

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM311031

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Prentiss LLC		03/24/2014	LIMITED LIABILITY COMPANY: GEORGIA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Wellmark International		
<b>Street Address:</b>	1501 E Woodfield Rd Suite 200 West		
<b>City:</b>	Schaumburg		
<b>State/Country:</b>	ILLINOIS		
<b>Postal Code:</b>	60173		
<b>Entity Type:</b>	CORPORATION: CALIFORNIA		
<b>PROPERTY NUMBERS Total: 4</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	71659005	NOXFISH	
<b>Serial Number:</b>	72237640	PRENTOX	
<b>Serial Number:</b>	73754349	NUSYN-NOXFISH	
<b>Serial Number:</b>	73420315	PBO-8	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	6022072183		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	6022813733		
<b>Email:</b>	feickstaedt@central.com		
<b>Correspondent Name:</b>	Filomena Eickstaedt		
<b>Address Line 1:</b>	301 West Osborn Road		
<b>Address Line 4:</b>	Phoenix, ARIZONA 85013		
<b>NAME OF SUBMITTER:</b>	Filomena Eickstaedt		
<b>SIGNATURE:</b>	/feickstaedt/		
<b>DATE SIGNED:</b>	07/17/2014		
<b>Total Attachments: 52</b>			
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source=PRENTISS LLC.CERTIFICATE OF MERGER#page2.tif			

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “*Agreement*”) is dated as of the last date written below, and is between WELLMARK INTERNATIONAL, a California corporation (“*Purchaser*”); Envincio, LLC, a North Carolina limited liability company and Prentiss LLC, a Georgia limited liability company (collectively, “*Seller*”); and Santolubes LLC, a Missouri limited liability company (“*Member*”).

### PREAMBLE

Seller is engaged in the business of manufacturing and distributing pesticides for the professional pest control industry (the “*Business*”).

Seller desires to sell, and Purchaser desires to purchase, substantially all of Seller’s assets used or useful in the Business.

Member owns a 100% ownership interest in the Seller.

In consideration of the premises, the parties agree as follows:

### ARTICLE 1 DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below.

(a) “*Affiliate*” means, with respect to any Person, any other Person or group of affiliated Persons directly or indirectly controlling (including without limitation all directors and executive officers of such Person), controlled by or under direct or indirect common control with such Person. For purposes of this definition, a Person will be deemed to control another Person if such Person possesses, directly or indirectly, the power (i) to vote 5% or more of the securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management or policies of such other Person. With respect to an individual Person, another Person will be deemed to be an Affiliate of that Person if such other Person is a member of that Person’s immediate family (i.e., that Person’s spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of that Person, and their respective spouses).

(b) “*Cash Amount*” means the excess of (i) the Purchase Price set forth in Section 4.1 hereof, prior to any reductions and increases thereto pursuant to this Agreement, rounded to the nearest cent over (ii) the Escrow Amount.

(c) “*Cleanup*” means cleanup costs or corrective action, including any investigation, cleanup, removal, containment, or other remediation or response actions required by applicable Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other Person).

(d) “*Closing Working Capital*” means the actual amount by which the aggregate current assets of the Business as of the Closing Date exceeds the aggregate current liabilities of the Business as of the Closing Date, in each case as acquired by the Purchaser pursuant hereto and as set forth on the Closing Working Capital Statement. For the avoidance of all doubt, no

cash, cash equivalents or other asset or liability not purchased or assumed by Purchaser pursuant hereto shall be included in the Closing Working Capital.

(e) “**Environment**” means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium or natural resource.

(f) “**Environmental, Health, and Safety Liabilities**” means any cost, Damages, expense, liability, obligation, or other responsibility arising from or under Environmental Law or Occupational Safety and Health Law and consisting of or relating to: (i) any environmental, health, or safety matters or conditions (including on-site or off-site contamination, occupational safety and health, and regulation of chemical substances or products); (ii) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, Damages, losses, claims, demands and response, investigative, remedial, or inspection costs and expenses arising under Environmental Law or Occupational Safety and Health Law; (iii) financial responsibility under Environmental Law or Occupational Safety and Health Law for Cleanup costs; or (iv) any other compliance, corrective, investigative, or remedial measures required under Environmental Law or Occupational Safety and Health Law. The terms “removal,” “remedial,” and “response action,” include the types of activities covered by the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended (“**CERCLA**”).

(g) “**Environmental Law**” means any Requirement of Law that requires or relates to: (i) advising appropriate authorities, employees, and the public of intended or actual releases of pollutants or hazardous substances or materials, violations of discharge limits, or other prohibitions and of the commencements of activities, such as resource extraction or construction, that could have significant impact on the Environment; (ii) preventing or reducing to acceptable levels the release of pollutants or hazardous substances or materials into the Environment; (iii) reducing the quantities, preventing the release, or minimizing the hazardous characteristics of wastes that are generated; (iv) assuring that products are designed, formulated, packaged, and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of; (v) protecting resources, species, or ecological amenities; (vi) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil, or other potentially harmful substances; (vii) cleaning up pollutants that have been released, preventing the threat of release, or paying the costs of such clean up or prevention; or (viii) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment, or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

(h) “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, or any successor law, and regulations and rules issued in accordance with that Act or any successor law.

(i) “**Escrow Agent**” means Enterprise Bank & Trust.

(j) “**Escrow Agreement**” means that certain Escrow Agreement to be entered into prior to Closing by and between Seller, Purchaser and the Escrow Agent, in substantially the form attached hereto as Exhibit A, providing for the Escrow Agent to hold the Escrow Amount in an account established pursuant to the terms of the Escrow Agreement with funds in the account to be used to fund any Post Closing Adjustment.

(k) “*Escrow Amount*” means \$500,000.

(l) “*Governmental Body*” means any (i) nation, state, county, city, municipality, town, village, district, or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign, or other government; (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, commission, instrumentality, branch, department, official, or entity and any court or other tribunal); (iv) multi-national organization or body; or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

(m) “*Hazardous Activities*” means the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment, or use (including any withdrawal or other use of groundwater) of Hazardous Materials in, on, under, about, or from any of the Real Estate or any part thereof into the Environment, and any other act, business, operation, or thing that increases the danger, or risk of danger, or poses an unreasonable risk of harm to persons or property on or off any of the Real Estate, or that may affect the value of any of the Real Estate.

(n) “*Hazardous Materials*” means any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, medical, infectious, biological or toxic or a pollutant or a contaminant under any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

(o) “*IRC*” means the Internal Revenue Code of 1986, as amended, or any successor law, and regulations issued by the IRS in accordance with the Internal Revenue Code or any successor law.

(p) “*Knowledge*” an individual will be deemed to have “Knowledge” of a particular fact or other matter if such individual is actually aware of such fact or other matter. A corporation, association, partnership, limited liability company or other entity (“*Entity*”) will be deemed to have “Knowledge” of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, officer, member, manager, partner, executor, or trustee of such Entity (or in any similar capacity) has, or at any time had, Knowledge of such fact or other matter; *provided, however*, that Seller and Member shall be deemed to have Knowledge only of particular facts or other matters as to which any of George E. Garrison, Jeff Ziehmer or Marty Houge has, or at any time had, Knowledge.

(q) “*Lien*” means any mortgage, lien, pledge, claim, charge, security interest, restriction or encumbrance of any kind of nature whatsoever, including, without limitation, the interest of a vendor or lessor under any conditional sale agreement, capital lease obligation or other title retention agreement, or any agreement to create or grant any of the foregoing or prohibiting Seller from granting Liens on their respective assets.

(r) “*Material*” means any change, event, fact or condition which, individually, has or can be expected to have a Material Adverse Effect; “*Materially*” means any Material effect of a change, event, fact or condition.

(s) “*Material Adverse Effect*” means any event, occurrence, fact, condition or change that is or could reasonably be expected to be materially adverse to (a) the business, results of operations, financial condition or assets of the Business, taken as a whole, or (b) the ability of

Seller to consummate the transactions contemplated hereby; *provided, however*, that Material Adverse Effect shall not include any event, occurrence, fact, condition or change arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Business operates and not disproportionately affecting the Business; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action taken (or omitted to be taken) with the written consent of or at the written request of Purchaser; (vi) any changes in applicable Requirements of Law or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof; or (vii) any natural or man-made disaster or acts of God.

(t) **“Occupational Safety and Health Law”** means any Requirement of Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (including those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

(u) **“Ownership Period”** shall mean the period commencing on October 3, 2008, and ending on the Closing Date.

(v) **“PBO”** means Piperonyl Butoxide.

(w) **“PBO Tolling Agreement”** means that certain ten (10) year tolling agreement to be entered into at Closing by and between Purchaser and Santolubes Manufacturing LLC, an Affiliate of Seller and Member, in the form of Exhibit G hereto, providing for the manufacture by Santolubes Manufacturing LLC of the Business’ entire requirements for PBO upon the terms and conditions set forth therein.

(x) **“Person”** means any individual, corporation, partnership, limited liability company, trust, joint venture, unincorporated association or other entity or enterprise or any governmental authority.

(y) **“Products”** means all those products currently associated with the Business.

(z) **“Registration”** means federal and state Product registrations made by Seller in connection with the Business.

(aa) **“Regulatory Change”** means, with respect to any Person, any change after the date of this Agreement in United States Federal or state law or regulations, or in any other regulation promulgated by any governmental authority, or the entry, adoption or making after such date of any order, interpretation, directive or request of or under any United States Federal or state law or regulations (whether or not having the force of law) by any Governmental Body charged with the interpretation or administration thereof, applying to a class of Persons including such Person.

(bb) **“Release”** means any spilling, leaking, emitting, discharging, depositing, escaping, leaching, injecting, pumping, emptying, dumping, or other releasing into the Environment, whether intentional or unintentional.

(cc) **“Requirements of Law”** means for any Person any Federal, State, local, County, Municipal law, treaty, regulation, statute rule, ordinance, order, writ, injunction, judgment, or

decree, or any other judicial or administrative determination or requirement of a Governmental Body or arbitrator applicable to or binding on such Person or any of its property or to which such Person or any of its property is subject.

(dd) “**Target Working Capital**” means the sum of the Closing Working Capital determined as of December 31, 2013 *plus* \$180,000.

(ee) “**Task Force Assets**” means Seller’s seats on the PBO and other task forces that provide the Business access to cooperatively developed research data that enhance Seller’s ability to procure and maintain Registrations necessary for the sale of such Products including without limitation PBO.

(ff) “**Taxes**” shall mean any federal, state, local or foreign taxes, assessments, interest, penalties, deficiencies, fees and other governmental charges or impositions (including without limitation all income tax, capital, gross income, gross receipts, profits, withholding, employment, unemployment compensation, social security, payroll, sales and use, transfer, excise, privilege, goods and services, severance, stamp, occupation, premium, property, ad valorem, franchise, license, school customs, duties and any other taxes, fees or assessments, or other governmental charges or impositions imposed by a Governmental Body and under any applicable Requirements of Law.

(gg) “**Threat of Release**” means a substantial likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

(hh) “**Transaction Documents**” means, collectively, this Agreement, the Escrow Agreement, the Restrictive Agreement, the Transition Services Agreement, the Transition Tolling Agreement, and all other documents, instruments, certificates or agreements executed or delivered in connection herewith, including the conveyance documents, as any or all of the foregoing may be renewed, amended, extended, modified, supplemented, replaced or rearranged from time to time.

(ii) “**Transition Services Agreement**” means that certain transition services agreement to be entered into at Closing between Seller and Purchaser, in substantially the form attached hereto as Exhibit B, providing for (i) Seller’s provision of accounting services, and (ii) Seller’s provision of other transition services to Purchaser, all for the term and upon such terms and conditions as set forth therein.

(jj) “**Transition Tolling Agreement**” means that certain tolling agreement to be entered into at Closing between Seller and Purchaser, in substantially the form attached hereto as Exhibit C, providing for Seller’s manufacture of Products for Purchaser for the term and upon such terms and conditions as set forth therein.

1.2 **Other Defined Terms.** Other capitalized terms defined elsewhere in this Agreement and not defined in this Article 1 shall have the meanings assigned to such terms in this Agreement.

1.3 **Interpretation.** As used in this Agreement, the word “including” means without limitation, the word “or” is not exclusive and the words “herein”, “hereof,” “hereby”, “hereto” and “hereunder” refer to this Agreement as a whole. Each defined term used in this Agreement shall have a comparable meaning when used in its plural or singular form. Unless the context otherwise requires, references herein: (a) to Articles, Sections, Exhibits and Schedules mean the Articles and Sections of and



the Exhibits and Schedules attached to this Agreement, (b) to an agreement, instrument or document means such agreement, instrument or document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and not prohibited by this Agreement, and (c) to a statute means such statute as amended from time to time and includes any successor legislation thereto. Any capitalized terms used in any Schedule or Exhibit attached hereto and not otherwise defined therein shall have the meanings set forth in this Agreement. The Disclosure Schedule and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. The Parties intend that each representation, warranty and covenant contained herein shall have independent significance. Information in any Schedule will be adequate to disclose an exception to the representation or warranty in this Agreement to which it corresponds and to any other representation or warranty in this Agreement to the extent the relevance of such disclosure to the subject matter of such other representation or warranty is reasonably apparent. If any party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which such party has not breached shall not detract from or mitigate the fact that such Party is in breach of the first representation, warranty or covenant. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

## ARTICLE 2 PURCHASE AND SALE OF ASSETS; CLOSING

2.1 Sale and Purchase of Assets. Upon the terms and subject to the conditions contained herein, at the Closing, Seller shall sell, transfer, assign, convey and deliver to Purchaser, and Purchaser shall purchase, accept and acquire from Seller, good and marketable title, free and clear from all Liens (other than Permitted Liens), to the following assets of Seller, other than the Excluded Assets (all of the assets and rights to be sold and purchased hereunder are referred to herein collectively as the “**Purchased Assets**”):

(a) *Accounts Receivable.* All of Seller’s accounts receivable from customers and others, and all rights to payment for goods sold or leased or services provided, including but not limited to those which are not evidenced by instruments or chattel paper, which have been earned by performance (the “**Sold Accounts Receivable**”).

