

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	07/09/2007

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
WALKER'S (GAME EAR), INC.		07/09/2007	CORPORATION: PENNSYLVANIA

**RECEIVING PARTY DATA**

Name:	GSM - WALKER PRODUCTS, LLC
Street Address:	3385 Roy Orr Boulevard
City:	Grand Prairie
State/Country:	TEXAS
Postal Code:	75050
Entity Type:	CORPORATION: TEXAS

**PROPERTY NUMBERS Total: 1**

Property Type	Number	Word Mark
Serial Number:	78586886	GAME EAR

**CORRESPONDENCE DATA**

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*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
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 Email: smcbride@patents-trademarks.com  
 Correspondent Name: J. Scott McBride  
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 Address Line 2: Suite 460  
 Address Line 4: Houston, TEXAS 77042

ATTORNEY DOCKET NUMBER:	SCHN070
NAME OF SUBMITTER:	/J. Scott McBride/
Signature:	/J. Scott McBride/

OP \$40.00 78586886

Date:

12/21/2007

**Total Attachments: 37**

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**ASSET PURCHASE AGREEMENT**

**Dated as of July 9, 2007**

**By and Among**

**GSM - WALKER PRODUCTS, LLC**

**and**

**WALKER'S (GAME EAR) INC.**

**and**

**ROBERT W. WALKER**

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**COPY**

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT is entered into as of July 9, 2007 (the "Agreement"), by and among GSM - WALKER PRODUCTS, LLC, a Texas limited liability company (the "Buyer"), WALKER'S (GAME EAR), INC., a Pennsylvania corporation (the "Company"), and ROBERT W. WALKER (the "Shareholder").

### WITNESSETH:

WHEREAS, the Company is engaged in the business of the manufacturing and sale of hearing enhancement and protection devices, and sports glasses, to individuals and businesses (the "Business"); and

WHEREAS, the Shareholder owns all of the issued and outstanding capital stock of the Company; and

WHEREAS, the Company desires to sell substantially all of its assets related to or used or useful in the operation of the Business, and the Buyer desires to acquire such assets on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the mutual representations, warranties, covenants and agreements, and subject to the terms and conditions herein contained, the parties hereto hereby agree as follows:

### ARTICLE I

#### PURCHASE AND SALE OF ASSETS

**1.1 Purchase and Sale of Assets.** Subject to the terms and conditions set forth in this Agreement, on the date hereof, the Company hereby sells, conveys, transfers, assigns and delivers, free and clear of all Encumbrances (as defined in Section 2.1.7 below) (except for current taxes not yet due and payable) to the Buyer all of the assets of the Company relating to or used or useful in the operation of the Business including those assets described in Section 1.2 hereof (the "Assets"), *provided, however*, that the Assets shall not include any Excluded Assets. As used herein, the term "Excluded Assets" means (i) all assets of the Company which do not relate to or are not used or useful in the operation of the Business and are not described in Section 1.2 hereof; (ii) prepaid federal and state income tax deposits of the Company; (iii) all books and records of the Company relating to the Excluded Assets or Retained Liabilities (as defined in Section 1.3.2 below), including the corporate charter, related organizational documents and minute books and tax returns of the Company; (iv) all assets in possession of the Company but owned by third parties; (v) amounts due in respect of any advances or loans to or note receivables from, any Affiliate (as defined in Section 6.1 below) of the Company; (vi) the assets reflected in Schedule 1.1; and (vii) all rights of the Company under this Agreement and any Ancillary Agreement contemplated hereunder and the consideration payable to the Company pursuant to this Agreement. The Assets purchased and sold pursuant to this Agreement are referred to herein as the "Purchased Assets."

**1.2 Description of Purchased Assets.** Except as otherwise provided in Section 1.1, the Purchased Assets sold and purchased pursuant to this Agreement shall include, without limitation, the following:

- (a) all cash and cash equivalents, including marketable securities;
- (b) all the machinery and equipment of the Company relating to the Business, including the machinery and equipment described in Schedule 1.2(b);
- (c) all the inventory of the Company relating to the Business, including the inventory that is located at 531 Gilbert Street, Media, Pennsylvania 19063 on the Closing Date (as defined in Section 1.8 below) and described in Schedule 1.2(c) (the "Inventory");
- (d) all contracts, agreements, commitments or other legally binding contractual right or obligation (other than to extent such contracts related to Retained Liabilities or Excluded Assets) of the Company relating to the Business, including those contracts described in Schedule 1.2(d) (the "Assigned Contracts");
- (e) all accounts receivable (including billed and unbilled) of the Company relating to the conduct of the Business, including those accounts receivable described in Schedule 1.2(e) (the "Accounts Receivable");
- (f) any trademark, service mark, trade name, product designation, logo, slogan, invention, patent, trade secret, copyright, know-how, proprietary design or process, computer software and database, Internet address or domain name (including any registrations or applications for registration or renewal of any of the foregoing), research in progress, or any other similar type of proprietary intellectual property right, in each case which is used or held for use or otherwise necessary in connection with the conduct of the Business, including but not limited to those on Schedule 1.2(f) (collectively, the "Intellectual Property Rights");
- (g) all governmental or regulatory licenses, registrations, authorizations, permits, franchises consents or approvals issued and held by or on behalf of the Company in connection with the conduct of the Business (collectively, the "Permits");
- (h) all third-party indemnities where the Company is an indemnified party and the proceeds afforded thereby, in each case other than to the extent relating to the Retained Liabilities or Excluded Assets;
- (i) all rights of the Company to manufacturers' warranties and indemnities with respect to any Purchased Asset;
- (j) the right to use the names set forth in Schedule 1.2(i), and all variants thereof;
- (k) the goodwill of the Company with respect to the Business;

(l) all rights of the Company pertaining to any causes of action, lawsuits, judgments, claims, demands, counterclaims, set-offs or defenses the Company may have with respect to any of the Assumed Liabilities or Purchased Assets, except to the extent relating to the Retained Liabilities or Excluded Assets;

(m) all books and records of the Company relating to the Purchased Assets and the Assumed Liabilities, including all customer and supplier files and lists, advertising, promotional and sales information and materials, including informational videos or commercials, equipment maintenance and warranty information, operating manuals, all correspondence with any customers, suppliers, employees or governmental authorities, and any other reports, promotional materials, marketing studies, plans and documents prepared by or on behalf of the Company related to the Business, including data stored electronically, but excluding the books and records of the Business listed as Excluded Assets or Retained Liabilities;

(n) all telephone and facsimile numbers (together with all other similar numbers), electronic mail addresses and websites of the Company;

(o) amounts due in respect of any advances or loans to, or notes receivable from, any employee of the Company; and

(p) except for the Excluded Assets, all other assets, properties and rights of every kind and nature of the Company or in which the Company has an interest on the Closing Date, known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, whether or not specifically referred to in this Agreement, that, in each case, relate to the Business.

