

## 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
SP Newsprint Co., LLC		07/19/2012	LIMITED LIABILITY COMPANY: GEORGIA
RECEIVING PARTY DATA			
Name:	SPN AcquisitionCo, LLC		
Street Address:	494 Wood Avenue		
City:	Westmount, Quebec		
State/Country:	CANADA		
Postal Code:	H3Y 2822		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 3			
Property Type	Number	Word Mark	
Registration Number:	2603545	SP NEWSPRINT SALES COMPANY	
Registration Number:	2622969	SP	
Registration Number:	2549125	SP RECYCLING CORP.	
CORRESPONDENCE DATA			
Fax Number:	2127557306		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
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ATTORNEY DOCKET NUMBER:	765625-975005		

CH \$90.00 2603545

**DOMESTIC REPRESENTATIVE**

Name:

Address Line 1:

Address Line 2:

Address Line 3:

Address Line 4:

**NAME OF SUBMITTER:**

Olivia E. Marbutt

**Signature:**

/Olivia E. Marbutt/

**Date:**

03/01/2013

**Total Attachments: 91**

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**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**SPN ACQUISITIONCO, LLC**

**as Purchaser,**

**and**

**SP NEWSPRINT CO., LLC,**

**SP NEWSPRINT HOLDINGS LLC,**

**and**

**CERTAIN SUBSIDIARIES OF SP NEWSPRINT CO., LLC**

**as Sellers**

**Dated as of July 19, 2012**

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. DEFINITIONS .....	2
1.1    Certain Definitions.....	2
1.2    Terms Defined Elsewhere in this Agreement .....	14
ARTICLE II. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES .....	16
2.1    Purchase and Sale of Assets.....	16
2.2    Excluded Assets .....	19
2.3    Assumption of Liabilities.....	20
2.4    Excluded Liabilities .....	22
2.5    Schedule Updates; Cure Costs .....	24
2.6    Undetermined Contracts .....	26
2.7    Further Conveyances and Assumptions.....	27
2.8    “As Is, Where Is” Transaction .....	27
ARTICLE III. CONSIDERATION .....	27
3.1    Consideration .....	27
ARTICLE IV. CLOSING AND TERMINATION.....	29
4.1    Closing .....	29
4.2    Closing Deliveries by Sellers.....	29
4.3    Closing Deliveries by Purchaser.....	31
4.4    Termination of Agreement.....	31
4.5    Procedure Upon Termination.....	33
4.6    Effect of Termination.....	33
ARTICLE V. REPRESENTATIONS AND WARRANTIES OF SELLERS.....	34
5.1    Corporate Organization and Qualification.....	34
5.2    Sellers and Subsidiaries .....	34
5.3    Authority .....	34
5.4    Conflicts; Consents of Third Parties .....	35
5.5    Absence of Certain Developments.....	36
5.6    Litigation.....	37
5.7    Intellectual Property.....	38
5.8    Agreements, Contracts and Commitments; Certain Other Agreements .....	39
5.9    Regulatory Matters; Permits .....	40
5.10   Brokers and Finders .....	40
5.11   Title to Assets .....	40
5.12   Tangible Personal Property; Equipment .....	41
5.13   Real Property .....	41
5.14   Compliance with Law .....	43
5.15   Tax Returns; Taxes .....	43

5.16	Employees .....	44
5.17	Company Benefit Plans .....	45
5.18	Holdings .....	47
5.19	Affiliate Matters .....	47
5.20	Insurance Policies .....	47
5.21	Environmental Matters .....	48
5.22	Customers, Vendors and Suppliers .....	49
5.23	Accounts Receivable .....	49
5.24	Inventory .....	50
5.25	Financial Statements .....	50
5.26	Absence of Undisclosed Liabilities .....	50
ARTICLE VI. REPRESENTATIONS AND WARRANTIES OF PURCHASER .....		51
6.1	Corporate Organization and Qualification .....	51
6.2	Authority .....	51
6.3	Consents and Approvals; No Violation .....	51
6.4	No HSR Filing .....	52
6.5	Brokers and Finders .....	52
6.6	Adequate Assurances Regarding Assigned Contracts .....	52
6.7	Sufficiency of Financing .....	52
ARTICLE VII. EMPLOYEES .....		53
7.1	Employee Matters .....	53
7.2	Excluded Plans .....	53
7.3	COBRA Coverage .....	53
7.4	WARN Act Liability .....	53
7.5	No Third-Party Beneficiaries .....	54
ARTICLE VIII. BANKRUPTCY COURT MATTERS .....		54
8.1	Bankruptcy Court Filings .....	54
8.2	Sale Order .....	55
ARTICLE IX. COVENANTS AND AGREEMENTS .....		57
9.1	Conduct of Business of Sellers .....	57
9.2	Access to Information .....	60
9.3	Assignability of Certain Contracts, Etc. ....	62
9.4	Bankruptcy Court Approval .....	63
9.5	Further Agreements .....	63
9.6	Further Assurances .....	64
9.7	Preservation of Records .....	66
9.8	Publicity .....	67
9.9	Communication with Significant Customers .....	67
9.10	DIP Loan Documents .....	67
9.11	Insurance Policies .....	67
9.12	Collective Bargaining Agreement .....	68
9.13	Cooperation With Title Insurance .....	69
9.14	Deemed Consent .....	69

9.15	Non-Solicitation of Employees of Brant Parties.....	69
9.16	Unknown Administrative Priority Claims .....	69
ARTICLE X. CONDITIONS TO CLOSING.....		70
10.1	Conditions Precedent to the Obligations of Purchaser and Sellers.....	70
10.2	Conditions Precedent to the Obligations of Sellers .....	70
10.3	Conditions Precedent to the Obligations of Purchaser .....	71
10.4	Failure Caused by Party’s Failure to Comply.....	72
ARTICLE XI. TAXES.....		72
11.1	Additional Tax Matters .....	72
ARTICLE XII. MISCELLANEOUS.....		73
12.1	Payment of Expenses .....	73
12.2	Non-Survival of Representations and Warranties; Survival of Certain Covenants.....	73
12.3	Entire Agreement; Amendments and Waivers .....	74
12.4	Counterparts .....	74
12.5	Governing Law .....	74
12.6	Jurisdiction, Waiver of Jury Trial .....	74
12.7	Notices .....	75
12.8	Binding Effect; Assignment.....	76
12.9	Severability .....	77
12.10	Injunctive Relief.....	77
12.11	Non Recourse.....	77
12.12	No Liability to Pre-Petition Secured Parties or DIP Secured Parties .....	77
12.13	No Waiver or Release .....	78
12.14	Time of the Essence .....	78
12.15	Certain Interpretations. ....	78

## **EXHIBITS**

Exhibit A	Form of Bill of Sale
Exhibit B	Form of Assignment and Assumption Agreement
Exhibit C	Form of Sale Order
Exhibit D	Form of Sale Procedures Order

## **SCHEDULES**

Schedule A	Subsidiaries of SP Newsprint Co., LLC
Schedule 1.1(h)	Assumed Administrative Priority Claims
Schedule 1.1(ccc)	Knowledge of Sellers
Schedule 1.1(III)	Non-Assumed Contracts
Schedule 1.1(qqqq)	Wind-Down Budget
Schedule 2.1(a)	Designated Contracts
Schedule 2.1(b)	Post-Petition Contracts
Schedule 2.1(f)	Deposits and Prepaid Expenses
Schedule 2.1(q)	Assumed Personal Property Leases
Schedule 2.1(r)	Assumed Real Property Leases
Schedule 2.1(w)	Assumed Plans
Schedule 2.2(i)	Additional Excluded Assets
Schedule 2.3(d)	Allowed Trade Claims
Schedule 2.3(j)	Additional Assumed Liabilities
Schedule 2.4(y)	Additional Excluded Liabilities
Schedule 2.5(d)	Contract & Cure Schedule
Schedule 2.6	Undetermined Contracts
Schedule 4.2(e)	Transition Services Agreement
Schedule 9.1	Conduct of Business of Sellers
Schedule 9.1(b)(viii)	Certain Employees

## **SELLERS DISCLOSURE SCHEDULE**

Section 5.1	Corporate Organization and Qualification
Section 5.2	Seller Jurisdiction of Incorporation and Qualification
Section 5.2(b)	Ownership by Sellers
Section 5.4(a)	Conflicts
Section 5.4(b)	Consents of Third Parties
Section 5.5	Absence of Certain Developments
Section 5.6	Litigation
Section 5.7	Registered IP
Section 5.7(b)	Software, Databases, and Licenses
Section 5.7(c)	IP Encumbrances & Enforceability
Section 5.7(e)	IP Infringements
Section 5.8	Business Contracts
Section 5.8(b)	Default under Business Contracts
Section 5.8(c)	Contracts Not Provided
Section 5.9	Seller Permits



Section 5.10	Brokers and Finders
Section 5.12(a)	Personal Property Leases
Section 5.12(b)	Default on Personal Property Leases
Section 5.13	Owned Real Property
Section 5.13(b)	Leased Real Property
Section 5.13(i)	Leased Real Property Improvements
Section 5.13(k)	Rights Against Real Property
Section 5.15	Tax Returns; Taxes
Section 5.16(b)	Collective Bargaining Agreements
Section 5.17	Seller Plans
Section 5.17(e)	Assumed Plans Underfunding
Section 5.18	Parent Contracts
Section 5.19	Affiliate Matters
Section 5.20(i)	Insurance Policies
Section 5.20 (ii)	Insurance Policies
Section 5.21	Environmental Matters
Section 5.22	Significant Customers and Significant Vendors/Suppliers
Section 5.26	Undisclosed Liabilities
Section 10.3(d)	Largest Customers

#### **PURCHASER DISCLOSURE SCHEDULE**

Section 6.1	Ownership of Purchaser
Section 6.3(b)	Governmental Consents

## ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this “Agreement”), dated as of July 19, 2012 (the “Execution Date”), by and among SPN AcquisitionCo, LLC, a Delaware limited liability company, on behalf of itself and as assignee of General Electric Capital Corporation as collateral agent for itself as Pre-Petition Agent and the Pre-Petition Lenders (“Purchaser”), SP Newsprint Co., LLC, a Georgia limited liability company (“SP Newsprint”), SP Newsprint Holdings LLC, a Delaware limited liability company (“Holdings”), and those subsidiaries of SP Newsprint set forth on the signature pages hereto and also on Schedule A (collectively with SP Newsprint and Holdings, the “Sellers” and each, individually, a “Seller”). Certain capitalized terms used herein are defined in ARTICLE I.

### RECITALS

WHEREAS, Sellers currently conduct the Business and Purchaser desires to purchase the Business;

WHEREAS, each Seller is a debtor in possession in those certain bankruptcy cases under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”) filed on November 15, 2011 in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 11-13649 (CSS) (as Jointly Administered, collectively, the “Chapter 11 Case”);

WHEREAS, pursuant to the Pre-Petition Credit Documents, the Pre-Petition Agent, for itself and the other Pre-Petition Lenders, has a first priority security interest in and continuing lien on all or substantially all of Sellers’ assets and property;

WHEREAS, the Pre-Petition Lenders have assigned their rights to receive the Purchased Assets and the obligation to assume the Assumed Liabilities to Purchaser;

WHEREAS, pursuant to the DIP Loan Documents and subject to the terms and conditions contained herein and following the entry of the Sale Order approving the bid memorialized in this Agreement and the Ancillary Agreements as the highest and best bid and subject to the terms and conditions thereof, Purchaser shall pay on behalf of Sellers in full all obligations owing under the DIP Credit Agreement as of the Closing Date; and

WHEREAS, in connection with the Chapter 11 Case and subject to the terms and conditions contained herein and following the entry of the Sale Order approving the bid memorialized in this Agreement and the Ancillary Agreements as the highest and best bid and subject to the terms and conditions thereof, Sellers shall transfer and assign to Purchaser, and Purchaser shall acquire from Sellers, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, the Purchased Assets and shall assume from Sellers the Assumed Liabilities, all as more specifically provided herein and in the Sale Order.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Purchaser and Sellers hereby agree as follows:

## ARTICLE I.

### DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, the following terms used in this Agreement shall have the respective meanings assigned to them below:

(a) “Accounts Receivable” means (i) any and all accounts receivable, trade accounts and other amounts (including overdue accounts receivable) owed to any of Sellers relating to, or arising in connection with the operation and conduct of, the Business and any other rights of any of Sellers to payment from third parties and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of services rendered, in each case owing to any of Sellers, and any return of premiums or other funds relating to or arising from any Insurance Policies; (ii) all other accounts or notes receivable, credit receivables or book debts of any of Sellers and the full benefit of all security for such accounts or notes receivable arising in the conduct of the Business; and (iii) any and all claims, remedies or other rights relating to any of the foregoing, together with any interest or unpaid financing charges accrued thereon, in each case existing on the Execution Date or arising in the Ordinary Course of Business after the Execution Date and in each case that have not been satisfied or discharged prior to the close of business on the day immediately preceding the Closing Date or have not been written off or sent to collection in the Ordinary Course of Business prior to the close of business on the day immediately preceding the Closing Date in accordance with Section 9.1 (it being understood that the receipt of a check prior to the close of business on the day immediately preceding the Closing Date shall constitute satisfaction or discharge of the applicable account or note receivable to the extent of the payment represented thereby).

(b) “Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise; provided that, notwithstanding anything to the contrary in this Agreement and for the avoidance of doubt, in no event shall any Pre-Petition Lender or the Pre-Petition Agent or any DIP Lender or the DIP Agent be deemed to be an Affiliate of Purchaser.

(c) “Allowed” means with respect to a claim, a claim against any of Sellers or any portion thereof (i) that either before or after the Closing Date has been allowed by a Final Order, (ii) for which a proof of claim in a liquidated amount has been filed and as to which either (a) no objection to its allowance has been filed within the applicable periods of limitation fixed by any order of the Bankruptcy Court or (b) any objection to its allowance has been settled or withdrawn, or has been denied by a Final Order or (iii) that has been scheduled in the schedules of assets and liabilities of the Sellers as liquidated in amount and not disputed or contingent, and with respect to which no contrary proof of claim has been filed.

(d) “Alternative Transaction” means (i) a transaction or series of related transactions pursuant to which Sellers accept, in accordance with the DIP Order, a bid for all or a material portion of the Purchased Assets or any group of assets that includes all or a material portion of the Purchased Assets from a Person other than Purchaser (or an Affiliate of Purchaser), or (ii) the filing of a plan of reorganization in accordance with the DIP Order that does not contemplate the sale of the Purchased Assets to Purchaser (or an Affiliate of Purchaser) in accordance with the terms hereof.

(e) “Ancillary Agreements” means any other agreement, document or instrument that any Seller or Purchaser, as applicable, enters into in connection with the consummation of the transactions contemplated hereby.

(f) “Approved Budget” means the aggregate, without duplication, of all items in the Initial Approved Budget and all Supplemental Approved Budgets.

(g) “Assigned Contracts” means the Designated Contracts, the Post-Petition Contracts, the Assumed Personal Property Leases, the Assumed Real Property Leases, the Assumed Intellectual Property, and the Assumed Plans.

(h) “Assumed Administrative Priority Claims” means any and all (i) Allowed administrative priority claims of a type described in any line item set forth on Schedule 1.1(h), as amended, supplemented or otherwise modified from time to time with the prior written consent of Purchaser and Sellers in their respective sole discretion, and in an aggregate amount not to exceed the Assumed Administrative Priority Claims Budget Limit, that were incurred but not paid on or prior to the Closing Date, and (ii) Closing Date Administrative Priority Claims that were not paid on or prior to the Closing Date.

(i) “Assumed Administrative Priority Claims Budget Limit” means \$27,871,432.

(j) “Auction” has that meaning ascribed to such term by the Sale Procedures Order.

(k) “Avoidance Actions” has that meaning ascribed to such term by the DIP Order.

(l) “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

(m) “Brant Industries” means Brant Industries, Inc.

(n) “Brant Parties” means the “Brant Parties” as defined in the DIP Order.

(o) “Business” means the business of producing, selling and distributing newsprint and other paper grades and operating recycling centers, including the operation of two newsprint mills located in Dublin, Georgia and Newberg, Oregon and more than 20 recycling centers in nine states.

(p) “Business Day” means any day of the year on which national banking institutions in New York, New York are open to the public for conducting business and are not required or authorized by Law to close.

(q) “Carve-Out” has the meaning ascribed to such term in the DIP Order.

(r) “Cash and Cash Equivalents” means all of Sellers’ cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances (excluding any amounts payable to third parties for outstanding checks), marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper and government securities and other cash equivalents (excluding any amounts funded pursuant to the DIP Credit Agreement for payment of the Cure Costs, the Closing Date Administrative Priority Claims and the Wind-Down Budget).

(s) “Challenged DIP Indebtedness” means that portion of the DIP Obligations (as defined in the DIP Order) that was incurred to pay post-petition interest, fees, costs and expenses in respect of the Pre-Petition Credit Obligations and that the Official Committee of Unsecured Creditors in the Bankruptcy Cases is seeking to reapply against, or to recharacterize as payments of, the principal amount of the Pre-Petition Credit Obligations.

(t) “Chief Restructuring Officer” means Alan D. Holtz in his capacity as Chief Restructuring Officer and Senior Vice President-Restructuring of Sellers.

(u) “Closing Date Administrative Priority Claims” means any and all unpaid Allowed administrative priority claims set forth in the Approved Budget that are due and payable as of the Closing Date (for the avoidance of doubt, this shall include all Allowed claims under section 503(b)(9) of the Bankruptcy Code to the extent they are due and payable as of the Closing Date and Allowed pursuant to the procedures set forth in the Order Establishing Procedures Related to Claims Asserted Pursuant to Bankruptcy Code section

503(b)(9) entered by the Bankruptcy Court (Docket No. 447) or by any other order of the Bankruptcy Court).

(v) “Code” means the Internal Revenue Code of 1986, as amended.

(w) “Committee Professional Fees” has that meaning ascribed to such term by the DIP Order.

(x) “Consent” means any consent, waiver, approval, order or authorization of, or registration, declaration or filing with or notice to, any Governmental Body or other Person.

(y) “Contract” means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, license, commitment or instrument or other agreement, arrangement or commitment that is binding upon a Person or its property under applicable law.

(z) “Contract Customers” means those customers of Sellers with Designated Contracts listed on Schedule 2.1(a), exclusive of customers who have no Contracts with Sellers other than purchase orders or service orders.

(aa) “Credit Bid” means a credit bid for the consideration described in Section 3.1(a)(i).

(bb) “Cure Costs” means the amounts necessary to cure all defaults, if any, and to pay all actual pecuniary losses, if any, that have resulted from such defaults, under the Assigned Contracts, in each case as of the Petition Date and to the extent required by Section 365(b) of the Bankruptcy Code and any order of the Bankruptcy Court, which amounts (if not already paid or to be paid in the Ordinary Course of Business pursuant to an order of the Bankruptcy Court) shall be identified to Purchaser on the Contract & Cure Schedule.

(cc) “Debtor Professional Fees” has that meaning ascribed to such term by the DIP Order.

(dd) “DIP Agent” means GE Capital, in its capacity as administrative agent and collateral agent for itself and the DIP Lenders under the DIP Credit Agreement.

(ee) “DIP Budget” means the Budget as defined in the DIP Credit Agreement in effect as of the date of this Agreement or that may be in effect at any time prior to Closing.

(ff) “DIP Credit Agreement” means that certain Senior Secured Priming and Superpriority Debtor-in-Possession Credit Agreement, dated as of December 22, 2011, by and among SP Newsprint, as borrower, as a debtor and debtor-in-possession, the other

persons designated as loan parties, each as a debtor and debtor-in-possession, the DIP Lenders and the DIP Agent, as such DIP Credit Agreement may be amended, modified, supplemented, or restated from time to time.

(gg) “DIP Indebtedness” means all “Obligations” as defined in the DIP Credit Agreement and any other DIP Obligations (as defined in the DIP Order), including, without limitation, principal, interest, fees, premiums and any other amounts due or other obligations of Sellers (or any Seller) arising under the DIP Order, the DIP Credit Agreement and/or the DIP Loan Documents.

(hh) “DIP Lenders” means the lenders party from time to time to the DIP Credit Agreement.

(ii) “DIP Loan Documents” means the DIP Credit Agreement and the “Loan Documents” as defined in the DIP Credit Agreement, as such Loan Documents are amended, modified, supplemented or restated from time to time.

(jj) “DIP Order” means that certain Final Order of the Bankruptcy Court, dated January 25, 2012, (i) authorizing debtors (a) to obtain post-petition secured financing pursuant to sections 105, 361, 362, 364 and 507 of the Bankruptcy Code and (b) to utilize cash collateral pursuant to section 363 of the Bankruptcy Code; (ii) granting liens and super-priority claims; and (iii) granting adequate protection to pre-petition secured parties pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code [ECF No. 388], as may be amended or modified.

(kk) “Documents” means all of Sellers’ written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies and documents, Tax Returns, ledgers, journals, title policies, customer lists (relating to past, present and prospective customers), regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form.

(ll) “Employee” means an individual who, as of the applicable date, is employed by any Seller in connection with the Business.

(mm) “Encumbrance” means any lien, encumbrance, interest, claim (as defined in Section 101(5) of the Bankruptcy Code), right, demand, charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, restrictive covenants, conditions, restrictions, encroachments,

rights of first refusal, preemptive rights, judgments, conditional sale or other title retention agreements and other impositions, imperfections or defects of title or restrictions on transfer or use of any nature whatsoever (whether known or unknown, secured or unsecured or in the nature of setoff or recoupment, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or nonmaterial, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, Law, equity, or otherwise, including claims otherwise arising under doctrines of successor liability).

(nn) “Environmental Laws” means all Laws relating to pollution or protection of health, natural resources or the environment, or the generation, use, treatment, storage, handling, transportation or Release of, or exposure to, Hazardous Materials, including the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), Safe Drinking Water Act (42 U.S.C. §3000(f) et seq.), Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Clean Air Act (42 U.S.C. §7401 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.) and other similar federal, state, provincial and local statutes.

