

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNS 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>
Dallis Bros., Inc.		03/22/2007	CORPORATION: NEW YORK
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Octavio, Inc.		
<b>Doing Business As:</b>	DBA Dallis Coffee		
<b>Street Address:</b>	100-32 Atlantic Avenue		
<b>City:</b>	Ozone Park		
<b>State/Country:</b>	NEW YORK		
<b>Postal Code:</b>	11416		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	3053322	DALLIS COFFEE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(718)843-0178		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
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<b>Email:</b>	marceloc@dalliscoffee.com		
<b>Correspondent Name:</b>	Octavio, Inc.		
<b>Address Line 1:</b>	100-32 Atlantic Avenue		
<b>Address Line 4:</b>	Ozone Park, NEW YORK 11416		
<b>NAME OF SUBMITTER:</b>	Octavio, Inc.		
<b>Signature:</b>	/octavioinc/		
<b>Date:</b>	04/08/2008		

Total Attachments: 39

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ASSET PURCHASE AGREEMENT

among:

OCTAVIO, INC.,  
a Delaware corporation;

OCTAVIO REALTY, INC.,  
a Delaware corporation;

DALLIS BROS., INC.,  
a New York corporation;  
and

DALLIS REALTY HOLDINGS, LLC,  
a New York limited liability company

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Dated as of March 21, 2007  
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TABLE OF CONTENTS

	<u>Page</u>
1. SALE AND PURCHASE OF ASSETS; RELATED TRANSACTIONS.....	1
1.1 Sale and Purchase of Assets .....	1
1.2 Excluded Assets .....	2
1.3 Purchase Price.....	3
1.4 Sales and Transfer Taxes.....	4
1.5 Allocation of Purchase Price. ....	4
1.6 Ancillary Agreements .....	4
1.7 Closing .....	5
2. REPRESENTATIONS AND WARRANTIES OF SELLER AND THE REAL PROPERTY SELLER.....	6
2.1 Title to Assets .....	6
2.2 Specified Contracts; Equipment; Certain Materials.....	6
2.3 Compliance with Legal Requirements. ....	6
2.4 Regulatory Matters.....	8
2.5 Employee Matters .....	8
2.6 Financial Statement and Records; Certain Liabilities.....	8

2.7	Legal Proceedings .....	9
2.8	Authority; Binding Nature of Agreement .....	9
2.9	Non-Contravention; Consents .....	10
2.10	Customers .....	10
2.11	Effect of Transaction.....	10
3.	REPRESENTATIONS AND WARRANTIES OF PURCHASER AND THE REAL PROPERTY PURCHASER.....	10
3.1	Due Organization .....	10
3.2	Authority; Binding Nature of Agreement .....	10
3.3	Non-Contravention; Consents .....	11
4.	PRE-CLOSING COVENANTS OF SELLER.....	11
4.1	Access.....	11
4.2	Conduct of Business.....	12
4.3	Consents .....	12
4.4	Conditions.....	12
4.5	Supplemental Disclosures .....	12
5.	PRE-CLOSING COVENANTS OF PURCHASER.....	13
5.1	Consents; Releases.....	13
5.2	Employment Matters.....	13
5.3	Conditions.....	13
6.	CONDITIONS PRECEDENT TO PURCHASER'S AND THE REAL PROPERTY PURCHASER'S RESPECTIVE OBLIGATIONS TO CLOSE.....	13
6.1	Accuracy of Representations .....	13
6.2	Performance of Covenants .....	14
6.3	Additional Documents.....	14
6.4	No Restraints .....	14
6.5	Consents .....	15
6.6	Releases .....	15
6.7	Schedules.....	15
6.8	UCC, Tax Lien and Judgment Search Results.....	15
7.	CONDITIONS PRECEDENT TO SELLER'S AND THE REAL PROPERTY SELLER'S RESPECTIVE OBLIGATIONS TO CLOSE.....	15
7.1	Accuracy of Representations.....	15
7.2	Performance of Covenants .....	15
7.3	Delivery of Consideration .....	15
7.4	Additional Documents.....	16
7.5	No Restraints .....	16
8.	TERMINATION.....	16
8.1	Right to Terminate Agreement .....	16
8.2	Termination Procedures .....	17
8.3	Effect of Termination.....	17
9.	INDEMNIFICATION.....	17
9.1	Survival of Representations, Warranties and Indemnity.....	17