### 1.3 Consideration for Purchased Assets; Adjusted Purchase Price.

1.3.1 **Purchase Price.** Subject to the terms and conditions of this Agreement, as consideration for the sale of the Purchased Assets to the Buyer and for the other covenants and agreements of the Company, the Buyer shall pay to the Company the aggregate purchase price of \$4,318,000 (the "**Purchase Price**"). The Purchase Price shall be payable by the Buyer in the following manner:

(a) at the Closing Date, an amount (the "**Bank Debt Payoff Amount**") in cash sufficient to pay in full the outstanding indebtedness of the Company pursuant to the terms of a certain Line of Credit evidenced by a Promissory Note dated August 23, 2001 by the Company in favor of Sovereign Bank in the original principal amount of \$250,000, as amended, restated, supplemented, or modified from time to time (the "**Bank Debt**"), which amount is estimated to be \$241,456.51 and shall be paid by the Buyer, on behalf of the Company, directly to the lender under the Bank Debt;

(b) at the Closing Date, an aggregate amount in cash to the Company of \$592,993.44 (the "**Accounts Payable Amount**"), which amount is to be used by the Company to immediately pay the amounts listed on Schedule 2.1.7.5 as being owed to "Affinity Medical Technology," "Rexton, Inc." and "Starkey;"



(c) at the Closing Date, cash to the Company in the amount of the Purchase Price less the Bank Debt Payoff Amount less the Accounts Payable Amount less the initial principal amount of the Promissory Note (as defined in Section 1.3.1(d) below), which amount is estimated to be \$1,165,550.05 based on the estimated Bank Debt Payoff Amount in Section 1.3.1(a) above; and

(d) the issuance of a subordinated, unsecured promissory note (the "Promissory Note") in the initial principal amount of \$2,318,000 by the Buyer in favor of the Company on the Closing Date as a portion of the Purchase Price, attached hereto as Exhibit A, which shall be guaranteed by Good Sportsman Marketing, L.L.C., a Texas limited liability company ("GSM"), in the form attached hereto as Exhibit B (the "Guaranty").

### 1.3.2 Assumed Liabilities.

(a) Subject to paragraph (b) below, the Buyer assumes as of the date hereof and will subsequently pay, honor and discharge when due and payable and otherwise in accordance with their terms, (i) all liabilities disclosed on Schedule 1.3.2(a); and (ii) all liabilities and obligations of the Company (other than Retained Liabilities) arising under the terms of the Assigned Contracts, but only to the extent not delinquent or otherwise accrued prior to the date hereof (collectively, the "Assumed Liabilities"). Notwithstanding anything in this Agreement or any document delivered in connection herewith, the Buyer's obligation in respect of the Assumed Liabilities will not extend beyond the extent to which the Company was obligated in respect thereof and will be subject to the Buyer's right to contest in good faith the nature and extent of any liability or obligation.

(b) Notwithstanding anything contained in this Agreement to the contrary, the Buyer does not assume, cause to be assumed nor deemed to assume, nor is it liable or responsible for, any liabilities or obligations of the Company, except the Assumed Liabilities described in paragraph (a) above. Without limiting the generality or effect of the foregoing, the Buyer does not assume, nor is it liable or responsible for:

(i) all liabilities of the Company in respect of federal, state, local or foreign taxes (specifically including any sales and use taxes) for any period, whether arising from the Company's conduct of operations before the Closing Date or arising from the sale of the assets contemplated hereunder;

(ii) all liabilities and fees and expenses incurred by the Company in connection with the sale of the assets contemplated hereunder; or

(iii) any liabilities or obligations of the Company or its Affiliates or their respective predecessors-in-interest, except for the Assumed Liabilities, whether or not arising out of or relating to the

conduct of the Business or associated with or arising from any of the Purchased Assets or any other rights, properties or assets used in or associated with the Business at any time, whether fixed or contingent or known or unknown.

All liabilities or obligations of the Company other than the Assumed Liabilities are hereinafter sometimes referred to as the "Retained Liabilities."

**1.4 Employees.** On the Closing Date, GSM will enter into an Employment, Noncompetition, Nondisclosure and Nonsolicitation Agreement (the "Employment Agreement") with the Shareholder, a copy of which is attached hereto as Exhibit C. The Company hereby releases the Shareholder under any agreements with the Company relating to any covenants regarding non-competition, non-disclosure, confidentiality, non-solicitation or similar matters. Other than the Employment Agreement, neither the Buyer nor GSM is undertaking any obligation to hire any other employees of the Company. The Buyer or GSM, as applicable, will make independent determinations as to whether, and under what circumstances, it may offer continuing arrangements as an employee or independent contractor to any employee of the Company other than the Shareholder.

**1.5 Prorated Items.**

**1.5.1 Adjustment of Costs.**

(a) Except as otherwise provided herein, the Company shall bear and be responsible for all costs incurred in connection with the operation of the Business prior to the Closing Date, including without limitation, utilities, rentals, service contracts, employee costs, maintenance expenses, and commissions related to sales prior to the Closing Date and except as otherwise provided therein, the Company shall pay all such costs in the Ordinary Course of Business of the Company. The Buyer shall bear and be responsible for all such costs incurred by the Buyer in connection with the operation of the Business on and after the Closing Date.

(b) The Company agrees to pay all Retained Liabilities in full on or prior to any due date for such payment (except for any amounts which the Company is disputing in good faith); in the event the Company fails to make such payments, the Buyer may make such payments on the Company's behalf and such amount shall be promptly reimbursed by the Company to the Buyer.

**1.5.2 Proration of Taxes.**

(a) The Company shall be liable for and shall pay when due all personal property taxes, income taxes, sales or use taxes, franchise taxes, payroll taxes, and taxes on the Business or any of the Purchased Assets that may be levied or imposed against the Buyer, the Company or the Purchased Assets, with respect to the Business for the period before the Closing Date, and for any other taxes which may be due by it for income earned with respect to the Business for the period before the Closing Date, subject to protests in good faith per Section 1.5.2(b)

below. The Buyer shall be liable for all personal property taxes, income taxes, sales or use taxes, franchise taxes, payroll taxes, other taxes on the Business or any of the Purchased Assets that may be levied or imposed against the Buyer, the Company or the Purchased Assets for the period on and after the Closing Date, and any other taxes which may be due by it for income earned with respect to the Business on and after the Closing Date, subject to protests in good faith per Section 1.5.2(b) below.

(b) Whichever party is liable hereunder for the payment of a tax shall prepare any necessary forms and returns, and shall bear all costs incident to the determination and payment thereof. Such party shall further have all available rights to contest the tax, but shall protect, defend, indemnify and hold harmless the other party from any damages, costs or losses or any limitation on the use and enjoyment of the Purchased Assets resulting therefrom.

**1.5.3 Payment of Taxes and Other Expenses.** If either party receives an invoice for any tax or other expense which is allocable to the other party in part or in full hereunder, the recipient shall forward a copy of the invoice promptly to the other party. If the other party is fully liable for such invoice it shall pay it in full promptly; *provided, however*, that such party may contest any tax or other expense in good faith through appropriate proceedings. If either party receives an invoice for taxes or other expenses that are allocable partly to it and partly to the other party, then the party receiving such notice shall promptly advise the other party that such invoice has been received and shall request the appropriate reimbursement from that party. The party owing such reimbursement shall pay such reimbursement within ten days after receipt of an invoice for the reimbursable amount. Notwithstanding the foregoing, whenever time permits, each party will make every reasonable effort to determine each party's appropriate allocable share of any tax amounts due and to pay the allocable share to the party responsible under this paragraph for paying the tax amounts in a timely fashion in order to avoid any late payment penalty.