(oo) “Equipment” means all equipment, machinery, vehicles, furniture, fixtures, supplies and other tangible personal property of every kind and description owned by any Seller, wherever located, including but not limited to, communications equipment, the IT Assets, and any attached and associated hardware, routers, devices, panels, cables, manuals, cords, connectors, cards, and vendor documents, and including all warranties of the vendor applicable thereto, to the extent such warranties are transferable, but excluding software and any other intangibles associated therewith except to the extent embedded in such Equipment and required to operate it.

(pp) “ERISA Affiliate” means any entity which is, or at any relevant time was, a member of (A) a controlled group of corporations (as defined in Section 414(b) of the Code), (B) a group of trades or businesses under common control (as defined in Section 414(c) of the Code), (C) an affiliated service group (as defined under Section 414(m) of the Code) or (D) any group specified in regulations under Section 414(o) of the Code, any of which includes or included any Seller.

(qq) “Final Order” means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the Clerk of the Bankruptcy Court or such other court on the docket in Sellers’ Chapter 11 Case or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (i) the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari* or motion for new trial, reargument



or rehearing shall then be pending or (ii) if an appeal, writ of *certiorari*, new trial, reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other court of competent jurisdiction shall have been affirmed by the highest court to which such order was appealed, or *certiorari* shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for *certiorari* or move for a new trial, reargument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Bankruptcy Rules; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause such order not to be a Final Order.

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

(ss) “GE Capital” means General Electric Capital Corporation.

(tt) “Governmental Body” means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

(uu) “Hazardous Materials” means petroleum and all derivatives thereof or synthetic substitutes therefor, asbestos and asbestos containing materials, and any and all materials, substances or wastes now or hereafter defined, listed, designated or classified as, or otherwise determined to be, “hazardous,” “radioactive,” “toxic,” or a “pollutant” or “contaminant” (or words of similar meaning) under or pursuant to or otherwise listed or regulated pursuant to any Environmental Law.

(vv) “HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a.

(ww) “Indebtedness” of any Person means, without duplication, (i) the interest in respect of, principal of and premium (if any) in respect of (x) indebtedness of such Person for money borrowed and (y) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property (other than for services and goods acquired in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise,

including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Encumbrance (other than Permitted Encumbrances), on any property or asset of such Person (whether or not such obligation is assumed by such Person).

(xx) “Initial Approved Budget” has that meaning ascribed to such term by the DIP Order.

(yy) “Intellectual Property” means all intellectual property and proprietary rights of any kind, including the following: (i) trademarks, service marks, trade names, slogans, logos, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (ii) patents, utility models and industrial design registrations (and all continuations, divisionals, continuations in part, provisionals, renewals, reissues, re-examinations and applications for any of the foregoing); (iii) copyrights and copyrightable subject matter (including without limitation any registrations and applications for any of the foregoing); (iv) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, and methodologies; (v) computer software, computer programs, and databases (whether in source code, object code or other form); and (vi) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

(zz) “Intercompany Obligations” means any intercompany obligation or Indebtedness between any Seller, on the one hand, and another Seller, on the other hand, whether or not evidenced by promissory notes, written contracts and/or recorded in the books and records of such Seller(s).

(aaa) “Inventory” means all raw materials, work-in-process, finished goods, supplies and other inventories.

(bbb) “IT Assets” means all of Sellers’ computers, computer software and databases (including source code, object code and all related documentation), firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines, and all other information technology equipment and elements, and all associated documentation.

(ccc) “Knowledge of Sellers” means, with respect to any matter in question, the knowledge, after reasonable inquiry, of those persons listed on Schedule 1.1(ccc), with respect to such matter.

(ddd) “Largest Customers” means those customers of Sellers listed on Schedule 10.3(d).

(eee) “Laws” means all federal, state, local or foreign laws, statutes, common law, rules, codes, regulations, restrictions, ordinances, orders, decrees, approvals, directives, judgments, rulings, injunctions, writs and awards of, or issued, promulgated, enforced or entered by, any and all Governmental Bodies, or court of competent jurisdiction, or other legal requirement or rule of law.

(fff) “Leased Real Property” means all of the real property leased, subleased, or licensed by any Seller, together with all buildings, structures, fixtures and improvements erected thereon, and any and all rights, interests, privileges, easements, licenses, hereditaments and other appurtenances relating thereto.

(ggg) “Legal Proceeding” means any claim, Liability, action, complaint, suit, litigation, arbitration, appeal, petition, demand, inquiry, hearing, proceeding, investigation or other dispute, whether civil, criminal, administrative or otherwise, at law or in equity, by or before any Governmental Body or any third person and any appeal from any of the foregoing.

(hhh) “Liability” means, as to any Person, any debt, adverse claim, liability, duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed, including all costs and expenses relating thereto.

(iii) “Licensed Intellectual Property” means any Intellectual Property that is licensed to any Seller from any third party.

(jjj) “Local Bankruptcy Rules” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

(kkk) “Material Adverse Effect” means any change, effect, event, occurrence, development, circumstance or state of facts which has had or would reasonably be expected to have a materially adverse effect on the business, properties, operations, financial condition, prospects or results of operations of the Business, taken as a whole, or which would materially impair Sellers’ ability to perform their obligations under this Agreement or have a materially adverse effect on or prevent or materially delay the consummation of the transactions contemplated hereby; provided, however, that changes in the business, properties, operations, financial condition, prospects or results of operations of the Business arising by reason of any of the following shall not constitute a material adverse effect: (i) the filing of a voluntary petition under Chapter 11 of the Bankruptcy Code or the

effect, directly or indirectly, of such filing; (ii) changes in conditions in the U.S. or global economy or capital or financial markets generally, including changes in interest or exchange rates; (iii) factors generally affecting the industries or markets in which Sellers operate; (iv) changes in general legal, tax, regulatory, political or business conditions that, in each case, generally affect the geographic regions or industries in which Sellers conduct their business; and (v) acts of war, armed hostilities, sabotage or terrorism, or any escalation or worsening of any such acts of war, armed hostilities, sabotage or terrorism threatened or underway as of the date of this Agreement; provided that in the case of the foregoing clauses (ii) – (iv), except to the extent that such matters disproportionately impact Sellers relative to other businesses in the industries in which the Sellers operate. For purposes of this definition and for the avoidance of doubt and not in limitation, an event shall be deemed a “Material Adverse Effect” if it has resulted in (i) Sellers shipping less than twenty seven-thousand (27,000) tons of newsprint and six -thousand (6,000) tons of brown paper in any fiscal month or (ii) any Significant Customer ceasing to do business or reducing in any material respect the business transacted with Sellers or terminating or modifying any agreement with Sellers (whether upon consummation of the transactions contemplated hereby or otherwise).

(lll) “Non-Assumed Contracts” means any Contracts to which any Seller is a party but that are not Assigned Contracts, including the Contracts set forth on Schedule 1.1(III).

(mmm) “Ordinary Course of Business” means the ordinary and usual course of day-to-day operations of the Business consistent with past practice.

(nnn) “Owned Intellectual Property” means all Intellectual Property owned by any Seller.

(ooo) “Owned Real Property” means all of the real property owned by any Seller, together with all buildings, structures, fixtures and improvements erected thereon, and any and all rights, interests, privileges, easements, licenses, hereditaments and other appurtenances relating thereto.

(ppp) “Permits” means all licenses, permits (including environmental, construction and operation permits), provider numbers, accreditations, franchises, certificates, approvals, Consents, waivers, clearances, exemptions, classifications, registrations, variances, orders, tariffs, rate schedules and other similar documents and authorizations issued by any Governmental Body and/or any self-regulatory or accreditation body or organization to any Seller and used, or held for use, in connection with the operation of the Business or applicable to ownership of the Purchased Assets or assumption of the Assumed Liabilities.

(qqq) “Permitted Encumbrances” means (i) statutory Encumbrances for current Taxes not yet due and payable, (ii) mechanics’, materialmen’s, warehouseman’s and similar Encumbrances solely to the extent securing the Assumed Liabilities, (iii) such

covenants, conditions, restrictions, easements, encroachments or encumbrances that do not interfere with any use or occupancy of the Real Property, (iv) zoning, building codes and other land use Laws regulating the use or occupancy of real property or the activities conducted thereon which are imposed by any Governmental Body having jurisdiction over real property, or (v) a lessor's interest in, and any mortgage, pledge, security interest, Encumbrance (statutory or other) or conditional sale agreement on or affecting a lessor's interest in, property underlying any of the Assumed Real Property Leases.

(rrr) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, labor union, estate, Governmental Body or other entity or group.

(sss) "Petition Date" means November 15, 2011, the date on which Sellers commenced the Chapter 11 Case.

(ttt) "Pre-Petition Agent" means GE Capital, in its capacity as administrative agent and collateral agent under the Pre-Petition Credit Agreement.

(uuu) "Pre-Petition Credit Agreement" means that certain Credit Agreement, dated as of March 31, 2008, by and among SP Newsprint (as successor in interest to SP Newsprint Merger LLC, a Delaware limited liability company), as Borrower, Holdings, the other Loan Parties party thereto (as defined in the Pre-Petition Credit Agreement), the Pre-Petition Lenders and L/C Issuers party thereto (as defined in the Pre-Petition Credit Agreement) and the Pre-Petition Agent, as such Pre-Petition Credit Agreement has been amended, modified, supplemented or restated.

(vvv) "Pre-Petition Credit Documents" means the Pre-Petition Credit Agreement and all other loan and security documents executed in connection therewith.

(www) "Pre-Petition Credit Obligations" means the "Pre-Petition Credit Obligations", as may be secured by "Prepetition First-Priority Liens" and the "Adequate Protection Replacement Liens", each as defined in the DIP Order.

(xxx) "Pre-Petition Lenders" means the lenders from time to time party to the Pre-Petition Credit Agreement.

(yyy) "Real Property" means, collectively, the Owned Real Property and the Leased Real Property.

(zzz) "Regulatory Approvals" means any Consents, waivers, approvals, orders, Permits or authorizations of any Governmental Body required in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

(aaaa) “Release” means, with respect to any Hazardous Material, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or migrating into or through any surface or ground water, drinking water supply, soil, surface or subsurface strata or medium, or the ambient air.

(bbbb) “Sale Hearing” means the hearing to approve this Agreement and seeking entry of the Sale Order.

(cccc) “Sale Motion” means the motion or motions of Sellers, in form and substance reasonably acceptable to Sellers and Purchaser, seeking approval and entry of the Sale Procedures Order and Sale Order.

(dddd) “Sale Order” means an order in the form attached hereto as Exhibit C or otherwise in form and substance satisfactory to Purchaser.

(eeee) “Sale Procedures” means the Sale Procedures in the form attached as Exhibit 1 to the Sale Procedure Order, to be approved by the Bankruptcy Court pursuant to the Sale Procedures Order.

(ffff) “Sale Procedures Order” means an order in the form attached hereto as Exhibit D or in such form as is otherwise in form and substance satisfactory to Purchaser.

(gggg) “Seller Intellectual Property” means all Licensed Intellectual Property and Owned Intellectual Property.

(hhhh) “Seller Plan” means (i) each “employee benefit plan” (as defined in Section 3(3) of ERISA), including each employee benefit plan which is a “pension plan” (as defined in Section 3(2) of ERISA) and any other written employee benefit arrangement or payroll practice (including severance pay, vacation pay, company awards, salary continuation for disability, sick leave, death benefit, hospitalization, welfare benefit, group or individual health, dental, medical, life insurance, survivor benefit, deferred compensation, profit sharing, retirement, retiree medical, supplemental retirement, bonus or other incentive compensation, equity compensation arrangements or policies) and (ii) each written employment, termination, bonus, severance, change in control or other similar Contract or agreement, in each case to which any Seller is a party, with respect to which any Seller has any Liability or obligation or which are maintained by any Seller and to which any Seller contributes or is obligated to contribute with respect to current or former directors, officers, consultants and Employees.

(iiii) “Supplemental Approved Budgets” has that meaning ascribed to such term by the DIP Order.

(jjjj) “Tax” and “Taxes” mean any and all taxes, tariffs, duties, impositions, withholdings, levies or other similar assessments, charges or fees, imposed by any

Governmental Body, and include any interest, penalties or additional amounts attributable to, imposed upon, or with respect thereto.

(kkkk) “Tax Period” means any period prescribed by any Governmental Body for which a Tax Return is required to be filed or a Tax is required to be paid.

(llll) “Tax Return” means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) supplied or required to be supplied to any Governmental Body with respect to Taxes, including attachments thereto and amendments thereof.

(mmmm) “Unknown Administrative Priority Claims” means any and all Allowed administrative priority claims that (i) are not Assumed Administrative Priority Claims or Closing Date Administrative Priority Claims, (ii) were incurred prior to the Closing Date, (iii) do not constitute fees and expenses of the respective professionals retained by the Sellers and the Official Committee of Unsecured Creditors in the Bankruptcy Cases or the expenses of the members of the Official Committee of Unsecured Creditors and (iv) in the aggregate do not exceed the Unknown Administrative Priority Claims Cap.

(nnnn) “Unknown Administrative Priority Claims Cap” mean \$2,000,000.

(oooo) “WARN Act” means the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. §2101 et seq. and any similar state law.

(pppp) “White Birch” means White Birch Paper Company, its Affiliates, and any successor-in-interest (regardless of the size of such successor’s position in White Birch Paper Company).

(qqqq) “Wind-Down Budget” means the budget for the winding down of the Debtors’ affairs, which budget shall be as set forth in Schedule 1.1(qqqq), as amended, supplemented or otherwise modified from time to time with the prior written consent of Purchaser and Sellers in their respective sole discretion.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
2011 Audited Financial Statements	5.25
Agreement	Introduction
Allocation	11.1(b)
Assumed CBA	2.1(x)
Assumed Intellectual Property	2.1(t)
Assumed Liabilities	2.3

<u>Term</u>	<u>Section</u>
Assumed Personal Property Leases	2.1(q)
Assumed Plans	2.1(w)
Assumed Real Property Leases	2.1(r)
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Bankruptcy and Enforceability Exceptions	5.3
Business Contracts	5.8
CBA	9.12
CERCLIS	5.21
Chapter 11 Case	Recitals
Closing	4.1
Closing Date	4.1
COBRA Continuation Coverage	7.3
Contract & Cure Schedule	2.5(d)
Credit Bid Amount	3.1(a)(i)
Credit Bid and Release	3.1(b)(i)
Credit Bid Purchased Assets	3.1(c)
Designated Contracts	2.1(a)
Designation	2.5(b)
Designation Deadline	2.6
DIP Repayment Amount	3.1(a)(ii)
DIP Repayment and Release	3.1(b)(ii)
Excluded Assets	2.2
Excluded Avoidance Actions	2.2(e)
Excluded Documents	2.1(e)
Excluded Liabilities	2.4
Excluded Plans	2.2(g)
Execution Date	Introduction
Exempt Trust	5.17(c)
Financial Statements	5.25
Holdings	Introduction
Insurance Policies	5.20
Most Recent Balance Sheet	5.25
Most Recent Balance Sheet Date	5.25
Named Insured	4.2(i)
Newberg	9.12
Organizational Documents	5.1
Outside Date	4.4(b)
Personal Property Leases	5.12
Post-Closing Designated Assigned Contract	2.6
Post-Petition Contracts	2.1(b)



<u>Term</u>	<u>Section</u>
Purchase Price	3.1
Purchased Assets	2.1
Purchased Names	2.1(i)
Purchaser	Introduction
Purchaser Disclosure Schedule	ARTICLE VI
Purchaser's Documents	6.2
Qualified Plan	5.17(c)
Representatives	9.2
Revolving Loan Amount	3.1(a)(i)
Seller	Introduction
Seller Disclosure Schedule	ARTICLE V
Seller Plans	5.17(a)
Seller Reserves	5.23
Sellers	Introduction
Sellers' Documents	5.3
SEP Technologies	5.15(j)
Significant Customers	5.22
Significant Vendors/Suppliers	5.22
SP Newsprint	Introduction
Third Party Insurance Policies	5.20(b)
Transfer Tax	11.1
Transferred Employee	7.1
Transition Services Agreement	4.2(e)
Undetermined Contracts	2.6
Union	9.12
WARN Act Liabilities	7.4

## **ARTICLE II.**

### **PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES**

2.1 Purchase and Sale of Assets. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and on the terms and subject to the conditions set forth in this Agreement and the Sale Order, Purchaser shall acquire and accept from each Seller, and each Seller shall transfer, assign, convey and deliver to Purchaser, at the Closing, all of such Seller's right, title and interest in, to and under the Purchased Assets, free and clear of all Encumbrances (other than Permitted Encumbrances and Encumbrances included in the Assumed Liabilities). "Purchased Assets" shall mean all of the business, assets, properties, contractual rights, goodwill, going concern value, rights and claims of any Seller, wherever situated and of whatever kind and nature, real or personal, tangible or intangible, owned, leased, licensed, used or held, whether or

not reflected on the books and records of any Seller (but, for the avoidance of doubt, excluding any Excluded Assets), including each Seller's right, title and interest in, to and under each of the following assets:

(a) all rights of any Seller under all Contracts of Sellers set forth on Schedule 2.1(a) (the "Designated Contracts"), as amended pursuant to Section 2.5;

(b) all rights of any Seller under all Contracts of Sellers entered into after the Petition Date in accordance with the terms of the DIP Loan Documents and Section 9.1 of this Agreement, provided that with respect to any Contracts that would be required to be disclosed in Section 5.8 of the Seller Disclosure Schedule if such Contract was in place as of the date of this Agreement, such Contract is set forth on Schedule 2.1(b) (as amended from time to time by the mutual written consent of Purchaser and Sellers in their sole discretion, the "Post-Petition Contracts");

(c) all Accounts Receivable;

(d) all Cash and Cash Equivalents, whether on hand, in transit or in banks or other financial institutions, security entitlements, securities accounts, commodity contracts and commodity accounts and including any cash collateral that is collateralizing any letters of credit issued pursuant to the DIP Loan Documents or any other letter of credit, including any letter of credit issued prior to the Petition Date, or obligation with respect thereto, assumed by Purchaser, but excluding any cash tendered as part of the Purchase Price;

(e) all Documents other than those Documents that (i) relate to the formation, qualifications to conduct business as a foreign corporation or other legal entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock ledgers, stock certificates, by-laws and other documents relating solely to the organization and existence of any Seller as a corporation or other legal entity, as applicable, together with analogous documentation, (ii) relate solely to any of the Excluded Assets or Excluded Liabilities, or (iii) that a Seller is required by Law to retain and is prohibited by Law from providing a copy to Purchaser (the "Excluded Documents");

(f) except for any amounts to the extent specifically owed pursuant to or solely related to any Excluded Asset or Excluded Liability (provided that for the avoidance of doubt any amount over such specified amounts shall be deemed a Purchased Asset), all deposits and prepaid expenses of Sellers, including but not limited to (i) security deposits with third party suppliers, vendors or service providers, ad valorem Taxes and lease and rental payments (other than deposits held and prepaid expenses relating to any Excluded Assets), (ii) rebates, (iii) tenant reimbursements, (iv) pre-payments and (v) those deposits and pre-paid expenses set forth on Schedule 2.1(f);

(g) all Equipment including the Equipment leased pursuant to the Personal Property Leases set forth in Section 5.12(a) of the Seller Disclosure Schedule;

(h) all Inventory;

(i) the name SP Newsprint Co., LLC and the names of all of the other Sellers, and, in all cases, any derivations thereof (the "Purchased Names");

(j) all Permits and all pending applications therefor, including the Seller Permits, to the extent transferable pursuant to the Sale Order, in accordance with the terms of such Permits or otherwise in accordance with applicable Law;

(k) all rights under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with Employees and agents or with third parties;

(l) all rights, claims, credits, causes of action or rights of set off against third parties relating to the assets purchased by Purchaser under this Section 2.1 (including for the avoidance of doubt, those arising under, or otherwise relating, to the Assigned Contracts) or Assumed Liabilities, including rights under vendors' and manufacturers' warranties, indemnities, guaranties and all Avoidance Actions other than the Excluded Avoidance Actions, if any; provided, however, that all such Avoidance Actions shall be released and discharged by Purchaser upon and as of the Closing;

(m) any counterclaims, setoffs or defenses that any Seller may have with respect to any Assumed Liabilities;

(n) subject to Section 2.2(d), to the extent assignable or transferable in accordance with applicable Law or the Sale Order, all rights and benefits under Insurance Policies including (i) all proceeds from Insurance Policies except to the extent that such proceeds relate to claims that are Excluded Assets or Excluded Liabilities and (ii) all claims, demands, proceedings and causes of action asserted by any Seller under Insurance Policies that do not relate solely to an Excluded Asset or Excluded Liability and (iii) any letters of credit related thereto;

(o) copies of all Tax Returns and Tax records of Sellers;

(p) any claim, right or interest of any Seller in or to any refund, rebate, abatement or other recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom, for any Tax Period (or portion thereof) ending on or before the Closing Date;

(q) all leases and subleases for personal property set forth on Schedule 2.1(q) and all of the rights of any and all Sellers to such personal property (the "Assumed Personal Property Leases");

(r) all leases and subleases for the Leased Real Property set forth on Schedule 2.1(r) and all of Sellers' right, title and interest in and thereto (the "Assumed Real Property Leases");

(s) all Owned Real Property;

(t) all of Sellers' right, title and interest in and to the Seller Intellectual Property (collectively, the "Assumed Intellectual Property");

(u) all Contracts pursuant to which any Seller is granted a license to, or any rights under, any Intellectual Property of any third Person and all Contracts pursuant to which any Seller grants to a third Person a license to, or any rights under, any Seller Intellectual Property;

(v) all goodwill and other intangible assets associated with the Business or the assets purchased by Purchaser under this Section 2.1;

(w) the Seller Plans listed on Schedule 2.1(w) (the "Assumed Plans"), and any associated funding media, assets, reserves, credits and service agreements, and all Documents created, filed or maintained in connection with the Assumed Plans (to the extent transferable in accordance with the existing terms and conditions of the applicable Seller Plan) and any applicable Insurance Policies related thereto;

(x) to the extent the CBA is amended as described in Section 9.12, the CBA, as so amended (the "Assumed CBA");

(y) all personnel files for Transferred Employees, except to the extent that any transfer or assignment is prohibited by applicable Law;

(z) all telephone, facsimile numbers and other directory listings and e-mail and website addresses used in connection with the Business; and

(aa) except for any amounts to the extent specifically owed pursuant to or solely related to any Excluded Asset or Excluded Liability, all loans and other indebtedness payable to any Seller.