9.2	Indemnification by Seller and the Real Property Seller .....	17
9.3	Limits on Indemnification by Seller and the Real Property Seller .....	18
9.4	Cross-indemnification for Broker's, Consultant's or Finder's Fees.....	18
9.5	Indemnification by Purchaser and the Real Property Purchaser .....	19
9.6	Procedure for Indemnification. ....	19
9.7	Payment .....	20
10.	MISCELLANEOUS.....	20
10.1	Time of Essence.....	20
10.2	No Other Representations.....	20
10.3	Access of Seller to Books and Records.....	20
10.4	Governing Law .....	21
10.5	Venue and Jurisdiction .....	21
10.6	Notices.....	21
10.7	Public Announcements.....	22
10.8	Assignment .....	22
10.9	Parties in Interest.....	22
10.10	Severability.....	22
10.11	Entire Agreement .....	22
10.12	Waiver .....	22
10.13	Amendments .....	22
10.14	Counterparts.....	23
10.15	Interpretation of Agreement. ....	23
10.16	Further Assurances.....	23
10.17	Release of Escrow Amount	
10.18	<u>Collection of Accounts Receivable</u>	

TABLE OF EXHIBITS AND SCHEDULES

Exhibit A	Certain Definitions
Exhibit B	Form of Assumption Agreement
Exhibit C	Form of Real Property Purchase and Sale Agreement: Block 9376, Lot 15
Exhibit D	Form of Real Property Purchase and Sale Agreement: Block 9376, Lot 14
Exhibit E	Form of Trademark Assignment Agreement
Exhibit F	Form of Consulting and Non-Competition Agreement for David B. Dallis
Exhibit G	Form of Escrow Agreement
Exhibit H	Form of Berkowitz, Trager & Trager, LLC Opinion
Exhibit I	Form of Real Property Purchase and Sale Agreement: Block 9376, Lot 21
Exhibit J	Form of Non-Competition Agreement for Herb Dallis
Schedule 1	Certain Excluded Assets
Schedule 2	Specified Contracts
Schedule 3	Specified Regulatory Filings
Schedule 4	Consents to be Obtained
Schedule 5	Available Employees
Schedule 6	Real Property Description
Schedule 7	Payees of Purchase Price Consideration
Schedule 8	Allocation of Purchase Price
Schedule 9	Seller Disclosure Schedule
Schedule 10	Milestones

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is being entered into as of March 21, 2007, by and among: DALLIS BROS., INC., a New York corporation (“Seller”); DALLIS REALTY HOLDINGS, LLC, a New York limited liability company (the “Real Property Seller”); OCTAVIO, INC., a Delaware corporation (“Purchaser”); and OCTAVIO REALTY, INC., a Delaware corporation (the “Real Property Purchaser”). Seller, the Real Property Seller, Purchaser and the Real Property Purchaser are referred to collectively in this Agreement as the “Parties.” Certain other capitalized terms used in this Agreement are defined in Exhibit A.

### RECITAL

The Parties wish to provide for the purchase by Purchaser and the Real Property Purchaser of certain assets from Seller and the Real Property Seller, and to provide for certain related transactions, on the terms and subject to the conditions and other provisions set forth in this Agreement and in the Ancillary Agreements.