The Company and the Shareholder shall do all things that may be necessary or advisable to procure, as expeditiously as possible, an original tax clearance certificate on Pennsylvania Form Rev. 181 or any successor form (the "Tax Clearance Certificate") issued in the name of the Company in respect of the transactions contemplated by this Agreement by the Commonwealth of Pennsylvania. The Company and the Shareholder shall keep the Buyer informed of their efforts to procure the Tax Clearance Certificate and shall copy the Buyer on all correspondence received from any Governmental Authority, including the Commonwealth of

~~Certificate made pursuant to this Section, any Governmental Authority, including the Commonwealth of Pennsylvania, asserts that the Company or the Shareholder is liable for any tax, the Company and/or the Shareholder, as applicable, shall promptly pay any and all such amounts and shall provide evidence to the Buyer that such liabilities have been paid in full or otherwise satisfied. The Company shall provide the Buyer with complete copies of the Tax Clearance Certificate when the same is received by the Company.~~

**1.6 Nonassignable Contracts and Permits.** In the case of any of the Purchased Assets constituting Assigned Contracts or Permits that are not by their terms assignable or that

require the consent of a third party in connection with the transfer by the Company hereunder and such assignment is not consented to prior to the Closing Date, this Agreement shall constitute an assignment, transfer or conveyance to the Buyer of all of the Company's right, title and interest therein to the extent permitted by such Assigned Contract or Permit. In addition, the Company will use its best efforts at its sole cost and expense to assist the Buyer in such manner as may reasonably be requested by the Buyer for purpose of obtaining such consent promptly. During such period in which the applicable Assigned Contract or Permit is not capable of being assigned to the Buyer due to the failure to obtain any required consent, the Company will make such arrangements as may be necessary to enable the Buyer to receive all the economic benefits under such Assigned Contract or Permit accruing on and after the Closing Date (including, to the extent permissible, through sub-contracting, sub-leasing, sub-licensing, or sub-participation arrangement, or an arrangement under which the Company would enforce such Assigned Contract or Permit for the benefit of the Buyer, with the Buyer, to the extent permissible, assuming the Company's executory obligations and any and all rights of the Company against the other party thereto). If the approval of the other party to the Assigned Contract or Permit is obtained, such approval will, as between the Company and the Buyer, constitute a confirmation (automatically and without further action of the parties) that such Assigned Contract or Permit is assigned to the Buyer as of the Closing Date.

**1.7 Allocation.** The Buyer will prepare and deliver to the Company and the Shareholder within 60 days after the Closing Date an allocation of the Purchase Price among the Purchased Assets in the form of Schedule 1.7, and the Company shall have 30 days after receipt of such allocation during which to object to such allocation. If the Company so objects, the Buyer and the Company shall negotiate in good faith to reach a mutually acceptable allocation. If the Buyer and the Company are able to mutually agree to an allocation, the Buyer and the Company and the Shareholder agree that (i) they will file all tax returns and related forms (including Form 8594) in accordance with such allocation, and (ii) they will not make any inconsistent statement or take any inconsistent position on any tax returns, in any refund claim or during the course of any Internal Revenue Service ("IRS") or other tax audit. Each party will notify the other party if it receives notice that the IRS proposes any allocation that is different from the agreed allocation.

**1.8 Closing.** The closing of the transactions contemplated by this Agreement (the "Closing") shall be on July 9, 2007 (the "Closing Date") simultaneously at the offices of Porter & Hedges, L.L.P., 1000 Main Street, 36<sup>th</sup> Floor, Houston, Texas 77002 and at the offices of Toscani & Lindros, LLP, 1205 Westlakes Drive, Suite 195, Berwyn, Pennsylvania 19312, using telephonic or other electronic communication between the two places, or such other time and place as the parties hereto may agree. Transactions affecting the Business on the Closing Date will be for the benefit of the Buyer if the Closing is consummated.

## **ARTICLE 2**

### **REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE SHAREHOLDER**

**2.1 Representations and Warranties of the Company and the Shareholder.** The Company and the Shareholder hereby jointly and severally represent and warrant as follows:

**2.1.1 Authority and Consent.** The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Pennsylvania, has full requisite corporate power and authority to carry on its business as it is currently conducted, and to own and operate the properties currently owned and operated by it, and is duly qualified or licensed to do business and is in good standing as a foreign entity authorized to do business in all jurisdictions in which the character of the properties owned or the nature of the business conducted by it would make such qualification or licensing necessary. The Company has all requisite power and authority to make, execute, deliver and perform this Agreement and all other agreements, documents and instruments to which the Company is a party and to effect the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the consummation of the transaction contemplated hereby have been duly authorized by the board of directors of the Company and the Shareholder and all necessary action on the part of the Company.

**2.1.2 Enforceability and Non-Interference.** This Agreement is a valid and binding obligation of the Company and the Shareholder, enforceable (subject to normal equitable principles) in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, debtor relief or similar laws affecting the rights of creditors generally. The execution and delivery of this Agreement by the Company and the Shareholder, or the consummation of the transactions contemplated hereby, will not conflict with or result in a violation or breach of any term or provision of, nor constitute a default under (i) any provision of the Company's charter or bylaws; (ii) any indenture, mortgage, deed of trust, credit agreement or other contract or agreement of any nature whatsoever to which the Company or the Shareholder is a party or by which their respective properties are bound; or (iii) any provision of any law, rule, regulation, order, Permit, certificate, writ, judgment, injunction, decree, determination, award or other decision of any Governmental Authority to which the Company's or the Shareholder's properties are subject.

**2.1.3 Capitalization.** All the outstanding shares of capital stock of Company have been validly issued to the Shareholder and are fully paid and nonassessable.

**2.1.4 Financial Information**

(a) The Company has heretofore furnished the Buyer with a true and complete copy of (i) the unaudited balance sheet ("Reference Balance Sheet") of the Company as of May 31, 2007 (the "Reference Balance Sheet Date"), together with the related statements of income, changes in stockholders' equity,

...of the Company as of December 31, 2006 and 2005, together with the related statements of income, changes in shareholders' equity and cash flows for the periods then ended, all of which are attached hereto as Schedule 2.1.4 (collectively, the "Reference Financial Statements").

(b) The Reference Financial Statements have been derived from the books and records of the Company, have been prepared in accordance with U.S. generally accepted accounting principals, consistent applied and fairly present in all material respects the financial position of the Company at the respective dates thereof and the results of the operations of the Company for the periods indicated. Since the date of the latest of such financial information, the Company has not experienced any material adverse change in the financial condition, results of operations, assets, liabilities, business or prospects of the Business except for the traditional seasonal slow down as the result of inclement weather.

(c) The books of account, minute books, shareholder record books and other records of the Company, all of which have been made available to the Buyer, are complete and correct in all material respects.

**2.1.5 Subsidiaries.** The Company has no ownership interest in any corporation or any interest in any other organization, incorporated or unincorporated, partnership or any other entity of any type.

**2.1.6 Liabilities.** Except as set forth in the Reference Financial Statements, the Assumed Liabilities as described in Schedule 1.3.2(a), and liabilities or obligations incurred in the Ordinary Course of Business of the Company since the date of the Reference Balance Sheet, the Company does not have any liabilities or obligations, either accrued, absolute, contingent, or otherwise, or have any knowledge of any potential liabilities or obligations that would adversely affect the value and conduct of the Business.