(b) *Fixed Assets.* All of the furniture, fixtures, leasehold improvements, equipment, supplies, machinery, tools, spare parts, molds, dies, computer hardware, printers, phone systems, field equipment other office equipment and vehicles, and other tangible assets of Seller, which are set forth on Schedule 2.1(b) hereto (the “**Fixed Assets**”).

(c) *Inventory.* All of Seller’s inventory of finished goods, work-in-process, raw materials, supply inventories, packaging and consuming materials and other inventories (the “**Inventory**”), to the extent that such Inventories have not been sold by Seller in the ordinary course of the Business consistent with past practice before the Closing.

(d) *Backlog.* All of Seller’s backlog of unfilled firm orders for Products sold by Seller (the “**Backlog**”), including but not limited to the Backlog set forth on Schedule 2.1(d) hereto, to the extent that such Backlog has not been filled by Seller in the ordinary course of the Business consistent with past practice before the Closing.

(e) *Vehicles*. The automobiles, trucks, automotive equipment and other vehicles owned or used by Seller in connection with the operation of the Business, which are set forth on Schedule 2.1(e) hereto, (the "*Vehicles*").

(f) *Prepaid Expenses*. All interest of Seller in and to the prepaid expenses and deposits relating to the Business, including but not limited to those Prepaid Expenses set forth on Schedule 2.1(f) hereto, but excluding those relating solely to assets and rights not being purchased by Purchaser pursuant hereto (the "*Prepaid Expenses*").

(g) *Assigned Contracts*. All right, title, and interest of Seller under the contracts and agreements (including without limitation leases of personal property) set forth on Schedule 2.1(g) hereto (the "*Assigned Contracts*").

(h) *Seller's Name*. All of Seller's interest in, and all goodwill associated with, the corporate names "Envincio," and "Prentiss," and any acronyms, national extensions or names derived from or bearing a resemblance thereto, including without limitation any trademarks, trade names (including "dba's" or fictitious names), service marks or other trade rights used or useful in the Business, including but not limited to those set forth on Schedule 2.1(h) hereto (collectively, the "*Trade Rights*").

(i) *Intellectual Property; Other Intangible Assets*. All of Seller's rights with respect to all mailing lists, all customer lists, all prospect lists, all web addresses, web sites and domain names, uniform resource locations (also known as URLs) (including, without limitation www.envincio.com) web site content, all records pertaining to e-commerce transactions, all advertising materials used in the Business, all logos used in the Business, all telephone numbers used in the Business and all intellectual property used or useful in connection with or relating to the Business or under development, including without limitation all copyrights, patents, trade secrets, proprietary and technical information, research and development, processes, formulas, know-how and other trade rights, together with all rights to, and all applications, registrations, licenses and franchises for, any of the foregoing, in any form or media (whether or not patentable, registrable under any Patent, Trademark or Copyright laws, or otherwise protectable under any applicable Requirements of Law in and for all countries) (collectively, the "*Intellectual Property*"), and any other intangible assets of Seller used in the Business as well as the goodwill associated with the Business, including but not limited to those Intellectual Properties set forth on Schedule 2.1(i) hereto.

(j) *Computer Software*. All interest of Seller in any computer software (whether proprietary or not) used by Seller in the operation of any computer hardware or other equipment transferred to Purchaser in accordance herewith, all of Seller's rights under any licenses related to Seller's use, at any time, of such computer equipment, hardware or software, and all leases under which Seller leases any computer software, in any form or media, together with all documentation and manuals obtained in connection therewith (collectively, the "*Software*"), including but not limited to the Software set forth on Schedule 2.1(j) hereto but excluding the Excluded Software.

(k) *Permits*. All interest of Seller in, to and under all permits, authorizations, certificates, approvals, registrations, variances, exemptions, rights of way, franchises, privileges, immunities, grants, ordinances, licenses and other rights of every kind and character issued, provided or granted by a Governmental Body relating to the Business or any of the Purchased Assets, including but not limited to those listed on Schedule 2.1(k) hereto, but excluding any relating solely to assets and rights not being purchased by Purchaser pursuant hereto (the "*Permits*").

(l) *Records*. Originals or, where not available, copies of all of Seller's books, records, files and papers pertaining to the Business or the Purchased Assets which are maintained in the ordinary course of the Business and are required, necessary or advisable in order for Purchaser to conduct the Business from and after the Closing in the manner in which it is presently being conducted, including but not limited to accounting and financial records, personnel records, environmental records and reports, contract forms, technical data, graphic materials, pricing and information manuals, drawings, patterns, fixtures, designs, sales literature or other sales aids, customer files, customer credit histories and other data related or pertaining to the Business (the "**Records**").

(m) *Task Force Assets*. All of Seller's rights with respect to all Task Force Assets.

(n) *Other Property*. All other or additional privileges, rights, interests, properties and assets owned by Seller, of every kind and description and wherever located, that are used or intended for use in connection with, or that are necessary or advisable to the continued conduct of, the Business as presently being conducted, excepting, however, the Excluded Assets.

2.2 Excluded Assets. Notwithstanding Section 2.1 hereof, the Purchased Assets will not include the following (collectively, the "**Excluded Assets**"):

(a) all of Seller's cash equivalents and other items on deposit in the accounts of Seller;

(b) the assets or properties expressly listed on Schedule 2.2 hereto;

(c) the rights of Seller under all contracts or agreements not included within the definitions of Assigned Contracts or Real Estate;

(d) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder;

(e) all Tax assets (including duty and Tax refunds and prepayments) of Seller or any of its Affiliates;

(f) all rights to any action, suit or claim of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise;

(g) the rights which accrue or will accrue to Seller under the Transaction Documents;

(h) the corporate seals, Articles of Organization, minute books, ownership ledgers, tax returns or other records having to do with the corporate organization of Seller;

(i) all interest of Seller in any Software which is also utilized by Member or any Affiliate of Member (other than Seller) ( the "**Excluded Software**"); and

(j) all interest of Seller in any real property, including ownership interests in real estate (the "**Owned Real Property**") and the leasehold estates of Seller (the "**Leased Premises**") and, collectively with the Owned Real Estate, the "**Real Estate**") that is more fully described on Schedule 2.2(j) hereto.

2.3 Closing. Subject to and in accordance with the provisions of this Agreement, the consummation of the transactions contemplated hereby (the "**Closing**") will occur at 10:00 a.m. local time at the offices of Polsinelli PC in St. Louis, Missouri, on or prior to April 1, 2014, or be held at such other location or on such date as is otherwise mutually agreeable by the parties (the "**Closing Date**"). All transfers of the Purchased Assets will be deemed to occur as of 12:01 a.m. on the Closing Date (the "**Effective Date**"), and until such time Seller will retain the ownership and possession of, and bear all risk of loss or damage to, the Purchased Assets and will remain liable for all liabilities of the Business.

### ARTICLE 3 LIABILITIES

3.1 Assumption of Liabilities. Commencing from and after the Closing Date, Purchaser will assume and agree to pay, perform and discharge, promptly when due the following liabilities, obligations and duties of Seller arising out of or relating to the Business of Seller and incurred in the ordinary course of business (the "**Assumed Liabilities**"):

(a) the trade accounts payable of Seller that have arisen in the ordinary course of the Business consistent with past practice, which exist at the Closing Date and would be on a Financial Statement prepared by Seller prepared as of the Closing Date in accordance with GAAP consistently applied and that remain unpaid but not delinquent as of the Closing Date (the "Accounts Payable");

(b) duties, liabilities and obligations under the Assigned Contracts arising after the Closing Date;

(c) the Backlog orders and orders obtained after the Closing Date from bids quoted before Closing Date;

(d) all warranty obligations of Seller arising out of or in connection with the Business (the "**Warranties**"); and

(e) all of Seller's obligations in connection with Task Force Assets and Registrations both accrued for the month during which the Closing Date occurs and arising after the Closing Date.

3.2 Liabilities Not Assumed by Purchaser. In no event, however, will Purchaser assume or incur any liability or obligation under Section 3.1 or otherwise in respect of any liabilities other than the Assumed Liabilities, including but not limited to the following (the "**Excluded Liabilities**"):

(a) any notes payable or long-term debt of Seller;

(b) any accrued expenses or other current liabilities of Seller (other than the Accounts Payable);

(c) any liability under any capital leases;

(d) any liabilities or obligations with respect to (i) the employees of Seller incurred on, before or as of the Closing Date, including but not limited to, all COBRA Liabilities; or (ii) the Seller Plans (as defined below);

(e) any Taxes, including any deferred Taxes (i) payable with respect to the Business or the Purchased Assets for any period before the Closing Date, or (ii) applicable to Seller or Member (as the case may be) that are incident to or arising solely as a consequence of the consummation by Seller of the transactions contemplated by this Agreement;

(f) any liability or obligation under or in connection with the Excluded Assets;

(g) any liability or obligation of Seller arising or incurred in connection with the negotiation, preparation, execution and performance of the transactions contemplated by this Agreement, including, but not limited to, all fees and expenses of Seller's counsel, accountants and experts, and sales taxes applicable to the sale of the Purchased Assets pursuant hereto;

(h) any liability or obligation of Seller or Member with respect to any pending or threatened litigation, regardless of whether such litigation has been disclosed on any Schedule hereto;

(i) except for the Accounts Payable and the Warranties any liability or obligation arising out of events occurring on or before the Closing Date, including without limitation those arising from Seller's or Member's conduct of the Business or Seller's or Member's (as applicable) ownership of the Purchased Assets on or before the Closing Date;

(j) any liability under any Assumed Contract that arises after the Closing Date but that arises out of or relates to any breach that occurred before the Closing Date;

(k) any liability under any contract not assumed by Purchaser, including any liability arising out of or relating to Seller's credit facilities or any security interest related thereto, unless expressly assumed under Section 3.1 hereof;

(l) any Environmental, Health and Safety Liabilities arising out of or relating to the operation of the Business or Seller's leasing, ownership or operation of any real property prior to Closing;

(m) any liability or obligation of Seller to Member;

(n) any liability to indemnify, reimburse or advance amounts to any officer, director, employee or agent of Seller;

(o) any liability arising out of any legal proceeding relating to the Business commenced after the Closing Date and arising out of or relating to any occurrence or event happening before the Closing Date;

(p) any liability arising out of or resulting from Seller's compliance or non-compliance with the Terms of any Permit, any applicable Requirements of Law or any legal requirement or order of any Governmental Body during the Ownership Period;

(q) any liability of Seller under this Agreement or any other document executed in connection with the transactions contemplated hereunder;

(r) any liability of Seller based upon Seller's acts or omissions occurring after the Closing Date;

- (s) any liability of Seller or Member identified on Schedule 3.2 hereto.

**ARTICLE 4**  
**CONSIDERATION FOR TRANSFER**

4.1 Purchase Price. The purchase price to be paid to Seller for the Purchased Assets will be [REDACTED], subject to reduction or increase as provided in Section 4.4 hereof (the “*Purchase Price*”), plus the assumption of the Assumed Liabilities.

4.2 Payment of Purchase Price. At the Closing, Purchaser shall pay the Purchase Price to Seller by:

(a) delivering to Seller, and/or to the designees of Seller as set forth in a direction letter delivered by Seller not less than two (2) business days prior to the Closing Date, in each case by wire transfer or other immediately available funds, the Cash Amount; and

(b) delivering to the Escrow Agent, by wire transfer or other immediately available funds, the Escrow Amount to be held in escrow to fund any Post-Closing Adjustment due from Seller pursuant to Section 4.4, all in accordance with the Escrow Agreement.

4.3 Allocation of Purchase Price. The Purchase Price will be allocated among the Purchased Assets as provided on Schedule 4.3 hereto. Purchaser and Seller agree that they shall each report the allocation of the Purchase Price in a manner entirely consistent with such allocation in all tax returns and forms and in the course of any tax audit, tax review or tax litigation relating thereto.

4.4 Purchase Price Adjustments.

(a) *Pro-Ration of Payments and Expenses.* On the Closing Date, the Purchase Price shall be adjusted by the difference between (i) the aggregate amount of the Prepaid Expenses and (ii) the Seller Prorated Expenses (the “*Proration Adjustment*”). For purposes hereof, the “*Seller Prorated Expenses*” shall mean the parties’ good faith estimate (based on the most recently completed periods and such other evidence as they shall determine in good faith) as set forth on Schedule 4.4(a) hereto of any and all utility, Tax, and other costs and expenses attributable to the ownership and use of the Purchased Assets by Seller prior to the Closing Date which are or become due and payable after the Closing Date. If the Proration Adjustment is a positive amount, such amount shall result in an upward adjustment of the Purchase Price; if the Proration Adjustment is a negative amount, such amount shall result in a downward adjustment of the Purchase Price. Notwithstanding anything herein to the contrary, no party shall have any claim or liability with regard to the calculation of the Proration Adjustment, except in the case of fraud.

(b) *Post-Closing Adjustment.*

(1) Within 60 days after the Closing Date, Purchaser shall prepare and deliver to Seller and Member (A) a statement setting forth its calculation of Closing Working Capital (the “*Closing Working Capital Statement*”), and (B) a certificate stating that the Closing Working Capital Statement was prepared in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Consolidated Financial Statements for the most recent fiscal year end, subject to the modifications and limitations set forth in Schedule 4.4(b) hereto.