2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall any Seller be deemed to sell, transfer, assign or convey, and each Seller shall retain all of such Seller's right, title and interest to, in and under, the following assets, properties, interests and rights of each Seller (collectively, the "Excluded Assets");

(a) all Non-Assumed Contracts;

(b) all Excluded Documents (whether copies or originals);

(c) all shares of capital stock or other equity interests of any Seller or any Affiliate of any Seller or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests;

(d) any of Sellers' director and officer Insurance Policies, fiduciary policies and employment practices policies and any excess coverage policies applicable thereto (in each case of the foregoing, including any tail policies or coverage thereon) and any of Sellers' rights, claims, demands, proceedings, credits, causes of action or rights of set off thereunder;

(e) any Avoidance Actions against any or all of the Brant Parties, Brant Industries, White Birch, and their respective Affiliates or any other officer or director of Sellers to the extent not addressed as part of the Transition Services Agreement (the "Excluded Avoidance Actions", which term, for avoidance of doubt, shall exclude Avoidance Actions against trade creditors of each Seller);

(f) all claims that Sellers may have against any Person solely with respect to any other Excluded Assets;

(g) each Seller's rights, interests and benefits under this Agreement;

(h) each Seller Plan that is not an Assumed Plan (the "Excluded Plans"), which, for the avoidance of doubt, shall include the SP Newsprint Co. Pension Plan and the SP Newsprint Co. Union Pension Plan as Excluded Plans;

(i) the contracts, properties and assets set forth on Schedule 2.2(i); and

(j) to the extent the CBA is not amended as described in Section 9.12, the CBA.

2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement and the Sale Order, Purchaser shall assume at the Closing only the following Liabilities of Sellers (collectively, the "Assumed Liabilities"):

(a) (i) any and all Liabilities of Sellers under each Assigned Contract (to the extent actually transferred to Purchaser in accordance with the terms of this Agreement, the Sale Order and applicable Law) arising (A) after the Closing Date, (B) on or prior to the Closing Date solely to the extent such Liabilities become payable after the Closing Date, or (C) with respect to Assigned Contracts constituting Post-Petition Contracts, at any time after the Petition Date, in each case (x) for which all necessary Bankruptcy Court approval to transfer have been obtained and (y) excluding any liabilities arising out of any breach or default thereof prior to being transferred to Purchaser, and (ii) with respect to the foregoing Assigned Contracts and subject to Section 2.5, all Cure Costs associated with any Assigned Contract added by Purchaser after the Closing Date in accordance with Section 2.5(b);

(b) any and all Assumed Administrative Priority Claims (for avoidance of doubt, to the extent Purchaser has paid administrative priority claims as set forth in Schedule 1.1(h) (exclusive of Closing Date Administrative Priority Claims) in an aggregate amount equal to the Assumed Administrative Priority Claims Budget Limit, any remaining unpaid administrative priority claims reflected in Schedule 1.1(h) (and not constituting Closing Date Administrative Priority Claims) shall constitute Excluded Liabilities pursuant to Section 2.4(x);

(c) any and all Liabilities arising under or otherwise in respect of any Assumed Plan, but, for the avoidance of doubt, excluding all Excluded Plans;

(d) the obligation to pay the amounts owed (and no other Liabilities) for all Allowed non-insider pre-petition trade claims incurred in the Ordinary Course of Business and set forth on Schedule 2.3(d);

(e) any and all Liabilities arising under or otherwise in respect of the Assumed CBA;

(f) the obligation to pay the amounts owed for all pre-petition wages and salaries incurred in the Ordinary Course of Business;

(g) the obligation to provide, and all Liabilities in respect of, COBRA Continuation Coverage, as provided under Section 7.3;

(h) the WARN Act Liabilities, as provided under Section 7.4;

(i) Transfer Taxes, as provided under Section 11.1(a);

(j) any additional Liabilities set forth on Schedule 2.3(j);

(k) any and all Allowed claims under section 503(b)(9) of the Bankruptcy Code to the extent they are not paid on or before the Closing Date and are Allowed pursuant to the procedures set forth in the Order Establishing Procedures Related to Claims Asserted pursuant to Bankruptcy Code section 503(b)(9) entered by the Bankruptcy Court (Docket No. 447) or by any other order of the Bankruptcy Court;

(l) Cure Costs to the extent they have not been paid on or before the Closing Date; and

(m) any Unknown Administrative Priority Claims assumed pursuant to Section 9.16, in an aggregate amount not to exceed the Unknown Administrative Priority Claims Cap *less* any amounts provided for payment of Unknown Administrative Priority Claims pursuant to Section 9.16 (for avoidance of doubt, to the extent Purchaser has paid Unknown Administrative Priority Claims in an aggregate amount equal to the Unknown

Administrative Priority Claims Cap, Purchaser shall not be obligated to provide for payment of, or assume, any remaining unpaid Unknown Administrative Priority Claims then outstanding (which then outstanding unpaid Unknown Administrative Priority Claims shall constitute Excluded Liabilities pursuant to Section 2.4(x)).

2.4 Excluded Liabilities. Except for the Assumed Liabilities, Purchaser shall not assume, or become liable for the payment or performance of and shall not be obligated to assume or otherwise discharge, any Liabilities of any Seller or its directors, officers, stockholders or agents (acting in such capacities) of any nature whatsoever, whether accrued or unaccrued, including the following Liabilities (collectively, the “Excluded Liabilities”) which shall remain Liabilities solely and exclusively of Sellers:

(a) all Liabilities of Sellers relating to or otherwise arising, whether before, on or after the Closing Date, out of, or in connection with, any of the Excluded Assets;

(b) all Closing Date Administrative Priority Claims that have been paid on or before the Closing Date, Unknown Administrative Priority Claims and Cure Costs that have been paid on or before the Closing Date;

(c) all Liabilities of Sellers in respect of the Non-Assumed Contracts;

(d) all Liabilities of Sellers arising out of or relating to any Legal Proceedings (other than in respect of the Assumed Plans) arising out of or in connection with events occurring on or prior to the Closing Date, no matter when raised;

(e) all accounts payable of each Seller arising on or prior to the Closing Date;

(f) all Liabilities of Sellers arising out of or relating to services or products of Sellers to the extent provided, developed, made or marketed, sold or distributed on or prior to the Closing Date;

(g) all Liabilities of Sellers under any Assigned Contract arising out of or relating to any Sellers’ conduct, action, omission or breach occurring on or prior to the Closing Date (other than the Cure Costs to be paid by Purchaser), no matter when raised;

(h) all Liabilities of Sellers arising out of or relating to any alleged tort, breach of contract, noncompliance or alleged non-compliance with any Law, ordinance, regulation, rule or treaty by the Sellers (other than in respect of the Assumed Plans);

(i) all Liabilities of Sellers for infringement or misappropriation of any Intellectual Property arising out of or relating to any conduct of any Seller or operation of the Business on or prior to the Closing Date;

(j) all Liabilities of Sellers under this Agreement or any Ancillary Agreement;

(k) all Liabilities of Sellers based upon Sellers' acts or omissions occurring after the Closing Date;

(l) any claims (as defined in the Bankruptcy Code) arising prior to the Closing and not expressly assumed pursuant to this Agreement;

(m) all Liabilities relating to any environmental, health or safety matter (including any Liability or obligation under any Environmental Law, whether known or unknown), arising out of or relating to any Seller's conduct, action or omission or their leasing, ownership or operation of real property on or prior to the Closing Date, no matter when raised, other than as required by Law;

(n) all Liabilities of Sellers in respect of Indebtedness, whether or not relating to the Business, including all Liabilities arising under the Pre-Petition Credit Documents;

(o) any claims, demands, proceedings or causes of action subject to or covered by the Insurance Policies described in Section 2.2(d), which Insurance Policies shall remain in effect and enforceable to cover any claims, demands, proceedings, or causes of action;

(p) all Liabilities relating to Employees or former employees, directors or officers of Sellers (i) under the Excluded Plans and any Seller Plan not set forth in Section 5.17 of the Seller Disclosure Schedule, (ii) under any employment, wage and hour restriction, equal opportunity, discrimination, plant closing or immigration and naturalization Laws or (iii) in connection with any workers' compensation or other employee health, accident, disability or safety claims;

(q) except as provided in Section 11.1(a), all Liabilities of Sellers for Taxes;

(r) any payments due to any equityholders of Sellers in respect of management or other fees, other than as set forth in the DIP Order;

(s) all Liabilities of any Seller in, under or pursuant to Intercompany Obligations;

(t) all Liabilities of Sellers under any collective bargaining agreement or any agreement with any labor union that is not the Assumed CBA;



(u) except as expressly provided in Section 2.3(b), all Liabilities for professional fees or transaction fees owed by any party, including all Debtor Professional Fees and Committee Professional Fees in excess of any applicable limitations set forth in the definition of Carve-Out;

(v) all Liabilities resulting from an Encumbrance that is not a Permitted Encumbrance;

(w) all Liabilities arising from the operation of any successor liability Laws, including “bulk sales” statutes, to the extent that non-compliance therewith or the failure to obtain necessary clearances would subject Purchaser or the Purchased Assets to the claims of any creditors of any Seller other than with respect to the Assumed Liabilities, or would subject any of the Purchased Assets to any Encumbrances or other restrictions, other than Encumbrances arising in connection with the Assumed Liabilities;

(x) except as expressly provided in Section 2.3(b), all Liabilities for administrative priority claims; and

(y) all Liabilities set forth on Schedule 2.4(y).

For the avoidance of doubt, except as expressly noted above, none of the Excluded Liabilities shall be included as Assumed Liabilities.

## 2.5 Schedule Updates; Cure Costs.

(a) Except as otherwise set forth in Section 2.5(b), Purchaser and Sellers agree that they will reach final agreement on the schedules to this Agreement (other than the Seller Disclosure Schedule and Purchaser Disclosure Schedule, which have been finalized as of the date of this Agreement) by the third (3<sup>rd</sup>) Business Day prior to the Auction, and if the Auction is not held, the hearing on the Sale Order.

(b) Notwithstanding anything to the contrary in this Agreement, and without any increase or decrease in the Purchase Price (other than any resulting increase or decrease in Cure Costs), Purchaser may revise this Agreement and any schedule (other than the Seller Disclosure Schedule and Purchaser Disclosure Schedule) setting forth the Purchased Assets and the Excluded Assets prior to the Closing to (i) include in the definition of Purchased Assets (pursuant to the applicable schedule) and to exclude from the definition of Excluded Assets, any Contract or other asset of any Seller not previously included in the Purchased Assets and require Sellers to file a notice of assumption and assignment with the Bankruptcy Court and provide any necessary notice to the parties to any such Contract (a “Designation”) and (ii) exclude from the definition of Purchased Assets (pursuant to the applicable schedule) and to include in the definition of Excluded Assets, any Assigned Contract or other asset of any Seller previously included in the Purchased Assets and not otherwise included in the definition of Excluded Assets.

(c) Sellers shall provide timely and proper written notice appropriate under the circumstances of the motion seeking entry of the Sale Order to all parties to Assigned Contracts and take all other actions reasonably necessary to transfer and assign all Assigned Contracts to Purchaser pursuant to Section 365 of the Bankruptcy Code, and Purchaser shall assume all Assigned Contracts from Sellers as of the Closing Date pursuant to section 365 of the Bankruptcy Code and the Sale Order (or in the case of any Post-Closing Designated Assigned Contract, upon entry of the applicable order of the Bankruptcy Court approving the assumption and assignment of any such Contract to Purchaser). In connection with the assignment and assumption of the Assigned Contracts pursuant to Section 2.5(b), (i) Sellers shall cure any defaults under the Assigned Contracts designated as such prior to the Closing, and (ii) Purchaser shall cure any defaults under the Assigned Contracts designated as such after the Closing, in each case, by payment of any Cure Costs in accordance with Section 2.3(a) or Section 2.4(g), as applicable.

(d) Schedule 2.5(d) (as such schedule may be amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement, the “Contract & Cure Schedule”) contains a list of each Assigned Contract and Sellers’ good faith estimate of the amount of Cure Costs applicable to each such Assigned Contract (and if no Cure Cost is estimated to be applicable with respect to any particular Contract, the amount of such Cure Cost has been designated for such Contract as “\$0.00”). Sellers shall provide Purchaser with (i) a preliminary Contract & Cure Schedule setting forth Sellers’ reasonable estimate of the Cure Costs as of the Execution Date and (ii) a final Contract & Cure Schedule, as modified by Purchaser, at least three (3) Business Days prior to the hearing on the Sale Order, setting forth Sellers’ reasonable estimate of the Cure Costs as of such date. From the date the preliminary Contract & Cure Schedule is provided through (and including) the Closing, promptly following any changes to the information set forth on such Contract & Cure Schedule (including any new Assigned Contracts included in the Purchased Assets to which Seller becomes a party and any change in the Cure Cost of any such Assigned Contract), Sellers shall provide Purchaser with a schedule that updates and corrects the Contract & Cure Schedule. Purchaser may, as permitted by Section 2.5(b), include or exclude any Contract from the Contract & Cure Schedule and require the Sellers to give notice to the third parties to any such Contract of Sellers’ assumption and assignment thereof to Purchaser and the amount of Cure Costs associated with such Contract or the rejection thereof. Notwithstanding anything to the contrary in Section 2.5(b) or this Section 2.5(d), to the extent a third party to a Contract objects to the Cure Cost applicable to such Contract set forth in the Contract & Cure Schedule and such objection is not finally resolved prior to the Closing, (i) Purchaser may exclude such Contract from the definition of Purchased Assets (pursuant to the applicable schedule) and to include such Contract in the definition of Excluded Assets and (ii) until such objection is finally resolved, Sellers shall not reject such Contract. Within three (3) Business Days following the final resolution of such objection, Purchaser shall provide the Sellers with written notice of its determination as to whether to treat such Contract as an Assigned Contract or Non-Assumed Contract. Promptly upon Sellers’ receipt of such notice Sellers shall deliver written notice of such determination to the

applicable counterparty to such Contract. With respect to any such Contract that Purchaser determines to treat as an Assigned Contract, Purchaser shall pay the applicable Cure Cost, and upon such payment, such Contract shall be deemed to be an Assigned Contract (and to be part of the Purchased Assets), without further notice or action, and the Contract & Cure Schedule shall be automatically deemed modified to include such Contract and the applicable Cure Amount. With respect to any such Contract that Purchaser determines to treat as a Non-Assumed Contract, such Contract shall be deemed to be a Non-Assumed Contract (and to be part of the Excluded Assets) as of the date of such written notice and without further notice or action, and Schedule 1.1(III) shall be automatically deemed modified to include such Contract.

2.6 Undetermined Contracts. From the Execution Date until the Closing Date, no Seller shall reject any Contract or Seller Plan without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed. With respect to any Contract which is set forth on Schedule 2.6 (which shall include Sellers' good faith estimate of the amount of Cure Costs applicable to each such Contract (and if no Cure Cost is estimated to be applicable with respect to any particular Contract, the amount of such Cure Cost has been designated for such Contract as "\$0.00") and as the same may be amended from time to time in Purchaser's sole discretion), (collectively, the "Undetermined Contracts"), Purchaser may designate such Undetermined Contracts after the Closing for inclusion in the definition of Purchased Assets, prior to the earlier of (x) the expiration of the term of the Transition Services Agreement and (y) the effective date of any plan of reorganization of the applicable Seller (any such Contract a "Post-Closing Designated Assigned Contract") (the earlier of the dates specified in clauses (x) and (y), "Designation Deadline"). No Seller shall reject any such Undetermined Contract prior to the Designation Deadline or if earlier the date on which Purchaser notifies Sellers in writing of its intention to designate such Undetermined Contract as a Rejected Contract and to include such Undetermined Contract in the Excluded Assets. Upon Purchaser's delivery of a written notice to Sellers setting forth its election to treat any Undetermined Contract as a Rejected Contract to be included in the Excluded Assets, Sellers shall use commercially reasonable efforts to reject such Undetermined Contract, and Purchaser shall be obligated to pay all post-Closing costs incurred by Sellers in connection with maintaining such Undetermined Contract for the period from and including the Closing through the fifth Business Day after the Seller's receipt of such written notice. Upon Purchaser's election to treat any Undetermined Contract as Post-Closing Designated Assigned Contract and include such Undetermined Contract on the Contract & Cure Schedule, as permitted by this Section 2.6, Sellers shall use commercially reasonable efforts to assume and assign such Undetermined Contract to Purchaser; provided that Purchaser pays all Cure Costs relating to such Undetermined Contract and all post-Closing costs required to be incurred by Sellers in connection with maintaining the Undetermined Contracts. All such Undetermined Contracts which are not designated as a Post-Closing Designated Assigned Contract by the Designation Deadline or which have not been previously rejected pursuant to this Section 2.6, shall be automatically rejected on the Designation Deadline without further order of the Bankruptcy Court.

2.7 Further Conveyances and Assumptions. From time to time following the Closing, Sellers and Purchaser shall, and Sellers and Purchaser shall take commercially reasonable efforts to cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and shall take such further actions as may be reasonably necessary or appropriate to assign and convey fully to Purchaser the Purchased Assets and to ensure the assumption of the Assumed Liabilities, and to otherwise make effective the transactions contemplated by hereby. Notwithstanding the foregoing, after the Closing, Purchaser shall pay all reasonable costs Sellers incur in connection with any actions taken by Sellers at Purchaser's request.

2.8 "As Is, Where Is" Transaction. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ARTICLE V OF THIS AGREEMENT, SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE PURCHASED ASSETS. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLERS HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE PURCHASED ASSETS. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE PURCHASED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE PURCHASED ASSETS AS PURCHASER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE PURCHASED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE V HEREOF, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, PURCHASER WILL ACCEPT THE PURCHASED ASSETS AT THE CLOSING "AS IS," "WHERE IS," AND "WITH ALL FAULTS."

### ARTICLE III.

#### CONSIDERATION

3.1 Consideration.

(a) The aggregate consideration (collectively, the "Purchase Price") to be paid for the purchase of the Purchased Assets shall be:

(i) (A) the entire principal balance of the Revolving Loans (as defined in the Pre-Petition Credit Agreement) (the "Revolving Loan Amount"), to be satisfied by way of an offset against the entire principal balance of the Revolving Loans, and (B) \$145,000,000 of the principal amount of the Term Loans (as defined in the Pre-Petition Credit Agreement) pursuant to Section 363(k) of the Bankruptcy Code, *less* the sum of

(1) the Revolving Loan Amount and (2) the DIP Repayment Amount; provided that such amount shall be reduced dollar-for-dollar to the extent that Purchaser assumes any portion of the Indebtedness outstanding under the Pre-Petition Credit Agreement (the “Credit Bid Amount”); provided further that the portion of the Pre-Petition Credit Obligations in excess of the Credit Bid Amount will remain outstanding as a claim against the Sellers; plus

(ii) an amount in cash sufficient to pay (or cash collateralize, in the case of letters of credit) and used to pay (or cash collateralize, in the case of letters of credit) in full all obligations owing under, and as defined in, the DIP Credit Agreement, including without limitation, the Challenged DIP Indebtedness (regardless of whether or in what manner the Bankruptcy Court determines to characterize or recharacterize the Challenged DIP Indebtedness or application of proceeds therefrom) (the “DIP Repayment Amount”), and the Sellers hereby authorize the Purchaser to remit at the Closing the DIP Repayment Amount by wire transfer of immediately available funds direct to an account or accounts designated by the DIP Agent for application to the DIP Indebtedness; plus

(iii) the amount and obligations of the Assumed Liabilities as described under Section 2.3.

(b) The Purchase Price shall be satisfied at the Closing as to:

(i) the Credit Bid Amount, by causing each of the Pre-Petition Agent, and each of the Pre-Petition Lenders to (A) acknowledge satisfaction of the applicable portion of the Pre-Petition Credit Obligations by the Credit Bid Amount and (B) to release all security interests and liens securing such satisfied portion of the Pre-Petition Credit Obligations (collectively, (i)(A) and (i)(B) above, the “Credit Bid and Release”);

(ii) the DIP Repayment Amount, by (A) payment of the DIP Repayment Amount by wire transfer of immediately available funds to an account or accounts designated by the DIP Agent and (B) causing each of the DIP Lenders to (I) acknowledge satisfaction of their Indebtedness by the DIP Repayment Amount and (II) to release all security interest and liens securing the Indebtedness in the DIP Repayment Amount (collectively, (ii)(A) and (ii)(B) above, the “DIP Repayment and Release”); and

(iii) the amount of the Assumed Liabilities described in Section 2.3, by assuming such Assumed Liabilities through a duly executed assignment and assumption agreement in the form attached hereto as Exhibit B.

(c) The portion of the Purchase Price comprised of the Credit Bid Amount shall constitute consideration for all Purchased Assets as to which the Pre-Petition Agent has a first priority, perfected, valid and enforceable security interest (subject to any applicable Permitted Encumbrances) and is entitled pursuant to Section 363(k) of the Bankruptcy Code to credit bid the Pre-Petition Credit Obligations in principal amount at least equal to the

Credit Bid Amount (such Purchased Assets, the “Credit Bid Purchased Assets”). In addition, the portion of the Purchase Price comprised of the DIP Repayment Amount and the Assumed Liabilities that in the aggregate equals the fair market value of the Purchased Assets other than the Credit Bid Purchased Assets shall constitute consideration for all such Purchased Assets, and the remainder of such portion of the Purchase Price shall constitute part of the consideration for the Credit Bid Purchased Assets.

(d) There shall be no presumption that the fair market value of the Purchased Assets is equal to the Purchase Price.