**2.1.7 Additional Information.** For purposes of this Agreement, the term "Encumbrance" shall mean any security interest, mortgage, pledge, claim, lien, charge, option, right of first refusal, preferential purchase right, defect, encumbrance or other right or interest of any other Person. Attached as Schedule 2.1.7.1 through and including Schedule 2.1.7.14 are true, complete and correct lists of the following items (such schedule may refer to the disclosures contained in the schedules delivered pursuant to Section 1.2):

**2.1.7.1 Real Estate.** All real property and structures thereon owned or leased or subject to a contract of purchase and sale, or lease commitment, by the Business, with a description of the nature and amount of any Encumbrance thereto;

**2.1.7.2 Machinery and Equipment.** All machinery, transportation equipment, tools, equipment, furnishings and fixtures owned, leased or subject to a contract of purchase and sale, or lease commitment, by the Business, with a description of the nature and amount of any Encumbrances thereon;

**2.1.7.3 Inventory.** All inventory items or groups of inventory items owned by the Business, together with the amount of any Encumbrances thereon;

**2.1.7.4 Receivables.** All accounts and notes receivable of the Business, together with (i) an appropriate aging schedule, (ii) the amounts provided for as an allowance for bad debts, (iii) the identity and location of any asset in which the Company holds a security interest to secure payment of the underlying indebtedness and (iv) a description of the nature and amount of any Encumbrances on such accounts and notes receivable;

**2.1.7.5 Payables.** All accounts and notes payable of the Business, together with an appropriate aging schedule;

**2.1.7.6 Insurance.** All insurance policies or bonds, including title insurance policies, with respect to the Business, including those covering its properties (real or personal), buildings, machinery, equipment, fixtures, employees and operations;

**2.1.7.7 Material Contracts.** All contracts (including purchase and sale contracts), whether or not made in the Ordinary Course of Business, including leases under which the Business is lessor or lessee, which are to be performed in whole or in part after the date hereof, and which involve or may involve aggregate payments by or to the Business of \$1,000 or more after such date;

**2.1.7.8 Employee Compensation Plans.** All bonus, incentive compensation, deferred compensation, profit-sharing, retirement, pension, welfare, group insurance, death benefit, or other fringe plans, arrangements or trust agreements of the Business, together with copies of the most recent reports with respect to such plans, arrangements, or trust agreements filed with any governmental agency and all IRS determination letters that have been received with respect to such plans (collectively, the "Employee Plans");

**2.1.7.9 Employee Agreements.** Any collective bargaining agreements of the Business with employees, including amendments, supplements, and written or oral understandings,

and all employment, compensation or consulting agreements, whether written or oral, of the Company with any person performing services for the Business;

**2.1.7.10 Patents and Intellectual Property.** All patents, trademarks, and copyrights owned, licensed, or used by the Business;

**2.1.7.11 Trade Names.** All trade names and fictitious names used or held by the Business, whether and where such names are registered and where such names are used;

**2.1.7.12 Promissory Notes and Indebtedness.** All long-term and short-term promissory notes, installment contracts, loan agreements, credit agreements and any other agreements of the Company relating thereto or with respect to collateral securing the same;

**2.1.7.13 Guaranties.** All indebtedness, liabilities and commitments of others and as to which the Company is a guarantor, endorser, co-maker, surety, or accommodation maker, or is contingently liable therefor (excluding liabilities as an endorser of checks and the like in the Ordinary Course of Business) and all letters of credit, whether stand-by or documentary, issued by any third party; and

**2.1.7.14 Business Locations.** The chief executive office and each other place of business of the Company, together with all locations where inventory is stored with a bailee, warehouseman, consignee or similar party, if any and the identity of each such bailee, warehouseman, consignee or similar party.

Schedules 2.1.7.1 through 2.1.7.14 shall be true, complete and correct as of the date hereof, except for items 2.1.7.4 and 2.1.7.5 which are true, complete and correct as of Reference Balance Sheet Date.

**2.1.8 No Undisclosed Defaults.** Except as may be specified in Schedule 2.1.7.7, the Company is not a party to, or bound by, any material contract to be performed after the date hereof or in default under any obligation or covenant on its part to be performed under any material obligation, lease, contract or plan.

**2.1.9 Absence of Certain Changes and Events.** Other than as a result of the transactions contemplated by this Agreement, since the Reference Balance Sheet Date, there has not been:

**2.1.9.1 Financial Change.** Any material adverse change in the financial condition, operations, assets, liabilities, business or prospects of the Business;

**2.1.9.2 Property Damage.** Any damage, destruction, or loss to the business or properties of the Business (whether or not covered by insurance);

**2.1.9.3 Disposition of Purchased Assets.** Any sale, purchase, lease or other disposition of any material portion of the Purchased Assets;

**2.1.9.4 Liabilities.** Any incurrence of a material liability or obligation (absolute or contingent) or any material expenditure;

**2.1.9.5 Accounts Receivable.** Any grant, conveyance, transfer, pledge, hypothecation or sale of accounts receivable or any accrual of liabilities related to the Business outside of the Ordinary Course of Business of the Business;

**2.1.9.6 Encumbrances.** Any Encumbrance granted on any Purchased Assets;

**2.1.9.7 Salary Increase.** Any general wage or salary increase for employees of the Business;

**2.1.9.8 Bonus; Special Compensation.** Any extraordinary bonus or other special compensation paid to any employee of the Business; or

**2.1.9.9 Other Material Changes.** Any other event or condition known to the Company that particularly pertains to and materially and adversely affects the operations, assets, business or prospects of the Company with respect to the Business or the Purchased Assets.

**2.1.10 Taxes.** Proper and accurate federal, state and local income, sales, use, franchise, gross revenue, turnover, excise, payroll, property, employment, customs duties and any and all other tax returns, reports, and estimates have been filed with appropriate governmental agencies, domestic and foreign, by the Company for each period for which any returns, reports, or estimates were due. All taxes of the Company which are (i) shown as due on such tax returns, (ii) otherwise due and payable, or (iii) claimed or asserted by any taxing authority to be due, have been paid, except for those taxes being contested in good faith and for which adequate reserves have been established in the Reference Financial Statements. All sales taxes and property taxes have been properly collected and accounted for.

taxing authorities. No waiver of any statute of limitations executed by the Company with respect to federal or state income or other tax is in effect for any period. No deficiencies for any taxes have been proposed, asserted or assessed against the Company, and no requests or waivers of the time to assess any such tax are pending. The federal income tax returns of the Company have never been audited by the IRS. No audit of any federal or state or other tax return of the Company is presently in process nor has an appointment for or notice of any such audit been requested or given by any taxing authority. The Company has delivered to the Buyer true and complete copies of all tax returns and reports filed by the Company with respect to the 2003, 2005 and 2004 tax years.

#### 2.f.ii Intellectual Property.

(a) Schedule 1.2(f) sets forth a list of all Intellectual Property Rights which are owned by the Company or which the Company is a licensor or licensee, and all material licenses, sublicenses and other written agreements as to which the Company or any of its affiliates is a party and pursuant to which any Person is

authorized to use such Intellectual Property Right, including the identity of all parties thereto.

(b) Except as disclosed in Schedule 1.2(f):

(i) All of the Intellectual Property Rights necessary for or used in the conduct of the Business are set forth in Schedule 1.2(f).

(ii) The conduct of the Business by the Company as currently conducted does not infringe upon any Intellectual Property Right of any third party. There is no claim, suit, action or proceeding that is either pending or, to the knowledge of the Company, threatened, that, in either case, involves a claim of infringement by the Company of any Intellectual Property Right of any third party, or challenging the Company's ownership, right to use, or the validity of any Intellectual Property Right listed or required to be listed in Schedule 1.2(f). The Company has no knowledge of any basis for any such claim of infringement and no knowledge of any continuing infringement by any Person of any of the Intellectual Property Rights listed or required to be listed in Schedule 1.2(f).