(2) The “**Post-Closing Adjustment**” shall be an amount equal to the Closing Working Capital *minus* the Target Working Capital. If the Post-Closing Adjustment is a positive number, Purchaser shall pay to Seller an amount equal to the Post-Closing Adjustment. If the Post-Closing Adjustment is a negative number, Seller shall pay to Purchaser an amount equal to the Post-Closing Adjustment.

(c) *Examination and Review of Post-Closing Adjustment.*

(1) *Examination.* After receipt of the Closing Working Capital Statement, Seller shall have 30 days (the “**Review Period**”) to review the Closing Working Capital Statement. During the Review Period, Seller and Seller’s accountants shall have full access to the relevant books and records of Purchaser with respect to the Business, the personnel of, and work papers prepared by, Purchaser and/or Purchaser’s accountants to the extent that they relate to the Closing Working Capital Statement and to such historical financial information (to the extent in Purchaser’s possession) relating to the Closing Working Capital Statement as Seller may reasonably request for the purpose of reviewing the Closing Working Capital Statement and to prepare a Statement of Objections (defined below), provided, that such access shall be in a manner that does not interfere with the normal business operations of Purchaser.

(2) *Objection.* On or prior to the last day of the Review Period, Seller may object to the Closing Working Capital Statement by delivering to Purchaser a written statement setting forth Purchaser’s objections in reasonable detail, indicating each disputed item or amount and the basis for Seller’s disagreement therewith (the “**Statement of Objections**”). If Seller fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Working Capital Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Working Capital Statement shall be deemed to have been accepted by Seller. If Seller delivers the Statement of Objections before the expiration of the Review Period, Purchaser and Seller shall negotiate in good faith to resolve such objections within 30 days after the delivery of the Statement of Objections (the “**Resolution Period**”), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Working Capital Statement with such changes as may have been previously agreed in writing by Purchaser and Seller, shall be final and binding.

(3) *Resolution of Disputes.* If Seller and Purchaser fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute (“**Disputed Amounts**”) and any amounts not so disputed, the “**Undisputed Amounts**”) shall be submitted for resolution to an impartial nationally recognized firm of independent certified public accountants other than Seller’s Accountants or Purchaser’s Accountants mutually agreeable to Purchaser and Seller (the “**Independent Accountants**”) who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Working Capital Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountants shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Working Capital Statement and the Statement of Objections, respectively.

(4) *Fees of the Independent Accountants.* Seller shall pay a portion of the fees and expenses of the Independent Accountants equal to 100% multiplied by a fraction, the numerator of which is the amount of Disputed Amounts submitted to the Independent Accountants that are resolved in favor of Purchaser (that being the difference between the Independent Accountants' determination and Seller's determination) and the denominator of which is the total amount of Disputed Amounts submitted to the Independent Accountants (that being the sum total by which Purchaser's determination and Seller's determination differ from the determination of the Independent Accountants). Purchaser shall pay that portion of the fees and expenses of the Independent Accountants that Seller is not required to pay hereunder.

(5) *Determination by Independent Accountants.* The Independent Accountants shall make a determination as soon as practicable after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Working Capital Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

(d) *Payment of Post-Closing Adjustment.* Except as otherwise provided herein, any payment of the Post-Closing Adjustment shall (A) be due (x) within five Business Days of acceptance of the applicable Closing Working Capital Statement or (y) if there are Disputed Amounts, then within five Business Days of the resolution described in subsection (c)(5) above; and (B) be paid by wire transfer of immediately available funds to such account as is directed by Purchaser or Seller, as the case may be. Any payment of the Post Closing Adjustment owed by Seller to Purchaser shall be paid by the Escrow Agent from the Escrow Amount; provided, however, that if the Escrow Amount is inadequate to pay in full the Post Closing Adjustment owed by Seller to Purchaser, Seller shall promptly pay the difference to Purchaser. If the Escrow Amount shall exceed any Post-Closing Adjustment owed by Seller to Purchaser then, on or before the due date for payment of the Post-Closing Adjustment, Purchaser shall deliver written instructions to Escrow Agent to distribute such excess, plus a prorata share of any income earned thereon, to Purchaser. The amount of any Post Closing Adjustment shall not bear interest.

(e) *Adjustments for Tax Purposes.* Any payments made pursuant to this Section 4.4 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by a Requirement of Law.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF SELLER AND MEMBER**

Seller and Member, jointly and severally, represent and warrant to Purchaser, as of the date hereof and as of Closing Date, as follows:

5.1 Organization and Good Standing. Each Seller and Member is a limited liability company duly organized, validly existing and in good standing under the laws of the state of its incorporation, with all requisite corporate power to carry on the business in which it is engaged and to own the properties it owns. Seller is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the nature of its business or the ownership of its assets makes such qualification necessary, all of which jurisdictions are set forth on Schedule 5.1 hereto. Seller does not own, directly or indirectly, any capital stock of any other corporation or any equity, profit sharing, participation, or other interest in any corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture or other Person, except as set forth on Schedule 5.1. There are no subsidiaries of Seller, except as set forth on Schedule 5.1.



5.2 Authorization and Validity. The execution, delivery and performance of this Agreement and the other Transaction Documents by Seller and Member, and the consummation of the transactions contemplated hereby and thereby, have been unanimously approved and duly authorized by the Member. This Agreement and each of the other Transaction Documents have been or will be duly executed and delivered by each of Seller and Member (to the extent Seller or Member is a party to each Transaction Document) and constitute, as of the Closing, legal, valid and binding obligations of each of Seller and Member (to the extent Seller or Member is a party to each Transaction Document), enforceable against each of them in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency or Requirements of Laws affecting creditors' rights generally or the availability of equitable remedies.

5.3 Financial Statements.

(a) Seller has made available to Purchaser the balance sheet of Seller and related statements of income, retained earnings and changes in financial position of Seller for the 12-month period ending on or about December 31, 2012, by Dixon Hughes Goodman LLP as a part of the consolidated financial statement of Member (the "*Consolidated Financial Statements*"), including the notes thereto, reported upon without exception or qualification as well as Seller's monthly and quarterly unaudited balance sheets and related unaudited statements of income for the interim periods from January 1, 2013, through December 31, 2013 (the "*Interim Financial Statements*" and, collectively with the Consolidated Financial Statements, the "*Financial Statements*").

(b) The Financial Statements are true, correct and complete in all Material respects and fairly present the financial condition and results of operations of Seller as of the dates and for the periods indicated and have been prepared in conformity with GAAP applied on a consistent basis with prior practices subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments and the absence of notes. There is no liability or obligation, whether absolute, contingent or otherwise, as of the respective dates of the Financial Statements required to be recorded, reflected or disclosed thereon or therein which was not so recorded, reflected or disclosed. Any significant items of income or expense which were unusual or of a nonrecurring or normalizing nature were separately disclosed in the Consolidated Financial Statements or are set forth on Schedule 5.3 hereto.

5.4 Liabilities and Obligations.

(a) Except as set forth on Schedule 5.4 hereto, the Financial Statements reflect all liabilities and obligations of Seller, accrued, contingent or otherwise, arising out of transactions effected or events occurring on or before the dates thereof to the extent such transactions or events are of a type required to be reflected on financial statements prepared in accordance with GAAP consistently applied.

(b) Subject to standard year-end adjustments, which are not Material in the aggregate, all allowances and reserves shown in the Interim Financial Statements are appropriate, reasonable and sufficient to provide for expenses and losses thereby contemplated.

(c) Except as set forth in the most recent Consolidated Financial Statements, or incurred in the ordinary course of business since January 1, 2013, consistent with prior practices and listed on Schedule 5.4 hereto, Seller is not liable upon or with respect to or obligated in any other way to provide funds in respect of or to guarantee or assume in any manner, any debt,

obligation or dividend of any Person and, to the Knowledge of Seller or Member, there is no basis for the assertion of any other claims or liabilities of any nature or in any amount.

5.5 Absence of Certain Changes. Except as set forth on Schedule 5.5 hereto, since December 31, 2013, Seller has not:

- (a) suffered any Material Adverse Effect upon its financial condition, the Purchased Assets, Assumed Liabilities or the Business;
- (b) contracted for or paid any capital expenditure in excess of [REDACTED];
- (c) incurred any indebtedness for borrowed money, issued or sold any debt securities, or maintained the aging of its accounts payable other than in the ordinary course of the Business consistent with prior practices;
- (d) mortgaged, pledged or subjected to any Lien, lease, or other charge or encumbrance (that will not be released at or before Closing) any of the Purchased Assets;
- (e) paid any amount on any indebtedness for borrowed money before the due date, forgiven or canceled any Material debts or claims or released or waived any Material rights or claims;
- (f) suffered any damage or destruction to or loss of any of the Purchased Assets (whether or not covered by insurance) that could or does have a Material Adverse Effect;
- (g) acquired or disposed of any of the Purchased Assets or incurred any liabilities or obligations or agreed to do any of the foregoing, except in the ordinary course of the Business consistent with prior practice;
- (h) written up or written down the carrying value of any of the Purchased Assets;
- (i) lost or terminated any employee, consultant, agent, representative, customer or supplier that could or does have a Material Adverse Effect;
- (j) increased or agreed to increase the compensation of any consultant, agent, director, officer, representative or employee who is associated with the Business, except in the ordinary course of the Business consistent with prior practice;
- (k) entered into any employment, compensation, consulting or collective bargaining agreement with any Person or group who is associated with the Business, or modified or amended the terms of any such existing agreement or agreed to do any of the foregoing;
- (l) been notified that it is a responsible party or potentially responsible party in connection with any federal or state "Superfund" site;
- (m) adopted any plan of merger, consolidation, reorganization, liquidation or dissolution or filed (or suffered the filing against it of) any petition in bankruptcy; or
- (n) entered into any agreement to do any of the foregoing, or taken any action or omitted to take any action which would result in any of the foregoing .

5.6 Liens and Encumbrances. Except as set forth on Schedule 5.6(a) hereto, Seller owns the Purchased Assets, and all real and personal property leaseholds, free and clear of all Liens. Except with respect to those Liens securing an Assumed Liability are set forth on Schedule 5.6(b) hereto (the “**Permitted Liens**”), as of the Closing the Purchased Assets shall be free and clear of all Liens.

5.7 Title to and Sufficiency of Assets. Upon consummation of the transactions contemplated hereby, Purchaser will receive good, valid, and marketable title to (or a valid leasehold interest in, as the case may be) the Purchased Assets and will be entitled to use as lessee all leased assets which are Material to the operation of the Business. The Purchased Assets, with the Excluded Assets, are the only assets necessary for the present conduct of the Business.

5.8 Real Estate.

(a) Except as set forth in Schedule 2.1(j), Seller does not own any real property.

(b) Seller has no Leased Premises.

(c) To the Knowledge of Seller or Shareholder, the Real Estate and the present uses thereof comply with any applicable restrictive covenant and all Requirements of Law, including all zoning, building, health, flood control or fire ordinances, and with respect to the Real Estate neither Seller nor Member has received any notices, oral or written, from any Governmental Body, that the Real Estate or any improvements thereon, or the uses conducted thereon or therein, violate any such Requirements of Law.

(d) The improvements located on the Real Estate are in good condition and are structurally sound, and all mechanical systems, appliances, plumbing, electrical systems, heating or air-conditioning systems, and other systems located therein are in good operating condition, subject to normal wear, and no condition exists requiring Material repairs, alterations or corrections other than those conducted by Seller in the ordinary course of business.

(e) There are no actions, suits, claims, proceedings or causes of action which are pending or, to the Knowledge of Seller and Member, have been threatened or asserted against, or are affecting Seller, the Real Estate or any part thereof, in any Governmental Body or before any arbitrator or other Persons which might have a Material Adverse Effect on the Real Estate improvements, personalty or any portion thereof.

5.9 Fixed Assets. All of the Fixed Assets owned or leased by Seller and presently used in the conduct of the Business are in good condition and repair, ordinary wear and tear excepted (which is not Material in the aggregate), and are fit for their intended use in the ordinary course of the Business.

5.10 Inventory. Except as set forth on Schedule 5.10, all Inventory of Seller (i) was acquired and has been maintained in the ordinary course of the Business, (ii) is of good and merchantable quality, (iii) consists substantially of a quality, quantity and condition usable, leasable or saleable in the ordinary course of the Business, (iv) is valued at reasonable amounts based on the ordinary course of the Business consistent with past practice and (v) is not subject to any write-down or write-off.

5.11 Backlog. The Backlog set forth on Schedule 2.1(d) hereto represents Seller’s complete internal records of the backlog of unfilled firm orders by customer and by Product as of the date hereof. The backlog constitutes valid binding obligations of Seller that are legally enforceable against Seller and the customers in accordance with the terms of such orders.

5.12 Accounts Receivable. The Sold Accounts Receivable (i) have arisen solely out of bona fide sales and deliveries of goods, performance of services and other business transactions in the ordinary course of the Business consistent with past practice, (ii) have been determined in accordance with GAAP consistently applied and (iii) are collectible (net of all applicable reserves) within ninety (90) days after Closing.

5.13 Prepaid Expenses. Schedule 2.1(f) hereto contains a complete and accurate list of all the Prepaid Expenses of Seller, determined in accordance with GAAP.

5.14 Contracts.

(a) Except as set forth on Schedule 5.14(a), Schedule 2.1(g) hereto contains a complete and accurate list, and Seller has delivered to Purchaser true and complete copies, of all contracts and agreements (including without limitation leases of personal property), oral or written, pertaining to the ownership, operation and maintenance of the Purchased Assets in which Seller or Member (as the case may be) has any right, title or interest.

