalf of Sellers; provided, further that in the event Sellers do not pay any excess Sales Tax Amount above \$50,000 to Purchaser in accordance with the foregoing, within five (5) Business Days following determination of the Sales Tax Amount, Purchaser and Sellers shall jointly instruct the Escrow Agent to release such excess amount from the Purchase Price Escrow Fund, and Sellers shall continue to owe such amount paid out of the Purchase Price Escrow Fund to Purchaser in respect of the Sales Tax Amount, and (ii) to the Sellers the amount, if any, by which the Sales Tax Escrow Amount exceeds the Sales Tax Amount.

(c) Purchaser and the Sellers agree to cooperate in the preparation and filing of any and all required returns for or with respect to such Transaction Taxes or use or sales taxes with any and all appropriate taxing authorities. As soon as practicable following final

determination of the Sale Tax Amount, but in no event more than 15 days after such determination, Sellers and Purchaser will execute any returns for or with respect to such Transaction Taxes or use or sales taxes with respect to the Purchased Assets. Purchaser will arrange to have filed the returns for or with respect to such use or sales taxes and will provide reasonably satisfactory evidence of (i) filing each required return with respect to Transaction Taxes and (ii) payment of the Sales Tax Amount in the form of checks or other method of payment made out to the appropriate taxing authority.

Section 10.2 Proration of Personal Property Taxes. To the extent not reflected in the computation of Closing Date Working Capital, personal property taxes and assessments on the Purchased Assets shall be prorated between Purchaser and the Sellers as of the Apportionment Date with respect to a taxable period that includes (but does not end on) the date preceding the Closing Date, provided, however, that the Sellers shall not be responsible for any increased assessments on personal property resulting from the transactions contemplated hereby. All such prorations shall be allocated so that items relating to time periods ending prior to the Closing Date shall be allocated to the Sellers and items related to time periods beginning on or after the Closing Date shall be allocated to Purchaser; provided, that such items shall only relate to time periods after December 31, 2009. The amount of all such prorations shall be settled and paid on the Closing Date unless, with respect to Sellers' obligations hereunder, otherwise ordered by the Bankruptcy Court.

Section 10.3 Cooperation on Tax and Other Matters. Purchaser and the Sellers agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Business as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution or defense of any suit or other proceeding relating to Tax matters and for the answer of any governmental or regulatory inquiry relating to Tax matters.

Purchaser agrees to retain possession of all files and records delivered to Purchaser by the Sellers for a period of at least seven years from the filing of the income tax return of the Sellers that reflects the sale of the Purchaser Assets. Sellers will notify Purchaser of the date that such income tax return was filed. In addition, from and after the Closing Date, Purchaser agrees that it will provide access to the Sellers, the Committee and their respective attorneys, accountants and other professionals and representatives (after reasonable notice and during normal business hours) to Purchaser's personnel and to such files and records (and to make copies of such files and records) as the Sellers or the Committee may reasonably deem necessary to (i) properly prepare for, file, prove, answer, prosecute or defend any such return, filing, audit, protest, claim, suit, inquiry or other proceeding, (ii) resolve any claim against the Sellers, or (iii) facilitate the administration of the Cases, the administration of the Excluded Assets or Excluded Liabilities, and other administrative activities. Sellers shall reimburse Purchaser for any reasonable out-of-pocket costs incurred by Purchaser (but not for overhead or cost of salaries or benefits of Purchaser's personnel) in providing such access. Purchaser shall not dispose of any such documents and records except as shall be consistent with applicable law; provided, further, Purchaser shall provide Sellers with reasonable advance notice prior to the disposal of any such documents or records, together with the opportunity for Sellers to preserve such documents or records at Sellers' cost.