### AGREEMENT

The Parties, intending to be legally bound, agree as follows:

#### 1. SALE AND PURCHASE OF ASSETS; RELATED TRANSACTIONS

1.1 Sale and Purchase of Assets. On the terms and subject to the conditions and other provisions set forth in this Agreement and in the Ancillary Agreements, at the Closing, Seller and the Real Property Seller will sell and transfer to Purchaser and the Real Property Purchaser, and Purchaser and the Real Property Purchaser will purchase from Seller and the Real Property Seller, all of the following (all of which, other than the Real Property (as defined below), are referred to in this Agreement as the “Specified Assets”):

(a) all of Seller’s and the Real Property Seller’s rights, title and interests in and to the real property, commonly known as 100-30 Atlantic Avenue, 100-32 Atlantic Avenue and 101-09 94<sup>th</sup> Avenue, Ozone Park, New York, as more particularly described on Schedule 6 (the “Real Property”) and the Facility;

(b) all of Seller’s rights as of the Closing Date under the Specified Contracts;

(c) all items of equipment, fixtures and furnishings owned by Seller and the Real Property Seller as of the Closing Date that are located and used primarily at the Facility, including without limitation all computers and other electronic data processing equipment, special and general tools and other tangible personal property;

(d) all finished product inventories, work-in-process inventories, product-in-transit inventories and other inventories that are owned by Seller as of the Closing Date, all the stock-in-trade, leasehold improvements, telephone numbers and all raw materials and supplies;

(e) all rights in and to the Trademark and all intellectual property and licenses of third parties granting the right to use any intellectual property;

(f) those records of Seller, as they exist on the Closing Date, that contain production and sales data (it being understood that such records will not be subject to any restrictions on their use by Purchaser and that Seller may retain copies of such records) and all accounting and other books, records, files, whether in paper, microfilm, microfiche, computer tape or disc, magnetic tape or any other form;

(g) all written technical information, data, specifications, research and development information, engineering drawings, operating and maintenance manuals and materials and analyses prepared by consultants and other third parties, machinery and equipment warranties and service contracts, all computer applications, programs, and other software, including operating software, network software, firmware, middleware, design software, design tools, systems documentation and instructions;

(h) all cost information, sales and pricing data, customer prospect lists, profiles, mailing lists, and all other information concerning Seller's current and potential customers, supplier records, customer and supplier lists, customer and vendor data, correspondence and lists, product literature, artwork, design, development and manufacturing files, vendor and customer drawings, formulations and specifications, quality records and reports and other books, records, studies, surveys, reports, plans and documents; and

(i) all prepaid expenses as of the Closing Date related to the business conducted at the Facility (the "Prepaid Expenses").

The parties shall enter into Real Estate Contracts of Sale for the Real Property simultaneous upon execution and delivery of this Agreement and, to the extent that the transfer of the Real Property is expressly provided for by the terms of such Ancillary Agreements, the terms of such other Ancillary Agreements shall effect, and determine the manner of, the transfer.

1.2 Excluded Assets. Notwithstanding anything to the contrary contained in Section 1.1, neither Seller nor the Real Property Seller will be required to sell or transfer to Purchaser or the Real Property Purchaser, and the Specified Assets will not be deemed to include, any of the following or any right or interest in or to any of the following:

(a) subject to Section 10.16, any Specified Contract if (i) a Consent is required to be obtained from any Person in order to permit the sale or transfer to Purchaser of Seller's rights under such Specified Contract, and (ii) such Consent shall not have been obtained prior to the Closing;

(b) any cash, cash equivalents or accounts receivable; or

(c) any asset identified on Schedule 1.



1.3 Purchase Price. As consideration for the sale of the Specified Assets and the Real Property to Purchaser and the Real Property Purchaser:

(a) at the Closing, (x) Purchaser will pay to Seller, by wire transfer of immediately available funds, the sum of One Million Four Hundred Thirty-One Thousand Three Hundred Ninety-Three Dollars (\$1,431,393) comprising \$17,172 for tangible personal property, \$159,893 for merchandise inventory for resale and \$1,254,328 for manufacturing, processing and brewing equipment,

and (y) the Real Property Purchaser will pay to Seller and the Real Property Seller the respective purchase prices set forth in the Ancillary Agreements concerning the Real Property aggregating One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000), being \$499,000 for 100-32 Atlantic Avenue, \$1,151,000 for 100-30 Atlantic Avenue and \$100,000 for 101-09 94<sup>th</sup> Avenue, all in the aggregate to be less the aggregate amount payable to payees under Section 1.3(b) ;