(b) Except as set forth on Schedule 5.14(b):

(1) each Assigned Contract is in full force and effect and is valid and enforceable in accordance with its terms;

(2) Seller is in compliance with all applicable terms and requirements of each Assigned Contract under which Seller has any obligation or liability or by which Seller or any of the Purchased Assets is bound;

(3) to the knowledge of Seller and Member, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with, or result in a violation or breach of, or give Seller or any other party the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Assigned Contract;

(4) neither Seller nor Member has given or received from any other party at any time any notice or other communication (whether oral or written) regarding any actual, alleged, possible, or potential violation or breach of, or default under, any Assigned Contract;

(5) no Assigned Contract contains any contractual requirement with which there is a reasonable likelihood Seller, Member or, to the Knowledge of Seller or Member, any other party thereto will be unable to comply; and

(c) Except as set forth on Schedule 5.14(b), all payments required to be made by Seller or Member (as the case may be) under the Assigned Contracts are current. Except as set forth on Schedule 5.25 hereto, no Assigned Contract requires the consent of any party to its assignment in connection with the transactions contemplated hereby.

5.15 Trade Rights; Intellectual Property. Schedules 2.1(h) and 2.1(i), respectively, contain complete and accurate lists of all Trade Rights and Intellectual Property that is used by Seller in, or deemed necessary by Seller for use, in the conduct of the Business or in which Seller has any right, title or interest. Each of the Trade Rights and Intellectual Property is in all respects valid, subsisting and in full force and effect and is owned by Seller free and clear of any Liens (other than Permitted Liens) or adverse

claims of any Person. To the Knowledge of Seller or Member, neither Seller nor Member infringes upon or unlawfully or wrongfully use any patent, trademark, trade name, service mark, copyright, trade secret or other intellectual property owned or claimed by another Person. Except with respect to any Intellectual Property licensed pursuant to non-exclusive license agreements, no Person, other than Seller, is making use of any of the Trade Rights or Intellectual Property. Seller has not granted any licenses or other rights to any Person to use any of the Trade Rights or Intellectual Property that remain outstanding. To the Knowledge of Seller or Member, neither is in default under, nor has Seller or Member received any notice of any claim of infringement or any other claim or proceeding relating to any patent, trademark, trade name, service mark, copyright, trade secret, domain name, web site or other intellectual property, and, to the Knowledge of Seller or Member, there is no basis for any third party making such a claim. No present or former employee or agent of Seller and, except with respect to any Trade Right or Intellectual Property licensed by Seller pursuant to an Assigned Contract, no other Person owns or has any proprietary, financial or other interest, direct or indirect, in whole or in part, in any of the Trade Rights or Intellectual Property.

5.16 Permits. Schedule 2.1(k) lists all Permits, used or useful in or necessary for the operation of the Purchased Assets in connection with the Business. Seller, Member and the Business have complied and are in compliance with the terms of the Permits and no Material violation of any of the Permits or the Requirements of Laws governing the issuance or continued validity thereof has occurred. Seller has not received any claim or notice, and, to the Knowledge of Seller or Member, there is no indication that Seller or the Business is not in compliance in all Material respects with the terms of any the Permits or with any of the Requirements of Law and with all requirements, standards and procedures of Governmental Bodies that issued them. Seller is in compliance in all Material respects with all Requirements of Law that are applicable to Seller, the Business or the Purchased Assets.

5.17 Records. During the Ownership Period, the Records have been kept accurately in the ordinary course of the Business, the transactions entered therein represent bona fide transactions and the revenues, expenses, Purchased Assets and Assumed Liabilities of Seller have been properly recorded in such Records. The Records are in good order, are complete, and have been maintained in accordance with sound business practices.

5.18 Proprietary Information. Except as set forth on Schedule 5.18 hereto, neither Seller nor Member (nor, to the Knowledge of Seller or Member, any employee or member of either of them) has disclosed any confidential information purported to be transferred hereunder (including, but not limited to, Trade Rights, Intellectual Property, Records, financial statements, methods by which the Business is or has been conducted, and methods by which the customers or Business of Seller are or have been obtained) (collectively, the "**Proprietary Information**"), which does not exist in the public domain to any third party, except in the ordinary course of the Business consistent with past practice, and it is acknowledged that upon consummation of the transactions contemplated hereunder and subject to the rights of the customers and clients of the Business, Purchaser will have sole exclusive rights to all prior work (professional and otherwise) of the Business, and all rights to reference to same as its own.

5.19 Customers.

(a) Except as set forth on Schedule 5.19(a) hereto, Seller has not made any selling price commitment to any customers that extend to a time period in excess of ninety (90) days.

(b) Except as set forth on Schedule 5.19(b) hereto, neither Seller nor Member has received actual notice or any other indicator, written or oral from any of Seller's customers that any such customer will, for any reason, cease to do business with Purchaser after the Closing

Date, or of any fact which could have a Material adverse impact on the relationship between Seller and such customer.

(c) Neither Seller nor Member has (i) made any payment to any Person (an “*Official*”) employed by or affiliated with any customer, supplier, or Governmental Body charged with reviewing, monitoring, or regulating any activities of Seller or Member, (ii) given any personal property or real property to any Official, (iii) sold any personal property or real property to any Official at less than fair market value, (iv) made a political contribution to any governmental Official in violation of any applicable Requirements of Law, or (v) otherwise taken any action in violation of any Requirements of Law prohibiting bribes, kickbacks, or other activities that seek to wrongfully influence any Official.

5.20 Claims and Proceedings. Schedule 5.20 hereto is a complete and accurate list and description of all claims, actions, suits, proceedings and investigations currently pending or, to the Knowledge of Seller or Member, threatened against or affecting Seller or the Business or any of the Purchased Assets, at law or in equity, or before or by any Governmental Body. None of such claims, actions, suits, proceedings or investigations will result in any liability or loss to the Purchased Assets or the Business. Except as set forth on Schedule 5.20, Seller has not been, and is not now, subject to any order, judgment, decree, stipulation or consent of any, Governmental Body. Except as set forth on Schedule 5.20, no inquiry, action or proceeding has been asserted, instituted or, to the Knowledge of Seller or Member, threatened to restrain or prohibit the carrying out of the transactions contemplated by this Agreement or to challenge the validity of such transactions or any part thereof or seeking damages on account thereof. To the Knowledge of Seller or Member, there is no basis for any claim or action that would, or could reasonably be expected to (individually or in the aggregate), have a Material Adverse Effect.

5.21 Employment Matters.

(a) Seller is not experiencing, nor, to the Knowledge of Seller or Member, is there any current or contemplated union organization efforts or negotiations, or requests for negotiations, for any representation or any labor contract relating to the employees of Seller. None of the employees of Seller is subject to a collective bargaining agreement. Seller is in Material compliance with all applicable Requirements of Law respecting employee and employer rights and obligations, each as amended to date.

(b) To the Knowledge of Seller or Member, there do not exist any facts that would indicate that any employee of Seller will not accept employment with Purchaser on a basis no less favorable than that upon which such employee is currently employed by Seller.

(c) Seller has delivered to Purchaser accurate and complete copies of all employment agreements, consulting agreements, confidentiality agreements and all other agreements, plans and other instruments to which Seller is a party and under which its employees or consultants are entitled to employment for a set term or are entitled to receive benefits of any nature.

(d) Seller is in Material compliance with all applicable Requirements of Law respecting employment and employment practices, terms of employment and wages and hours, and Seller is not engaged in, nor has Seller committed any discriminatory employment practice or unfair labor practice as defined in the National Labor Relations Act of 1947, as amended. There is no employment discrimination claim, or other statutory employment claims, either pending or, to the Knowledge of Seller or Member, threatened, against the Business, Seller or Member, nor is

there any unfair Labor Practice claim against the Business, Seller or Member before the National Labor Relations Board with respect to the Business.

(e) No present or former employee of Seller who was an employee during the Ownership Period has, or will as of the Closing Date have, any claim against Seller (whether under any applicable Requirements of Law, any employment agreement, or otherwise) on account of or for (i) overtime pay, other than overtime pay for the current payroll period, (ii) wages, incentives, bonuses, commissions or salary for any period other than the current payroll period, (iii) vacation, sick pay, time off or pay in lieu of vacation or time off, other than that earned in respect of the current fiscal year or accrued on Seller's Records, or (iv) any violation of any applicable Requirements of Law relating to minimum wages or maximum hours of work. All amounts required to be withheld by Seller from its employees have been properly withheld and timely deposited and all contributions required to be paid by Seller in respect of its employees have been paid in accordance with the applicable Requirements of Laws regarding Taxes.

(f) No Person (including, but not limited to, any Governmental Body of any kind) has any claim, or, to the Knowledge of Seller or Member, any basis for any action or proceeding, against Seller arising out of any applicable Requirements of Law relating to occupational safety and health standards. Seller has not received any notice or citation from any Governmental Body alleging a violation of occupational safety or health standards.

(g) Seller has not received notice from any Person, Governmental Body or Official notifying it that Seller or any property or asset of Seller (including, without limitation, any of the Purchased Assets including the Real Estate) is in violation of, or in noncompliance with, the Americans with Disabilities Act (the "*ADA*"). Seller has not received any notice of a claim or potential claim under the Civil Rights Act of 1991 for any violation of the ADA.

(h) Seller is in compliance in all Material respects with all applicable Requirements of Law, including Section 274A(b) of the Immigration and Nationality Act, regarding the employment verification process for its employees. Seller maintains a timely and properly completed Form I-9 for each current employee and for any former employee for which retention of Form I-9 is required. Seller does not knowingly or intentionally employ any person ineligible to work in the United States under federal, state or local law. Seller has never been the subject of (i) any immigration investigation, enforcement action or legal proceeding involving the federal government, (ii) any requests by U.S. Immigration Customs Enforcement to inspect Seller's I-9 Forms or other immigration records, or (iii) any state or local immigration enforcement investigation or legal proceeding. Seller has never received notification from the Social Security Administration, Internal Revenue Service or any federal, state or local governmental agency that information provided by the Seller regarding an employee failed to match the agency's records.

## 5.22 Employee Benefits.

(a) *Definitions.* As used in this Section, the following terms have the meanings set forth below.

(1) "*ERISA Affiliate*" means, with respect to the Seller, any other person that, together with the Seller, would be treated as a single employer under IRC § 414.

(2) "*Other Benefit Obligations*" means all obligations, arrangements, or customary practices, whether or not legally enforceable, to provide benefits, other than salary, as compensation for services rendered, to present or former directors, employees,

or agents, other than obligations, arrangements, and practices that are Plans. Other Benefit Obligations include consulting agreements under which the compensation paid does not depend upon the amount of service rendered, sabbatical policies, severance payment policies, and fringe benefits within the meaning of IRC § 132.

(3) “*Plan*” has the meaning given in ERISA § 3(3).

(4) “*Plan Sponsor*” has the meaning given in ERISA § 3(16)(B).

(5) “*Qualified Plan*” means any Plan that meets or purports to meet the requirements of IRC § 401(a) (including Plans described in IRC § 403(b)).

(6) “*Seller Other Benefit Obligation*” means an Other Benefit Obligation owed, adopted, or followed by the Seller or an ERISA Affiliate.

(7) “*Seller Plan*” means a Plan of which the Seller or an ERISA Affiliate is or was a Plan Sponsor, or to which the Seller or an ERISA Affiliate otherwise contributes or has contributed, or in which the Seller or an ERISA Affiliate otherwise participates or has participated. All references to Plans are to Seller Plans unless the context requires otherwise.

(8) “*Welfare Plan*” has the meaning given in ERISA § 3(1).

(b) *Disclosure Schedules.* Schedule 5.22(b) sets forth the following:

(1) Schedule 5.22(b)(1) contains a complete and accurate list of all current Seller Plans and Seller Other Benefit Obligations as of the date of this Agreement as well as a complete and accurate list of any Seller Plans and Seller Other Benefit Obligations no longer offered but offered within the last five (5) years, and identifies as such all Seller Plans that are:

(A) Qualified Plans; or

(B) Welfare Plans.

(2) Schedule 5.22(b)(2) contains a complete and accurate list of:

(A) all ERISA Affiliates;

(B) all Plans of which any such ERISA Affiliate is or was a Plan Sponsor, and

(C) all Plans in which any such ERISA Affiliate participates or has participated, or to which any such ERISA Affiliate contributes or has contributed.

(3) Schedule 5.22(b)(3) sets forth a calculation of the liability of Seller for post-retirement benefits other than pensions, made in accordance with Financial Accounting Statement 106 of the Financial Accounting Standards Board, regardless of whether any Seller is required by this Statement to disclose such information.



(4) Schedule 5.22(b)(4) sets forth the financial cost of all obligations owed under any Seller Plan or Seller Other Benefit Obligation that is not subject to the disclosure and reporting requirements of ERISA.

(c) *Disclosure Documents Provided.* Seller has made available to Purchaser a true, correct and complete listing of all personnel, their respective payroll, and any employment manuals, handbook and policies of the Seller and any ERISA Affiliate.

(d) *Seller Plans and Seller Other Benefit Obligations.* Except as set forth in Schedule 5.22(d),

(1) Seller, with respect to all Seller Plans and Seller Other Benefits Obligations is, and each Seller Plan and Seller Other Benefit Obligation is, in full compliance, both in form and operation, with ERISA, the IRC, and all other applicable Legal Requirements, including the provisions of such Legal Requirements expressly mentioned in this Section, and each of the Seller Plans and Seller Other Benefit Obligations has been and presently is being operated in Material compliance with the terms of the operative plan documents. All contributions and payments have been timely made or accrued with respect to all Seller Plans and Seller Other Benefit Obligations.

(2) Neither Seller nor any of its Related Persons has made any voluntary correction program submission to either the Internal Revenue Service or the Department of Labor with respect to any compliance failure or operational failure as relates to any Seller Plan listed in Schedule 5.22(b).

(3) No Seller Plan is a stock bonus, pension, or profit-sharing plan within the meaning of IRC § 401(a).

(4) No statement, either written or oral, has been made by the Seller to any Person with regard to any Seller Plan or Seller Other Benefit Obligation that was not in accordance with the Seller Plan or Seller Other Benefit Obligation and that could have an adverse economic consequence to Seller or to Purchaser.