## **ARTICLE IV.**

### **CLOSING AND TERMINATION**

4.1 Closing. Upon the terms and subject to the conditions hereof, the closing of the sale of the Purchased Assets and the assumption of the Assumed Liabilities contemplated hereby (the “Closing”) shall take place at the offices of Latham & Watkins LLP, 233 S. Wacker Drive, Suite 5800, Chicago, Illinois, on the date that is forty-five (45) days after the date on which the Sale Order is entered or such earlier date as may be designated by Purchaser in writing on not less than three (3) Business Days’ notice (subject to the satisfaction or (if permissible) waiver of all conditions set forth in ARTICLE X (other than the conditions which by their nature are to be satisfied by actions taken at the Closing), and subject to the right of Purchaser to extend the Closing in accordance with Section 4.4(b)), or at such other place or time as Purchaser and Sellers may mutually agree. The date and time at which the Closing actually occurs is referred to as the “Closing Date.” Unless otherwise agreed by the Parties in writing, the Closing shall be deemed effective and all right, title and interest of the Sellers to be acquired by Purchaser hereunder shall be considered to have passed to Purchaser or its permitted assigns as of 11:59 p.m. (Eastern time) on the Closing Date.

4.2 Closing Deliveries by Sellers. At the Closing, Sellers shall deliver to Purchaser:

(a) a duly executed bill of sale with respect to the Purchased Assets, in the form attached hereto as Exhibit A;

(b) a duly executed assignment and assumption agreement with respect to the Assumed Liabilities, in the form attached hereto as Exhibit B;

(c) a payoff letter from the DIP Agent setting forth the amount of the DIP Indebtedness outstanding as of the Closing Date and UCC-3 termination statements and other releases reasonably requested by Purchaser to memorialize the release of the DIP Agent’s and DIP Lenders’ liens on the Purchased Assets;

(d) a (i) true and correct copy of the Sale Order and (ii) with respect to Owned Real Property, any existing surveys, legal descriptions and title policies in the possession of any Seller;

(e) a duly executed transition services agreement, on terms reasonably acceptable to each of the Brant Parties and the Purchaser, covering the services described on Schedule 4.2(e) (the “Transition Services Agreement”);

(f) a duly executed non-foreign person affidavit of each Seller that is not a disregarded entity for federal tax purposes, dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Section 1445 of the Code, stating that such Seller is not a “foreign person” as defined in Section 1445 of the Code;

(g) the officer’s certificates required to be delivered pursuant to Section 10.3(c);

(h) a list of the Accounts Receivable as of the last day of the fiscal month immediately preceding the month in which the Closing occurs, updated from time to time as soon as practicable following such date as additional Accounts Receivable information becomes available;

(i) written assurances in the form of policy endorsements or other forms satisfactory to Purchaser that, subject to Section 2.2(d), Purchaser is named as a policyholder (“Named Insured”) under Sellers’ Insurance Policies;

(j) all Seller Permits listed on Section 5.9 of the Seller Disclosure Schedule;

(k) if the CBA is included in the definition of Purchased Assets pursuant to Section 2.1(x), a copy of the CBA, as amended pursuant to Section 9.12; and

(l) such other bills of sale, special warranty deeds, completed transfer tax returns, title affidavits, assignments of leases, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Purchaser (in each case signed and acknowledged as appropriate), as Purchaser may reasonably request (including, without limitation, as may be required in order for Purchaser to obtain title insurance from any reputable licensed title insurer(s) insuring its interest in the Owned Real Property subject to no Encumbrances other than the Permitted Encumbrances) to vest in Purchaser all the right, title and interest of Sellers in, to or under any or all the Purchased Assets; provided that all of the reasonable out-of-pocket post-Closing costs incurred by Sellers in preparing and delivering the foregoing shall be borne by Purchaser and paid promptly after demand therefor and receipt of supporting invoices; provided further that

Purchaser has consented to such costs in writing prior to their incurrence, and Sellers shall be under no obligation to take any action unless and until such written consent is delivered.

4.3 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver, or cause to be delivered, to Sellers (or to other Persons, at the direction of Sellers):

(a) the Purchase Price, in the form of (i) the Credit Bid and Release, (ii) the DIP Repayment and Release, and (iii) a duly executed assignment and assumption agreement, in the form attached hereto as Exhibit B, assuming the Assumed Liabilities described in Section 2.3;

(b) the officer's certificates required to be delivered pursuant to Section 10.2(b);

(c) such other assignments and other good and sufficient instruments of assumption and transfer, in form reasonably satisfactory to Sellers, as Sellers may reasonably request to transfer and assign the Purchased Assets and Assumed Liabilities to Purchaser;

(d) a payoff letter from the DIP Agent, in customary form, with respect to the DIP Repayment Amount, and which payoff letter shall (i) indicate the total amount required to be paid to satisfy the DIP Repayment Amount and (ii) state that all Encumbrances in connection therewith relating to the assets of the Sellers shall be released upon the payment of the DIP Repayment Amount; and

(e) confirmation that funding under the DIP Credit Agreement has been provided for payment of the Closing Date Administrative Priority Claims, the Unknown Administrative Priority Claims (to the extent identified and allowed prior to Closing), the Cure Costs (to the extent identified and allowed prior to Closing), and amounts set forth in the Wind-Down Budget.

4.4 Termination of Agreement. This Agreement may be terminated at any time prior to the Closing as follows:

(a) by the mutual written consent of Sellers and Purchaser;

(b) by either Purchaser or Sellers, if the Closing shall not have been consummated prior to August 17, 2012 (the "Outside Date"); provided, further, that on or before the Outside Date, Purchaser shall have the right to extend the Outside Date for a period of up to forty five (45) days in its sole discretion so long as Sellers have determined (in their reasonable judgment) that they have sufficient liquidity to continue to pay administrative expenses as they become due; provided, further, that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser or any Seller,



then Purchaser (if it is so in breach) or any Seller (if any Seller is so in breach), respectively, may not terminate this Agreement pursuant to this Section 4.4(b);

(c) by either Purchaser or Sellers, if there shall be any Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited, or there shall be in effect a final non-appealable order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(d) by Sellers, if Purchaser has not provided consent to (i) modify Schedule 1.1(h) to address valid and allowable administrative priority claims that become known after the Execution Date but before the Closing Date, or (ii) the Wind-Down Budget to address reasonable future expenses that are required to be incurred to effectuate the post-Closing wind-down of the Chapter 11 Cases and that become known after the Execution Date but before the Closing Date;

(e) by either Purchaser or Sellers, if any Chapter 11 Case is dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner with expanded powers to operate or manage the financial affairs, the business or the reorganization of Sellers is appointed in the Chapter 11 Case;

(f) by Purchaser, if (i) the Bankruptcy Court shall not have held a hearing on the Sale Procedures by the close of business on July 26, 2012, (ii) if the Sale Procedures Order shall not have been entered by the Bankruptcy Court by the close of business on July 27, 2012, (iii) if the Auction has not been held by August 10, 2012 or (iv) if the Sale Order shall not have been entered by the Bankruptcy Court by the close of business on August 13, 2012; provided, however, that notwithstanding anything to the contrary herein, if the Bankruptcy Court extends the date with respect to any of the matters listed in clauses (i) – (iv) of this Section 4.4(f) beyond the outer date permitted above to accommodate its schedule, the dates provided in clauses (i) – (iv) shall be automatically extended by the same time period as the Bankruptcy Court's extension.

(g) by either Purchaser or Sellers, if, following its entry, the Sale Procedures Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of Purchaser and Sellers;

(h) automatically upon closing of an Alternative Transaction;

(i) by Sellers, if Purchaser has breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach the conditions set forth in Sections 10.2(a) and 10.2(b) hereof, as the case may be, would not then be satisfied at the time of such breach; provided, however, that if such breach is curable by Purchaser by the earlier of (x) one Business Day prior to the Outside Date and (y) twenty

(20) days through the exercise of its commercially reasonable efforts, then for so long as Purchaser continues to exercise such commercially reasonable efforts Sellers may not terminate this Agreement under this Section 4.4(i) unless such breach is not cured within such earlier date; provided, further, that Sellers are not then in material breach of the terms of this Agreement, and provided further, that no cure period shall be required for a breach which by its nature cannot be cured;

(j) by Purchaser, if Sellers announce any plan of liquidation or support any such plan filed by any other party in lieu of consummating this Agreement;

(k) by Purchaser, if Sellers have materially breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach the conditions set forth in Sections 10.3(b) and 10.3(c) hereof, as the case may be, would not then be satisfied at the time of such breach; provided, however, that if such breach is curable by Sellers within twenty (20) days through the exercise of their respective commercially reasonable efforts, then for so long as Sellers continue to exercise such commercially reasonable efforts Purchaser may not terminate this Agreement under this Section 4.4(j) unless such breach is not cured within twenty (20) days from written notice to Sellers of such breach; provided, further, that Purchaser is not then in material breach of the terms of this Agreement, and provided further, that no cure period shall be required for a breach which by its nature cannot be cured;

(l) by either Purchaser or Sellers, if the amendment to the DIP Loan Documents to increase any Seller's borrowing capacity thereunder prior to the Closing in the manner described in Section 10.1(b) is not signed and approved by the Bankruptcy Court on or before August 13, 2012; and

(m) by either Purchaser or Sellers, if for any reason Purchaser is unable, pursuant to Bankruptcy Court Order, pursuant to Section 363(k) of the Bankruptcy Code, to credit bid the Credit Bid Amount in payment of the Purchase Price as set forth in Section 3.1.

4.5 Procedure Upon Termination. In the event of a termination of this Agreement by Purchaser or Sellers, or both, pursuant to Section 4.4, (a) written notice thereof shall be given promptly by the terminating party to the other parties hereto, specifying the provision hereof pursuant to which such termination is made, (b) except as contemplated by Section 4.6, this Agreement shall thereupon terminate and become void and of no further force and effect and (c) the consummation of the transactions contemplated by this Agreement shall be abandoned without further action of the parties hereto.

4.6 Effect of Termination. In the event that this Agreement is validly terminated pursuant to a right of termination as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Agreement effective as of the date of such termination and such termination shall be without Liability to Purchaser or Sellers; provided, however, that Section 4.5, this Section 4.6, and ARTICLE XII, the Sale Procedures Order (if

entered) shall survive. In no event shall any termination of this Agreement relieve any party hereto of any Liability for any willful breach of this Agreement by such party.

## **ARTICLE V.**

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

Sellers hereby, jointly and severally, make the representations and warranties in this ARTICLE V to Purchaser except as qualified or supplemented by Sections in the Seller Disclosure Schedule attached hereto (the "Seller Disclosure Schedule"), it being understood and agreed that each disclosure set forth in the Schedules shall qualify or modify each of the representations and warranties set forth in this ARTICLE V to the extent the applicability of the disclosure to each other Section is reasonably apparent from the text of the disclosure made. Each such Section of the Seller Disclosure Schedule is numbered by reference to representations and warranties in a specific Section of this ARTICLE V.

5.1 Corporate Organization and Qualification. Each of Sellers is duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization listed on Section 5.1 of the Seller Disclosure Schedule. Each of the other Sellers is qualified and in good standing as a foreign entity in each jurisdiction where the properties owned, leased or operated or the conduct of its respective Business requires such qualification except where the failure to be so qualified would not have a Material Adverse Effect. Each Seller has all requisite power and authority to own, lease and operate its properties and to carry on the Business as it is now being conducted, subject to the provisions of the Bankruptcy Code. Each Seller has previously made available to Purchaser complete and correct copies of certificate of the incorporation and bylaws (or other comparable organizational documents) of each of the other Sellers as in effect on the Execution Date (the "Organizational Documents").

5.2 Sellers and Subsidiaries.

(a) Section 5.2 of the Seller Disclosure Schedule sets forth a true and complete list of the names, jurisdictions of organization, and jurisdictions of qualification as a foreign entity of each Seller. Except as set forth in Section 5.2 of the Seller Disclosure Schedule, all outstanding shares of capital stock of or other equity ownership interests in each Seller are owned, directly or indirectly, by Holdings, free and clear of all Encumbrances, other than Permitted Encumbrances.

(b) Section 5.2(b) of the Seller Disclosure Schedule sets forth each corporation, association or other entity in which each Seller owns, of record or beneficially, any direct or indirect equity or other interest or any right (contingent or otherwise) to acquire the same.

5.3 Authority. Except for such authorization as is required by the Bankruptcy Court and receipt of any required Regulatory Approvals after giving effect to the Sale Order, each

Seller has all requisite power, authority and legal capacity to (a) execute and deliver this Agreement, (b) execute and deliver each other agreement, document, instrument or certificate contemplated hereby or to be executed by Sellers in connection with the consummation of the transactions contemplated hereby (together with this Agreement, the “Sellers’ Documents”), and (c) perform its obligations hereunder and thereunder and consummate the transactions contemplated hereby and thereby. The execution and delivery of Sellers’ Documents, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all requisite action on the part of Sellers, including by any action or required approval of the equityholder or equityholders of each Seller as required by applicable Law. This Agreement has been, and at or prior to the Closing, each of Sellers’ Documents will be, duly and validly executed and delivered by each Seller and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, and the entry of the Sale Order) this Agreement constitutes, and each of the other Sellers’ Documents when so executed and delivered will constitute, legal, valid and binding obligations of each Seller, enforceable against each Seller in accordance with its respective terms, subject to: (i) entry of the Sale Order by the Bankruptcy Court, and (ii) applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) (the “Bankruptcy and Enforceability Exceptions”).

#### 5.4 Conflicts; Consents of Third Parties.

(a) Except for Contracts with Governmental Bodies, and except as set forth in Section 5.4(a) of the Seller Disclosure Schedule, or after giving effect to the Sale Order, none of the execution and delivery by Sellers of this Agreement or any other Sellers’ Document, the consummation of the transactions contemplated hereby or thereby, or compliance by Sellers with any of the provisions hereof or thereof will conflict with, or result in any violation of or constitute a breach or default (with or without notice or lapse of time, or both) under, or give rise to a right of acceleration, payment, amendment, termination or cancellation under any provision of (i) the Organizational Documents; (ii) subject to and assuming entry of the Sale Order, any Contract or transferable Permit to which any Seller is a party or by which any of the properties or assets of Sellers is bound, including any Assigned Contract; (iii) subject to and assuming entry of the Sale Order, any order of any Governmental Body applicable to any Seller or any of the properties or assets of Sellers, including the Purchased Assets, or the Business; or (iv) subject to and assuming entry of the Sale Order, any applicable Law, other than, in the case of clauses (ii), (iii) and (iv), such conflicts, violations, defaults, terminations or cancellations that would not have, individually or in the aggregate, a materially detrimental effect on Sellers’ ability to operate the Business in the Ordinary Course of Business.

(b) Except for any notices required pursuant to Contracts with Governmental Bodies, and except as set forth in Section 5.4(b) of the Seller Disclosure

Schedule, no order, Permit or declaration or filing with, or notification to, any Governmental Body or other Person is required on the part of Sellers in connection with the execution and delivery of this Agreement or Sellers' Documents, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by Sellers of any other action contemplated hereby or thereby, except for the entry of the Sale Order.

5.5 Absence of Certain Developments. Except for actions taken in connection with the Chapter 11 Case or pursuant to an order of the Bankruptcy Court, as contemplated or expressly required or permitted by this Agreement, or as set forth in Section 5.5 of the Seller Disclosure Schedule, since the Most Recent Balance Sheet Date and prior to the Execution Date, the Business has been conducted in the Ordinary Course of Business, and none of Sellers has:

(a) acquired any material assets, other than acquisitions of Equipment or Inventory in the Ordinary Course of Business;

(b) sold, leased, transferred or assigned any material assets, tangible or intangible, other than (i) sales of Inventory in the Ordinary Course of Business, or (ii) the disposition of obsolete or immaterial assets not necessary for the conduct of the Business by Sellers;

(c) unless otherwise specifically permitted pursuant to the terms of an order of the Bankruptcy Court, accelerated, terminated, modified, amended, or cancelled any Business Contract, or waived, released or assigned any rights or claims thereunder, in each case, in a manner adverse to Sellers (and no other party to any such Business Contract has accelerated, terminated, modified, amended, or cancelled such Business Contract or waived, released or assigned any rights or claims thereunder);

(d) imposed or created any Encumbrance (other than Permitted Encumbrances) upon any of the Purchased Assets, tangible or intangible, that would be binding on Purchaser;

(e) incurred or made any capital expenditures in an aggregate amount in excess of \$50,000, except as permitted in the DIP Budget;

(f) created, incurred, assumed, or guaranteed any Indebtedness that would be binding upon Purchaser;

(g) transferred, assigned, abandoned, permitted to lapse or granted any license or sublicense of any rights under or with respect to any Assumed Intellectual Property, other than non-exclusive licenses of Intellectual Property granted pursuant to license agreements entered into in the Ordinary Course of Business;

(h) experienced any damage, destruction or other casualty loss (whether or not covered by insurance) affecting the tangible Purchased Assets, other than any damage, destruction or other casualty loss related to maintenance of the Purchased Assets in the Ordinary Course of Business in an aggregate amount specified in the DIP Budget for such use or resulting in an aggregate loss in excess of \$50,000;

(i) granted any bonus or any increase in any type of compensation or benefits, including severance or termination pay, to any of its current or former directors, officers, or consultants, except pursuant to the existing Seller Plans;

(j) paid any bonus except pursuant to the existing Seller Plans;

(k) delayed or postponed the payment of undisputed accounts payable or any other undisputed Liabilities of the Business in any material respect;

(l) adopted, made or agreed to (i) any welfare, pension, retirement, profit-sharing, incentive compensation or similar plan, program, payment or arrangement for any Employee except pursuant to the existing Seller Plans, or (ii) any new employment, change of control or collective bargaining agreement;

(m) made any addition to or modification of any Seller Plan, other than (i) contributions to such plans made in the Ordinary Course of Business or (ii) the extension of coverage to Employees of Sellers who became eligible after the Most Recent Balance Sheet Date;

(n) received any written notice of any cancellation or termination of any Assigned Contract that is a Business Contract;

(o) breached any provision of the DIP Order or the DIP Loan Documents;  
or

(p) replaced, removed or terminated the Chief Restructuring Officer, except in accordance with the terms and provisions of the DIP Order.

5.6 Litigation. Except as set forth in Section 5.6 of the Seller Disclosure Schedule, there is no litigation, action, claim, suit, proceeding, investigation, examination, hearing, arbitration, inquiry or subpoena, pending or, to the Knowledge of Sellers, threatened against Sellers or any property or asset of Sellers or which could give rise to or increase an Assumed Liability. Except as set forth in Section 5.6 of the Seller Disclosure Schedule, no Seller is subject to any judgment, decree, injunction, or order of any court, arbitration panel or other Governmental Body that relates to the Business or the Purchased Assets and for which Sellers have continuing obligations or Liabilities.

## 5.7 Intellectual Property.

(a) Section 5.7 of the Seller Disclosure Schedule sets forth a true, complete and correct list of (i) all of the patents, registered trademarks, registered copyrights, Internet domain names, and applications for any of the foregoing, in each case that constitute the Owned Intellectual Property and (ii) all other material non-registered trademarks constituting Owned Intellectual Property and a list of all Licensed Intellectual Property (except for Intellectual Property licensed related to off-the-shelf software and licenses implied in the sale of such software).

(b) Section 5.7(b) of the Seller Disclosure Schedule sets forth a true, complete and correct list of all material software constituting Owned Intellectual Property.

(c) Except as set forth in Section 5.7(c) of the Seller Disclosure Schedule, (i) each of Sellers owns the Owned Intellectual Property required to be listed on Sections 5.7 or 5.7(b) of the Seller Disclosure Schedule, free from any Encumbrances, other than Permitted Encumbrances, and free from any requirement of any present or future royalty payments, license fees, charges or other payments, or conditions or restrictions whatsoever; and (ii) no action is pending or, to the Knowledge of Sellers, threatened, challenging the validity, enforceability, registration, ownership or use of any such Owned Intellectual Property.

(d) Sellers own or have the right to use all Intellectual Property necessary to conduct the Business as currently conducted, and the Assumed Intellectual Property constitutes all Intellectual Property necessary to conduct the Business as currently conducted. The execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby will not result in the loss or material impairment of any right of the Sellers in or to any Intellectual Property rights.

(e) To the Knowledge of Sellers, (i) neither Sellers nor any of their respective products or services is infringing upon, misappropriating, diluting or otherwise violating, the Intellectual Property of any third party and (ii) no Person is infringing upon, misappropriating, diluting or otherwise violating, any Owned Intellectual Property. Except as set forth in Section 5.7(e) of the Seller Disclosure Schedule, there is no pending claim, action or proceeding alleging that Sellers are infringing, misappropriating, diluting or otherwise violating the Intellectual Property rights of any Person and, to the Knowledge of Sellers, no such claims are threatened.

(f) Sellers have made commercially reasonable efforts to maintain, protect and enforce their respective rights with respect to the Owned Intellectual Property, including, without limitation, entering into confidentiality or non-disclosure agreements with third parties exposed to such Sellers' trade secrets and other confidential information in order to maintain the confidentiality of such information.

5.8 Agreements, Contracts and Commitments; Certain Other Agreements.

(a) Section 5.8 of the Seller Disclosure Schedule sets forth the Contracts (other than purchase orders, service orders, and sale orders) entered into prior to the Petition Date relating to the Business to which any Seller is a party or by which it is bound or any of the Purchased Assets are bound (together with the Post-Petition Contracts, are collectively referred to as the “Business Contracts”):

(i) each note, setoff agreement, deposit agreement, financing agreement and other instrument for or relating to any lending or borrowing of any Seller or to which any assets of any Seller are subject;

(ii) each limited partnership agreement, or limited liability company operating agreement and other joint venture agreement or other similar Contract pursuant to which any Seller has any equity interest in any other Person;

(iii) each Contract with customers of any Seller for goods or services to be provided by such Seller (other than Contracts with Governmental Bodies);

(iv) each Contract with suppliers to any Seller for goods or services to be provided to such Seller (other than insurance and real property leases and Contracts with Governmental Bodies);

(v) employment agreements, severance agreements, agreements with employment agencies, and collective bargaining agreements with any labor unions;

(vi) Contracts to which any officer or director of each of Sellers or any Affiliate of any such officer or director, is a party;

(vii) leases for any real property or any Equipment (other than leases with Governmental Bodies);

(viii) Contracts involving the license, use, development or ownership of Intellectual Property (other than click-wrap, shrink-wrap or other software licenses generally commercially available on reasonable terms with annual, aggregate license, maintenance and support fees of less than \$10,000);

(ix) each sales agent, dealer, distributor or joint marketing Contract under which Sellers have continuing obligations to jointly market any product or service;

(x) each Tax sharing, indemnification, allocation or similar Contract;  
and

(xi) Contracts with any Governmental Body.