(b) at the Closing, Purchaser will on behalf of Seller and the Real Property Seller pay the amounts set forth on Schedule 7 directly to the named payees described on the Schedule 7;

(c) at the Closing, Purchaser will deposit in escrow with the Escrow Agent pursuant to the Escrow Agreement the sum of One Million One Hundred Thousand Dollars (\$1,100,000)(the “Escrowed Amount”), to be held until the final determination of the Milestones, after which the escrowed amount will be delivered to Seller pursuant to the terms of the Escrow Agreement and Section 10.17, subject to earlier claims in favor of Purchaser as set forth elsewhere herein;

(d) at the Closing, Purchaser will assume the Assumed Liabilities by delivering to Seller an Assignment and Assumption Agreement substantially in the form of Exhibit B (the “Assumption Agreement”) and will assume the obligation with respect to accrued vacation with respect to all of the Available Employees who are employed by Purchaser ; and

(e) within 45 days of the Closing the parties will agree upon the amount of Prepaid Expenses based upon the aggregate amount of payments made by Seller and/or the Real Property Seller and upon such agreement the Purchaser will promptly pay the agreed amount to the Seller.

(f) For purposes of this Section 1.3, the inventory of Seller only includes inventory that is currently physically present in the Facility and has been valued at \$159,893. Immediately following the Closing the Purchaser shall conduct a physical count of inventory at the Facility and at the Pennsylvania and Texas warehouses or otherwise in transit to the Facility (or, at its option in lieu thereof, accept certification by the bailee of such inventory as to the amount thereof) and based on such count, Purchaser shall promptly pay to Seller the value of such inventory calculated at Seller’s cost.

The Parties acknowledge that except as described above, neither Purchaser nor the Real Property Purchaser will be assuming any liabilities or contingent liabilities, debts, obligations, responsibilities, of Seller or the Real Property Seller, or any claim of any of the foregoing, whether known or unknown, contingent or absolute, or otherwise, and that Seller and the Real Property Seller will remain responsible for all of their respective liabilities other than the Assumed Liabilities (such liabilities being the “Seller Liabilities”).

1.4 Sales and Transfer Taxes. Seller will bear and pay, and will reimburse Purchaser for, any sales taxes, use taxes, transfer taxes, documentary charges, recording fees, filing fees or similar taxes, charges, fees or expenses that may become payable in connection with the sale of the Specified Assets to Purchaser, the assumption by Purchaser of the Assumed Liabilities or any of the other transactions contemplated by this Agreement.

1.5 Allocation of Purchase Price.

(a) The Parties have agreed upon an allocation of the consideration referred to in Section 1.3 among the Specified Assets and the Real Property and, to the extent appropriate, the Ancillary Agreements (the “Allocation”), as set forth on Schedule 8. The Allocation was determined in a manner consistent with Section 1060 of the Internal Revenue Code and the Treasury Regulations thereunder.

(b) The Allocation will be conclusive and binding upon the Parties for tax purposes, and no Party will make any statement or declaration to any taxing authority that is inconsistent with the Allocation, except as provided below. No Party will take or permit any of its affiliates or representatives to take any position on any tax return, with any taxing authority or in any judicial tax proceeding that is inconsistent with the Allocation except as required by a final determination within the meaning of Section 1313(a) of the Internal Revenue Code or any equivalent provision of any applicable state or local law. Each Party will promptly provide the other Parties with any additional information required to complete Form 8594 if the filing of such form is required. Each Party will timely notify the other Parties, and will timely provide the other Parties with assistance, in the event of an examination, audit or other proceeding regarding the Allocation.

(c) The Parties agree that if and to the extent the Milestones are paid, such payments shall be accounted for as payment of goodwill.