(e) Health and Welfare Plans.

(1) Neither Seller nor any other ERISA Affiliate has established, maintained, or contributed to, or had any obligation to establish, maintain or contribute to:

(A) a multiple employer welfare arrangement within the meaning of ERISA Section 3(40)(A); or

(B) a voluntary employees' beneficiary association under IRC § 501(c)(9).

(2) Neither Seller nor any other ERISA Affiliate has any obligation to provide any medical, life or similar benefits to current or future retired or terminated employees, their spouses or dependents following termination of employment except as required in ERISA § 601.

(3) All claims which have been incurred prior to Closing, regardless whether reported, shall be processed through and paid under Seller's Welfare Plans (including for

this purpose, any educational reimbursement or assistance program). For this purpose, a claim shall be deemed incurred:

(A) with respect to medical benefits, other than as described in Clause (B) immediately below, at the time services or materials are received;

(B) with respect to benefits for hospital or nursing home confinement, including doctors' visits, nursing services and other services and supplies furnished in conjunction with the confinement, at the time the confinement commenced;

(C) with respect to life or survivor benefits, at the time of the death;

(D) with respect to short- or long-term disability or accident and sickness benefits, at the time the disability commenced;

(E) with respect to amounts payable under workers' compensation or other similar laws, at the time the disability, accident or illness commenced; and

(F) with respect to tuition or educational reimbursements, at the time the class or program commenced.

With respect to any employee who is not actively at work on the Closing Date (for reasons other than normal scheduling or vacation), including former employees who terminated or retired prior to the Closing Date, employees on leave of absence for medical or other reasons, and employees on layoff, Seller shall remain responsible for and continue any applicable welfare benefit plan coverage until such time, if any, as such employee returns to active service with the Seller.

(f) *COBRA*. Seller has complied with the provisions of ERISA § 601 et seq. and IRC § 4980B. Further, Seller shall also remain responsible for and continue to provide any applicable health care continuation coverage under IRC § 4980B to employees or their dependents if the "qualifying event" (as defined in IRC § 4980B(f)(3)) occurred prior to Closing.

5.23 No Violation. Subject to the receipt of the Required Consents, except as set forth on Schedule 5.23, neither the execution and performance of this Agreement or the agreements contemplated hereby nor the consummation of the transactions contemplated hereby or thereby (the "*Contemplated Transactions*") will, directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with, or result in a violation of (i) any provision of the Articles of Organization or the Operating Agreement of Seller, or (ii) any resolution adopted by the Member;

(b) contravene, conflict with, or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Requirement of Law or any order to which Seller or any of the Purchased Assets may be subject;

(c) contravene, conflict with, or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel,

terminate, or modify, any governmental authorization that is held by Seller or that otherwise relates to the Business or any of the Purchased Assets;

(d) contravene, conflict with, or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Assigned Contract; or

(e) result in the imposition or creation of any Lien upon or with respect to any of the Purchased Assets.

5.24 Taxes. During the Ownership Period, Seller has duly and timely filed (and prior to the Closing Date will duly and timely file) true, correct and complete tax returns, reports and estimates required to be filed by it as of the date hereof by the United States of America or any state or any Governmental Body, and has paid or established adequate reserves for all Taxes which have or may become due under such returns and any assessments which have been received by it or otherwise. All such tax returns or reports fairly and accurately reflect in all Material respects the Taxes of Seller for the periods covered thereby. Seller is not delinquent in the payment of any Tax, there is no Tax deficiency or delinquency asserted against Seller, there is no unpaid assessment, proposal for additional taxes, deficiency or delinquency in the payment of any of the Taxes of Seller that could be asserted by any Governmental Body and there has been no violation by Seller of any applicable Requirements of Law pertaining to Taxes. No Internal Revenue Service or other tax audit of Seller is pending or, to the Knowledge of Seller or Member, threatened, and the results of any completed audits are properly reflected in the Consolidated Financial Statements. No Internal Revenue Service or other tax audit of Seller has occurred during the Ownership Period. Seller has not granted any extension to any Governmental Body of the limitation period during which any tax liability may be asserted. All monies required to be withheld by Seller from employees or other payees or collected from customers or other payees for Taxes, including, but not limited to penalties and interest thereon, have been collected or withheld and either paid to the respective Governmental Bodies or set aside in accounts for such purpose.

5.25 Consents. Except as set forth on Schedule 5.25 hereto, no authorization, consent, approval or, Permit of, or filing with, any Governmental Body, any lender or lessor or any other Person is required (i) to authorize, or is required in connection with, the execution, delivery and performance of this Agreement or the agreements contemplated hereby on the part of Seller or Member or (ii) in connection with the transfer of any of the Purchased Assets from Seller to Purchaser, including but not limited to the assignment of the Assigned Contracts to Purchaser (collectively, the “**Required Consents**”).

5.26 Environmental Matters. Except as set forth on Schedule 5.26 hereto:

(a) Seller is, and at all times throughout the Ownership Period has been, in Material compliance with, and has not been and is not in violation of or liable under, any Environmental Law. Seller has no basis to expect, nor, to the Knowledge of Seller or Member, has any other Person for whose conduct Seller is or may be held to be responsible received, any actual or threatened order, notice, or other communication from (i) any Person acting in the public interest, or (ii) the current or prior owner or operator of any of the Real Estate, of any actual or potential violation or failure to comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health, and Safety Liabilities with respect to any of the Real Estate or any other properties or assets (whether real, personal, or mixed) in which Seller has had an interest, or with respect to any of the Real Estate or any other property at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used, or processed by Seller or any other Person for whose conduct Seller is or may be

held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(b) Seller has obtained and is in Material compliance with all Material Permits, letters, clearances, consents, waivers, and exemptions pursuant to any Environmental Law necessary for the conduct of the Business and the ownership of the Purchased Assets.

(c) There are no pending or, to the Knowledge of Seller or Member, threatened claims, encumbrances, or other restrictions of any nature, resulting from any Environmental, Health, and Safety Liabilities or arising under any Environmental Law, with respect to or affecting any of the Real Estate or any other properties and assets (whether real, personal, or mixed) in which Seller has or had an interest.

(d) Seller has no basis to expect, nor, to the Knowledge of Seller or Member, has any other Person for whose conduct Seller is or may be held responsible, received, any citation, directive, inquiry, notice, order, summons, warning, or other communication that relates to Hazardous Activity, Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health, and Safety Liabilities with respect to any of the Real Estate or any other properties or assets (whether real, personal, or mixed) in which Seller had an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used, or processed by Seller or any other Person for whose conduct Seller is or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(e) Neither Seller nor, to the Knowledge of Seller or Member, any other Person for whose conduct Seller is or may be held responsible, has any Environmental, Health, and Safety Liabilities with respect to any of the Real Estate or with respect to any other properties and assets (whether real, personal, or mixed) in which Seller (or any predecessor), has or had an interest, or at any property adjoining any of the Real Estate or any such other property or assets.

(f) Other than in compliance with all Environmental Laws, there are no Hazardous Materials present on or in the Environment at any of the Real Estate or at any adjoining property, including any Hazardous Materials contained in barrels, above ground or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of any of the Real Estate or such adjoining property, or incorporated into any structure therein or thereon, other than in compliance with Environmental Laws.

(g) Other than in compliance with all Environmental Laws, during the Ownership Period there has been no Release or, to the Knowledge of Seller or Member, Threat of Release, of any Hazardous Materials at or from any of the Real Estate or at any other locations or any other properties or assets in which Seller has or had an interest, or to the Knowledge of Seller or Member, any adjoining property, where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed, whether by Seller or Member or any other Person.

(h) Seller has made available to Purchaser true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by Seller pertaining to Hazardous Materials or Hazardous Activities in, on, or under any of the Real Estate, or

concerning compliance by Seller or any other Person for whose conduct Seller is or may be held responsible, with Environmental Laws.

5.27 Finder's Fee. Except as set forth on Schedule 5.27, Neither Seller nor Member has incurred any obligation for any finder's, broker's or agent's fee in connection with this Agreement or any of the agreements contemplated hereby or any of the transactions contemplated hereby or thereby for which Purchaser may be liable or for which a claim could be asserted against the Purchased Assets.

5.28 Enablement. Seller and Member each warrants that the Intellectual Property provides Purchaser with all the confidential information and know-how, technical and otherwise, necessary to enable Purchaser to manufacture, have manufactured, formulate, have formulated, fill, have filled, package, have packaged, sell, have sold, distribute, or have distributed, the Products.

5.29 Registrations. Each and every of the Registrations is currently active and maintained in good standing, with no outstanding accrued fees, fines, penalties, or costs of any kind or description due and owing, whether such relates to any late maintenance charge or cost, any restoration charge or cost, or otherwise. Except as has been disclosed to Purchaser in writing, neither Seller nor Member is in receipt of, and Seller and Member have no expectation of receiving, any warning letter or stop sale notices or any data call-in or any other requirement(s) from any regulatory body or entity or any other correspondence from any governmental or regulatory body or entity regarding any non-compliance of Seller relative to Seller's manufacture, marketing, sale, and/or distribution of any Product or the Registrations.

## **ARTICLE 6 REPRESENTATIONS OF PURCHASER**

Purchaser represents and warrants to Seller and Member as of the date hereof and as of the Closing Date as follows:

6.1 Organization and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of California, with all requisite corporate power to carry on the business in which it is engaged, to own the properties it owns and to execute and deliver this Agreement and to consummate the transactions contemplated hereby.

6.2 Authorization and Validity. The execution, delivery and performance of this Agreement and the other Transaction Documents by Purchaser, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by Purchaser. This Agreement and the other Transaction Documents have been or will be before the Closing duly executed and delivered by Purchaser, and constitute, as of Closing, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally or the availability of equitable remedies.

6.3 No Violation. Neither the execution and performance of this Agreement or the other Transaction Documents, nor the consummation of the transactions contemplated hereby or thereby, will (i) conflict with, or result in a breach of the terms, conditions and provisions of, or constitute a default under, the organizational documents of Purchaser or of any agreement, indenture or other instrument under which Purchaser is bound, or (ii) violate or conflict with any judgment, decree, order, statute, rule or regulation of any court or any public, governmental or regulatory agency or body having jurisdiction over Purchaser or the properties or assets of Purchaser.

6.4 Finder's Fee. Purchaser has not incurred any obligation for any finder's, broker's or agent's fee in connection with this Agreement or any of the agreements contemplated hereby or any of the transactions contemplated hereby or thereby for which Seller or Member may be liable.

6.5 Consents. No authorization, consent, approval, permit or license of, or filing with, any Governmental Body or any lender or lessor or any other Person is required to authorize, or is required in connection with, the execution, delivery and performance of this Agreement or the agreements contemplated hereby on the part of Purchaser.

**ARTICLE 7**  
**SELLER'S AND MEMBER'S COVENANTS BEFORE CLOSING**

Seller and Member, jointly and severally, covenant and agree that from the date hereof through the Closing:

7.1 Business Operations. Seller and Member will operate the Business only in the ordinary course of the Business consistent with past practice and will not introduce any new method of management, operation, or accounting. Seller and Member will each use its commercially reasonable efforts to preserve the Business intact and to retain Seller's present employees, customers and suppliers so that they will be available to Purchaser after the Closing Date. Neither Seller nor Member will knowingly take any action that might impair the Business or Purchased Assets without the prior written consent of Purchaser or take or fail to take any action that would cause or permit the representations and warranties made in Article 5 hereof (except for those representations and warranties that speak as of a specific date) to be inaccurate at the time of the Closing or preclude Seller from making such representations and warranties at and as of the Closing. Seller and Member will comply with all applicable laws, rules, regulations and ordinances that are applicable to the Business.

7.2 Inspection and Access. Seller will permit Purchaser and its officers, attorneys, accountants, and representatives on a reasonable basis free, full, and complete access to, and make available for inspection, all of the properties or assets (including, without limiting the Purchased Assets) of Seller, as well as Seller's key employees, customers, and suppliers, and furnish Purchaser copies of all correspondence, documents, books, records, tax returns, and information with respect to the affairs of Seller as Purchaser and its representatives may reasonably request.

7.3 Notice of Developments. Seller or Member will promptly inform Purchaser in writing of any Material adverse development in (i) the Business, (ii) the Purchased Assets and/or (iii) the financial condition of Seller.

7.4 Required Consents. Seller will use its commercially reasonable efforts to secure as soon as practicable each of the Required Consents.

7.5 Hiring Employees. Seller will cooperate with all requests made by Purchaser for the purpose of allowing Purchaser to hire those employees of Seller designated by Purchaser, such employment to be effective as of the Closing Date.

7.6 Employee Compensation. Except with Purchaser's prior written consent or as authorized by written contracts and Seller Plans in existence as of the date hereof and except for normal salary increases consistent with past practices, no increase will be made in the compensation or rate of compensation payable or to become payable to the officers or employees of Seller, and no bonus, profit sharing, retirement, insurance, death, fringe benefit or other direct or indirect compensation will accrue, be set aside or be paid to, for or on behalf of any of such officers or employees by Seller. Seller shall not

adopt any additional Seller Plans or written agreements respecting compensation of Employees from the date hereof without the prior written consent of Purchaser.

7.7 Contracts. Except with Purchaser's prior written consent, Seller will not waive any right or cancel any contract, debt or claim nor will it assume or enter into any contract, lease, license, obligation, indebtedness, commitment, purchase or sale outside of the ordinary course of the Business.

7.8 Capital Assets; Payments of Liabilities. Seller will not, without Purchaser's prior written consent, acquire or dispose of any capital asset having an initial cost of \$25,000 or more or capital assets having a cost of \$25,000 or more in the aggregate.