(iii) No Intellectual Property Right listed or required to be listed in Schedule 1.2(f) is subject to any outstanding order, judgment, decree, stipulation or agreement restricting the use thereof by the Company or restricting the licensing thereof by the Company to any Person other than with respect to standard and customary restrictions associated with commercially available third party software to which the Company has a valid right to use in connection with the Business; and

(iv) The Company has not entered into any agreement to indemnify any other Person against any charge of infringement of any Intellectual Property Right; and the Company has duly maintained all registrations for any Intellectual Property Rights listed or required to be listed in Schedule 1.2(f).

**2.1.12 Title to Properties; Condition of Assets.** Except as set forth on Schedules 2.1.7.12 and 2.1.7.13, the Company has good and marketable title to the Purchased Assets, free and clear of any Encumbrance of any nature whatsoever, except liens for current taxes not yet due and payable. The Purchased Assets that represent tangible personal property shall be in good operating condition and repair, reasonable wear and tear excepted, as of the Closing Date. During the five-year period immediately preceding the date hereof, the Company has had no business locations other than the locations described in Schedule 2.1.7.14 nor has the Company acquired any inventory or equipment from any person or entity other than purchases in the Ordinary Course of Business of the seller thereof.

**2.1.13 Accounts Receivable.** All of the Accounts Receivable reflected on the Reference Balance Sheet (net of any applicable reserves set forth on the Reference Balance Sheet) and all Accounts Receivable which have arisen since the Reference Balance Sheet Date (net of any additional applicable reserves established since such date in the Ordinary Course of Business of the Company) are valid and enforceable claims, and the goods and services sold and delivered which gave rise to such Accounts Receivable were sold and delivered in the Ordinary Course of Business. Such Accounts Receivable are subject to no defenses, offsets or recovery in whole or in part by the Persons whose purchase gave rise to such Accounts Receivable or by third parties and are fully collectible within 30 days of the invoice date of each such Account Receivable without resort to legal proceedings, except to the extent of the amount of the reserve for doubtful accounts reflected on the Reference Balance Sheet.

**2.1.14 Inventory.** All Inventory reflected on the Reference Balance Sheet (net of any applicable reserves set forth on the Reference Balance Sheet) and all Inventory which have been acquired or produced since the Reference Balance Sheet Date (net of any additional applicable reserves established since such date in the Ordinary Course of Business of the Company) are in good condition, conform in all material respects with the applicable specifications and warranties of the Company, are not obsolete, and are usable and salable in the Ordinary Course of Business. The values at which such inventories are carried are consistent with the past business practices of the Company.

**2.1.15 Litigation, etc.** There is no suit, action, or legal, administrative, arbitration, or other proceeding or governmental investigation pending or, to the knowledge of the Company, threatened to which the Company is a party or, to the knowledge of the Company, might become a party or which particularly affects the Business.

**2.1.16 Hazardous Wastes and Substances.** None of the current or past operations or assets of the Company have been conducted or used in such a manner as to constitute a material violation of any Applicable Environmental Laws (as hereinafter defined). No notice (whether formal or informal, written or oral) has been served on the Company from any entity, governmental agency or individual regarding any existing, pending or threatened investigation or inquiry related to violations under any Applicable Environmental Laws or regarding any claims for remedial obligations or contribution for removal costs or damages under any Applicable Environmental Laws. The Buyer is not required to obtain Permits or similar authorizations pursuant to any Applicable Environmental Laws in effect as of the date of this Agreement to operate and use any of the Purchased Assets of the Company for their current purposes and uses. To the best of the Company's knowledge, no asbestos or asbestos containing material currently is being used or has ever been used by the Company in its operations. For the purposes hereof, "Applicable Environmental Laws" means any applicable federal, state or local law, statute, ordinance, rule, regulation, order or notice requirement pertaining to human health, the environment, or to the storage, treatment, discharge, release or disposal of hazardous wastes or hazardous substances, including, without limitation (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§9601 et seq.), as amended from time to time ("CERCLA") (including, without limitation, as amended pursuant to the Superfund Amendments and Reauthorization Act of 1986), and regulations promulgated under CERCLA, (ii) the Resources Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 et seq.), as amended from time to time ("RCRA"), and regulations promulgated under RCRA,

(iii) the Federal Water Pollution Control Act (U.S.C.A. §9601 et seq.), as amended and regulations promulgated under its authority, and (iv) any applicable state laws or regulations relating to the environment.

**2.1.17 Compliance with Other Laws.** The Company is not in violation of or in default with respect to, or in alleged violation of or alleged default with respect to, any other applicable law or any applicable rule, regulation, or any writ or decree of any court or any governmental commission, board, bureau, agency, or instrumentality, and the Company is not delinquent with respect to any report required to be filed with any governmental commission, board, bureau, agency or instrumentality.

**2.1.18 Employment Practices.** There are no labor or employment disputes or controversies pending or, to the Company's knowledge, threatened against the Company or any of the employees of the Company who work in the Business, and the Company has not taken or failed to take any action which action or omission would provide a reasonable basis for any such controversy. To the Company's knowledge, after due inquiry, there are no organizational efforts presently being made or threatened by or on behalf of any labor union with respect to any employees of the Company. The Company has complied with all requirements under the Occupational Safety and Health Act, all laws, rules and regulations with respect to worker's compensation insurance or, if applicable, all requirements relating to obtaining "non-subscriber status" thereunder, and all other laws relating to the employment of labor, including, without limitation, laws relating to equal employment opportunity and employment discrimination, employment of illegal aliens or undocumented or ineligible workers, wages, hours, collective bargaining and the collection or payment of social security and withholding taxes, or both, and similar taxes. The Company is not liable for any arrearage of wages or any taxes or penalties for failure to comply with any of the foregoing.

**2.1.19 Transactions with Management.** The Company is not a party to any contract, lease or agreement with, and has not sold any goods to, any person affiliated with the Business or any member of the family of any such persons.

**2.1.20 Finder's Fee.** All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the Company and its counsel directly with the Buyer and its counsel, without the intervention of any other person as the result of any act of the Company, and so far as is known to the Company, without the intervention of any other person in such manner as to give rise to any valid claim against any of the parties hereto for a brokerage commission, finder's fee or any similar payments, except Triton Light Capital Advisors Inc. who is acting on behalf of the Company regarding the transaction contemplated by this Agreement.

**2.1.21 Adequacy of Purchased Assets and Necessary Consents.** The Purchased Assets constitute all of the assets necessary to conduct the Business as historically conducted by the Company, and the Company has obtained all consents to assignment or waivers thereof, if any, from any Governmental Authority or from any third party with respect to any assets or agreements necessary for the Buyer to conduct such business after the date hereof. The Company has all Permits necessary or appropriate to its Business as currently conducted.

### **ARTICLE 3**

#### **REPRESENTATIONS AND WARRANTIES OF THE BUYER**

**3.1 Representations and Warranties of the Buyer.** The Buyer represents and warrants as follows:

**3.1.1 Organization and Standing.** The Buyer is a limited liability company duly organized and validly existing under the laws of the State of Texas, has full requisite corporate power and authority to carry on its business as currently conducted, and to own and operate the properties owned and operated by it and is duly qualified or licensed to do business and is in good standing as a foreign corporation authorized to do business in all jurisdictions in which the character of the properties owned or the nature of the business conducted by it would make such qualification or licensing necessary. The Buyer has all requisite power and authority to make, execute, deliver and perform this Agreement and all other agreements, documents and instruments to which the Buyer is a party and to effect the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the consummation of the transaction contemplated hereby have been duly authorized by the managers of the Buyer and all necessary action on the part of the Buyer.