(b) Except as set forth in Section 5.8(b) of the Seller Disclosure Schedule or the Contracts & Cure Schedule, no Seller has received any written or oral notice of any default or event that with notice or lapse of time or both would constitute a post-petition default by such Seller under any Business Contract.

(c) Except as set forth in Section 5.8(c) of the Seller Disclosure Schedule, Sellers have heretofore delivered or made available to Purchaser true and complete copies of all Business Contracts that are in writing, including all amendments, modifications, schedules and supplements thereto and all waivers (including descriptions of oral waivers) with respect thereto to the extent in any Seller's, or such Seller's Affiliates', possession. Assuming (x) the entry of the Sale Order and (y) due execution by the other party or parties thereto, as of the Closing Date, each Business Contract will be in full force and effect and, subject to the Bankruptcy Exceptions, enforceable in accordance with its terms against each Seller that is a party thereto. To the Knowledge of Sellers, no other party to any of the Business Contracts or any other Assigned Contract is in breach or default thereunder.

#### 5.9 Regulatory Matters; Permits.

(a) Section 5.9 of the Seller Disclosure Schedule sets forth a true, complete and correct list of Permits held by Sellers as of or prior to the Execution Date.

(b) Except as disclosed in Section 5.21 of the Seller Disclosure Schedule, each Seller is in compliance with its material obligations under each of the Permits in effect as of the Execution Date, and the rules and regulations of the Governmental Body issuing such Permits, and no condition exists that without notice or lapse of time or both would constitute a default under, or a violation of, any such Permit except for such failures to be in compliance or defaults that would not have, individually or in the aggregate, a Material Adverse Effect on Sellers' ability to operate the Business in the Ordinary Course of Business.

5.10 Brokers and Finders. Other than with respect to Raymond James & Associates, Inc., except as set forth in Section 5.10 of the Seller Disclosure Schedule, Sellers have not employed, and to the Knowledge of Sellers, no other Person has made any arrangement by or on behalf of Sellers with any investment banker, broker, finder, consultant or intermediary in connection with the transactions contemplated by this Agreement which would be entitled to any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby.

#### 5.11 Title to Assets.

(a) Immediately prior to the Closing, Sellers will have (and shall convey to Purchaser at the Closing) good and marketable title or a valid leasehold or licensed interest in and to each of the Purchased Assets free and clear of all Encumbrances except Permitted Encumbrances.

(b) The Purchased Assets constitute all of the properties, assets and rights used by Sellers to conduct and operate the Business substantially as currently conducted and operated by Sellers. All of the Purchased Assets are in good order and repair for assets of comparable age and past use and are capable of being used in the Ordinary Course of Business to operate the Business substantially as currently conducted and operated by Sellers.

5.12 Tangible Personal Property; Equipment. Section 5.12(a) of the Seller Disclosure Schedule sets forth all personal property leases (the “Personal Property Leases”) involving annual payments in excess of \$10,000 relating to personal property, including Equipment, used by any Seller or to which any Seller is a party or by which the personal property, including Equipment, of any Seller is bound. Except as set forth in Section 5.12(b) of the Seller Disclosure Schedule, none of Sellers has received any written notice of, or to the Knowledge of Sellers, oral notice of any default or event that with notice or lapse of time or both would constitute a default by such Seller under any of the Personal Property Leases.

5.13 Real Property.

(a) Section 5.13 of the Seller Disclosure Schedule sets forth a complete and correct list of all parcels of Owned Real Property, specifying the address or other information sufficient to identify all such Owned Real Property. After giving effect to the Sale Order, Seller owns good and marketable fee simple absolute title to the Owned Real Property, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) Section 5.13(b) of the Seller Disclosure Schedule sets forth a complete and correct list of all Leased Real Property, specifying the address or other information sufficient to identify all such Leased Real Property. After giving effect to the Sale Order, each lease for each parcel of Leased Real Property grants Sellers the right to use and occupy the applicable Leased Real Property, in accordance with the terms thereof, subject to no Encumbrances other than Permitted Encumbrances.

(c) None of Sellers has received any written notice of, or to the Knowledge of Sellers, oral notice (or otherwise has knowledge) of condemnation or eminent domain proceedings pending or threatened that affect any of the Real Property. None of Sellers has received any written notice of, or to the Knowledge of Sellers, oral notice (or otherwise has knowledge) of any violation of any zoning, building, land use, fire or health code Law or other legal violation (or of any recorded instruments of record or other Business Contract) affecting any Real Property.

(d) There are no encroachments or other facts or conditions affecting in any material respect any of the Real Property that would be revealed by an accurate survey or inspection thereof. To the Knowledge of Sellers, none of the buildings and structures on any of the Real Property encroaches upon real property of another Person or upon the area of any easement affecting any Real Property.

(e) Sellers have delivered to Purchaser a true and correct copy of the Assumed Real Property Leases. Each Assumed Real Property Lease is valid and in full force and effect, is unmodified and represents the entire agreement between the applicable Seller and the applicable landlord. There exist no material obligations on the part of any Seller to be paid or performed with respect to the Assumed Real Property Leases other than those set forth in the leases. No Seller, and to the Knowledge of Sellers, no other party to such Assumed Real Property Leases, is in default of its respective obligations under any Assumed Real Property Lease except for any breach or default in connection with or as a result of the Chapter 11 Case.

(f) Each of the Real Properties and the improvements thereon are in good operating condition and repair, subject to ordinary wear and tear, and are sufficient for the continued use in the Business after the Closing to the extent such use is substantially the same as that conducted prior to the Closing. The Real Property constitutes all of the real property used or occupied by Sellers.

(g) Each of the Real Properties and the improvements thereon are supplied with utilities and other services necessary for the operation of such Real Properties and improvements, including gas, electricity, water, telephone, sanitary sewer and storm sewer, all of which services are adequate for the use of the Business in accordance with all applicable Laws and are provided via public roads or via permanent, irrevocable, appurtenant easements benefiting such Real Property.

(h) Each of the Real Properties abuts on and has direct vehicular access to a public road, or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting the parcel, and access to each of the Real Properties sufficient for the use of the Business is provided by paved, gravel, dirt, or other improved public right-of-way with adequate curb cuts available.

(i) Except as disclosed in the Section 5.13(i) of the Seller Disclosure Schedule, to the Knowledge of Sellers, the improvements on the Real Properties comply with all material Laws (and all recorded instruments of record and other Business Contracts binding on such Real Property) independently and without benefit of any restrictions or burdens imposed upon other real property, or other rights with respect to any other real property, such as, for example: (a) parking facilities located on real property not constituting Real Property; (b) development restrictions affecting such other real property; or (c) other use or construction limitations affecting such other real property.

(j) Sellers have delivered to Purchaser correct and complete copies of all surveys of, and title insurance policies (together with correct and complete copies of all material instruments of record depicted on such survey or listed in such policy) with respect to, the Real Property in Sellers' possession or reasonably available to Sellers, and to the

Knowledge of Sellers, there has been no material change in the facts depicted in each such survey or reflected on each such title insurance policy.

(k) Except as set forth in Section 5.13(k) of the Seller Disclosure Schedule, Sellers have not leased or granted to any Person the right to access, enter upon, use, occupy, lease, manage, operate, maintain, broker or purchase (or any rights of first offer or of first refusal with respect to) any portion of the Real Property that will not otherwise be terminated on or prior to the Closing Date.

5.14 Compliance with Law. Except with respect to tax matters which are the representations and warranties set forth in Section 5.15, each Seller is in compliance, in all material respects, with all applicable Laws except as would not have a Material Adverse Effect. As of the Execution Date, no Seller has received any notice of any written alleged violation of any Law applicable to it or them. No Seller is in default of any order of any Governmental Body applicable to the Purchased Assets or the transactions contemplated under this Agreement. To the Knowledge of Sellers, no investigations, inquiries or reviews by any Governmental Body with respect to the Business have been commenced, nor are any contemplated, that would impose any Liability on Purchaser or, from and after the Closing Date, the Purchased Assets or the Business.

5.15 Tax Returns; Taxes. Except as set forth in Section 5.15 of the Seller Disclosure Schedule:

(a) All material Tax Returns required to have been filed by Sellers have been duly filed and are true, correct and complete in all material respects. No extension of time in which to file any such Tax Return is in effect.

(b) All material Taxes due and payable by Sellers (whether or not shown on any Tax Return) have been paid in full. The accruals and reserves with respect to Taxes (other than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the Most Recent Balance Sheet are adequate in all material respects to cover all Taxes of Sellers accruing or payable with respect to Tax Periods (or portions thereof) ending on or before the Most Recent Balance Sheet Date. All material Taxes of Sellers attributable to Tax Periods (or portions thereof) commencing after the Most Recent Balance Sheet Date have arisen in the Ordinary Course of Business.

(c) No claims, adjustments, assessments or deficiencies for any amount of Taxes of Sellers are being asserted, proposed or, to the Knowledge of Sellers, threatened, and no audit or investigation of any Tax Return of Sellers has occurred in the last three (3) years or is currently underway, pending or, to the Knowledge of Sellers, threatened.

(d) Since January 1, 2008, no claim has been made in writing against a Seller by any Governmental Body in a jurisdiction where such Seller does not file Tax Returns that such Seller is or may be subject to taxation in such jurisdiction.

(e) Sellers have withheld and paid all material Taxes required to have been withheld and paid by them to the appropriate Governmental Body in connection with amounts paid or owing to any Person.

(f) There are no Encumbrances for Taxes with respect to Sellers or their respective assets, nor is there any such Encumbrance that is pending or, to the Knowledge of Sellers, threatened other than Permitted Encumbrances.

(g) No Seller has made an election, nor is any Seller required, to treat any Purchased Asset as owned by another Person or as tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168 of the Code or under any comparable provision of state or local Tax Law.

(h) None of Sellers is party to any Tax sharing, indemnity, allocation or similar agreements, excluding (for the avoidance of doubt) Tax related obligations arising under commercial agreements not primarily related to Tax, such as gross-up obligations under financing agreements and the tax provisions in real estate leases.

(i) None of Sellers has engaged in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b).

(j) Holdings is classified as a partnership for U.S. federal income Tax purposes pursuant to Treasury Regulations Section 301.7701-2(c)(1) and for state and local income Tax purposes in all jurisdictions in which Holdings has been obligated to file income Tax Returns or owns or leases property, has employees or otherwise conducts business. Holdings is not subject to any state or local Taxes imposed on its income. SEP Technologies, L.L.C., a Georgia limited liability company ("SEP Technologies"), and SP Newsprint are each classified as entities that are disregarded as separate from their owners for U.S. federal income Tax purposes pursuant to Treasury Regulations Section 301.7701-2(c)(2)(i) and for state and local income Tax purposes in all jurisdictions in which SEP Technologies or SP Newsprint, as applicable, otherwise would be obligated to file income Tax Returns or own or lease property, have employees or otherwise conduct business. No Seller has ever been a member of a group of entities with which it has filed (or been required to file) consolidated, combined, unitary or similar Tax Returns.

#### 5.16 Employees.

(a) Sellers have delivered to Purchaser a true and correct list of the Employees as of the Execution Date, specifying their position, annual salary, and date of hire. Sellers are not delinquent in any material respect in payments to any Employees for any wages, salaries, commissions, bonuses or other direct compensation for any services performed for it or amounts required to be reimbursed to Employees. Sellers are in material compliance with all applicable Laws respecting labor, employment, fair employment practices, terms and conditions of employment, immigration, workers' compensation,

occupational safety, plant closings and wages and hours. Sellers have withheld all material amounts required by Law or by agreement to be withheld from the wages, salaries and other payments to Employees, and are not liable for any material arrears of wages or any Taxes or any material penalty for failure to comply with any of the foregoing. To the Knowledge of Sellers, no Employees are in violation of any term of any employment Contract, non-disclosure agreement, noncompetition agreement, or any restrictive covenant to a former employer relating to the right of any such Employee to be employed by Sellers because of the nature of the business conducted by Sellers or to the use of trade secrets or proprietary information of others. To the Knowledge of Sellers, no Seller has any direct or indirect Liability with respect to any misclassification of any Person as an independent contractor rather than as an Employee or with respect to any Employee leased from another employer. No Seller is party to any employment Contract with any Employee relating to the right of any such Employee to be employed by Sellers or the terms or conditions of such employment, other than the CBA.

(b) Except as set forth in Section 5.16(b) of the Seller Disclosure Schedule, no Seller is a party to or bound by, either directly or by operation of Law, any collective bargaining agreement, labor Contract, letter of understanding, letter of intent, voluntary recognition agreement or legally binding commitment or written communication to any labor union, trade union or employee organization or group which may qualify as a trade union in respect of or affecting Employees nor is any Seller subject to any union organization effort, nor is any Seller engaged in any labor negotiation. There are no, and within the prior three years there have not been any (i) strikes, work stoppages, work slowdowns or lockouts pending or, to the Knowledge of Sellers, threatened against or involving any Seller, or (ii) unfair labor practice charges, grievances or complaints pending or, to the Knowledge of Sellers, threatened by or on behalf of any Employee or group of Employees. Except as set forth on Section 5.16(b) of the Seller Disclosure Schedule or pursuant to any Seller Plan, no Seller has an obligation to make any severance or termination payment to any Employee in excess of any amount payable under common law principles or applicable Law.

5.17 Company Benefit Plans. Except as provided in Section 5.17 of the Seller Disclosure Schedule:

(a) Each Seller Plan is listed in Section 5.17 of the Seller Disclosure Schedule. Sellers have made available to Purchaser true and complete copies of (i) all Seller Plans and related trust agreements, annuity contracts or other funding instruments, (ii) the latest Internal Revenue Service determination or opinion letter obtained with respect to any such Seller Plan qualified or exempt under Section 401 or 501 of the Code, as applicable, and the results of discrimination testing for the most recently completed three (3) fiscal years for each such Seller Plan, (iii) Forms 5500 and certified financial statements for the most recently completed three (3) fiscal years for each Seller Plan required to file such form, together with the most recent actuarial report, if any, prepared by the Seller Plan's enrolled actuary, (iv) the current summary plan descriptions for each Seller Plan required to prepare

and distribute summary plan descriptions, (v) all summaries furnished to Employees, officers or directors of Sellers of all incentive compensation, other plans and fringe benefits for which a summary plan description is not required and (vi) the form notifications to Employees of their rights under Section 4980B of the Code.

(b) None of Seller Plans is a “multiemployer plan” (as defined in Section 3(37) of ERISA), is or has been subject to Sections 4063 or 4064 of ERISA, or is or has been subject to subject to Title IV of ERISA or Code Section 412 or 430. Neither Sellers nor any of their ERISA Affiliates have any Liability under Title IV of ERISA or Code Section 412 or 430. None of Seller Plans is subject to any Laws outside of the United States.

(c) Each Seller Plan has been established, administered and invested in accordance with its terms and is in material compliance with all applicable Laws. Sellers have performed and complied with all of their respective obligations under or with respect to the Seller Plans. Each Seller Plan that is intended to be a “qualified plan” within the meaning of Section 401(a) of the Code (“Qualified Plan”) and each trust that is intended to be exempt under Section 501 of the Code (“Exempt Trust”) has received a determination or opinion letter from the Internal Revenue Service to the effect that such Qualified Plan is so qualified and such Exempt Trust is so exempt, and, to the Knowledge of Sellers, nothing has occurred since the date of the most recent Internal Revenue Service determination or opinion letter, as applicable, that would reasonably be expected to adversely affect the tax-qualified status of any Qualified Plan or Exempt Trust.

(d) There is no action, order, writ, injunction, judgment or decree outstanding or proceeding, arbitral action, governmental audit, or investigation relating to, or seeking benefits under, any Seller Plan that is pending or threatened against any of Sellers (other than any claims for benefits under the Seller Plans in the Ordinary Course of Business).

(e) No Assumed Plan provides post-retirement or post-termination employee benefits (including death, medical or health benefits) to or in respect of any Employees or former Employees or their beneficiaries, and none of Sellers has any obligation to provide such benefits other than COBRA Continuation Coverage. Except as set forth in Section 5.17(e) of the Seller Disclosure Schedule, all contributions or premiums required to be made by Sellers to or under each Assumed Plan have been made in a timely fashion in accordance with applicable Law, the terms of the applicable Assumed Plan and any applicable collective bargaining agreement.

(f) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (whether alone or in conjunction with any other event) will result in forgiveness of Indebtedness or the acceleration or creation of any rights of any Person to benefits under any Assumed Plan (including the acceleration of the accrual or vesting of any benefits under any such Assumed Plan or the acceleration or

creation of any rights under any employment, severance, retention, parachute or change in control agreement or the right to receive any transaction bonus or other similar payment) or the obligation to take action to secure any benefits payable under any Assumed Plan .

5.18 Holdings. Except as set forth in Section 5.18 of the Seller Disclosure Schedule, Holdings is not party to any Business Contracts relating to the Business or the Assumed Liabilities or any Business Contracts by which any of the Purchased Assets are bound. Except for the equity interests of SP Newsprint, Holdings does not hold any assets used, or held for use, in connection with the operation of the Business.

5.19 Affiliate Matters. Except as set forth in Section 5.19 of the Seller Disclosure Schedule, no (a) shareholder, officer, or director of Sellers, (b) entity in which any such shareholder, officer or director owns any beneficial interest (other than a publicly held corporation whose stock is traded on a national securities exchange or in the over-the-counter market and less than two percent (2%) of the stock of which is beneficially owned by such shareholders, officers or directors in the aggregate), or (c) Affiliate of any of the foregoing is a party to: (i) any Contract with, or relating to, Sellers, their respective businesses, the Purchased Assets or the Assumed Liabilities; or (ii) any property (real, personal or mixed, tangible or intangible) used by Sellers in the operation of the Business. Section 5.19 of the Seller Disclosure Schedule also sets forth a true, correct and complete list of all Accounts Receivable, notes receivable and other receivables and accounts payable owed to or due from any such Person described above by or to any Seller except for any compensation payable to such officers in their capacity as employees, officers or directors of a Seller in the Ordinary Course of Business.

5.20 Insurance Policies.

(a) Section 5.20(i) of the Seller Disclosure Schedule lists all insurance policies owned or held by any Seller or otherwise applicable to the Business (the "Insurance Policies"). All such policies (or substitute policies with substantially similar terms and underwritten by insurance carriers with substantially similar or higher ratings) are in full force and effect, all premiums with respect thereto covering all periods up to and including the Execution Date have been paid, and no written notice of cancellation or termination (or any other threatened termination) has been received with respect to any such policy. Except as set forth on Section 5.20 (ii) of the Seller Disclosure Schedule, there are no pending, or to the Knowledge of Sellers, threatened claims, or circumstances that might give rise to a claim, under any Insurance Policy. Sellers maintain sufficient insurance with reputable insurers for the Business, properties and assets of Sellers against all risks normally insured against, and in the amounts normally carried, by Sellers in the Ordinary Course of Business. All claims relating to Purchaser, the Business or any of the Purchased Assets under the Insurance Policies have been filed in a due and timely fashion and any such claims that are pending are included in the Purchased Assets. No notice of cancellation or nonrenewal with respect to, disallowance of any claim, or reservation of rights with respect to any claim under, or increase of premium for, any Insurance Policy has been received by Sellers.



(b) Insurance policies under which Sellers, the Business or any of the Purchased Assets are insured that are provided by or on behalf of vendors, contractors or third party service providers (collectively, the “Third Party Insurance Policies”) are, to the Knowledge of Sellers, in full force and effect in accordance with the requirements therefor under the applicable Contracts. Immediately following the Closing, Purchasers will have the ability to directly make claims under the Third Party Insurance Policies related to Sellers, the Business (to the extent not specifically related to the Excluded Assets) or the Purchased Assets pursuant to all of the rights Sellers had under the Third Party Insurance Policies immediately prior to the Closing.

(c) It is the intent of the parties that immediately following the Closing, Purchasers will have all the rights under the Insurance Policies and Third Party Insurance Policies that Sellers had under the Insurance Policies and Third Party Insurance Policies immediately prior to the Closing, with respect to Purchasers, the Business (to the extent not specifically related to the Excluded Assets) and the Purchased Assets.

5.21 Environmental Matters. Except as disclosed on Section 5.21 of the Seller Disclosure Schedule, (a) each of Sellers is in material compliance with all Environmental Laws and all Permits issued pursuant thereto, (b) there is no material investigation, suit, claim, action or judicial or administrative proceeding relating to or arising under Environmental Laws that is pending or, to the Knowledge of Sellers, threatened against any Seller or any real property owned, operated or leased by any Seller, or any of the Purchased Assets, (c) none of the Real Property has been listed on the federal National Priority List or Comprehensive Environmental Response, Compensation Liability Information System (CERCLIS) database or any other similar federal, or state list of known or suspected contaminated sites, (d) to the Knowledge of Sellers no Hazardous Materials have been treated, stored Released or threatened to be Released by any Seller at any location or by any other Person at, on or under the Real Property in each case, in a manner or concentration that requires investigation, removal or remediation under Environmental Laws or would otherwise cause any Seller or any future owner or operator of any Real Property to incur material Liability under Environmental Laws, (e) no Seller has received any written notice or, to the Knowledge of Sellers, any other notice of or entered into any order, settlement, judgment, injunction or decree involving underperformed, uncompleted, outstanding or unresolved material obligations, liabilities or requirements relating to or arising under Environmental Laws, (f) to the Knowledge of Sellers, there are no existing facts, conditions, or circumstances that could reasonably be expected to cause Sellers or any owner of the Business or the Purchased Assets to make material expenditures in order to achieve or maintain compliance with existing Environmental Laws (other than those expenditures already included in the Sellers’ capital expenditure or environmental expense budgets that have been provided to Purchaser), and (g) the Sellers have provided or otherwise made available to Purchaser all material environmental audits, reports, and assessments concerning the Business and the Real Property that are in the possession, custody or control of the Sellers.