## ARTICLE XI

### EMPLOYEES AND EMPLOYEE BENEFITS

Section 11.1 Transferred Employees. Effective as of the Closing, Purchaser may, in its sole discretion offer employment to any and all Sellers Employees and to those employees on disability, FMLA, military or other leave or absence other than vacation or jury duty; provided, however, that Purchaser agrees to offer employment to a sufficient number of Sellers' Employees, at positions having comparable duties, hours, salary and medical, pension and other welfare benefits as their current employment, to avoid causing the Sellers to incur any obligations or liabilities under the WARN Act. All or such shall employees who accept Purchaser's offer of employment are referred to herein collectively as the "**Transferred Employees**". Purchaser shall have access to and the right to meet with all of Sellers' Employees during normal business hours prior to the Closing Date. Prior to the Designation Time, Purchaser will deliver Schedule 11.1 to Sellers, which shall set forth (a) a list of all Sellers' Employees to whom Purchaser has determined to offer employment and (b) a description of all employment and equity arrangements made with members of Sellers' senior management.

Section 11.2 Terms of Employment of Transferred Employees. Subject to Section 11.1 above and clauses (a) and (b) below, Purchaser may, in its sole discretion, offer each Transferred Employee terms and conditions of employment, including but not limited to benefits, base compensation, retirement and savings plans, and incentive compensation, each as determined by the Purchaser in its sole discretion. To the extent an employee becomes a Transferred Employee, Purchaser agrees to:

(a) provide such Transferred Employees with any benefits accrued by such Transferred Employees prior to the Closing Date, including the amount of accrued but unused vacation time and sick leave time; and

(b) grant such Transferred Employees a credit for the amount of months and years of service of such Transferred Employee for purposes of eligibility, vesting of benefits, calculation of severance pay, determination of vacation time, sick leave, or other approved or statutory leave of absence, or for purposes of determining the amount of benefit coverage under any plan of Purchaser providing for medical, dental, and prescription drug coverage and accrual of other benefits.

Section 11.3 No Successor Employer Liability. Subject to the assumption by Purchaser of the Assumed Liabilities and compliance by Purchaser of its obligations under this Article XI, Purchaser shall not, for any purposes, be deemed a successor employer of any of the Sellers' employees, and Purchaser expressly does not assume any liabilities as a successor employer.

Section 11.4 COBRA. Purchaser, at no expense to Sellers, shall provide the benefits, if any, required from and after the Closing pursuant to Section 4980B of the Code or Part 6 of Title I of ERISA for any Transferred Employee who is or becomes entitled to such continuation medical coverage from Purchaser after the Closing.

Section 11.5 Employment Tax Reporting. With respect to Transferred Employees, Purchaser and Sellers shall use the standard procedure set forth in Revenue Procedure 2004-53, 2004-34 I.R.B. 320, or another mutually agreed upon procedure, for purposes of employment tax reporting.

Section 11.6 No Obligations. Other than as set forth in this Article XI, nothing contained in this Agreement shall be construed to require, or prevent the termination of, employment of any individual, require minimum benefit or compensation levels or prevent any change in the employee benefits provided to any individual Transferred Employee.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

Section 12.1 No Survival of Sellers' Representations and Warranties. The representations and warranties of Sellers contained in this Agreement or in any certificate delivered hereunder shall not survive the Closing.

Section 12.2 Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when delivered personally to the recipient, (b) one (1) Business Day after the date when sent to the recipient by reputable express courier service (charges prepaid) or by facsimile transmission or (c) seven (7) Business Days after the date when mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications will be sent to the Sellers and to Purchaser at the addresses indicated below:

If to Purchaser:

c/o  
Eileen T. Nugent  
Marie L. Gibson  
Skadden, Arps, Slate, Meagher & Flom LLP  
New York, New York 10036  
Email: eileen.nugent@skadden.com  
Email: marie.gibson@skadden.com  
Telephone: 212.735.3000  
Facsimile: 212.735.2000

With a copy (which shall not constitute notice) to:

George N. Panagakis  
Skadden, Arps, Slate, Meagher & Flom LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
Email: george.panagakis@skadden.com  
Telephone: 312.407.0700  
Facsimile: 312.407.0411

and

If to Sellers:

The Weck Corporation d/b/a Gracious Home  
632 Broadway, Suite 401  
New York, New York 10012  
Attention: Jordan Smilowitz, President  
Email: jsmilowitz@gracioushome.com  
Telephone: 212-901-6307  
Facsimile: 212-677-8010

With a copy (which shall not constitute notice) to:

Rosanne T. Matzat, Esq.  
Mark T. Power, Esq.  
Hahn & Hessen LLP  
488 Madison Avenue  
New York, NY 10022  
Email: rmatzat@hahnhessen.com  
Email: mpower@hahnhessen.com  
Telephone: 212.478.7200  
Facsimile: 212.478.7400

And to special counsel for Sellers:

Drew Hazen, Esq.  
The Law Offices of Andrew Hazen,  
30 Glenn Street, Suite 301  
White Plains, New York 10603  
Email: drew@drewslaw.com  
Telephone: 914-761-0381  
Facsimile: 914-948-3371

And the financial advisor to Sellers:

Triton Equity Partners, LLC  
Attention: Robert L. Pressman  
Chief Executive Officer  
81 Newtown Lane, Suite 351  
East Hampton, New York 11937  
Email: rpressman@tritonequity.com  
Telephone: 631-613-6655  
Facsimile: 631-613-6659

If to the Committee:

Lowenstein Sandler PC  
Bruce S. Nathan, Esq.  
1251 Avenue of the Americas, 18th Floor  
New York, New York 10020  
(212) 262-7402 (Facsimile)  
-and-  
Scott Cargill, Esq.

65 Livingston Avenue  
Roseland, New Jersey 07068  
(973) 597-2500 (Telephone)  
(973) 597-2400 (Facsimile)  
(212) 262-6700 (Telephone)

or to such other address as any party hereto may, from time to time, designate in writing delivered pursuant to the terms of this Section.

Section 12.3 Amendments. The terms, provisions and conditions of this Agreement may not be changed, modified or amended in any manner except by an instrument in writing duly executed by each of the parties hereto.

Section 12.4 Assignment. This Agreement is binding upon and inures to the benefit of the successors and assigns of each party to this Agreement (including any trustee appointed in respect of the Sellers under the Bankruptcy Code), but no rights, obligations or liabilities under this Agreement may be assigned by any party without the prior written consent of the other parties hereto, except that Purchaser shall have the right, on or prior to the Closing Date, to assign all or any portion of its rights under this Agreement to one or more wholly owned subsidiaries of Purchaser or to one or more entities under common ownership with Purchaser; provided, however, that no such assignment shall relieve Purchaser of its obligations hereunder.

Section 12.5 Announcements. All press releases, notices to customers and suppliers and other announcements prior to the Closing Date with respect to this Agreement and the transactions contemplated by this Agreement shall be approved by both Purchaser and Sellers prior to the issuance thereof; provided that any party may make any public disclosure (i) it believes in good faith is required by law or regulation (in which case the disclosing party shall advise the other party (which shall be Sellers in the case of disclosure proposed to be made by Purchaser and Purchaser in the case of disclosure proposed to be made by any of the Sellers) prior to making such disclosure and provide such other party an opportunity to review and comment on the proposed disclosure) or (ii) as otherwise ordered by the Bankruptcy Court.

Section 12.6 Expenses. Except as otherwise set forth in this Agreement, each party to this Agreement shall bear all of its legal, accounting, investment banking and other expenses incurred by it or on its behalf in connection with the transactions contemplated by this Agreement, whether or not such transactions are consummated.

Section 12.7 Entire Agreement. This Agreement and the Ancillary Documents constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede and are in full substitution for any and all prior agreements and understandings between them relating to such subject matter; provided that any schedule which is not provided as of the date Purchaser executes this Agreement shall be reasonably agreed by the parties hereto prior to becoming a part of this Agreement. The Exhibits and Schedules to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement.