**3.1.2 Enforceability and Non-Interference.** This Agreement is a valid and binding obligation of the Buyer, enforceable (subject to normal equitable principles) in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, debtor relief or similar laws affecting the rights of creditors generally. The execution and delivery of this Agreement by the Buyer, or the consummation of the transactions contemplated hereby, will not conflict with or result in a violation or breach of any term or provision of, nor constitute a default under (i) any provision of the Buyer's certificate of formation or company agreement; (ii) any indenture, mortgage, deed of trust, credit agreement or other contract or agreement of any nature whatsoever to which the Buyer is a party or by which its properties are bound; or (iii) any provision of any law, rule, regulation, order, Permit, certificate, writ, judgment, injunction, decree, determination, award or other decision of any Governmental Authority to which the Buyer's properties are subject.

**3.1.3 Finder's Fee.** All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the Buyer and its counsel directly with the Company and its counsel, without the intervention of any other person as the result of any act of the Buyer, and so far as is known to the Buyer, without the intervention of any other person in such manner as to give rise to any valid claim against any of the parties hereto for a brokerage commission, finder's fee or any similar payments.



## ARTICLE 4

### CONDITIONS PRECEDENT TO OBLIGATIONS OF THE BUYER AND THE COMPANY

**4.1 Conditions Precedent to Obligations of the Buyer.** The obligations of the Buyer to consummate the transactions contemplated by this Agreement shall be subject to the following conditions:

**4.1.1 Representations and Warranties of the Company and the Shareholder True at the Date Hereof.** The representations and warranties of the Company and the Shareholder herein contained shall be true and correct in all material respects as of the date hereof, except as affected by transactions permitted or contemplated by this Agreement; the Company and the Shareholder shall have performed and complied in all material respects with all covenants required by this Agreement to be performed or complied with prior to the date hereof.

**4.1.2 Tender of the Transfer Documents, Etc.** On the date hereof, the Company and the Shareholder shall have executed and delivered all necessary or appropriate instruments of transfer, bills of sale, certificates of title and other documents to transfer the Purchased Assets to the Buyer. The Shareholder shall have executed and delivered to GSM the Employment Agreement. The Company shall have executed and delivered to the Buyer the Promissory Note.

**4.1.3 Termination of Security Interests.** The Company shall have obtained releases and other documentation reasonably requested by the Buyer in form and substance reasonably satisfactory to the Buyer providing for the termination and release of all Encumbrances on the Purchased Assets.

**4.1.4 Additional Documents.** On the Closing Date, the Company and the Shareholder shall deliver to the Buyer such certificates and resolutions of the Company as the Buyer shall reasonably request.

**4.2 Conditions Precedent to Obligations of the Company and the Shareholder.** The obligations of the Company and the Shareholder to consummate the transactions contemplated by this Agreement shall be subject to the following conditions:

**4.2.1 Representations and Warranties of the Buyer True at the Date Hereof.** The representations and warranties of the Buyer herein contained shall be true and correct in all material respects as of the date hereof, except as affected by transactions permitted or contemplated by this Agreement; the Buyer shall have performed and complied in all material respects with all covenants required by this Agreement to be performed or complied with by it prior to the date hereof.

**4.2.2 Consideration for Assets.** On the date hereof, the Buyer shall have delivered to the Company the portion of the Purchase Price as described in Section 1.3.1(a), (b) and (c). Buyer shall have executed and delivered to the Company the Promissory Note. GSM shall have executed and delivered to the Company the Guaranty.

**4.2.3 Tender of Transfer Documents, Etc.** On the date hereof, the Buyer shall have executed and delivered all necessary or appropriate instruments of transfer, bills of sale and other documents to reflect the obligations of the Buyer. GSM shall have executed and delivered to the Shareholder the Employment Agreement.

**4.2.4 Additional Documents.** On the date hereof, the Buyer shall deliver to the Company and the Shareholder such certificates and resolutions of the Buyer as the Company and the Shareholder shall reasonably request.

## ARTICLE 5

### SURVIVAL; INDEMNIFICATION

**5.1 Survival of Representations, Warranties, Covenants and Agreements.** Regardless of any investigation made at any time by or on behalf of any party hereto or of any information any party may have as a result of any such investigation, all representations, warranties, covenants and agreements made in or pursuant to this Agreement shall survive the Closing Date and shall continue in effect indefinitely thereafter.

**5.2 Indemnification of the Buyer.** The Company and the Shareholder, jointly and severally, shall indemnify, defend and hold harmless the Buyer and its officers, directors, employees, agents and shareholders, against and with respect to any and all claims, costs, damages, losses, expenses, obligations, liabilities, recoveries, suits, causes of action and deficiencies, including interest, penalties and reasonable attorneys' fees and expenses (collectively, the "Damages") that such indemnitees shall incur or suffer, which arise, result from or relate to (a) any breach of, or failure by the Company or Shareholder to perform, any of its representations, warranties, covenants or agreements in this Agreement or in any schedule, certificate, exhibit or other instrument furnished to the Buyer by the Company or Shareholder under this Agreement; (b) the operation of the Business prior to the Closing Date; (c) the Excluded Assets; (d) the Retained Liabilities; (e) the personal injury, death or property damage arising out any product manufactured or sold by the Company prior to the Closing Date; or (f) the Company's failure to comply with the bulk sales laws of any jurisdiction, including the Commonwealth of Pennsylvania, in connection with the transactions contemplated by this Agreement, including, in respect of an application for the Tax Clearance Certificate made pursuant to Section 1.5.3, any taxes assessed against the Company or the Shareholder by any Governmental Authority, including the Commonwealth of Pennsylvania.



**5.3 Indemnification of the Company and the Shareholder.** The Buyer shall indemnify, defend and hold harmless the Company and the Shareholder and their respective employees and agents against and with respect to any and all Damages that such indemnitees shall incur or suffer, which arise, result from or relate to (a) any breach of, or failure by the Buyer to perform, any of its representations, warranties, covenants or agreements in this Agreement or in any schedule, certificate, exhibit or other instrument furnished to the Company or Shareholder by the Buyer under this Agreement; (b) the operation of the Business on or after the Closing Date; (c) the Purchased Assets; (d) the Assumed Liabilities; or (e) the personal injury, death or property damage arising out any product manufactured and sold by the Buyer on or after to the Closing Date.