5.22 Customers, Vendors and Suppliers. Section 5.22 of the Seller Disclosure Schedule sets forth a complete and accurate list of all Significant Customers and Significant Vendors/Suppliers. “Significant Customers” are: (a) the ten (10) customers that have purchased the most, in terms of dollar value, products or services sold by the Business during the year ended December 31, 2011; and (b) the ten (10) customers that have purchased the most, in terms of dollar value, products or services sold by the Business during the three month period ended May 31, 2012. “Significant Vendors/Suppliers” are: (i) those vendors and/or suppliers who sold services to the Business during the year ended December 31, 2011 in an amount greater than \$1,000,000 or (ii) those vendors and/or suppliers who are expected to sell services to the Business during the 2012 fiscal year in an amount greater than \$1,000,000. Except as set forth in Section 5.22 of the Seller Disclosure Schedule, true, correct and complete copies of all written Business Contracts with Significant Customers and Significant Vendors/Suppliers have been provided to Purchaser. Since the Most Recent Balance Sheet Date, no Significant Customer or Significant Vendor/Supplier has given any Seller written notice terminating, canceling or reducing, or threatening to terminate, cancel or reduce, any Contract or relationship with such Seller. Since the Most Recent Balance Sheet Date, except as set forth in Section 5.22 of the Seller Disclosure Schedule, no Significant Customer: (i) has notified in writing any Seller that the same no longer meets such Significant Customer’s quality specifications or any certification requirements imposed upon companies in the Business or (ii) has threatened in writing to terminate such Significant Customer’s Contract or relationship with Sellers. Except as set forth in Section 5.22 of the Seller Disclosure Schedule, since the Most Recent Balance Sheet Date, (i) no Significant Customer or Significant Vendor/Supplier has proposed in writing, or given any Seller written notice of its intention to propose, any price structure changes or any other changes to any Business Contract with any Seller, nor, to the Knowledge of Sellers, does any Significant Customer or Significant Vendor/Supplier intend to propose a change to the price structure of any such Business Contract or any other change to any such Business Contract and (ii) the Chief Restructuring Officer has not (A) approved, any decision or action by Sellers or Brant Industries relating to any allocation or servicing of business as and between Sellers, on one hand, and White Birch, on the other hand, from existing customers of Sellers, or any material transactions between Sellers, on one hand, and the Brant Parties, on the other hand or (B) been provided notice or consulted with regarding any decision concerning the allocation or servicing of business as between Sellers, on one hand, and White Birch, on the other hand, from new customers. For purposes of this Section 5.22, the term Significant Vendors/Suppliers excludes lessors, insurance providers, utilities and professional service providers (including subcontractors who provide services under vendor managed service agreements and auditors and attorneys).

5.23 Accounts Receivable. Sellers have made available to Purchaser a complete and accurate list, subject to contractual adjustments, as of the Most Recent Balance Sheet Date, of the Accounts Receivable of Sellers, including an aging of all Accounts Receivable showing amounts due in 30-day aging categories. Sellers have provided reserves for Accounts Receivable (the “Seller Reserves”) in accordance with GAAP and Sellers’ accounting policies as consistently applied in the Ordinary Course of Business by Sellers. On the Closing Date, Sellers will deliver to Purchaser a complete and accurate list, as of a date within five (5) days of the Closing Date, of

the Accounts Receivable. All Accounts Receivable represent valid obligations arising from bona fide business transactions in the Ordinary Course of Business and do not represent obligations for goods sold on consignment, on approval or on a sale-or-return basis or subject to any other repurchase or return arrangement. Subject to the Seller Reserves, there is no pending or threatened contest, claim, counterclaim, defense or right of set-off under any Business Contract or otherwise with any obligor of any Account Receivable relating to the amount or validity of such Accounts Receivable.

5.24 Inventory. All Inventory is in good and merchantable quality and is usable or saleable in the Ordinary Course of Business and none of it is slow moving, obsolete, materially damaged or materially defective, except for those items the value of which has been reduced in accordance with GAAP and Sellers' Inventory policies consistently applied by Sellers, less reserves for obsolescence.

5.25 Financial Statements. Sellers have delivered or made available to Purchaser the following financial statements (collectively the "Financial Statements"): (a) audited consolidated balance sheets and statements of income, changes in stockholders' equity, and cash flow as of and for the fiscal year ended December 31, 2011 for Sellers (the "2011 Audited Financial Statements"), and (b) an unaudited consolidated balance sheet (the "Most Recent Balance Sheet") as of May 31, 2012 (the "Most Recent Balance Sheet Date") for Sellers. The 2011 Audited Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved, present fairly, in all material respects, the financial condition of Sellers as of such dates and the results of operations and cash flows of Sellers for such periods, and are consistent, in all material respects, with the books and records of Sellers. The Most Recent Balance Sheet includes all of the assets and Liabilities of Sellers as of May 31, 2012, in each case that are required by GAAP to be set forth on a balance sheet, presents fairly, in all material respects, the financial condition of Sellers as of May 31, 2012, and is consistent, in all material respects, with the books and records of Sellers.

5.26 Absence of Undisclosed Liabilities. Except as set forth in Section 5.26 of the Seller Disclosure Schedule, Sellers do not have any Liabilities except (a) Liabilities reflected on the liabilities side of the Most Recent Balance Sheet, (b) Liabilities that have arisen after the date of the Most Recent Balance Sheet in the Ordinary Course of Business or otherwise in accordance with the terms and conditions of this Agreement (none of which is a material Liability for breach of warranty, malpractice, tort or infringement or a claim or lawsuit relating to a breach of an Environmental Law), (c) Liabilities that are or will be Excluded Liabilities and (d) Liabilities incurred in connection with this Agreement or the transactions contemplated hereby.

## ARTICLE VI.

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby makes the representations and warranties in this ARTICLE VI to Sellers, except as qualified or supplemented by Sections in Purchaser Disclosure Schedule (the "Purchaser Disclosure Schedule") attached hereto:

6.1 Corporate Organization and Qualification. Purchaser is a limited liability company duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation. Purchaser is qualified and in good standing as a foreign entity in each jurisdiction where the properties owned, leased or operated, or the business conducted by it require such qualification. Purchaser has all requisite power and authority (corporate or otherwise) to own its properties and to carry on its business as it is now being conducted. Purchaser has previously made available to Sellers complete and correct copies of Purchaser's entity organizational documents, as amended and in effect on the Execution Date. All of the equity of Purchaser is owned, and as of the Closing will be owned, as set forth in Schedule 6.1.

6.2 Authority. Purchaser has the requisite corporate power and authority to (a) execute and deliver this Agreement, (b) execute and deliver each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Purchaser in connection with the consummation of the transactions contemplated hereby (together with this Agreement, the "Purchaser's Documents"), and (c) perform its obligations hereunder and thereunder and consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of each Purchaser's Document have been duly authorized by all necessary corporate action on behalf of Purchaser. This Agreement has been, and at or prior to the Closing each Purchaser's Document will be, duly and validly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each of the other Purchaser's Documents when so executed and delivered will constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to the Bankruptcy Exceptions. As of the date of this Agreement, Purchaser has received executed Direction to Credit Bid from the Pre-Petition Agent and an Assignment Agreement from the Pre-Petition Agent pursuant to which the Pre-Petition Agent has assigned its right to receive pursuant to the Credit Bid, the Purchased Assets (subject to the Assumed Liabilities), resulting in Purchaser having the ability, as of the date of this Agreement, to consummate the transactions contemplated by this Agreement.

6.3 Consents and Approvals; No Violation.

(a) None of the execution and delivery by Purchaser of this Agreement or any other Purchaser's Documents, the consummation of the transactions contemplated hereby or thereby, or the compliance by Purchaser with any of the provisions hereof or

thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of acceleration, payment, amendment, termination or cancellation under any provision of (i) the certificate of formation and the limited liability company operating agreement (or similar organizational documents) of Purchaser, (ii) any Contract (including but not limited to any Contracts related to financing) or Permit to which Purchaser is a party or by which Purchaser or its properties or assets are bound, (iii) any order of any Governmental Body applicable to Purchaser or by which any of the properties or assets of Purchaser are bound, or (iv) any applicable Law, other than, in the case of clauses (ii), (iii), and (iv), except as would not have or reasonably be expected to have a materially detrimental effect on Purchaser's ability to consummate the transactions contemplated by this Agreement.

(b) Except as set forth in Section 6.3(b) of Purchaser Disclosure Schedule, no Consent, waiver, approval, order, Permit or authorization of, or declaration or filing with, or notification to, any Governmental Body or other Person nor any other Regulatory Approval is required on the part of Purchaser in connection with the execution and delivery of this Agreement or Purchaser's Documents, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by Purchaser of any other action contemplated hereby or thereby, or for Purchaser to operate the Purchased Assets.

6.4 No HSR Filing. Purchaser represents that no filings are required by the parties or on their behalf under the HSR Act relating to this Agreement and the transactions contemplated hereby. The transactions contemplated by this Agreement fall within Section 7A(a)(2)(B)(i) of the Clayton Act, 15 U.S.C. § 18(a)(2)(B)(i), and is exempt from the notification requirement of the HSR Act pursuant to 16 C.F.R. Section 802.63(a).

6.5 Brokers and Finders. Purchaser has not employed, and to the knowledge of Purchaser, no other Person has made any arrangement by or on behalf of Purchaser with, any investment banker, broker, finder, consultant or intermediary in connection with the transactions contemplated by this Agreement which would be entitled to any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby.

6.6 Adequate Assurances Regarding Assigned Contracts. As of the Sale Hearing, Purchaser will be capable of satisfying the conditions set forth in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts.

6.7 Sufficiency of Financing. Prior to the Auction if there is to be one, and if not, the Closing, Purchaser will have (i) received an executed direction to Credit Bid from the Pre-Petition Agent and an Assignment and Assumption Agreement from the Pre-Petition Agent pursuant to which the Pre-Petition Agent has assigned its right to receive the Purchased Assets,

and (ii) cash on hand sufficient to pay the DIP Repayment Amount, resulting in Purchaser having the ability, as of the Closing, to consummate the transactions contemplated by this Agreement.

## ARTICLE VII.

### EMPLOYEES

7.1 Employee Matters. Effective as of the Closing, Purchaser shall offer employment to each Employee of the Sellers in the same position in and at the same base salary at which such Employee is employed by such Seller immediately prior to the Closing. Each Employee to whom Purchaser has made an offer of employment pursuant to this Section 7.1 and that has accepted such offer and commences employment with Purchaser or its Affiliates on or following the Closing Date is hereinafter referred to as a “Transferred Employee”; provided, however, that each Employee to whom Purchaser has made an offer of employment pursuant to this Section 7.1 who is on a leave of absence as of the Closing Date shall not become a Transferred Employee unless such Employee returns to active service within six (6) months following the Closing Date and, except pursuant to any Assumed Plan, Purchaser shall have no Liability with respect to any such Employee prior to the date he or she becomes a Transferred Employee.

7.2 Excluded Plans. Sellers shall be solely responsible and shall retain all Liabilities with respect to the Excluded Plans.

7.3 COBRA Coverage. Purchaser shall be responsible for providing, and shall assume all Liabilities in respect of, the provision of continued medical coverage pursuant to its group health plans for employees under Part 6, Title I of ERISA and Section 4980B of the Code (“COBRA Continuation Coverage”), for all current and former employees of Sellers with respect to any “qualifying event” (within the meaning of COBRA) incurred on or prior to the Closing Date or otherwise arising as a result of the transactions described herein. Immediately prior to the Closing, Sellers will provide to Purchaser a list of all Employees (i) terminated by Sellers within the ninety (90) days immediately preceding the Closing, and (ii) receiving COBRA Continuation Coverage on the Closing Date.

7.4 WARN Act Liability. Sellers shall be solely responsible for any obligations under the WARN Act, or under any similar provision of any federal, state, provincial, regional, foreign or local Law, rule or regulation that might arise on or prior to the Closing as a consequence of the transactions contemplated by this Agreement, including providing any notice of layoff or plant closing, or maintaining the Employees on Sellers’ payroll for any period of notice required by the WARN Act, other than those incurred on or prior to the Closing Date to the extent directly caused at the written direction of Purchaser, which Liabilities Purchaser shall assume (the “WARN Act Liabilities”).

7.5 No Third-Party Beneficiaries.

(a) Notwithstanding anything set forth in this ARTICLE VII, nothing contained herein, whether express or implied, (i) shall be treated as an amendment or other modification of any Seller Plan or (ii) shall limit the right of Purchaser or any of its Affiliates to amend, terminate or otherwise modify any Assumed Plan following the Closing Date.

(b) Sellers and Purchaser acknowledge and agree that all provisions contained in this ARTICLE VII with respect to current or former Employees are included for the sole benefit of Sellers and Purchaser, and that nothing herein, whether express or implied, shall create any third party beneficiary or other rights (i) in any other Person, including any current or former employees, directors, officers or consultants of Sellers, any participant in any Seller Plan, or any dependent or beneficiary thereof, or (ii) to continued employment with Purchaser or any of its Affiliates.

**ARTICLE VIII.**

**BANKRUPTCY COURT MATTERS**

8.1 Bankruptcy Court Filings.

(a) Sellers shall use commercially reasonable efforts to pursue the entry of the Sale Procedures Order and the Sale Order. Sellers shall use commercially reasonable efforts to comply (or obtain an order from the Bankruptcy Court waiving compliance) with all requirements under the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules in connection with obtaining entry of the Sale Procedures Order and the Sale Order. The Sale Procedures Order, the Sale Order and any other Final Orders of the Bankruptcy Court relating to the transactions contemplated herein shall be in form and substance satisfactory to Purchaser, and Sellers shall consult with Purchaser and its Representatives concerning the bankruptcy proceedings in connection therewith, and provide Purchaser with copies of applications, pleadings, notices, proposed Final Orders and other documents relating to such proceedings as soon as reasonably practicable.

(b) Purchaser agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Procedures Order and the Sale Order and a finding of adequate assurance of future performance by Purchaser under the Assigned Contracts, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a “good faith” purchaser under section 363(m) of the Bankruptcy Code; provided, however, in no event shall Purchaser or Sellers be required to agree to any amendment of this Agreement.

(c) No later than July 19, 2012, Sellers shall file a motion seeking entry by the Bankruptcy Court of the Sale Motion and shall use commercially reasonable efforts to have the Bankruptcy Court enter the Sale Procedures Order by July 26, 2012, subject to availability of the Bankruptcy Court (and only to the extent permitted by the Bankruptcy Rules and the Local Bankruptcy Rules).

8.2 Sale Order. Sellers shall use commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Sale Order no later than August 13, 2012. The Sale Order shall provide that:

(a) the Purchased Assets shall be sold to Purchaser free and clear of all Encumbrances (except for Permitted Encumbrances), and the Assumed Liabilities shall be assumed by Purchaser, in each case, pursuant to this Agreement;

(b) Sellers shall assign to Purchaser all of the Assigned Contracts as of the Closing Date pursuant and subject to the Sale Order and shall be authorized to assign to the Purchaser all Assigned Contracts designated after the Closing Date;

(c) Seller shall, on or before the Closing Date or such other date ordered by the Bankruptcy Court, pay any Cure Costs to the appropriate parties as ordered by the Bankruptcy Court so as to permit the assumption and assignment of each applicable Assigned Contract;

(d) Purchaser shall be found to have demonstrated and established any adequate assurance of future performance before the Bankruptcy Court with respect to the Assigned Contracts;

(e) the transactions contemplated by this Agreement and the Ancillary Agreements were negotiated at arm's length, that Purchaser acted in good faith in all respects and Purchaser shall be found to be a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code;

(f) the terms and conditions of the sale of the Purchased Assets to Purchaser as set forth herein are approved;

(g) Sellers hold good and indefeasible title to the Purchased Assets;

(h) that the total consideration provided by Purchaser hereunder constitutes fair value for the Purchased Assets;

(i) Purchaser is acquiring none of the Excluded Assets;

(j) notice of the transactions contemplated hereby was adequate and proper under the circumstances and to the extent possible was provided to all creditors and



parties in interest required to receive such notice pursuant to the Bankruptcy Rules, the Local Bankruptcy Rules, or Final Order of the Bankruptcy Court, including any and all creditors holding Encumbrances on the Purchased Assets or any of them;

(k) Sellers are authorized and directed to consummate the transactions contemplated by this Agreement and to comply in all respects with the terms of this Agreement;

(l) the sale process conducted by Sellers and/or its Representatives (including any auction or bid solicitation process) was non-collusive, fair and reasonable and was conducted in good faith;

(m) Purchaser and Sellers did not engage in any conduct which would allow the transactions contemplated by this Agreement to be set aside pursuant to section 363(n) of the Bankruptcy Code;

(n) to the fullest extent permissible under the Bankruptcy Code and applicable Law, Purchaser shall have no Liability or responsibility for any Liability or other obligation of Sellers arising under or related to the Purchased Assets other than as expressly set forth in this Agreement, including successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor Law, de facto merger or substantial continuity, and that Purchaser is not a successor to, or otherwise liable for, the debts or obligations of Sellers, including without limitation, any claims for injuries or losses suffered to any persons or property for incidences or circumstances that occurred before the Closing, any environmental claims or any labor or employment claims other than as specifically set forth in this Agreement with respect to the Assumed Liabilities, and that any action threatened or commenced or claim made against Purchaser in respect of the Excluded Liabilities of Sellers is and shall be enjoined;

(o) the Sale Order is binding upon any successors to Sellers, including any trustees in respect of Sellers or the Purchased Assets in the case of any proceeding under Chapter 7 of the Bankruptcy Code;

(p) Sellers, Purchaser, and any other party thereto shall be authorized to enter into the Transition Services Agreement; and

(q) Purchaser shall have no Liability for any Excluded Liability.

In the event the Sale Order is appealed, Sellers and Purchaser shall use their respective commercially reasonable efforts to defend such appeal at their own cost and expense through Closing, and Purchaser shall fund any such reasonable out-of-pocket expenses incurred by Sellers after Closing promptly after demand therefor and receipt of supporting invoices, provided that Purchaser has consented to such costs in writing prior to their incurrence, and Sellers shall

be under no obligation to take any action unless and until such written consent is delivered.

## ARTICLE IX.

### COVENANTS AND AGREEMENTS

#### 9.1 Conduct of Business of Sellers.

(a) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 4.4 or the Closing, except (1) for any limitations on operations imposed by, or actions required by, the Bankruptcy Court or the Bankruptcy Code, (2) as required by applicable Law, (3) as otherwise expressly contemplated by this Agreement, (4) as set forth on Schedule 9.1, (5) with the prior written consent of Purchaser (such consent not to be unreasonably withheld, conditioned or delayed), (6) as specifically permitted by any order of the Bankruptcy Court or the DIP Loan Documents, each Seller shall:

(i) conduct the Business and operate and maintain the Purchased Assets in the Ordinary Course of Business;

(ii) use commercially reasonable efforts to (x) preserve the goodwill of and relationships with Governmental Bodies, customers, suppliers, vendors, lessors, licensors, licensees, contractors, distributors, agents, Employees and others having business dealings with the Business; and (y) comply with all applicable Laws and, to the extent consistent therewith, preserve their assets (tangible and intangible), including the IT Assets.

(b) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 4.4 or the Closing, except (1) for any limitations on operations imposed by, or actions required or specifically permitted by, the Bankruptcy Court or the Bankruptcy Code, (2) as required by applicable Law, (3) as otherwise expressly contemplated by this Agreement, (4) as set forth on Schedule 9.1, or (5) with the prior written consent of Purchaser (such consent not to be unreasonably withheld, conditioned or delayed), or (6) as specifically permitted by the DIP Order, the DIP Budget, the DIP Loan Documents, or order of the Bankruptcy Court, each Seller shall not:

(i) mortgage, pledge or subject to any Encumbrance (other than a Permitted Encumbrance) the Business or any of the Purchased Assets;

(ii) sell, assign, license, transfer, convey, lease, surrender, relinquish or otherwise dispose of any of the Purchased Assets, except to the extent specifically permitted by the DIP Loan Documents or this Agreement or the sale of Inventory and obsolete assets in the Ordinary Course of Business;

(iii) cancel or compromise any debt or claim or waive or release any right of any Seller that constitutes a Purchased Asset or otherwise relates to the Business;

(iv) (A) enter into any new Business Contract or renew any existing Business Contract requiring payments by Sellers or to Sellers in excess of \$10,000 individually, or \$50,000 in the aggregate over the twelve month period immediately following the execution thereof or (B) cancel, terminate, amend, modify, supplement or rescind any Business Contract or any terms of any Business Contract, except for the purpose of effecting any changes in applicable Law or implementing regulatory requirements or in response to a breach or default by the other party thereto or (in consultation with Purchaser) in order to renew such contracts in the Ordinary Course of Business;

(v) abandon any rights under any Business Contract or breach any Business Contract;

(vi) incur or permit to be incurred any Liability (other than in connection with the performance of any Non-Assumed Contracts and purchase orders, service orders, and sale orders entered into in the Ordinary Course of Business, in accordance with past practices) that would be an Assumed Liability, or would increase the amount of an Assumed Liability except (i) to the extent permitted by the DIP Loan Documents or (ii) entered into in the Ordinary Course of Business and not requiring payment over the twelve month period in excess of \$10,000 individually, or \$50,000 in the aggregate;

(vii) terminate any Employee (other than for cause) or hire any Person to replace any such Employee;

(viii) increase the salary, bonus, severance arrangements, or other compensation including fringe, incentive or other benefits of such Employee or amend, modify, terminate or enter into any employment or severance Business Contract except (A) with respect to any Employee set forth on Schedule 9.1(b)(viii), or (B) with respect to all other Employees, take any of the foregoing actions other than in the Ordinary Course of Business;

(ix) amend or terminate any Assumed Plan except as required by any collective bargaining agreement or applicable Law;

(x) (A) recognize any union or other collectively bargaining representative with respect to any Employees, or (B) enter into or amend any collective bargaining agreement;

(xi) file any amended Tax Return that is material in nature, settle or compromise any material Tax liability, enter into a closing agreement with respect to

Taxes that are material in nature or agree to an extension of the period for assessment, reassessment or collection of any material Taxes, except, in each case, for any such actions that relate to a Tax that is imposed on or measured by reference to income or profits of Holdings, SP Newsprint, or SEP Technologies, L.L.C.;

(xii) institute, settle or agree to settle or modify in any manner that is adverse to the Business, Purchaser or the Purchased Assets, any litigation, action or proceeding before any court or Governmental Body relating to the Purchased Assets and that is or will be an Assumed Liability except any such litigation, action or proceeding involving payment, as the sole remedy, by or to Sellers (including any applicable release, waiver or Consent) that is less than \$10,000 individually and \$50,000 in the aggregate;

(xiii) With respect to Permits that are valid and in full force and effect as of the Execution Date (A) take any action that jeopardizes the validity of or results in the revocation, surrender or forfeiture of, any such Permits necessary or desirable for the continued operation of the Business, (B) fail to use commercially reasonable efforts to prosecute with due diligence any pending applications with respect to such Seller Permits, including any renewals thereof, (C) with respect to such Permits, fail to make all filings and reports and pay all fees necessary or reasonably appropriate for the continued operation of the Business of Sellers, as and when such approvals, Consents, Permits, licenses, filings, or reports or other authorizations are necessary or appropriate or (D) fail to initiate appropriate steps to renew any such Permits held by Sellers that are scheduled to terminate prior to or within sixty (60) days after the Closing or to prosecute any pending applications for any Permit;

(xiv) transfer, assign permit to lapse or abandon or grant any rights or modify any existing rights under any Seller Intellectual Property other than the non-exclusive licensing of Intellectual Property in the Ordinary Course of Business, or enter into any settlement regarding the breach or infringement, misappropriation, dilution or other violation of any Intellectual Property right;

(xv) make, commit to make or incur any Liability for capital expenditures except to the extent permitted by the DIP Loan Documents or the DIP Budget;

(xvi) declare, set aside, make or pay any dividend or other distribution in respect of capital stock, membership interests or other equity interests of Sellers, or repurchase, redeem or otherwise acquire any outstanding shares of capital stock, membership interests or other securities of, or other ownership interests in, Sellers;

(xvii) (A) make any decision or take any action relating to any allocation or supplying of goods or services as between Sellers, on the one hand, and White Birch, on the other hand, from existing customers of Sellers (that is not consistent in all material respects with historical practice with respect to such customer), (B) enter into any

material transaction with the Brant Parties, (C) make any decision concerning the allocation or supplying of goods or services as between Sellers and White Birch from new or former customers;

(xviii) replace, remove or terminate (other than for cause) the Chief Restructuring Officer; or

(xix) enter into any Contract to do any of the foregoing or agree to do anything prohibited by this Section 9.1(b).