7.9 Mortgages; Liens. Except with Purchaser's prior written consent, Seller will not enter into or assume any mortgage, pledge, conditional sale or other title retention agreement, permit any Lien to attach to any of its properties or assets, (including, without limitation the Purchased Assets) whether now owned or hereafter acquired, or guarantee or otherwise become contingently liable for any stock or dividends of any Person or obligations of another, or make any capital contributions to or investments in any Person.

7.10 Notice of Breach. Seller or Member will, upon becoming aware thereof, give detailed written notice to Purchaser of the occurrence of, or the impending or threatened occurrence of, any event which would cause or constitute a breach, or would have caused or constituted a breach had such event occurred or Seller or Member had Knowledge of before the date of this Agreement, of any of Seller's covenants, agreements, representations or warranties contained or referred to herein or in any document delivered in accordance with the terms hereof.

7.11 Satisfaction of All Conditions Precedent. Seller will use its commercially reasonable efforts to cause all conditions precedent to the obligations of Purchaser hereunder, and all of the conditions precedent to the obligations of Seller and Member hereunder, to be satisfied by the Closing.

7.12 Continuation of Insurance Coverage. Except as otherwise consented to in writing by Purchaser, Seller will cause insurance coverage for Seller and its assets and operations comparable in amount and scope to the coverage now maintained by Seller to be kept in full force and effect. Risk of loss of, damage to or destruction of the Purchased Assets will remain with Seller until the Closing.

7.13 Confidentiality; Publicity.

(a) Any information or document (including without limitation this Agreement or any of the other Transaction Documents) that Purchaser provides to Seller or that Seller develops based on any such information or document in the course of completing the transactions contemplated hereby, in each case with the exception of information or documents that are publicly available other than through a breach by Seller or Member of any agreement with Purchaser, will be treated as confidential and proprietary and will not be disclosed to any third party, with the exception of representatives of Seller who agree in writing to comply with this Section 7.13 or as otherwise consented to in writing by Purchaser. Seller will not issue any press release or make any other public disclosure relating to the transactions contemplated hereby without the prior written consent of Purchaser.

(b) Notwithstanding anything herein to the contrary, except as reasonably necessary to comply with applicable securities laws, Seller and Member (and each employee, representative, or other agent of such party) may: (i) consult any tax advisor regarding the U.S. federal income tax treatment or tax structure of the transaction, and (ii) disclose to any person,

without limitation of any kind, the U.S. federal income tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to the taxpayer relating to such tax treatment and tax structure; provided that this clause (ii) will not apply until the earliest of (A) the date of the public announcement of discussions relating to the transaction, (B) the date of the public announcement of the transaction, or (C) the date of the execution of an agreement, with or without conditions, to enter into the transaction. For this purpose, "tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transaction and does not include information relating to the identity of the parties.

7.14 Obligation to Update Schedules. Seller and Member shall promptly update and supplement the Schedules attached to this Agreement, as necessary to reflect any changes to the matters set forth in such Schedules from the date hereof through the Closing (the "**Updated Schedules**"). Any changes in the Updated Schedules shall be highlighted on the Updated Schedules at the time such Updated Schedules are delivered to Purchaser and Seller shall in good faith cause such Updated Schedules to be provided to Purchaser promptly following Seller's determination that a change has occurred requiring an Updated Schedule.

## **ARTICLE 8 PURCHASER'S COVENANTS BEFORE CLOSING**

Purchaser covenants and agrees that from the date hereof through the Closing:

8.1 Consummation of Agreement. Purchaser will use its commercially reasonable efforts to cause the consummation of the transactions contemplated by this Agreement in accordance with its terms.

8.2 Notice of Breach. Purchaser will, upon becoming aware thereof, give detailed written notice to Seller of (i) the occurrence of, or the impending or threatened occurrence of, any event which would cause or constitute a breach, or would have caused or constituted a breach had such event occurred or Purchaser had Knowledge of before the date of this Agreement, of any of Purchaser's covenants, agreements, representations or warranties contained or referred to herein or in any document delivered in accordance with the terms hereof which (ii) Purchaser deems to constitute a non-fulfillment of any condition precedent to Purchaser's obligations under this agreement which is set forth in Article 10 hereof.

8.3 Satisfaction of All Conditions Precedent. Purchaser will use its commercially reasonable efforts to cause all conditions precedent to the obligations of Seller and Member hereunder, and all of the conditions precedent to the obligations of Purchaser hereunder (to the extent that such matters are within the control of Purchaser), to be satisfied by the Closing.

8.4 Hiring Employees. Purchaser shall, or shall cause an Affiliate of Purchaser to, offer employment, effective on the Closing Date, to the employees of Seller listed on Schedule 8.4 hereto (the "**Transferred Employees**"). At any time prior the scheduled Closing Date, Purchaser may, by delivering an updated Schedule 8.4 to Seller, designate additional employees of Seller as Transferred Employees. For the avoidance of any confusion, Purchaser shall not be entitled to remove from Schedule 8.4, or otherwise undesignated as a Transferred Employee, any employee of Seller once such employee has been included on any Schedule 8.4 delivered to Seller.

8.5 Identification of Fixed Assets. Prior to the scheduled Closing Date, Purchaser shall identify those Fixed Assets of Seller, reasonably acceptable to Seller, which Purchaser will purchase as a part of the Purchased Assets by delivery of an updated Schedule 2.1(b) to Seller. For the avoidance of



any confusion, the Fixed Assets so identified may include any of Seller's production equipment previously identified on Schedule 2.2 as Excluded Assets.

**8.6 Confidentiality; Publicity.**

(a) Any information or document (including without limitation this Agreement or any of the other Transaction Documents) that Seller provides to Purchaser or that Purchaser develops based on any such information or document in the course of completing the transactions contemplated hereby, in each case with the exception of information or documents that are publicly available other than through a breach by Purchaser of any agreement with Seller, will be treated as confidential and proprietary and will not be disclosed to any third party, with the exception of representatives of Purchaser who agree in writing to comply with this Section 8.6 or as otherwise consented to in writing by Seller. Purchaser shall not issue any press release or make any other public disclosure relating to the transactions contemplated hereby without the prior written consent of Seller.

(b) Notwithstanding anything herein to the contrary, except as reasonably necessary to comply with applicable securities laws, Purchaser (and each employee, representative, or other agent of such party) may: (i) consult any tax advisor regarding the U.S. federal income tax treatment or tax structure of the transaction; and (ii) disclose to any person, without limitation of any kind, the U.S. federal income tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to the taxpayer relating to such tax treatment and tax structure; provided that this clause (ii) will not apply until the earliest of (A) the date of the public announcement of discussions relating to the transaction, (B) the date of the public announcement of the transaction, or (C) the date of the execution of an agreement, with or without conditions, to enter into the transaction. For this purpose, "tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transaction and does not include information relating to the identity of the parties.

**ARTICLE 9  
CONDITIONS TO THE OBLIGATIONS OF SELLER AND MEMBER**

The obligations of Seller and Member to consummate the transactions contemplated hereby are subject to the fulfillment, to the reasonable satisfaction of Seller and Member, on or before the Closing Date, of each of the following conditions precedent; *provided, however*, that any of such conditions precedent may be waived by Seller and Member on or before the Closing Date. If the Closing does not occur as a result of the failure of any of the following conditions precedent, then Seller and Member will not have any liability to Purchaser, except as provided in this Agreement. If the Closing occurs and any condition precedent to Seller's or Member's obligation to Close has not been fulfilled, Seller and Member shall be deemed to have waived such conditions precedent by Closing the Transaction.

9.1 Representations and Warranties. The representations and warranties of Purchaser contained herein shall be accurate in all Material respects as of the date hereof and (except with respect to those representations and warranties that speak as of a specific date) as of the Closing.

9.2 Covenants. Purchaser shall have performed and complied in all Material respects with all covenants or conditions required by this Agreement to be performed and complied with by Purchaser before the Closing.

9.3 Execution and Delivery of Documents. Purchaser shall have executed and delivered all documents required to be delivered by Purchaser under Section 11.3 hereof.

9.4 Proceedings. No action, proceeding or order by any court or Governmental Body or agency shall have been threatened in writing, asserted, instituted or entered to restrain or prohibit the carrying out of the transactions contemplated by this Agreement.

9.5 Other Actions. Purchaser shall have executed and delivered such other documents and instruments and taken such other actions as Seller and Member reasonably may request in order to carry out the transactions contemplated by this Agreement.

## ARTICLE 10 CONDITIONS TO THE OBLIGATIONS OF PURCHASER

The obligations of Purchaser to consummate the transactions contemplated hereby are subject to the fulfillment, to the reasonable satisfaction of Purchaser, on or before the Closing Date, of each of the following conditions precedent; *provided, however*, that any of such conditions precedent may be waived by Purchaser on or before the Closing Date. If the Closing does not occur as a result of the failure of any of the following conditions precedent, then Purchaser will not have any liability to Seller or Member, except as provided in this Agreement. If the Closing occurs and any condition precedent to Purchaser's obligation to Close has not been fulfilled, Purchaser shall be deemed to have waived such condition precedent by Closing the Transaction.

10.1 Representations and Warranties. The representations and warranties of Seller and Member contained herein shall be accurate in all Material respects as of the date hereof and (except with respect to those representations and warranties that speak as of a specific date) as of the Closing.

10.2 Covenants. Seller and Member shall have performed and complied in all Material respects with all covenants or conditions required by this Agreement to be performed and complied with by Seller and Member before the Closing.

10.3 Execution and Delivery of Documents. Seller and Member shall have executed and delivered all documents required to be delivered by Seller and Member under Section 11.2 hereof.

10.4 Proceedings. No action, proceeding or order by any court or Governmental Body or agency shall have been threatened in writing, asserted, instituted or entered to restrain or prohibit the carrying out of the transactions contemplated by this Agreement.

10.5 Consents. Seller shall have obtained and delivered to Purchaser each of the Required Consents. With respect to Permits that are not transferable, Purchaser shall have confirmed to its reasonable satisfaction that any necessary new licenses, permits or other authorizations will be issued to Purchaser upon proof of transfer of ownership of the Purchased Assets.

10.6 Seller's Updated Schedules. All changes, additions and deletions reflected in the Updated Schedules shall have been accepted by Purchaser in writing, in Purchaser's sole discretion. Should an Updated Schedule be delivered to Purchaser less than two (2) business days prior to the scheduled Closing Date, Purchaser may at its option delay the Closing Date two (2) days without violating the terms of this Agreement.

10.7 Customer and Supplier Interviews. The results of Purchaser's interviews of those customers and/or suppliers listed on Schedule 10.7 (under conditions reasonably satisfactory to Seller, including Seller participation therein) shall have been reasonably satisfactory to Purchaser.

10.8 Other Actions. Seller and Member shall have executed and delivered such other documents and instruments and taken such other actions as Purchaser may reasonably request in order to carry out the transactions contemplated by this Agreement.

**ARTICLE 11  
DOCUMENTS TO BE DELIVERED AT CLOSING**

11.1 Condition Precedent. Each party's obligation to consummate the transactions contemplated by this Agreement is conditioned on the delivery to such party of each of the documents listed in this Article 10, unless such delivery is expressly waived by such party in writing.

11.2 Documents Delivered by Seller. In addition to the delivery of the Purchased Assets, Seller and Member, as the case may be, shall deliver the following documents to Purchaser on the Closing Date, each in form and substance satisfactory to Purchaser:

(a) *Bill of Sale*. A bill of sale conveying the Purchased Assets, duly executed by an authorized officer of Seller or Member (as applicable) (the "*Bill of Sale*") in substantially the form attached hereto as Exhibit D;

(b) *Escrow Agreement*. The Escrow Agreement duly executed by Seller.

(c) *Assignment and Assumption Agreement*. An assignment and assumption agreement conveying the Assigned Contracts under which Purchaser will assume the Assumed Liabilities, duly executed by an authorized officer of Seller or Member (as applicable) (the "*Assignment and Assumption Agreement*") in substantially the form attached hereto as Exhibit E;

(d) *Restrictive Agreement*. Restrictive agreements duly executed by Member and Seller, pursuant to which each of Member and Seller shall refrain from taking certain actions for certain periods of time (the "*Restrictive Agreements*") in substantially the form attached hereto as Exhibit F;

(e) *Transition Services Agreement*. The Transition Services Agreement, duly executed by Seller;

(f) *Transition Tolling Agreement*. The Transition Tolling Agreement, duly executed by Seller;

(g) *PBO Tolling Agreement*. The PBO Tolling Agreement, duly executed by Santolubes Manufacturing LLC;

(h) *Updated Schedules*. The Updated Schedules, certified as accurate by a duly authorized officer of Seller;

(i) *Closing Certificate*. A certificate of Seller dated the Closing Date certifying (i) that the conditions specified in Sections 10.1, 10.2, and 10.4 have been satisfied and (ii) resolutions of the Member authorizing the execution, delivery and performance of this Agreement and all other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby, duly executed by an authorized officer of Seller;

(j) *UCC Termination Statements.* All UCC termination statements or other Lien release documents necessary to evidence the transfer of good and marketable title free of all Liens, other than Permitted Liens, to all of the Purchased Assets to Purchaser, duly executed by such secured parties;

(k) *Certificate of Good Standing.* A Certificate of Good Standing of Seller, issued by the Secretary of State of the jurisdiction of its incorporation, as of a date not more than ten (10) days before the Closing Date;

(l) *Tax Clearance Letters.* A tax clearance letter (or similar) from each of the states of Seller's formation or qualification set forth in Schedule 5.1; and

(m) *Other.* Such other documents and instruments as Purchaser may reasonably require for the consummation of the transactions contemplated by this Agreement.