Section 12.8 Descriptive Headings. The descriptive headings of the several sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 12.9 Counterparts. This Agreement may be executed in two or more counterparts (delivery of which may occur via facsimile or as an attachment to an electronic mail message in "pdf" or similar format), each of which shall be binding as of the date first written above, and, when delivered, all of which shall constitute one and the same instrument. This Agreement and any documents delivered pursuant hereto, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or as an attachment to an electronic mail message in "pdf" or similar format, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of the Sellers, each other party shall re-execute original forms thereof and deliver them to the Sellers. No party to this Agreement shall raise the use of a facsimile machine or electronic mail attachment in "pdf" or similar format to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or electronic mail attachment as a defense to the formation of a contract and each such party forever waives any such defense. A facsimile signature or electronically scanned copy of a signature shall constitute and shall be deemed to be sufficient evidence of a party's execution of this Agreement, without necessity of further proof. Each such copy shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

Section 12.10 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the laws of the State of New York, without giving effect to the principles of conflicts of laws thereof. For so long as the Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties hereto irrevocably elect as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the jurisdiction of, the Bankruptcy Court. After the Sellers are no longer subject to the jurisdiction of the Bankruptcy Court, the parties hereto irrevocably elect as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the jurisdiction of, the courts of the County of New York, State of New York or of the United States of America for the Southern District of New York.

Section 12.11 Construction. This Agreement has been freely and fairly negotiated among the parties hereto. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this Agreement. Any references to the "past practices" of the Sellers, the Business or the business of Sellers shall exclude, for the avoidance of doubt, practices related to the Former Operations. Any references to any federal, state, local or foreign statute or law will also refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Unless the context otherwise requires: (a) a term has the meaning assigned to it by this Agreement; (b) an accounting term not otherwise defined has the meaning assigned to it by GAAP; (c) the words "include", "includes" and "including" shall be deemed to be followed by the words "without limitation"; and (d) "\$" means the currency of the United States of America.



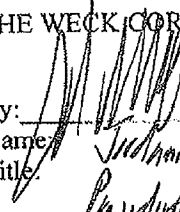
Section 12.12 Severability. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

Section 12.13 Remedies. Except as otherwise expressly provided in this Agreement, any and all remedies expressly conferred upon a party to this Agreement shall be cumulative with, and not exclusive of, any other remedy contained in this Agreement, at law or in equity and the exercise by a party to this Agreement of any one remedy shall not preclude the exercise by it of any other remedy.

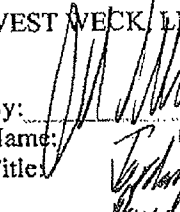
Section 12.14 Non-Recourse. Notwithstanding anything to the contrary that may be expressed or implied in this Agreement or in any document or instrument delivered in connection herewith, the Sellers and Purchaser covenant, agree and acknowledge, on behalf of themselves and their affiliates, that no person other than Purchaser and each Seller has any obligations hereunder and that, notwithstanding that Purchaser and/or Sellers are limited liability companies or corporations, and none of the Sellers or Purchaser or any of their respective affiliates have any right of recovery or claim under this Agreement or any document or instrument delivered in connection herewith against, and no personal liability shall attach to, the former, current or future equity holders, controlling persons, directors, officers, employees, agents, affiliates, members, managers or assignees of any of Purchaser, any Seller, or any of their respective former, current or future stockholder, controlling person, director, officer, employee, general or limited partner, member, manager, affiliate, agent or assignee of any of the foregoing (collectively, but not including Purchaser, or any Seller, each a “**Non-Recourse Party**”), whether seeking recovery through Purchaser, Sellers or otherwise, whether by or through attempted piercing of the corporate veil or “alter-ego” or similar theory, by or through a claim by or on behalf of Purchaser or Seller against any Non-Recourse Party, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute, regulation or applicable law or otherwise.

IN WITNESS WHEREOF, the Sellers and Purchaser have executed and delivered this Agreement as of the day and year first written above.