1.6 Ancillary Agreements. At the Closing, the Parties will enter into the following additional agreements (the “Ancillary Agreements”):

(a) a Trademark Assignment Agreement, substantially in the form of Exhibit E, and all such other documents, certificates, agreements, releases and consents to cancellation necessary to transfer and assign to Purchaser, and for Purchaser to record, register and file with the U.S. Patent and Trademark Office and all other applicable registration authorities, all of Seller’s right, title and interest in and to the Trademark, free and clear of all liens and in form and substance satisfactory to the Purchaser;

(b) an Escrow Agreement, substantially in the form of Exhibit G; and

(c) a Consulting and Non-Competition Agreement with David Dallis, substantially in the form of Exhibit F and Non-Competition Agreements from \_Herb Dallis, substantially in the form of Exhibit J.

1.7 Closing. The closing of the purchase of the Specified Assets by Purchaser and of the Real Property by the Real Property Purchaser (the “Closing”) will take place at the offices of Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166, at a time and on a date to be designated by Purchaser, which will be at least three (3) business days but not more than fifteen (15) business days after the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in Sections 6 and 7 (other than those conditions that by their nature are to be satisfied at the Closing). For purposes of this Agreement, “Closing Date” means the date as of which the Closing actually takes place.

## 2. REPRESENTATIONS AND WARRANTIES OF SELLER AND THE REAL PROPERTY SELLER.

Seller and the Real Property Seller each represents and warrants to Purchaser and the Real Property Purchaser that, except as set forth in the Seller Disclosure Schedule:

2.1 Title to Assets. As of the Closing Date, Seller will have good and valid title to the Specified Assets, free and clear of any liens or encumbrances, except for (i) any lien for current taxes not yet due and payable, and (ii) minor liens and encumbrances that have arisen in the ordinary course of business and that do not materially detract from the value of the Specified Assets subject thereto.

### 2.2 Specified Contracts; Equipment; Certain Materials.

(a) Seller has made available to Purchaser true and correct copies of each of the contracts identified on Schedule 2. Each contract identified on Schedule 2 is valid and in full force and effect. Seller is not in material breach of any contract identified on Schedule 2, and, to Seller's knowledge, no other party to any such contract is in material breach of such contract.

(b) The Specified Assets include all of the assets necessary and used in the conduct of the business heretofore conducted by Seller and will enable Purchaser to conduct such business in the manner in which the business has heretofore been conducted by Seller. The Specified Assets are in good and useable condition, subject to normal wear, tear and maintenance, and as such are adequate to conduct the business as presently conducted. Seller has made available to Purchaser all material information regarding the equipment, fixtures and furnishings that are owned by Seller and the Real Property Seller and located at the Facility.

### 2.3 Compliance with Legal Requirements.

(a) Seller is in substantial compliance with all Legal Requirements relating to the Specified Assets and the use thereof. Since January 1, 2005, Seller has not received any written notice from any governmental body alleging any failure to comply with any Legal Requirement relating to the Specified Assets and the use thereof and the employment of the Available Employees, except for any such notice relating to a failure to comply that has since been cured.

(b) Seller and the Real Property Seller each is, and has been at all times since January 1, 2005, in substantial compliance with all Environmental Laws applicable to the Specified Assets, the Real Property, the Facility and Seller's operations at the Facility. To Seller's and the Real Property Seller's knowledge, no event has occurred or condition exists or has existed which would reasonably be expected to give rise to liability on the part of Purchaser or the Real Property Purchaser pursuant to, or to materially impair Purchaser's or the Real Property Purchaser's compliance with, any Environmental Law applicable to the Specified Assets and the Facility. To Seller's and the Real Property

Seller's knowledge, no material lien has attached to the Real Property or any part thereof, or to any of the Seller's property at the Facility pursuant to any Environmental Law.