11.3 Documents Delivered by Purchaser. In addition to transferring the Purchase Price as provided in Section 3.2, Purchaser shall deliver the following documents to Seller and/or Member on the Closing Date, each in form and substance satisfactory to Seller:

(a) *Bill of Sale.* A counterpart to the Bill of Sale duly executed by Purchaser;

(b) *Assignment and Assumption Agreement.* A counterpart to the Assignment and Assumption Agreement duly executed by Purchaser;

(c) *Assignment and Assumption of Lease.* A counterpart to each Assignment of Lease duly executed by Purchaser;

(d) *Escrow Agreement.* A counterpart to the Escrow Agreement duly executed by Purchaser and Escrow Agent.

(e) *Restrictive Agreements.* A counterpart to each Restrictive Agreement duly executed by Purchaser;

(f) *Transition Services Agreement.* A counterpart to the Transition Services Agreement duly executed by Purchaser;

(g) *Transition Tolling Agreement.* A counterpart to the Transition Tolling Agreement duly executed by Purchaser;

(h) *PBO Tolling Agreement.* The PBO Tolling Agreement, duly executed by Purchaser, along with evidence reasonably satisfactory to Seller of the payment by Purchaser of all amounts due upon the execution and delivery thereof;

(i) *Closing Certificate.* A certificate of Purchaser dated the Closing Date certifying (i) that the conditions specified in Sections 9.1, 9.2, and 9.4 have been satisfied and (ii) the resolutions of the Board of Directors of Purchaser authorizing the execution, delivery and performance of this Agreement and all other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby, duly executed by an authorized officer of Purchaser;

(j) *Certificate of Good Standing.* A Certificate of Good Standing of Purchaser, issued by the Secretary of State of the jurisdiction of its incorporation, as of a date not more than ten (10) days before the Closing Date; and

(k) *Other.* Such other documents and instruments as Seller may reasonably require for the consummation of the transactions contemplated by this Agreement.

**ARTICLE 12  
COVENANTS AFTER THE CLOSING**

12.1 Books and Records. From and after the Closing and for a period of eighteen (18) months subsequent thereto, Purchaser shall provide Seller and its representatives reasonable access during normal business hours and upon three (3) days' prior written notice to Purchaser to all books and Records of Seller that Purchaser receives from Seller. In addition, Purchaser shall, upon reasonable request of Seller and at Seller's expense, furnish to Seller copies of any such books or records.

12.2 Further Assurances. Seller hereby covenants and agrees that from and after the Closing Date, Seller shall, at its expense, execute and deliver to Purchaser all such deeds, conveyances, bills of sale, assurances, transfers, assignments and consents, approvals, agreements and contracts and any other documents, and shall cooperate fully with Purchaser and do all such other things, as may be reasonably necessary to (i) effectively transfer the Purchased Assets to, and to perfect and confirm the ownership of the Purchased Assets by, Purchaser and (ii) effectuate the transfer of the Business to Purchaser, in each case as reasonably requested by Purchaser.

12.3 Sales Tax. Seller shall pay (and shall indemnify Purchaser from and against, and, if necessary, will reimburse Purchaser with respect to) all sales, use and transfer taxes resulting from the sale of the Business. Seller shall timely prepare and file all returns and reports in respect of such sales, use and transfer taxes, and shall pay the appropriate tax amounts to the appropriate taxing authorities.

12.4 Seller's Name Change. Purchaser is purchasing all of Seller's Rights to the names used in the Business, and therefore, Seller and Member are not entitled to use, and shall promptly cease and cause other Persons to cease, the use of, "Envincio," "Prentiss" or any variation thereof as corporate, product or business names or titles anywhere in the world within 30 days after the Closing Date. The parties hereto agree that Seller will, on or immediately after the Closing Date, at Seller's cost, change Seller's name to a name dissimilar to the name "Envincio," "Prentiss" or any variation thereof.

12.5 Responsibility of Former Employer.

(a) Seller will be and remain solely responsible for all wages, incentives, bonuses, commissions and all benefits under all Plans and similar arrangements in effect or covering one or more of Seller's employees or retired, disabled or other former employees, including dependents and beneficiaries, as of or before the Closing, including any termination, severance or separation benefits, including COBRA continuation rights, if any, and including all covered claims and expenses, rights to reimbursement and benefits claims incurred or arising out of events or conditions existing or occurring as of or before the Closing, even though such expenses, claims or rights continue or arise after the Closing. Purchaser will have no obligations for any such claims and Seller and Member, jointly and severally, indemnify Purchaser from any claims therefor, without regard to any of the limitations on indemnification set forth in Article 13 or elsewhere in this Agreement.

(b) Seller shall make full and final settlements with each of the Transferred Employees listed on Schedule 8.4 with respect to all liabilities and obligations relating to their employment with Seller.

**ARTICLE 13  
INDEMNIFICATION**

**13.1 Survival of Representations and Warranties.**

(a) The representations and warranties contained in this Agreement or in any other Transaction Document, and the covenants and agreements contained herein or therein to be performed or complied with before the Closing will survive the Closing until the fifteen (15) month anniversary of the Closing Date (the “*Expiration Date*”) and will thereupon expire together with the associated right to indemnification (except to the extent a written notice asserting a claim for breach thereof is given to Seller and Member or Purchaser, as the case may be, before such date).

(b) The covenants and agreements contained herein or in any other Transaction Document to be performed or complied with at or after the Closing (other than the covenant and agreement to indemnify against breaches of representations and warranties, which shall expire as aforesaid) will survive without limitation as to time (except as provided in such covenant or agreement).

(c) As to any breach of the representations and warranties or any failure to perform or comply with any of the covenants and agreements contained herein or in any other Transaction Document that constitutes fraud on the part of the breaching or non-performing party or parties, such representations and warranties and such covenants and agreements will survive the Closing until the expiration of the applicable statutes of limitations and will thereupon expire together with the associated right to indemnification (except to the extent a written notice asserting a claim for breach thereof is delivered to Seller and Member or Purchaser, as the case may be, before such expiration).

**13.2 Seller and Member’s Indemnity.** Subject to the terms of this Article 13, and except for the Assumed Liabilities which are assumed by Purchaser, Seller and Member hereby, jointly and severally, indemnify Purchaser, and its shareholders, officers, directors, agents, attorneys and Affiliates, and their respective representatives, successors and assigns, from and against all lawsuits, losses, diminution of value, claims, charges, obligations, demands and proceedings, assessments, penalties, liabilities, costs, damages, reasonable attorneys’ fees and expenses (collectively, “*Damages*”), incurred by any or all of them or assessed against the Purchased Assets or the Business arising, directly or indirectly, from or in connection with:

(a) The inaccuracy of any representation or warranty, or the breach or default of or under any covenant or agreement, made by Seller and/or Member in this Agreement, including any of the Exhibits and Schedules hereto or in any other Transaction Document;

(b) Any liability or Damage relating to any injury sustained or incurred by a claimant with respect to Products or services manufactured, distributed, or sold by Seller during the Ownership Period, except to the extent such Product or service has been modified by or at the direction of Purchaser after the Closing;

(c) Any warranty claims made, or customer allowances given, by Seller or Purchaser arising from defects in or allowances requested by customers with respect to Products or services manufactured, distributed, or sold by Seller during the Ownership Period, including, but not limited to, any claims that Purchaser is liable for Damages as a result of it being a successor to the Business of Seller, except to the extent such Product or service has been modified by or at the direction of Purchaser after the Closing;

(d) Any claims arising out of or relating to occurrences of any nature relating to the Business or the conduct thereof during the Ownership Period, whether any such claims are asserted before or after the Closing;

(e) Any obligation or liability under or related to any Plan or the termination of or failure to properly terminate such Plan;

(f) Any Taxes in connection with the purchase and sale transactions contemplated by this Agreement or any of the other Transaction Documents;

(g) Any claim for severance pay, vacation pay, sick pay or any other remuneration as a result of the transfer of the Business, including, but not limited to, any claim made by former employees of Seller subsequently hired by Purchaser;

(h) Any claim arising out of or relating to the employment or termination of employees by Seller during the Ownership Period or in connection with the transactions contemplated by this Agreement or brought by or on behalf of employees arising out of or attributable to events occurring during the Ownership Period or as a result of the transfer of the Business and/or the transactions contemplated herein;

13.3 Indemnification and Payment of Damages by Seller – Environmental Matters. In addition to the provisions of Section 13.2, Seller and Member, jointly and severally, hereby indemnify Purchaser, and its members, managers, officers, agents, attorneys, Affiliates, heirs, representatives, successors and assigns, as applicable, for, and shall pay to Purchaser and such Persons the amount of, any Damages (including costs of Cleanup, containment, or other remediation) arising, directly or indirectly, from or in connection with:

(a) any Environmental, Health, and Safety Liabilities arising out of or relating to: (i) the ownership, operation, or condition at any time during the Ownership Period of the Real Estate or any other properties and assets (whether real, personal, or mixed and whether tangible or intangible) in which Seller has or had an interest; (ii) any Hazardous Materials or other contaminants that were present on any of the Real Estate or such other properties and assets at any time during the Ownership Period; (iii) any Hazardous Materials or other contaminants, wherever located, that were generated, transported, stored, treated, Released, or otherwise handled by Seller or by any other Person for whose conduct they are or may be held responsible at any time during the Ownership Period; or (iv) any Hazardous Activities that were conducted by Seller or by any other Person for whose conduct Seller is or may be held responsible; or

(b) any bodily injury (including illness, disability, and death, and regardless of when any such bodily injury occurred, was incurred, or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction, and deprivation of the use of real property), or other damage of or to any Person, including any employee or former employee of Seller or any other Person for whose conduct Seller is or may be held responsible, in any way arising from any Hazardous Activity conducted with respect to any of the Real Estate or the

operation of Seller during the Ownership Period, or from Hazardous Material that was (i) present during the Ownership Period on or at any of the Real Estate (or present on any other property, if such Hazardous Material emanated from any of the Real Estate and was present on any of the Real Estate during the Ownership Period) or (ii) Released by Seller or any other Person for whose conduct Seller is or may be held responsible, at any time during the Ownership Period.

13.4 Purchaser's Indemnity. Subject to the terms of this Article 13, Purchaser hereby indemnifies Seller, Member, and each of their respective members, managers, officers, agents, attorneys, Affiliates, heirs, representatives, successors and assigns, as applicable, from and against all Damages asserted against or incurred by any or all of them by reason of or resulting from or based on:

(a) The inaccuracy of any representation or warranty, or the breach or default of or under any covenant or agreement, made by Purchaser in this Agreement, including any of the Exhibits and Schedules hereto or in any other Transaction Document;

(b) The failure of Purchaser to pay, perform and/or discharge when due any of the Assumed Liabilities; or

(c) Any liability or claim arising out of or relating to occurrences of any nature relating to the conduct of the Business from events occurring after the Closing Date, except with respect to Excluded Assets and except as otherwise specified herein.

13.5 Conditions of Indemnification. The respective indemnification obligations and liabilities of Seller, Member and Purchaser (the "**Indemnifying Party**") to the other and the other's and each of their respective shareholders, members, directors, managers, officers, agents, attorneys, Affiliates, heirs, representatives, successors and assigns, as applicable, (the "**Party to be Indemnified**") under Sections 13.2, 13.3, and 13.4 hereof with respect to claims resulting from the assertion of liability by third parties will be subject to the following terms:

(a) Within 20 days (or such earlier time as might be required to avoid prejudicing the Indemnifying Party's position) after receipt of notice of commencement of any legal action evidenced by service of process or other legal pleading, or with reasonable promptness after the assertion in writing of any claim by a third party, the Party to be Indemnified shall give the Indemnifying Party written notice thereof together with a copy of such claim, process or other legal pleading, and the Indemnifying Party will have the right to undertake the defense thereof by representatives of its own choosing (but subject to the approval of the Party to be Indemnified, which approval may not be unreasonably withheld or delayed) and at its own expense; *provided, however,* that the Party to be Indemnified may participate in the defense with counsel of its own choice and at its own expense and *provided further, however,* that the failure of the Party to be Indemnified to give timely notice will not affect the right to indemnification hereunder except to the extent (and then only to the extent) the Indemnifying Party proves actual Damages caused by such failure.

(b) If the Indemnifying Party, by the 30th day after receipt of notice of any such claim (or, if earlier, by the 10th day preceding the day on which an answer or other pleading must be served in order to prevent judgment by default in favor of the Person asserting such claim), does not elect to defend against such claim, the Party to be Indemnified will (upon further notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such claim on behalf of and for the account and risk of the Indemnifying Party and at the Indemnifying Party's expense.



(c) Anything in this Section 13.5 to the contrary notwithstanding, the Indemnifying Party may not settle any claim without the consent of the Party to be Indemnified unless such settlement involves only the payment of money and the claimant provides to the Party to be Indemnified a release from all liability in respect of such claim. If the settlement of the claim involves more than the payment of money, the Indemnifying Party may not settle the claim without the prior consent of the Party to be Indemnified, which consent may not be unreasonably withheld.

(d) The Party to be Indemnified and the Indemnifying Party shall each cooperate with all reasonable requests of the other.

(e) If the Indemnifying Party undertakes the defense of any claim by a third party, the Party to be Indemnified may withhold from any monies then or thereafter due or to become due to the Indemnifying Party, an amount reasonably estimated by the Party to be Indemnified to be necessary to satisfy such claim.

13.6 Remedies. If the Closing occurs, the indemnification provided in this Article 13 will be the sole and exclusive legal remedy for any inaccuracy of any representation or warranty, or the breach or default of or under any covenant or agreement, made by any party in this Agreement or in any other Transaction Document, and no party may seek any other legal remedy (whether under federal or state securities laws or otherwise) that might otherwise be available to such party; *provided, however*, that nothing in this Article 13 will preclude any party from seeking any legal remedy available to such party for any such inaccuracy, breach or default that constitutes fraud on the part of any other party; and *provided further, however*, nothing in this Article 13 will preclude any party from seeking any equitable remedy available to such party for such inaccuracy, breach or default or for any failure by any other party to comply with any of the covenants or agreements of such other party contained herein or in any other Transaction Document to be performed or complied with after the Closing Date.