(c) Promptly after the Closing Date, Sellers will (i) prepare and file with the appropriate Governmental Body appropriate documents, including, but not limited to, articles of amendment, changing their name so as to effectuate the transfer of the Purchased Names and any of like names or combinations of words or derivations thereof to Purchaser and promptly deliver evidence of such name change to Purchaser and (ii) cease using the Purchased Names, and any derivations thereof.

## 9.2 Access to Information.

(a) Each of Sellers agrees that, between the Execution Date and the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, Purchaser shall be entitled to (i) direct and commercially reasonable access to Sellers' Chief Restructuring Officer, managers, officers, employees, counsel, accountants, financial advisors, and other authorized representatives, agents and contractors (each a "Representative," and collectively, the "Representatives"), and with respect only to matters relating to Sellers, to Brant Industries' Representatives providing services to Sellers, (ii) have such reasonable access to and make such reasonable investigation and examination of the books and records, properties, businesses, assets, Employees, accountants, auditors, counsel and operations of Sellers as Purchaser's Representatives may reasonably request and (iii) take all action necessary or appropriate to be fully informed with respect to Sellers' financial condition, operations, customers and business prospects; provided, however, that Sellers shall not be obligated to provide information that they are not permitted to provide under applicable Law. Any such investigations and examinations shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances, including Sellers' right to have its Representatives accompany Purchaser upon the Real Property at the time of any inspection or examination and shall be subject to restrictions under applicable Law. Each of Sellers shall use commercially reasonable efforts to cause its Representatives and Brant Industries to cooperate in good faith with Purchaser and Purchaser's Representatives in connection with such investigations and examinations, and Purchaser shall, and shall use its commercially reasonable efforts to cause its Representatives to, reasonably cooperate with such Sellers and their respective Representatives and shall use their commercially reasonable efforts to minimize any disruption to the Business. In addition, each of Sellers shall use commercially reasonable efforts to cause the Brant Parties providing

services to Sellers to turn over to Sellers, prior to the Closing Date, (a) any property of Sellers constituting the Purchased Assets, (b) any documents relating solely to Sellers constituting the Purchased Assets or (c) copies of any documents relating in part to Sellers of the Business constituting the Purchased Assets, redacted to exclude information not related to Sellers, that are in the possession or control of the applicable Brant Party In addition, each of Sellers shall use commercially reasonable efforts to cause the Brant Parties (subject to any applicable provisions of the Transition Services Agreement) to turn over to Purchaser on or after the Closing Date, (a) any property of Sellers constituting the Purchased Assets, (b) any documents relating solely to Sellers constituting the Purchased Assets or (c) copies of any documents relating in part to Sellers of the Business constituting the Purchased Assets, redacted to exclude information not related to Sellers, that are in the possession or control of the applicable Brant Party.

(b) From and after the Closing Date, Sellers shall give Purchaser and Purchaser's Representatives reasonable access during normal business hours to the offices, facilities, properties, assets, Employees, Documents, personnel files and books and records of Sellers pertaining to the Business. In connection with the foregoing, Sellers shall use commercially reasonable efforts to cause their Representatives to furnish, at Purchaser's expense, to Purchaser such financial, technical, operating and other information pertaining to the Business as Purchaser's Representatives shall from time to time reasonably request and to discuss such information with such Representatives. Without limiting the generality of the foregoing, Sellers shall, and shall use commercially reasonable efforts to cause each of their Affiliates to, cooperate with Purchaser as may reasonably be requested by Purchaser for purposes of (i) enabling an independent accounting firm selected by Purchaser to conduct an audit of the Business, including access to Sellers' independent auditors' working papers pertaining to the Business or the Purchased Assets; (ii) undertaking, with the consent of Sellers, which consent shall not be unreasonably withheld or delayed, any study of the condition or value of the Purchased Assets including any environmental assessment; (iii) undertaking any study relating to Sellers' compliance with Laws; and Sellers acknowledge that information or access may be requested and used for such purpose; and (iv) preparing for, and the defense of, any Legal Proceeding (whether or not disclosed in the Seller Disclosure Schedule) filed or claimed against Sellers or any of their Affiliates or any of their respective agents, directors, officers and employees of Sellers and their Affiliates, whether currently pending or asserted in the future, concerning the operation or conduct of the Business prior to the Closing Date; provided, however, that the access, and related rights to investigate and examine, granted to Purchaser and its Representatives pursuant to this Agreement shall not constitute nor be construed as a waiver of any applicable legal privilege of Sellers or any Seller, including the attorney-client and work product privileges. All requests for documents, information, meetings and discussions under this Section 9.2 shall initially be made through AP Services, LLC or AlixPartners, LLP. Any reasonable out-of-pocket costs incurred by Sellers in compliance with this Section 9.2 shall be borne by Purchaser and payable promptly after demand therefor and receipt of supporting invoices, provided that Purchaser has consented to such costs in writing prior to their incurrence, and

Sellers shall be under no obligation to take any action unless and until such written consent is delivered.

(c) From and after the Closing Date, Purchaser shall give Sellers and Sellers' Representatives reasonable access during normal business hours to the offices, facilities, properties, assets, Employees, Documents (including any Documents included in the Purchased Assets), personnel files and books and records of Purchaser pertaining to (i) the conduct of the Business or ownership of the Purchased Assets prior to the Closing Date or (ii) the Excluded Assets and Liabilities. In connection with the foregoing, Purchaser shall use commercially reasonable efforts to cause its Representatives to furnish to Sellers such financial, technical, operating and other information pertaining to (i) the conduct of the Business or ownership of the Purchased Assets prior to the Closing Date, or (ii) the Excluded Assets and Liabilities, in each case, as Sellers' Representatives shall from time to time reasonably request and to discuss such information with such Representatives. Without limiting the generality of the foregoing, Purchaser shall, and shall use commercially reasonable efforts to cause each of its Affiliates to, cooperate with Sellers as may reasonably be requested by Sellers for purposes of enabling an independent accounting firm selected by Sellers to conduct an audit of the Business for periods prior to the Closing Date, including access to Purchaser's independent auditors' working papers pertaining to the Business or the Purchased Assets.

(d) No information received pursuant to an investigation made under this Section 9.2 shall be deemed to (i) qualify, modify, amend or otherwise affect any representations, warranties, covenants or other agreements of Sellers set forth in this Agreement or any certificate or other instrument delivered to Purchaser in connection with the transactions contemplated hereby, (ii) amend or otherwise supplement the information set forth in the Seller Disclosure Schedule, (iii) limit or restrict the remedies available to the parties under applicable Law arising out of a breach of this Agreement or otherwise available at Law or in equity, or (iv) limit or restrict the ability of either party to invoke or rely on the conditions to the obligations of the parties to consummate the transactions contemplated by this Agreement set forth in ARTICLE X.

9.3 Assignability of Certain Contracts, Etc.. To the extent that the assignment to Purchaser of any Assigned Contract, Assumed Real Property Lease, Assumed Personal Property Lease or Assumed Plan pursuant to this Agreement is not permitted without the Consent of a third party and such restriction cannot be effectively overridden or canceled by the Sale Order or other related order of the Bankruptcy Court, then this Agreement will not be deemed to constitute an assignment of or an undertaking or attempt to assign such Business Contract or any right or interest therein unless and until such Consent is obtained; provided, however, that the parties hereto will use their commercially reasonable efforts, before the Closing, to obtain all such Consents; provided, further, that if any such Consents are not obtained prior to the Closing Date, each Seller shall, with respect to each such Assigned Contract, Assumed Real Property Lease, Assumed Personal Property Lease or Assumed Plan, as applicable, from and after the

Closing and until the earlier to occur of (x) the date on which such applicable Consent is obtained and (y) the date on which such Seller liquidates and ceases to exist, use commercially reasonable efforts during the term of such Assigned Contract, Assumed Real Property Lease, Assumed Personal Property Lease or Assumed Plan, as applicable, to (i) provide to Purchaser or its Affiliates, as applicable, the benefits under such Business Contract, (ii) cooperate in any reasonable and lawful arrangement (including holding such Business Contract in trust for Purchaser or its Affiliates, as applicable, pending receipt of the required Consent) designed to provide such benefits to Purchaser or its Affiliates, as applicable, and (iii) enforce for the account of Purchaser or its Affiliates, as applicable, any rights of such Seller under such Business Contract (including the right to elect to terminate such Business Contract in accordance with the terms thereof upon the direction of Purchaser). Purchaser shall be responsible for performing all obligations under such Assigned Contract, Assumed Real Property Lease, Assumed Personal Property Lease or Assumed Plan, as applicable, required to be performed by Sellers on or after the Closing Date to the extent that if such Business Contract were assumed by Purchaser as of the Closing Date the obligations thereunder would have constituted an Assumed Liability. Any reasonable out-of-pocket costs associated with compliance with this Section 9.3 shall be the obligation of the Purchaser payable upon demand thereof and receipt of supporting invoices, provided that Purchaser has consented to such costs in writing prior to their incurrence, and Sellers shall be under no obligation to take any action unless and until such written consent is delivered.

9.4 Bankruptcy Court Approval. Purchaser agrees to cooperate with Sellers to satisfy the requirement of adequate assurance of future performance, including as required by Section 365(f)(2)(B) of the Bankruptcy Code prior to the Sale Hearing.

9.5 Further Agreements. Purchaser authorizes and empowers Sellers from and after the Closing Date to receive and to open all mail received by Sellers relating to the Purchased Assets, the Business or the Assumed Liabilities and to deal with the contents of such communications in accordance with the provisions of this Section 9.5. Each of Sellers shall (a) promptly deliver to Purchaser any mail or other communication received by them after the Closing Date and relating to the Purchased Assets, the Business or the Assumed Liabilities, (b) promptly transfer in immediately available funds to Purchaser any cash, electronic credit or deposit received by such Seller but solely to the extent that such cash, electronic credit or deposit are Purchased Assets and (c) promptly forward to Purchaser any checks or other instruments of payment that it receives but solely to the extent that such checks or other instruments are Purchased Assets. Purchaser shall (x) promptly deliver to Sellers any mail or other communication received by it after the Closing Date and relating to the Excluded Assets or the Excluded Liabilities, (y) promptly wire transfer in immediately available funds to Sellers, any cash, electronic credit or deposit received by Purchaser but solely to the extent that such cash, electronic credit or deposit are Excluded Assets and (z) promptly forward to Sellers any checks or other instruments of payment that it receives but solely to the extent that such checks or other instruments are Excluded Assets. From and after the Closing Date, Sellers shall refer all inquiries with respect to the Business, the Purchased Assets and the Assumed Liabilities to Purchaser, and



Purchaser shall refer all inquiries with respect to the Excluded Assets and the Excluded Liabilities to Sellers.

9.6 Further Assurances.

(a) Subject to the terms and conditions of this Agreement (including Section 8.2) and applicable Law, Sellers and Purchaser shall use their respective commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement as soon as practicable, and shall coordinate and cooperate with each other in exchanging information, keeping the other party reasonably informed with respect to the status of the matters contemplated by this Section 9.6 and supplying such reasonable assistance as may be reasonably requested by the other party in connection with the matters contemplated by this Section 9.6. Without limiting the foregoing, following the Execution Date and until the date on which the Closing occurs or this Agreement is terminated in accordance with Section 4.4, the parties shall use their commercially reasonable efforts to take the following actions but solely to the extent that such actions relate to the transactions contemplated by this Agreement:

(i) obtain any required Consents, approvals (including Regulatory Approvals), waivers, Permits, authorizations, registrations, qualifications or other permissions or actions by, and give all necessary notices to, and make all filings with, and applications and submissions to, any Governmental Body or third party and provide all such information concerning such party as may be necessary or reasonably requested in connection with the foregoing;

(ii) avoid the entry of, or have vacated or terminated, any injunction, decree, order, or judgment that would restrain, prevent, or delay the consummation of the transactions contemplated hereby;

(iii) take any and all reasonably necessary steps to avoid or eliminate every impediment under any applicable Law that is asserted by any Governmental Body with respect to the transactions contemplated hereby so as to enable the consummation of such transactions to occur as expeditiously as possible;

(iv) execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and cooperate and take such further actions, as may be reasonably necessary or appropriate to transfer and assign fully to Purchaser and its successors and assigns, all of the Purchased Assets, and for Purchaser and its successors and assigns, to assume the Assumed Liabilities, and to otherwise make effective the transactions contemplated hereby and thereby;

(v) negotiate in good faith with the Brant Parties to enter into the Transition Services Agreement; and

(vi) take any and all actions necessary to effect the transfer of all of the Permits and include all such Permits in the Purchased Assets.

(b) Subject to the terms and conditions of this Agreement, the parties shall not take any action or refrain from taking any action the effect of which would be to delay or impede the ability of Sellers and Purchaser to consummate the transactions contemplated by this Agreement, unless in such party's reasonable judgment, taking such action or refraining from taking such action is consistent with achieving the ultimate objective of consummating the transactions contemplated hereby or is required by applicable Law; provided, however, that as provided in Section 12.11, no past, present or future director, officer, employee, advisor, lawyer, agent, Representative, incorporator, member, partner or equityholder of any Seller shall have any Liability for breach of any obligations or liabilities of any Seller under this Section 9.6(b).

(c) Following the Execution Date and until the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, Sellers, on the one hand, and Purchaser, on the other hand, shall (i) keep each other reasonably informed as to the status of matters relating to the consummation of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Sellers or Purchaser or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement and (ii) give prompt notice to the other parties hereto, of (A) any notice or other communication from any Person alleging that the Consent of such Person which is or may be required in connection with the transactions contemplated by this Agreement is not likely to be obtained prior to the Closing and (B) any written objection or proceeding that challenges the transactions contemplated hereby or the entry of the approval of the Bankruptcy Court. To the extent permitted by applicable Law, Sellers shall give prompt notice to Purchaser of (w) any notice of any alleged violation of Law applicable to any Seller, (x) the commencement of any investigation, inquiry or review by any Governmental Body with respect to the Business or that any such investigation, inquiry or review, to the Knowledge of any Seller, is contemplated, (y) the infringement or unauthorized use by any Person of any material Seller Intellectual Property (of which any Seller has Knowledge) and (z) the execution of any Business Contract entered into other than in the Ordinary Course of Business (and Sellers shall deliver or make available a copy thereof to Purchaser).

(d) In addition to the foregoing, following the Execution Date and until the date on which the Closing occurs or this Agreement is terminated in accordance with Section 4.4, as promptly as practicable after any request by Purchaser, Sellers shall (i) provide such additional information, reports, consultant's reports (including environmental

reports), diligence materials, financial and operational data (including customer specific information) and other documents and information as may be reasonably necessary or desirable in connection with the transactions contemplated by this Agreement, and (ii) use their commercially reasonable efforts to cause the Brant Parties providing service to Sellers to, as promptly as practicable after request by Sellers or Purchaser, turnover to Sellers, prior to the Closing, or Purchaser, after the Closing, any property of Sellers that is in the possession or control of the applicable Brant Party.

(e) Notwithstanding anything in this Agreement to the contrary, the obligations of Sellers pursuant to this Section 9.6 shall be subject to any orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Chapter 11 Case), and each of Sellers' obligations as a debtor in possession to comply with any order of the Bankruptcy Court (including the Sale Procedures Order and the Sale Order) and Sellers' fiduciary duties, including to seek and obtain the highest or otherwise best price for the Business.

(f) Notwithstanding anything in this Agreement to the contrary, nothing in this Section 9.6 shall create any obligation on the part of Purchaser, the DIP Lenders or the DIP Agent to amend the DIP Loan Documents to increase any Seller's borrowing capacity thereunder prior to the Closing, including in the manner described in Section 10.1(b); provided that the obligation of the DIP Lenders and the DIP Agent to provide any such increased borrowing capacity shall be governed by the terms of the applicable amendment to the DIP Loan Documents that is executed and delivered by the parties thereto and approved by order of the Bankruptcy Court.

9.7 Preservation of Records. Sellers and Purchaser agree that each of them shall preserve and keep the records (including, for the avoidance of doubt, Tax Returns and Tax records) held by them or their Affiliates relating to the Business, the Purchased Assets and Assumed Liabilities (i) for a period of six (6) years from the Closing Date or (ii) in the case of Sellers, if prior to the expiration of such six (6) year period, until the liquidation and winding up of Sellers' estates, and shall make such records available, at Purchaser's sole expense, to the other party as may be reasonably required by such other party in connection with any insurance claims by, actions or tax audits against or governmental investigations of Sellers or Purchaser or any of their respective Affiliates or in order to enable Sellers or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. Notwithstanding the foregoing, Purchaser shall have no obligation to pay any costs or expenses incurred by Sellers in connection with maintaining or storing such records. In the event Sellers or Purchaser wishes to destroy such records at the end of such period, such party shall first give sixty (60) days prior written notice to the other party and such other party shall have the right at its option and expense, upon prior written notice given to such party within such sixty (60) day period, to take possession of the records within one hundred and twenty (120) days after the date of such notice, or such shorter period as the liquidation and winding up of Sellers' estates shall permit.

9.8 Publicity. Each of Sellers and Purchaser shall not issue a press release or make any other public announcement concerning this Agreement or the matters or transactions contemplated hereby without the prior written approval of the other parties hereto (which approval shall not be unreasonably withheld, conditioned or delayed).

9.9 Communication with Significant Customers. Promptly following the Bankruptcy Court's entry of the Sale Procedures Order, Sellers shall send a letter to the Contract Customers, in form and substance reasonably satisfactory to Sellers and Purchaser, advising each such Contract Customer about the existence, but not the terms, of this Agreement and the proposed transfer of such Contract Customer's account and the underlying Assigned Contract from Sellers to Purchaser. Following the Bankruptcy Court's entry of the Sale Procedures Order, but prior to the entry of the Sale Order, Purchaser shall not contact or meet with any of Sellers' customers, except with the (i) Largest Customers; provided that Purchaser shall provide at least two (2) Business Days' prior written notice (including by e-mail) to Russ Lowder of such proposed contact or meeting, and (ii) Contract Customers other than the Largest Customers, but only to the extent reasonably necessary to provide adequate assurance of future performance in accordance with Section 365(b)(1)(B) of the Bankruptcy Code; provided that Purchaser shall provide written notice (including by e-mail) thereof to Sellers as soon as reasonably practicable thereafter. Following the Bankruptcy Court's entry of the Sale Order, with the consent of Sellers, which consent shall not be unreasonably withheld, conditioned or delayed, Purchaser shall have the right to contact and meet with any of Sellers' customers; provided that Purchaser shall provide Sellers with reasonable prior written notice (including by e-mail) of, and a reasonable opportunity for Russ Lowder to participate in, any such contact or meeting.

9.10 DIP Loan Documents. Notwithstanding anything in this Agreement to the contrary, between the date of this Agreement and the earlier of the termination of this Agreement in accordance with Section 4.4 and the Closing Date, it shall not be a breach of this Agreement for, and nothing in this Agreement shall (or shall be deemed to) limit or affect the ability of, Sellers to incur Indebtedness or borrow funds under the DIP Indebtedness or the DIP Loan Documents, including for the purpose of paying Cure Costs in accordance with the terms and conditions of the DIP Loan Documents.