(c) There has not been any action taken by Seller or the Real Property Seller, operating practice by Seller or the Real Property Seller or failure by Seller or the Real Property Seller to act that would reasonably be expected to give rise to a material liability on the part of Purchaser and the Real Property Purchaser as a result of:

(i) the handling, storage, use, presence, transportation or disposal or arranging for transportation or disposal of any Hazardous Substance by Seller or the Real Property Seller in, on, under, near or from the Facility;

(ii) any emission, discharge or release of any Hazardous Substance by Seller or the Real Property Seller on or from the Real Property or the Facility into or upon the air, surface water, ground water or land;

(iii) any disposal, handling, manufacturing, processing, distribution, use, treatment or transport of any Hazardous Substances by Seller or the Real Property Seller on or from the Real Property or the Facility; or

(iv) to Seller's knowledge, the presence of any Hazardous Substances (including asbestos, urea formaldehyde foam installation or similar substances contained in building materials) in or on the Real Property or the Facility.

(d) Seller and the Real Property Seller each holds all registrations, permits, licenses and approvals issued by or on behalf of any federal, state or local government body that are required pursuant to any Environmental Laws for the occupancy of and the conduct of business at the Facility and the ownership of the Real Property and the Specified Assets ("Environmental Permits"). Any such Environmental Permits held by Seller and the Real Property Seller are currently in full force and effect. Seller and the Real Property Seller each is in substantial compliance with all terms and conditions of such Environmental Permits, and with all other applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in Environmental Laws.

(e) To Seller's and the Real Property Seller's knowledge, no underground storage tanks or surface impoundments exist at, on or under the Real Property or at the Facility.

(f) Seller and the Real Property Seller have not, either expressly or by operation of law, assumed or undertaken any liability or corrective, investigatory or remedial obligation of any other Person relating to any Environmental Laws that would reasonably be expected to result in a material liability to Purchaser or the Real Property Purchaser.

(g) Seller and the Real Property Seller have made available to Purchaser and the Real Property Purchaser copies of any environmental reports, audits, permits,

licenses, registrations and other environmental, health or safety documents relating to the Specified Assets, the Real Property and the Facility that are in Seller's or the Real Property Seller's possession or control.

#### 2.4 Regulatory Matters.

(a) The Specified Regulatory Filings are current and in full force and effect and include all regulatory filings and governmental registrations made by or issued to Seller that relate specifically to the business heretofore conducted by Seller. Seller has made available to Purchaser copies of all governmental correspondence (including copies of official notices, citations or decisions) in Seller's files relating to the Specified Regulatory Filings.

(b) Seller is in substantial compliance with the laws applicable to the manufacture, labeling, testing, sales and inspection (at the Facility and otherwise) and the operation of manufacturing facilities used to manufacture the products heretofore produced by Seller, and with all applicable regulations, policies and procedures promulgated with respect thereto.

2.5 Employee Matters. Seller has made available to Purchaser (except to the extent prohibited under applicable Legal Requirements) accurate information with respect to the employment of, the job responsibilities of, the compensation payable by Seller to, and the employee benefits being provided to, each of the Available Employees. As of the date of this Agreement, there are approximately twenty-one (21) employees of Seller based at the Facility.

#### 2.6 Financial Statement and Records; Certain Liabilities.

(a) Seller has delivered to Purchaser true, correct and complete copies of the following (the "Seller Financial Statements"): (i) the reviewed balance sheets of Seller as of December 31, 2005, and the related statement of income and cash flows for the year then ended; and (ii) the reviewed balance sheets of Seller as of June 30, 2006 (the "Most Recent Balance Sheet"), and the related statement of income and cash flows for the six months then ended.

(b) The Seller Financial Statements present fairly the assets, liabilities and financial position of Seller as of the dates thereof and the results of operations thereof for the periods then ended and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis with prior periods. The books and records of Seller have been and are being maintained in accordance with good business practice, reflect only valid transactions, are complete and correct in all material respects, and present fairly in all material respects the basis for the financial position and results of operations of Seller set forth in the Seller Financial Statements.

(c) The accounts receivable set forth on the Most Recent Balance Sheet are reflected thereon in accordance with good business practice and on a basis consistent with prior periods. The allowance for collection losses on the Most Recent Balance Sheet has been determined in accordance with past practice. The accounts receivable arising

since the date of the Most Recent Balance Sheet are, to the knowledge of Seller, valid and genuine and have been properly recorded in the general ledger of Seller.