**5.4 Indemnification Procedures.** In the event that any party discovers or otherwise becomes aware of an indemnification claim arising under Section 5.2 or Section 5.3 of this Agreement, such indemnified party shall give written notice to the indemnifying party, specifying such claim, and may thereafter exercise any remedies available to such party under this Agreement; provided, however, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of any obligations hereunder, to the extent the indemnifying party is not materially prejudiced thereby. Further, promptly after receipt by an indemnified party hereunder of written notice of the commencement of any action or proceeding with respect to which a claim for indemnification may be made pursuant to this Article, such indemnified party shall, if a claim in respect thereof is to be made against any indemnifying party, give written notice to the latter of the commencement of such action; provided, however, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of any obligations hereunder, to the extent the indemnifying party is not materially prejudiced thereby. In case any such action is brought against an indemnified party, the indemnifying party shall be entitled to participate in and to assume the defense thereof, jointly with any other indemnifying party similarly notified, to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after such notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof unless the indemnifying party has failed to assume the defense of such claim and to employ counsel reasonably satisfactory to such indemnified person. An indemnifying party who elects not to assume the defense of a claim shall not be liable for the fees and expenses of more than one counsel in any single jurisdiction for all parties indemnified by such indemnifying party with respect to such claim or with respect to claims separate but similar or related in the same jurisdiction arising out of the same general allegations. Notwithstanding any of the foregoing to the contrary, the indemnified party will be entitled to select its own counsel and assume the defense of any action brought against it if the indemnifying party fails to select counsel reasonably satisfactory to the indemnified party, the expenses of such defense to be paid by the indemnifying party. No indemnifying party shall consent to entry of any judgment or enter into any settlement with respect to a claim without the consent of the indemnified party, which consent shall not be unreasonably withheld, or unless such judgment or settlement includes as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability with respect to such claim. No indemnified party shall consent to entry of any judgment or enter into any settlement of any such action, the defense of which has been



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~~assumed by an indemnifying party, without the consent of such indemnifying party, which~~

**5.5 Payment of Indemnification Payments; Right of Offset.** All Damages under this Agreement will be paid in cash in immediately available funds. Notwithstanding the foregoing, the parties hereto hereby agree that if Buyer shall incur any Damages for which it is entitled to indemnification by the Company or Shareholder pursuant to the terms of this Agreement, Buyer shall have the right to offset any payments due or to become due under the terms of any other agreement contained herein or executed in connection herewith, including the Promissory Note and the Employment Agreement, by the amount of such Damages. Such right of offset shall not be considered an exclusive remedy, it being agreed that Buyer shall also be entitled to exercise any other remedies available to it at law or in equity, including, without limitation, the indemnification rights set forth in this Article.

## ARTICLE 6

### CERTAIN DEFINITIONS

**6.1 Certain Definitions.** For purposes of this Agreement, each of the following terms has the meaning set forth below:

(a) "Affiliate" when used to indicate a relationship with any Person, means: any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, or is acting as agent on behalf of, or as an officer or director of, such person. As used in the definition of Affiliate, the term "control" (including the terms "controlling," "controlled by" or "under common control with") means the possession, direct or indirect, of the power to direct, cause the direction of or influence the management and policies of a Person, whether through the ownership of voting securities, by contract, through the holding of a position as a director or officer of such person, or otherwise.

(b) "Ancillary Agreements" means the Promissory Note, the Guaranty, the Employment Agreement, and instruments, certificates and other agreements entered into by the parties in connection with the consummation of the transactions contemplated by this Agreement.

(c) "Governmental Authority" means any domestic or foreign governmental or regulatory agency, authority, bureau, commission, department, official or similar body or instrumentality thereof, or any governmental court, arbitral tribunal or other body administering alternative dispute resolution.

(d) "Ordinary Course of Business" means, with respect to any Person, the ordinary course of business of such Person, consistent with such Person's past practice and custom, including, with respect to any category, quantity or dollar amount, term and frequency of payment, delivery, accrual, expense or any other accounting entry.

(c) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust or other entity or organization or Governmental Authority.

## ARTICLE 7

### CLOSING DELIVERIES

**7.1 Deliveries of the Company and the Shareholder.** At the Closing, the Company and the Shareholder shall deliver to the Buyer:

(a) a Bill of Sale together with such instruments of assignment, conveyance and transfer as the Buyer may deem necessary or desirable, duly executed by the Company;

(b) a certificate of the secretary of the Company certifying as to the Company's articles of incorporation and bylaws or other comparable documents;

(c) evidence or copies of the consents, approvals, orders, qualifications or waivers required by any third party or Governmental Authority to consummate the transactions contemplated by this Agreement;

(d) the Ancillary Agreements required to be executed and delivered by the Company or the Shareholder;

(e) releases and other documentation reasonably requested by the Buyer in form and substance reasonably satisfactory to the Buyer providing for the termination and release of all Encumbrances on the Purchased Assets;

(f) an opinion of counsel for the Company and the Shareholder in the form of Exhibit D hereto; and

(g) such other documents and instruments as may be reasonably required to consummate the transactions contemplated by this Agreement and the Ancillary Agreements and to comply with the terms hereof and thereof.

**7.2 Deliveries of the Buyer.** At the Closing, the Buyer shall deliver to the Company and the Shareholder:

(a) the portion of the Purchase Price as described in Section 1.3.1(a), (b) and (c);

(b) certificates of the secretary of the Buyer and GSM certifying as to the Buyer's and GSM's certificate of formation and company agreement or other comparable documents;

(c) the Ancillary Agreements required to be duly authorized and delivered by the Buyer or GSM; and



(d) such other documents and instruments as may be reasonably required to consummate the transactions contemplated by this Agreement and the Ancillary Agreements and to comply with the terms hereof and thereof.

## ARTICLE 8

### MISCELLANEOUS

**8.1 Further Assurances.** The parties hereto, and their respective, successors and assigns, covenant and agree to take or cause to be taken all such further acts, including the execution and delivery of documents, instruments, conveyances, and powers of attorney, as may be requested to consummate the transactions contemplated hereby. Without limiting the generality of the foregoing, the Company and the Shareholder covenant and agree to take any and all actions, and to execute, acknowledge and deliver any and all documents and assurances as the Buyer may reasonably require for the later assuring, assigning, transferring and assigning unto the Buyer of the Purchased Assets, and to protect the right, title and interest of the Buyer in and to, and its enjoyment of, the Purchased Assets.

**8.2 Use of Names.** On and after the Closing Date, the Company and the Shareholder will discontinue all use of the names and marks included in the Intellectual Property Rights transferred pursuant to this Agreement, including the names set forth in Schedule 1.2(i) alone or in any combination of any words or marks confusingly similar thereto, and will as promptly as possible, but in no event later than 45 days after the Closing Date, eliminate such names from all signs, purchase orders, invoices, sales orders, packaging stock, labels, letterheads, business cards, displays, signs, promotional materials, manuals, shipping documents and other materials used by the Company or the Shareholder. In addition, the Company will change its name as it appears on its Articles of Incorporation with the Pennsylvania Secretary of State as promptly as possible, but in no event later than 45 days after the Closing Date, and the Buyer acknowledges that the continuation of the use of the name of the Company for a period of up to 45 days after the date of Closing shall not constitute a violation of this Agreement.

**8.3 Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or when dispatched by electronic facsimile transfer (receipt confirmed) or one business day after having been dispatched by a nationally recognized overnight courier service to the appropriate party at the address specified below (or such other address as the party entitled thereto may have prior thereto specified by notice given as contemplated in this Section):

If to the Company: Walker's (Game Ear), Inc.  
531 Gilbert Street  
Media, Pennsylvania 19063  
Attn: Robert W. Walker  
Facsimile: (610) 566-7488

With copy to: John E. Lindros, Esquire  
Toscani & Lindros, LLP  
1205 Westlakes Drive, Suite 195

Berwyn, PA 19312  
Facsimile: (610) 647-4985

If to the Buyer: GSM - Walker Products, LLC  
3385 Roy Orr Boulevard  
Grand Prairie, Texas 75050  
Attn: David E. Schnell  
Facsimile: (214) 988-1407

With copy to: Porter & Hedges, L.L.P.  
1000 Main Street, 36<sup>th</sup> Floor  
Houston, Texas 77002  
Attn: John O. Brentin  
Facsimile: (713) 226-6263

but if mailed, the same shall not be deemed effective unless and until actually received by the party entitled thereto.