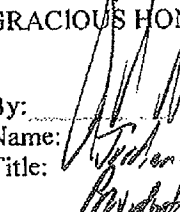
THE WECK CORPORATION

By:   
Name: Thomas Milward  
Title: President & C.O.O.

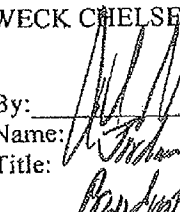
WEST WECK, LLC

By:   
Name: Thomas Milward  
Title: President & C.O.O.

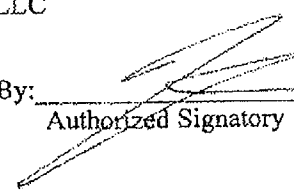
GRACIOUS HOME.COM, LLC,

By:   
Name: Thomas Milward  
Title: President & C.O.O.

WECK CHELSEA, LLC

By:   
Name: Thomas Milward  
Title: President & C.O.O.

AMERICAS RETAIL FLAGSHIP FUND  
LLC

By:   
Authorized Signatory

SCHEDULE 3.7(a)

Intellectual Property

Trademarks

Country	Mark	Serial / Reg No.	Filing / Reg. Date	Goods and/or Services	Status
European Community	GRACIOUS HOME	001619774	April 26, 2002	Retail gift, hardware, housewares and home furnishing store services, in Class 42	Registered  Renewal Due: April 19, 2020
United States	GRACIOUS	3,029,630	December 13, 2005	Picture frames, in Class 20	Registered  Affidavit of Use Due: 12/13/2011
United States	GRACIOUS	3,036,142	December 27, 2005	Cleaning preparations, namely tile cleaners and tile polishes, in Class 3	Registered  Affidavit of Use Due: 12/27/2011
United States	GRACIOUS	3,011,708	November 1, 2005	Candles, in Class 4	Registered  Affidavit of Use Due: 11/1/2011
United States	GRACIOUS	3,024,023	December 6, 2005	Hand tools, namely, screwdrivers, in Class 8	Registered  Affidavit of Use Due: 12/6/2011
United States	GRACIOUS	3,085,757	April 25, 2006	Flashlights, lamps, lampshades and faucets, in Class 11	Registered  Affidavit of Use Due: 4/25/2012
United States	GRACIOUS	3,024,024	December 6, 2005	Cups; salt shakers, peppers shakers, mugs, and sponges for household purposes, in Class 21	Registered  Affidavit of Use Due: 12/6/2011
United States	GRACIOUS	3,036,143	December 27, 2005	Domestic textiles, namely, shower curtains, flat bed sheets, fitted bed sheets, pillowcases, pillow shams, duvet covers, in Class 24	Registered  Affidavit of Use Due:

Country	Mark	Serial/ Reg. No.	Filing/ Reg. Date	Goods and/or Services	Status
					12/27/2011
United States	GRACIOUS	3,024,025	December 6, 2005	Retail gift, hardware, housewares, home furnishing and furniture store services, in Class 35	Registered Affidavit of Use Due: 12/6/2011
United States	GRACIOUS HOME	0,947,721	November 21, 1972	Retail gift, hardware, housewares and home furnishing store services, in Class 42	Registered Renewal Due: 11/21/2012
United States	GRACIOUS HOME	3,264,838	July 17, 2007	Online retail store services in the field of retail gift, hardware, housewares and home furnishings, in Class 35	Registered Affidavit of Use Due: 7/17/2013
United States	GRACIOUS HOME	3,351,200	December 11, 2007	Paper and cardboard gift boxes, in Class 16	Registered Affidavit of Use Due: 12/11/2013
United States	GRACIOUS HOME	3,351,201	December 11, 2007	Tape measures, in Class 9	Registered Affidavit of Use Due: 12/11/2013
United States	GRACIOUS HOME	3,351,202	December 11, 2007	Framed decorative mirrors, in Class 20	Registered Affidavit of Use Due: 12/11/2013
United States	GRACIOUS HOME	3,351,209	December 11, 2007	Chemically-treated paper for the prevention of tarnishing, in Class 1	Registered Affidavit of Use Due: 12/11/2013
United States	GRACIOUS HOME (stylized)  <b>GRACIOUS HOME</b>	3,351,799	December 11, 2007	Retail store services in the field of gifts, hardware, housewares and home furnishings, Class 35	Registered Affidavit of Use Due: 12/11/2013
United States	GRACIOUS HOME (stylized)	3,408,659	April 8, 2008	Credit card services, in Class 36	Registered