(d) All inventory used in the conduct of the operations of Seller reflected on the Most Recent Balance Sheet, or acquired since the date thereof, was acquired and has been maintained in the ordinary course of business, consists substantially of good and merchantable quality and, other than after acquired inventory, has been recorded on the Most Recent Balance Sheet in accordance with good business practice and on a basis consistent with prior periods. Inventory acquired since July 1, 2006 consists of good and merchantable quality and has been properly recorded in the general ledger of Seller.

(e) The accounts payable and accrued expenses reflected on the Most Recent Balance Sheet include all trade liabilities and accrued expenses incurred as of that date, and have been recorded on the Most Recent Balance Sheet in accordance with good business practice and on a basis consistent with prior periods. All trade accounts payable and accrued expenses incurred since July 1, 2006 have been recorded in the general ledger of the Seller.

(f) As of the date of this Agreement, Seller has no material liabilities relating to the Specified Assets, the operations conducted at the Facility or the Available Employees other than (i) liabilities under or relating to the Specified Contracts, (ii) liabilities incurred in the ordinary course of business or consistent with past practices, that are fully reflected, accrued or reserved against on the Most Recent Balance Sheet, for which the reserves are appropriate and reasonable, or incurred in the ordinary course of business consistent with past practices since July 1, 2006, (iii) liabilities referred to in, or relating to matters referred to in, the Seller Disclosure Schedule, (iv) liabilities under applicable Legal Requirements, (v) liabilities otherwise made known to or discovered by Purchaser in the course of Purchaser's investigation of the Specified Assets, the Available Employees and the operations conducted at the Facility during the period from July 1, 2006 through the date of this Agreement. Schedule 7 describes all accounts payable of the Seller as of the date of this Agreement.

2.7 Legal Proceedings. There is no lawsuit or other legal proceeding pending or, to Seller's or the Real Property Seller's knowledge, being threatened against Seller or the Real Property Seller as of the date of this Agreement that involves the Specified Assets, the Real Property or the Facility and would reasonably be expected to result in a judgment having a material adverse effect on the value of the Specified Assets, the Real Property or the Facility.

2.8 Authority; Binding Nature of Agreement. Each of Seller and the Real Property Seller has all necessary corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements and to perform its respective obligations under this Agreement and the Ancillary Agreements; and the execution, delivery and performance by Seller and the Real Property Seller of this Agreement and the Ancillary Agreements have been duly authorized by all necessary action on the part of Seller and its board of directors and the Real Property Seller and its Manager and Members. Seller has provided to Purchaser a copy of the resolutions adopted by the board of directors of Seller and of the Manager and Members of the

Real Property Seller authorizing the execution, delivery and performance by Seller and the Real Property Seller, respectively, of this Agreement and the Ancillary Agreements. The transactions contemplated by this Agreement have been approved by the sole shareholder of Seller. This Agreement constitutes, and, upon execution thereof, each of the Ancillary Agreements will constitute, the valid and binding obligation of Seller and of the Real Property Seller, respectively, enforceable against Seller and the Real Property Seller, as the case may be, in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

2.9 Non-Contravention; Consents. Assuming the Consents set forth on Schedule 4 are obtained, the execution and delivery by Seller and the Real Property Seller of this Agreement and the Ancillary Agreements and the sale of the Specified Assets by Seller to Purchaser will not: (a) contravene or result in a violation or breach of any Legal Requirement applicable to the Specified Assets or any Specified Contract; or (b) result in the imposition of any lien or encumbrance upon any of the Specified Assets. Except for the Consents set forth on Schedule 4, Seller is not required to obtain any Consent from any Person, under any material Specified Contract, at or prior to the Closing in connection with the execution and delivery of this Agreement or the Ancillary Agreements or the sale of the Specified Assets to Purchaser.

2.10 Customers. The sales reports in respect of 2005, 2006 and the portion of 2007 to date which have been provided to the Purchaser are true and correct in all material respects.