#### **8.4 Dispute Resolution.**

(a) The parties shall cooperate in good faith to resolve any dispute arising under this Agreement, including any claim for indemnification pursuant to the provisions of Article 5 of this Agreement. If, after no less than thirty (30) days, the parties are unable to resolve a dispute, such dispute shall be resolved by binding arbitration in accordance with the following provisions of this Section 8.4; *provided* that any party may seek injunctive relief or other equitable relief to preserve the status quo pending arbitration.

(b) Any party to this Agreement may submit any dispute which is subject to arbitration under this Section 8.4 by giving written notice to all other parties hereto. Within ten (10) business days after receipt of such notice by all other parties, the Buyer, on one hand, and the Company and the Shareholder, on the other hand, shall each appoint one arbitrator, and within ten (10) business days thereafter the two arbitrators so appointed shall select a third arbitrator. If the Buyer, on one hand, or the Company and the Shareholder, on the other hand, shall fail to make such appointment within such ten-day period, then any party may request the American Arbitration Association to appoint the second arbitrator. The American Arbitration Association may thereupon appoint the second arbitrator. If the two appointed arbitrators shall fail to select a third arbitrator within said ten-day period, the parties hereto shall mutually select the third arbitrator. If the parties are unable to agree upon such selection within two (2) business days, then any party may, upon at least five (5) business days' prior written notice to all other parties, request the American Arbitration Association to appoint the third arbitrator. The American Arbitration Association may thereupon appoint the third arbitrator. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect, except as otherwise provided in this Section 8.4. The arbitration shall take place in Houston, Texas.

(c) The three arbitrators shall investigate the facts and shall hold hearings at which the parties hereto may present evidence and arguments, be represented by counsel and conduct cross-examination. The three arbitrators shall render a written decision on the matter presented to them by majority vote as soon as practicable after the appointment of the third arbitrator and in any event not more than ninety (90) days after such appointment. The decision of the arbitrators, which may include equitable relief, shall be final and binding on the parties hereto, and judgment upon the decision may be entered in any court having jurisdiction thereof. If the three arbitrators shall fail to render a decision within said 90-day period, either party may institute such action or proceeding in such court as shall be appropriate in the circumstances and upon the institution of such action, the arbitration proceedings shall be terminated and shall be of no further force and effect. The prevailing party shall be awarded reasonable attorneys' fees, expert and nonexpert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, and the fees and costs of the arbitrators shall be borne by the nonprevailing party unless, in either case, the arbitrators for good cause determine otherwise. In resolving any dispute, the arbitrators shall apply the provisions of this Agreement, without varying therefrom in any respect. The arbitrators shall not have the power to add to, modify or change any of the provisions of this Agreement.

**8.5 Rights of Parties.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective successors and assigns, nor shall any provision give any third persons any right of subrogation or action against any party to this Agreement. Without limiting the generality of the foregoing, it is expressly understood that this Agreement does not create any third party beneficiary rights.

**8.6 Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one and the same instrument.

**8.7 Amendments and Waivers.** This Agreement may be amended, modified, or superseded only by written instrument executed by each party hereto. Any waiver of the terms, provisions, covenants, representations, warranties, or conditions hereof shall be made only by a written instrument executed and delivered by an authorized officer of such party. The failure of either party at any time or times to require performance of any provision hereof shall in no manner affect the right to enforce the same. No waiver by either party of any condition, or of the breach of any term, provision, covenant, representation, or warranty contained in this Agreement in one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or the breach of any other term, provision, covenant, representation, or warranty.

**8.8 Entire Agreement; Conflicts.** This Agreement (including the schedules and exhibits hereto, all of which are by this reference fully incorporated into this Agreement) and the documents and materials expressly referred to in schedules or exhibits hereto sets forth the entire Agreement and understanding of the parties with respect to the transactions contemplated hereby and supersedes all prior agreements, arrangements, and understandings relating to the subject matter hereof. In the event of any conflict or inconsistency between the provisions of this

Agreement and the contents or provisions of any schedule or exhibit hereto, the provisions of this Agreement shall be deemed controlling.

**8.9 Successors and Assigns.** All of the terms, provisions, covenants, representations, warranties, and conditions of this Agreement shall be binding on and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors, but this Agreement and the rights and obligations hereunder shall not be assignable or delegable by any party; except that the Buyer may assign this Agreement to an Affiliate of the Buyer.

**8.10 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to the laws which would otherwise apply by application of Texas' internal principles of conflicts of law.

**8.11 Severability.** If any term, provision, covenant, or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, covenants and restrictions shall remain in full force and effect and shall in no way be affected, impaired or invalidated. It is hereby stipulated and declared to be the intention of the parties that they would have executed this Agreement had the terms, provisions, covenants and restrictions which may be hereafter declared invalid, void, or unenforceable not initially been included herein.

**8.12 Headings and Captions.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any article, section, or paragraph hereof.

**8.13 Successor Laws.** Reference made herein to any law or statute shall include reference to any future law amending or superseding such law or statute and to any future laws applicable to the same subject matter.

**[Signature Page Follows]**

**IN WITNESS WHEREOF, the parties to this Agreement have duly executed this Agreement on the date first above.**

**BUYER:**

**GSM - WALKER PRODUCTS, LLC**

  
\_\_\_\_\_  
David E. Schnell, *Manager*

**COMPANY:**

**WALKER'S (GAME EAR), INC.**

\_\_\_\_\_  
Robert W. Walker, *President*

**SHAREHOLDER:**

\_\_\_\_\_  
Robert W. Walker

**[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]**

**TRADEMARK  
REEL: 003684 FRAME: 0397**

**IN WITNESS WHEREOF**, the parties to this Agreement have duly executed this Agreement on the date first above.

**BUYER:**

**GSM - WALKER PRODUCTS, LLC**

\_\_\_\_\_  
David E. Schnell, *Manager*

**COMPANY:**

**WALKER'S (GAME EAR), INC.**

\_\_\_\_\_  
Robert W. Walker, *President*

**SHAREHOLDER**

\_\_\_\_\_  
Robert W. Walker

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

Walker's (Game Ear), Inc. had a "Trade Mark Principal Register" for the trade mark "Game Ear" issued on March 15, 1994, and being registration number 1,826,161. An application is pending with the US Patent and Trademark Office to renew that application. A "Trademark/Service Mark" Statement of Use related to serial number 78586886 was filed on March 2, 2007 by Carl H. Pierce, Esquire related to "Game Ear" on behalf of Walker's (Game Ear), Inc.

Walker's (Game Ear), Inc. has various common law rights to unpatented technology and know how relating to the design and manufacture of its various products. This technology and know how includes as an example: (1) developing electrical, physical and acoustical product performance factors such as Frequency Response, Distortion, Battery Current, Battery Types, Gain Amplification measured in decibels, and (2) developing operating guidance for consumers relating to Walker branded products.

In addition, Walker's (Game Ear), Inc. holds the right to the internet domain names shown on Schedule 1.2 (j).

See also the Trade Names and Similar Items listed on Schedule 1.2 (j), which Schedule is incorporated herein by reference.