Country	Mark	Serial/ Reg. No.	Filing/ Reg. Date	Goods and/or Services	Status
	<b>GRACIOUS HOME</b>				Affidavit of Use Due: 4/8/2014
United States	GRACIOUS HOME est. 1963 (Stylized)  GRACIOUS HOME <small>est. 1963</small>	3,807,720	June 22, 2010	Online retail and retail store services in the field of retail gift, hardware, house wares and home furnishings, in Class 35	Registered  Affidavit of Use Due: 6/22/2016
United States	GRACIOUS HOME in Color (Blue)  GRACIOUS HOME	3,828,911	August 3, 2010	Chemically-treated paper for the prevention of tarnishing, in Class 1;  house mark for potpourri, bath soap, skin soap, bath salts, body cream, moisturizers, hand cream, skin lotions, hair and body wash, shampoo, sachets, perfume, cologne, body sprays, essential oils for use in the manufacture of scented products, and room fragrances, namely, room mists and potpourri oil refreshers; cleaning preparations, namely, floor tile cleaners and floor tile polishes, in Class 3;  candles, in Class 4  hand tools, namely, screwdrivers and screwdriver bits, in Class 8;  tape measurers, in Class 9;  flashlights, lamps, lampshades and faucets, in Class 11  picture frames and decorative pillows; framed decorative mirrors, in Class 20;  house mark for a full line of non-metal and non-precious metal housewares, namely, plates, cups, saucers, bowls, creamers, sugar bowls, teapots, coffee pots, serving platters, spoon rests, candlesticks; butter dishes, salt shakers, pepper shakers, egg cups, pitchers, soup tureens, canisters, mugs, flower pots, vanity and valet trays, wastepaper baskets, ceramic tissue box covers, cachepots, drinking	Registered

Country	Mark	Serial/ Reg. No.	Filing / Reg. Date	Goods and/or Services	Status
				<p>glasses, namely, tumblers, soap dishes, toothbrush holders, skin and hand lotion dispensers for home use, jars, carafes, fitted picnic baskets and picnic baskets and sponges for household purposes, in Class 21</p> <p>House mark for a full line of domestic textiles, namely, dinner napkins, cocktail napkins, placemats, tablecloths, shower curtains, bath towels, hand towels, bath sheets, washcloths, flat bed sheets, fitted bed sheets, pillowcases, pillow shams, duvet covers, dust ruffles, bed covers, bed spreads and comforters; ornamental items used for decorating, namely, textile tie backs, in Class 24;</p> <p>online retail and retail store services in the field of retail gift, hardware, house wares and home furnishings, in Class 35;</p> <p>Credit card services, in Class 36</p>	
United States	LOOK NO FURTHER	2,152,208	April 21, 1998	Retail store services in the field of hardware, housewares and home furnishings, in Class 35	Registered Renewal Due: 4/21/2018
Venezuela	GRACIOUS HOME	S022053	June 27, 2003	Promotion, exhibition, demonstration and sale of hardware, gifts and domestic utensils, Class 35	Registered Renewal Due: June 27, 2013

Domain names:

Gracioushome.com  
 Gracioushomes.net  
 Gracioushome.info  
 Gracious-home.com  
 Gracioushome.us  
 Gracioushomes.us  
 Gracioushome.biz  
 Gracioushomes.info  
 Gracioushomes.ws