9.11 Insurance Policies. Without limiting the generality of Section 5.20, and subject to Section 2.2(d), Sellers shall:

(a) cause the assignment of all rights of any of Sellers in and to the Insurance Policies and Third Party Insurance Policies set forth on Schedule 2.1(a), to the extent related to the Business (to the extent not specifically related to the Excluded Assets) or the Purchased Assets, to Purchasers as soon as reasonably practicable (and in any event within seven (7) days following the Closing);

(b) to the extent Purchasers are not Named Insureds or otherwise do not have the rights to directly make claims under the Insurance Policies or Third Party Insurance

Policies, provide Purchasers with all the rights of Sellers to make claims thereunder related to the Business (to the extent not specifically related to the Excluded Assets) or the Purchased Assets;

(c) use commercially reasonable efforts to maintain each Insurance Policy (or in the case of any Third Party Insurance Policy, to cause the applicable vendor, contractor or third party services provider to maintain) in full force and effect through such Insurance Policy's scheduled expiration date in accordance with its terms and provide Purchasers with prompt notice of any event that would reasonably be expected to cause any such Insurance Policy other than any Third Party Insurance Policy to cease to be so in full force and effect, including the reduction in the total aggregate limits of Liability applicable to the excess Liability or the directors and officers Liability insurance programs;

(d) take all action and furnish all assistance as is reasonably necessary to assist Purchasers in tendering and pursuing claims including but not limited to settling, compromising or modifying coverage, or establishing the right to make claims with respect to the Business (to the extent not specifically related to the Excluded Assets) or Purchased Assets under the Insurance Policies and Third Party Insurance Policies;

(e) promptly remit to Purchasers all net proceeds and recoveries under the Insurance Policies and Third Party Insurance Policies with respect to the Business (to the extent not specifically related to the Excluded Assets) or the Purchased Assets;

(f) not take or permit any action that would affect the rights of Purchasers with respect to the Insurance Policies or Third Party Insurance Policies, including but not limited to any returns of premium under the Insurance Policies or collateral for any of the Insurance Policies including amounts secured by letters of credit;

(g) provide reasonable cooperation and assistance to Purchasers in obtaining comparable insurance policies to the extent any of the Insurance Policies (or any benefits thereunder) at any time prior to the scheduled expiration date become unavailable to Purchasers; and

(h) use commercially reasonable efforts to obtain all approvals, authorizations, Consents, licenses, permissions, waivers and approvals from, and make all notices and filings with, third parties necessary or advisable to accomplish the foregoing.

Notwithstanding any other provision of this Agreement to the contrary, the parties shall be entitled to specifically enforce this Section 9.11.

9.12 Collective Bargaining Agreement. Prior to the Closing, Sellers shall take such reasonable action directed by Purchaser in writing to assist Purchaser to re-negotiate and obtain an amendment to the Labor Agreement, dated April 1, 2008 (the "CBA"), between SP Newsprint Co., Newberg Mill ("Newberg") and the Association of Western Pulp and Paper Workers (the

“Union”) that is reasonably acceptable to Purchaser to eliminate Newberg’s requirement to provide pensions to covered employees under the SP Newsprint Co. Union Pension Plan or any other defined benefit pension plan on or after the Closing Date. Purchaser shall cooperate with Sellers in this effort to the extent reasonably requested. Notwithstanding anything herein to the contrary, Purchaser shall be permitted to independently communicate with the Union, provided that Purchaser shall provide Sellers with reasonable prior written notice of such communication and give Sellers the opportunity to have an Employee of Sellers reasonably acceptable to Purchaser and the CRO (or his AP Services, LLC or AlixPartners, LLP designee) participate in any such communications.

9.13 Cooperation With Title Insurance. Sellers shall, promptly upon the reasonable written request of Purchaser, provide to Purchaser’s title insurance company such evidence of such Seller’s existing title to the Real Property as such Seller may possess prior to the Closing Date. Sellers shall otherwise reasonably cooperate with the title insurance company’s work in connection with this transaction, when and as reasonably requested in writing by Purchaser or the title insurance company, including without limitation the delivery of such affidavits, owner’s statements, and gap undertakings relating to the period of Sellers’ ownership as are customary or otherwise reasonable and as required for Purchaser to obtain title insurance upon request by Purchaser prior to the Closing Date.

9.14 Deemed Consent. For the purposes of this Agreement, the relevant Sellers shall be deemed to have obtained all required Consents in respect of the assignment of any Designated Contracts if, and to the extent that, pursuant to the Sale Order, Sellers are authorized to assume and assign to Purchaser such Designated Contracts pursuant to section 365 of the Bankruptcy Code and any applicable Cure Cost or other obligations hereunder or under the Bankruptcy Code.

9.15 Non-Solicitation of Employees of Brant Parties. Purchaser shall not solicit for employment any employee of the Brant Parties as of the Execution Date for a period of eighteen (18) months from the Execution Date; provided that Purchaser shall not be restricted from (i) making any general solicitation for employees or public advertising of employment opportunities not specifically directed at such persons or hiring any employee who responds to such solicitation or (ii) soliciting any person who leaves the employment of the Brant Parties or is terminated by any of the Brant Parties prior to commencement of such solicitation or (iii) soliciting (or employing) any employee of the Brant Parties in response to such employee’s unsolicited request or application for or inquiry about employment with Purchaser.

9.16 Unknown Administrative Priority Claims. Notwithstanding anything in this Agreement to the contrary, Purchaser shall either (i) provide for payment of, or cause funding to be made available to Sellers sufficient to cover, or (ii) assume all Unknown Administrative Priority Claims, in an aggregate amount not to exceed the Unknown Administrative Priority Claims Cap (for avoidance of doubt, to the extent Purchaser has paid Unknown Administrative Priority Claims in an aggregate amount equal to the Unknown Administrative Priority Claims

Cap, Purchaser shall not be obligated to provide for payment of, or assume any remaining unpaid Unknown Administrative Priority Claims then outstanding (which then outstanding unpaid Unknown Administrative Priority Claims shall constitute Excluded Liabilities pursuant to Section 2.4(x)).

## ARTICLE X.

### CONDITIONS TO CLOSING

10.1 Conditions Precedent to the Obligations of Purchaser and Sellers. The respective obligations of each party to this Agreement to consummate the transactions contemplated by this Agreement are subject to the satisfaction or written waiver, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Sellers and Purchaser in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any statute, rule, regulation, executive order enacted, issued, entered or promulgated by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(b) confirmation that funding under the DIP Credit Agreement has been provided for payment of the Closing Date Administrative Expenses, the Cure Costs (to the extent identified and allowed prior to Closing), and amounts set forth in the Wind-Down Budget.

(c) (i) Purchaser has provided consent to modify Schedule 1.1(h) to address valid and allowable administrative priority claims that become known after the Execution Date and before the Closing Date and (ii) Purchaser and Sellers have agreed to the Wind-Down Budget to address reasonable future expenses that are required to be incurred to effectuate the post-Closing wind-down of the Debtors' affairs; and

(d) the Bankruptcy Court shall have entered the Sale Procedures Order and Sale Order and each of such orders shall be a Final Order and in form and substance reasonably satisfactory to Sellers and Purchaser; provided, however, that Purchaser in its sole discretion may waive the requirement that the Sale Order be a Final Order.

10.2 Conditions Precedent to the Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Sellers in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Purchaser set forth in ARTICLE VI hereof shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties made as

of a certain date, which shall be true and correct as of such date as though made on and as of such date);

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date, and Sellers shall have received a certificate signed by an authorized officer of Purchaser, dated the Closing Date, to the foregoing effect;

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers all of the items set forth in Section 4.3;

(d) all portions of the Purchase Price shall have been delivered in accordance with Section 3.1; and

(e) Purchaser shall have delivered to Sellers appropriate evidence of all necessary corporate action by Purchaser in connection with the transactions contemplated hereby, including: (i) certified copies of resolutions duly adopted by Purchaser's members, board of managers or similar governing body approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by Purchaser of this Agreement; and (ii) a certificate as to the incumbency of officers of Purchaser executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated by this Agreement.

10.3 Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) Sellers shall have delivered to Purchaser (i) a certified copy of the Sale Order (which shall contain, among other things, the terms described in Section 8.2) and (ii) copies of all affidavits of service of the Sale Motion or notice of such motion filed by or on behalf of Sellers (which service shall comply with Section 8.1(c));

(b) the representations and warranties of Sellers set forth in ARTICLE V hereof shall be true and correct in all material respects (without giving effect to any limitation or qualification as to "materiality" or "material adverse effect" set forth in such representations and warranties) as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties made as of a certain date, which shall be true and correct as of such date as though made on and as of such date);

(c) Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with



by them on or prior to the Closing Date, and Purchaser shall have received a certificate signed by an authorized officer of each Seller, dated such Closing Date, to the forgoing effect;

(d) Except as provided in Section 9.3, all of the Assigned Contracts set forth on Section 10.3(d) of the Seller Disclosure Schedule, shall (i) be in full force and effect on the Closing Date, and (ii) be assignable to Purchaser without the Consent of the counterparty to such Assigned Contract for such assignment (or such Consent shall have been received prior to the Closing Date).

(e) Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 4.2;

(f) Sellers shall have paid all Cure Costs to the appropriate parties as ordered by the Bankruptcy Court so as to permit the assumption and assignment of each applicable Assigned Contract;

(g) Purchaser shall have obtained all of the Seller Permits, and all of the Seller Permits shall be in full force and effect as necessary for Purchaser to continue to conduct the Business in the Ordinary Course of Business immediately after the Closing Date; and

(h) between the Execution Date and the Closing Date, there shall not have occurred a Material Adverse Effect.

10.4 Failure Caused by Party's Failure to Comply. Neither Sellers nor Purchaser may rely on the failure of any condition set forth in Sections 10.1, 10.2 or 10.3, as the case may be, if such failure was caused directly by such party's failure to comply with any provision of this Agreement.

## ARTICLE XI.

### TAXES

#### 11.1 Additional Tax Matters.

(a) Any sales, use, transfer, deed, stamp, documentary stamp or other similar transfer type Taxes and recording charges (each, a "Transfer Tax") which may be payable by reason of the purchase and sale of the Purchased Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated herein shall be borne and timely paid by Purchaser, and Purchaser shall indemnify, defend (with counsel reasonably satisfactory to Holdings), protect, and save and hold Sellers harmless from and against any and all claims, charges, interest or penalties assessed, imposed or asserted in relation to any such Transfer Taxes. Purchaser and Sellers shall cooperate to prepare and

timely file any Tax Returns required to be filed in connection with Transfer Taxes described in the immediately preceding sentence.

(b) For the avoidance of doubt, Purchaser has no rights with respect to the Tax Returns (other than with respect to Tax Returns subject to Section 11.1(a)), including the right to amend such Tax Returns.

(c) Purchaser shall, within one-hundred twenty (120) days after the Closing Date, prepare and deliver to SP Newsprint a schedule allocating the purchase price (as determined for federal income tax purposes) among the Purchased Assets, which Allocation shall be subject to the prior consent of Holdings (not to be unreasonably withheld, conditioned or delayed) (such schedule as agreed, the "Allocation"). Purchaser and Sellers shall report and file all Tax Returns (including amended Tax Returns and claims for refund) consistent with the Allocation, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any Governmental Body or any other proceeding); provided, however, that nothing contained herein shall prevent Purchaser or Sellers from settling any proposed deficiency or adjustment by any Governmental Body based upon or arising out of the Allocation, and neither Purchaser nor Sellers shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Body challenging such Allocation. Purchaser and Sellers shall cooperate in the filing of any forms (including Form 8594 under Section 1060 of the Code) with respect to such Allocation, including any amendments to such forms required as a result of any adjustment to the purchase price (as defined for federal income Tax purposes). If and to the extent the parties are unable to agree on such Allocation, at Purchaser's sole expense, the parties shall retain a mutually agreed upon accounting firm of national repute to resolve such dispute. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 11.1(b) shall survive the Closing without limitation.

## ARTICLE XII.

### MISCELLANEOUS

12.1 Payment of Expenses. Subject to compliance with the DIP Order, and except as otherwise provided in this Agreement and whether or not the transactions contemplated hereby are consummated, Sellers and Purchaser shall, subject to Section 12.13 below, bear their own expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby.

12.2 Non-Survival of Representations and Warranties; Survival of Certain Covenants. The parties hereto agree that the representations and warranties, and the covenants and agreements to be performed prior to the Closing, contained in this Agreement shall not survive, and thus shall expire upon, the Closing. The parties hereto agree that the covenants contained in

this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant or until fully performed.

12.3 Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto and other documents specifically referred to herein, including the Ancillary Agreements) represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. In the event of any irreconcilable conflict between this Agreement and any of the Ancillary Agreements, the provisions of this Agreement shall prevail. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any party shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

12.4 Counterparts. For the convenience of the parties hereto, this Agreement may be executed (by facsimile or PDF signature) in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

12.5 Governing Law. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

12.6 Jurisdiction, Waiver of Jury Trial.

(a) THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER THE PARTIES HERETO AND ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF NEW

YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE SOUTHERN DISTRICT OF THE STATE OF NEW YORK WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY.

(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.7 Notices. Unless otherwise set forth herein, any notice, request, instruction or other document to be given hereunder by any party to the other parties shall be in writing and shall be deemed duly given (i) upon delivery, when delivered personally, (ii) one (1) day after being sent by overnight courier or when sent by facsimile transmission (with a confirming copy sent by overnight courier) or email or other electronic communication, and (iii) three (3) days after being sent by registered or certified mail, postage prepaid, as follows:

If to Sellers, to:

Edward D. Sherrick  
Timothy Butler  
80 Field Point Road  
Greenwich, CT 06830

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

Alan D. Holtz (aholtz@alixpartners.com)  
AlixPartners, LLP  
40 W. 57<sup>th</sup> Street  
New York, NY 10019

Cahill Gordon & Reindel LLP  
80 Pine Street  
New York, NY 10005  
Attn: Joel H. Levitin (JLevitin@cahill.com)  
Richard A. Stieglitz Jr. (rstieglitz@cahill.com)  
Helene R. Banks (HBanks@Cahill.com)  
Facsimile No.: 212-269-5420

If to Purchaser, to:

SPN AcquisitionCo, LLC  
494 Wood Avenue  
Westmount, Quebec H3Y 2822  
Attn: Jay Guardiano (jayg@bellnet.ca)  
Facsimile No.: 514-281-0347

With copies (which shall not constitute effective notice) to:

Latham & Watkins LLP  
233 South Wacker Drive, Suite 5800  
Chicago, IL 60606  
Attn: Rick Levy (Richard.Levy@lw.com)  
Roger Schwartz (Roger.Schwartz@lw.com)  
Zachary A. Judd (Zachary.Judd@lw.com)  
Facsimile No.: 312-993-9767

Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, NY 10036  
Attn: John Bessonette (jbessonette@kramerlevin.com)  
Doug Mannel (dmannel@kramerlevin.com)  
Facsimile No.: 212-715-8000

or to such other Persons or addresses as may be designated in writing by the party to receive such notice.

12.8 Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, subject to entry of the Sale Procedures Order (with respect to the matters covered thereby) and the Sale Order, Sellers, and inure to the benefit of the parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Chapter 11 Case or any successor Chapter 7 case. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by Sellers or Purchaser (by operation of law or otherwise) without the prior written consent of the other parties hereto and any attempted assignment without the required consents shall be void; provided, that Purchaser may assign (i) its rights and obligations hereunder in whole or in part to one or more wholly owned subsidiaries of Purchaser or to one or more third parties that can provide reasonable assurance of its or their ability to perform the applicable rights and obligations under this Agreement and the Ancillary Agreements and (ii) its rights to receive the Purchased Assets under this Agreement and the Ancillary Agreement that have been so assigned to one or more third parties at any time prior to Closing. No assignment of

any obligations hereunder shall relieve the parties hereto of any such obligations. Upon any such permitted assignment, the references in this Agreement to Purchaser shall also apply to any such assignee unless the context otherwise requires.

12.9 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

12.10 Injunctive Relief. The parties agree that damages at Law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement by Sellers, and, accordingly, Purchaser shall be entitled to injunctive relief with respect to any such breach, including without limitation, specific performance of such covenants, promises or agreements or an order enjoining Purchaser from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement by Sellers. The rights set forth in this Section 12.10 shall be in addition to any other rights which Purchaser may have at Law or in equity pursuant to this Agreement. Nothing in this Section 12.10 shall limit the rights of Purchaser to seek or obtain enforcement of the Sale Procedures Order or the Sale Order after the entry of such orders or of this Agreement.

12.11 Non Recourse. No past, present or future director, officer, employee, advisor, lawyer, agent, Representative, incorporator, member, partner or equityholder of any Seller or Purchaser shall have any Liability for any obligations or liabilities of any Seller or Purchaser under this Agreement or Sellers' Documents or Purchaser's Documents of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby.

12.12 No Liability to Pre-Petition Secured Parties or DIP Secured Parties. Notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement, none of the Pre-Petition Agent, the Pre-Petition Lenders, the DIP Agent or the DIP Lenders (a) is making any representations or warranties to Sellers or Purchaser with respect to any matter relating to or otherwise in connection with this Agreement or any Ancillary Agreement, (b) shall be liable to Sellers or Purchaser for any breach by any or all of the Sellers or Purchaser of their respective representations, warranties, covenants or other agreements in connection with this Agreement or any Ancillary Agreement, or (c) shall have any liabilities under or in respect of any of this Agreement or any Ancillary Agreement. Notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement, in credit bidding a portion of the Pre-Petition Credit Obligations for the Purchased Assets and in taking all other actions in connection with the foregoing (whether pursuant to this Agreement, any Ancillary Agreement or otherwise), (i) none

of the Pre-Petition Agent and the Pre-Petition Lenders shall be deemed to have assumed in any respect possession, title or control with respect to any of the Credit Bid Assets or other Purchased Assets, (ii) the Pre-Petition Agent shall be entitled to all of the indemnification, reimbursement, exculpatory and other protections provided in the applicable Pre-Petition Credit Documents and in the instrument by which the Required Lenders (as defined in the Pre-Petition Credit Agreement) directed the Pre-Petition Agent to credit bid a portion of the Pre-Petition Credit Obligations; and (iii) the DIP Agent shall be entitled to all of the indemnification, reimbursement, exculpatory and other protections provided in the applicable DIP Loan Documents.

12.13 No Waiver or Release. Notwithstanding anything herein to the contrary, all terms, conditions, covenants, representations and warranties contained in the DIP Loan Documents or Pre-Petition Credit Documents, and all rights, powers and remedies of the DIP Agent, the DIP Lenders, the Pre-Petition Agent and Pre-Petition Lenders and all of the obligations of the Debtors (as defined in the DIP Loan Documents or Pre-Petition Credit Documents, as applicable) and other Loan Parties (as defined in the DIP Loan Documents or Pre-Petition Credit Documents, as applicable) thereunder (including the obligation to reimburse the Pre-Petition Agent and Pre-Petition Lenders for fees and expenses incurred in connection with preparation and negotiation of this Agreement to the extent set forth therein), are reserved and are not amended, modified, limited or otherwise affected by the terms and conditions of this Agreement.

12.14 Time of the Essence. Time is of the essence in the performance of each of the obligations of the parties and with respect to all covenants and conditions to be satisfied by the parties in this Agreement and all documents, acknowledgments and instruments delivered in connection herewith.

12.15 Certain Interpretations.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) All references in this Agreement to Articles, Sections, Schedules and Exhibits shall be deemed to refer to Articles, Sections, Schedules and Exhibits to this Agreement.

(ii) All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iii) The Article, Section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

(iv) The words “include,” “includes” and “including,” when used herein shall be deemed in each case to be followed by the words “without limitation” (regardless of whether such words or similar words actually appear).

(v) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded.

(vi) Any reference in this Agreement to \$ shall mean U.S. dollars.

(vii) Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(viii) The words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(b) The parties hereto agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

(c) Purchaser acknowledges hereby that Sellers may not comply with the provisions of any bulk transfer Laws of any jurisdiction in connection with the transactions contemplated by this Agreement.

*[Remainder of page intentionally left blank]*



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

PURCHASER:

SPN ACQUISITION CO, LLC

By: 

Name: Jay Gurandiano

Title: President and Secretary

[Signature Page to Asset Purchase Agreement]

SELLERS:

SP NEWSPRINT CO., LLC

By: 

Name:

Title:

SP NEWSPRINT HOLDINGS LLC

By: 

Name:

Title:

SP RECYCLING CORPORATION

By: 

Name:

Title:

SEP TECHNOLOGIES, L.L.C.

By: 

Name:

Title:

## Section 5.7

### Registered IP

**Copyright:** The Life of Mister Newspaper  
Owner SP Recycling Corporation  
Jurisdiction United States  
Reg. No. TX-999-050  
Registration Date 10/07/82

**Trademarks:**  
Trademark SP Newsprint Sales Company<sup>1</sup>  
Owner SP Newsprint Company, LLC.  
Jurisdiction United States  
Reg. No. 2603545  
Reg. Date 08/06/02

Trademark SP (logo)  
Owner SP Newsprint Company, LLC.  
Jurisdiction United States  
Reg. No. 2622969  
Reg. Date 09/24/02

Trademark SP Recycling Corp.  
Owner SP Newsprint Company, LLC.  
Jurisdiction United States  
Reg. No. 2549125  
Reg. Date 03/19/02

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<sup>1</sup> This mark is no longer in use in commerce and accordingly the owner will not be able to file an affidavit of continuing use or application for renewal.

**Software, Databases, and Licenses**

The Debtors have Intellectual Property Licenses for numerous off-the-shelf software licenses. In addition, the following Intellectual Property is licensed to the Debtors:

IBM I Series 9406

OS/400 V5R4 operating system

JDE World A73 Cume 13 (J.D. Edwards World Software) - includes Address Book

Human Resources, Payroll, Accounts Receivable, Financial Reporting, and World

Writer

Dublin Majiq Custom System

Desert Micro

Avantis.Xa

Elixir on Windows (EOW)

Maximo

BIZTALK Server

ADP

Sharepoint

OIL Systems Inc. software licenses

TrimPlus

**IP Encumbrances & Enforceability**

There is a security interest in favor of General Electric Capital Corporation recorded against the three registered trademarks at Reel 4695/Frame 0485 at the U.S. Trademark Office.

There is a security interest in favor of General Electric Capital Corporation recorded against the registered copyright at V3564D545 at the U.S. Copyright Office.

**IP Infringements**

Pulper Mining, LLC v. Blank, et al., Civil Action No. 2012-cy-0429