13.7 Limitations on Indemnification.

(a) *Limitation of Damages*. No party shall be entitled to indemnification under any provision of this Agreement for incidental, consequential, indirect, special or punitive damages (including without limitation, damages for loss of business, loss of profits or loss of use), regardless of the basis for recovery, even if such party has been informed or should have known of the possibility of such damages; *provided, however*, that the foregoing limitation shall have no application to the right of an Indemnified Party to recover from the Indemnifying Party the amount of incidental, consequential, indirect, special or punitive damages actually paid to third persons by the Indemnified Party.

(b) *Aggregate Limit*. Any indemnification under Section 13.2(a) or Section 13.3 hereof (except for (i) indemnification for the inaccuracy, misrepresentation or omission of or in any representation or warranty contained in Sections 5.1, 5.2, 5.7, 5.24, 6.1, and 6.2, which are not limited, and (ii) indemnification that relates to the breach, default or non-fulfillment of or under any covenant or agreement to be performed or complied with on or after the Closing Date, which are not limited) will be limited to an aggregate sum equal to thirty percent (30%) of the Purchase Price; provided, however that any indemnification on account of a breach of any covenant set forth at Article 12 hereof shall be subject to no such limit.

(c) *Minimum Limits*. Any indemnification under Section 13.2(a) or Section 13.3 hereof (except for indemnification that relates to the breach, default or non-fulfillment of or under any covenant or agreement to be performed or complied with on or after the Closing Date, which

are not limited) may not be claimed or asserted by an Indemnified Party (i) unless the amount thereof exceeds \$1,000 and (ii) until the total amount of all Damages with respect to such matters (in excess of \$1,000) exceeds \$25,000, and then only for the amount by which such Damages exceeds \$25,000.

(d) *Limitation With Respect to Sold Accounts Receivable.* In the event of any claim for indemnification by the Purchaser arising out of the Seller's breach of its representation and warranty made in Section 5.12(iii), the provisions hereof shall apply, *provided, however*, that (i) such claim shall be barred unless it is made within one-hundred twenty (120) days after the Closing Date; (ii) the amount of the Indemnified Parties' Damages shall be limited to the face amount of any uncollectable Sold Accounts Receivable (net of any applicable reserve) underlying such claims; and (iii) Purchaser shall, in connection with such claim, assign, set over and convey to Seller all right, title and interest in and to such Sold Accounts Receivable. For the avoidance of any doubt, any claim for indemnification by the Purchaser arising out of the Seller's breach of its representation and warranty made in Section 5.12(iii) shall be subject to the minimum limitations of Section 13.8(c), but any Sold Accounts Receivable which form the basis of a Claim which is barred solely by, and included in the total amount of all Damages used to reach, the threshold set forth in Section 13.8(c)(ii) shall be included in the Sold Accounts Receivable assigned, set over, and conveyed to Seller pursuant to this Section.

#### ARTICLE 14 MISCELLANEOUS

14.1 Amendment and Waiver. No provision of this Agreement may be amended, modified, supplemented or waived except by an instrument in writing executed by all of the parties hereto or, in the case of an asserted waiver, executed by the party against which enforcement of the waiver is sought. The rights and remedies of the parties to this Agreement are cumulative and not alternative.

14.2 Assignment. Neither this Agreement nor any right created hereby is assignable by any party hereto, except by Purchaser to a Person that is an Affiliate of Purchaser.

14.3 Notice Any notice or communication must be in writing and given by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, (ii) depositing same with a national overnight delivery service (e.g., FedEx or UPS) addressed to the party to be notified, air bill prepaid for next day delivery, or (iii) by delivering the same in person or by fax or electronic mail (with confirmation of receipt). Such notice will be deemed received on the date on which it is hand-delivered, faxed (with evidence of successful transmittal), or sent via electronic mail (with confirmation of receipt), on the next business day following delivery to an overnight delivery service, or on the third business day following the date on which it is so mailed. For purposes of notice, the addresses of the parties shall be:

If to Seller  
or to Member: 2155 West Croft Circle  
Spartanburg, South Carolina 29302  
Attn: George Garrison  
Phone: (864) 596-1514  
Fax: (864) 208-1220  
E-Mail: ggarrison@santolubes.com

With a copy to: Polsinelli PC  
100 South Fourth Street, Suite 1000  
St. Louis, Missouri 63102  
Attn: Alan C. Witte  
Phone: (314) 889-7085  
Fax: (314) 622-6785  
E-Mail: AWitte@polsinelli.com

If to Purchaser: WELLMARK INTERNATIONAL  
c/o Central Garden and Pet Company  
1340 Treat Boulevard, Suite 600  
Walnut Creek, California 94597  
Attn: William E. Brown  
Phone: (925) 948-3677  
Fax: (925) 947-0914  
E-Mail: bbrown@central.com

With a copy to: Orrick, Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, California 94105  
Attn: John F. Seegal  
Phone: (415) 773-5797  
Fax: (415) 7773-5759  
E-Mail: jseegal@orrick.com

Notice to counsel shall not constitute notice to a party. Any party may change its address for notice by written notice given to the other parties in accordance with this Section 14.3.

14.4 Confidentiality. From and after the Closing, any party may make such disclosures after the Closing as it reasonably considers are required by law, but each party will notify the other parties in advance of any such disclosure.

14.5 Entire Agreement. This Agreement and the Exhibits and Schedules hereto supersede all prior agreements and understandings relating to the subject matter hereof, except that the obligations of any party under that certain Confidentiality Agreement for Potential Business Transaction by and between Seller or an Affiliate of Seller and Purchaser or an Affiliate of Purchaser dated September 10, 2013. Any agreement executed in accordance with this Agreement shall not be affected by this Section 14.5.

14.6 Transactional Expenses.

(a) Except as otherwise provided in this Agreement, Purchaser and Seller will each bear their respective costs and expenses of the transactions contemplated hereby, including without limitation, the fees and expenses of their attorneys, accountants and other advisors. The prevailing party in any dispute resolution, arbitration or other legal proceeding hereunder or under

any agreement executed pursuant hereto will, however, in addition to other relief, be entitled to recover its reasonable attorneys' fees and expenses and any other out-of-pocket expenses relating to such resolution, arbitration or other legal proceeding.

(b) Seller will pay out of the proceeds of the transaction contemplated by this Agreement all sales, use, and similar taxes, if any, in connection with the purchase and sale of the Purchased Assets.

14.7 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof; and the remaining provisions hereof will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement a provision which is legal, valid and enforceable and as similar in its terms to such illegal, invalid or unenforceable provision, as may be possible.

14.8 Governing Law; Consent to Jurisdiction; Venue. This Agreement will be governed by, and construed in accordance with, the substantive laws of the State of Delaware, without reference or regard to the conflicts of law rules thereof. Seller, Member and Purchaser hereby irrevocably and unconditionally consent and submit to the personal jurisdiction and venue of any state or federal court sitting in New Castle County, Delaware, with respect to any action to enforce this Agreement, any Transaction Document, and the transactions contemplated hereby and thereby, and Seller, Member and Purchaser also expressly consent and submit to and agree that venue in any such action is proper in said courts and county, and Seller, Member and Purchaser hereby expressly waive any and all personal rights under applicable Requirements of Law or in equity to object to the jurisdiction and venue of said courts and county.

14.9 Captions and Headings. The headings and captions used in this Agreement, in any Schedule or Exhibit hereto, in the table of contents or in any index hereto are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement or any Schedule or Exhibit hereto, and all provisions of this Agreement and the Disclosure Schedule and Exhibits hereto shall be enforced and construed as if no caption or heading had been used herein or therein.

14.10 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument. This Agreement, and any amendments thereto, to the extent signed and delivered by means of facsimile transmission or as an attachment to an electronic mail message in "PDF" or similar format, shall be treated in all manner and respects as an original agreement or instrument and shall have the same binding legal effect as if it were the original signed version thereof delivered in person.

14.11 Number and Gender. Whenever the context requires, references in this Agreement to the singular number includes the plural, the plural number includes the singular and words denoting gender include the masculine, feminine and neuter.

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

14.13 Termination.

(a) This Agreement may be terminated at any time before the Closing (i) by the mutual written consent Seller, Member and Purchaser; or (ii) by either Seller and Member or Purchaser in writing, without liability on account of such termination (provided that Seller and Member are not or Purchaser is not, as the case may be, otherwise in default or in breach of this Agreement), if Purchaser (in the case of termination by Seller and Member) or Seller or Member (in the case of termination by Purchaser) (A) fail to perform in any Material respect such party's covenants and agreements contained herein required to be performed before the Closing, or (B) Materially breach any of such party's representations or warranties contained herein.

(b) Termination of this Agreement under this Section 14.13 will terminate all obligations of Seller and Member and Purchaser hereunder; *provided, however*, that termination under clause (ii) of Section 14.13(a) will not relieve any defaulting or breaching party or parties from any liability to the other party or parties hereto.

(c) Notwithstanding anything contained in this Agreement to the contrary, if Seller and Member fail to consummate any of the transactions contemplated by this Agreement or any of the other agreements contemplated hereby and Purchaser is not otherwise in breach of any of its representations, warranties, covenants or agreements contained herein, Purchaser will have the right to compel Seller and Member to consummate each of the transactions contemplated by this Agreement and each of the other agreements contemplated hereby by a suit for specific performance or any other equitable remedy.

14.14 Waiver of Jury Trial. EACH OF THE PARTIES HERETO WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) RELATED TO OR ARISING OUT OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

14.15 Waiver. Any term of the Agreement may be waived at any time by the party which is entitled to the benefit thereof, but only if such waiver is evidenced by a writing signed by such party. No failure on the part of any party hereto to exercise, and no delay in exercising any right, power, or remedy created hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy by either party preclude any other or further exercise thereof or exercise of any right, power or remedy.


14.16 Dispute Resolution. The parties shall attempt to resolve any disputes, controversies, or claims (a "*Dispute*") arising out of or relating to this Agreement through E-mail, telephone or face-to-face discussions and negotiations between each other. If after good faith discussions a Dispute cannot be resolved amicably between the parties, they will submit such Dispute to non-binding mediation with a mediator mutually acceptable to all parties. It is understood that such mediation is to be held as soon as practical after the attempt to resolve such Dispute has failed. Any such mediation will not in any way prejudice the rights of any party to commence litigation regarding such Dispute and this Section will not constitute a condition precedent to the institution of legal proceedings.

[SIGNATURE PAGE FOLLOWS]

The parties are signing this Asset Purchase Agreement with the intent to be legally bound as of March 24, 2014.

**SELLER:**

ENVINCIO, LLC


By:   
Name: GEORGE C GARRIDO  
Title: Manager of Santolubés LLC, its Sole Member

**PURCHASER:**

WELLMARK INTERNATIONAL


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PRENTISS LLC

By:   
Name: GEORGE C GARRIDO  
Title: Manager of Santolubés LLC, the Sole Member of Envincio, LLC, its Sole Member

**MEMBER:**

SANTOLUBES LLC

By:   
Name: GEORGE C GARRIDO  
Title: Manager

The parties are signing this Asset Purchase Agreement with the intent to be legally bound as of March 24, 2014.

**SELLER:**

ENVINCIO, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PRENTISS LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MEMBER:**

SANTOLUBES LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PURCHASER:**

WELLMARK INTERNATIONAL

By: Frank Jusich  
Name: Frank Jusich  
Title: Chief Operating Officer

William E. Brown

SCHEDULE 2.1(h)  
Trade Rights

1. Envincio, LLC owns the following trademarks concerning its corporate name:

<b>Mark</b>	<b>Registration Date</b>	<b>Serial Number</b>	<b>Owner</b>
"ENVINCIO"	6/28/2011	77911130	Envincio, LLC
"ENVINCIO" and Design	6/28/2011	77911087	Envincio, LLC

2. The corporate name "Prentiss LLC" is not a protected mark.
3. Except as set out on Schedule 2.1(i), Seller have not registered fictitious names or trade names in any domestic or foreign jurisdiction.



SCHEDULE 2.1(i)  
Intellectual Property

1. Trademarks:

The following trademarks, in addition to those marks in Schedule 2.1(h), are utilized in the Business:

Mark	Registration Date	Serial Number	Owner
"ESSENTRIA"	9/11/2012	85/334,821	Envincio, LLC
"Equil" and Design	Unregistered		Envincio, LLC
"Elite" and Design	Unregistered		Envincio, LLC
"Envi" and Design	Unregistered		Envincio, LLC
"Adonis"	Unregistered		Envincio, LLC
"Formulator"	Unregistered		Seller
"Prentfish"	Unregistered		Prentiss LLC
"Prentox"	6/20/67	72237640	Prentiss LLC
"Prentox Perm-X"	Unregistered		Prentiss LLC
"PBO-8"	4/17/84	73420315	Prentiss LLC
"Pyronyl"	Unregistered		Prentiss LLC
"Noxfish"	9/7/54	0594721	Prentiss LLC
"Nusyn-Noxfish"	5/15/90	73754349	Prentiss LLC
"ExciteR"	Unregistered		Prentiss LLC

Pursuant to the License Agreement with EcoSmart described in Schedule 2.1(g), Seller has a limited license to use the following marks provided the same are modified or a tag line is added to distinguish them from the marks utilized by EcoSmart:

Product Name
EcoEXEMPT D
EcoEXEMPT Jet
EcoEXEMPT IC2
EcoEXEMPT MC
EcoEXEMPT G
EcoEXEMPT KO
EcoPCO ACU
EcoPCO D X
EcoPCO WP X
EcoPCO AR X
EcoPCO Jet X
EcoADJUVANT
EcoEMULSIFIER