2.11 Effect of Transaction. To Seller's knowledge, except as otherwise disclosed in Part 2.11 of the Seller Disclosure Schedule, no creditor, key-employee or customer or other person having a material business relationship with Seller has informed Seller that such person intends to change the relationship because of the purchase and sale of the Real Property and the Specified Assets, nor does Seller have knowledge of any such intent. For purposes of this Section 2, the term "Seller's knowledge" shall mean the actual knowledge of David B. Dallis.

### 3. REPRESENTATIONS AND WARRANTIES OF PURCHASER AND THE REAL PROPERTY PURCHASER.

Each of Purchaser and the Real Property Purchaser represents and warrants to Seller and the Real Property Seller as follows:

3.1 Due Organization. Each of Purchaser and the Real Property Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

3.2 Authority; Binding Nature of Agreement. Each of Purchaser and the Real Property Purchaser has all necessary power and authority to execute and deliver this Agreement, the Assumption Agreement and the Ancillary Agreements, and to perform its obligations hereunder and thereunder; and the execution, delivery and performance by each of Purchaser and



the Real Property Purchaser of this Agreement, and the Ancillary Agreements have been duly authorized by all necessary action on the part of their respective boards of directors. Each of Purchaser and the Real Property Purchaser has provided to Seller a copy of the resolutions of their respective boards of directors authorizing the execution, delivery and performance of this Agreement, the Assumption Agreement and the Ancillary Agreements. No vote of the holders of the capital stock of Purchaser or the Real Property Purchaser is required to authorize the purchase of the Specified Assets or the Real Property, or any of the other transactions contemplated by this Agreement and the Ancillary Agreements. This Agreement constitutes, and, upon execution thereof, each of the Assumption Agreement and the Ancillary Agreements will constitute, the valid and binding obligation of Purchaser and the Real Property Purchaser, enforceable against Purchaser and the Real Property Purchaser in accordance with their respective terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

3.3 Non-Contravention; Consents. Neither the execution, delivery or performance of this Agreement, the Assumption Agreement or any of the Ancillary Agreements, nor the consummation of any of the transactions contemplated by this Agreement, the Assumption Agreement or any of the Ancillary Agreements, will (a) conflict with or result in any violation of any provision of the certificate of incorporation, bylaws or other charter or organizational documents of Purchaser or the Real Property Purchaser, (b) result in a breach or default by Purchaser or the Real Property Purchaser under any material contract to which Purchaser or the Real Property Purchaser is a party, (c) result in a violation of any Legal Requirement or order to which Purchaser or the Real Property Purchaser is subject, or (d) result in the creation of a lien or encumbrance on any material asset of Purchaser or the Real Property Purchaser. Neither Purchaser nor the Real Property Purchaser is or will be required to obtain any Consent from any Person in connection with the execution, delivery or performance of this Agreement, the Assumption Agreement or any of the Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby.

#### 4. PRE-CLOSING COVENANTS OF SELLER.

4.1 Access. During the period from the date of this Agreement through the Closing Date (the “Pre-Closing Period”), Seller and the Real Property Seller will, after receiving reasonable advance notice from Purchaser, give Purchaser and its agents reasonable access (during normal business hours) to the Real Property and the Facility and to Seller’s books and records relating to the Real Property and the Specified Assets and relating to those Available Employees who consent in writing to such access (the “Consenting Employees”), and will provide Purchaser with such information regarding the Real Property, the Specified Assets, the Consenting Employees and any other appropriate matters germane to the subject matter of this Agreement and the Ancillary Agreements as Purchaser may reasonably request, for the sole purposes of enabling Purchaser (i) to further investigate, at Purchaser’s sole expense, the Real Property, the Specified Assets, the Consenting Employees and any other appropriate matters germane to the subject matter of this Agreement and the Ancillary Agreements, and (ii) to verify the accuracy of the representations and warranties set forth in Section 2. To the extent requested by Purchaser, Seller will arrange to permit Purchaser to conduct interviews of any of the

Available Employees during the Pre-Closing Period. Seller will request the consent of the Available Employees to the disclosure of their respective personnel files to Purchaser.

4.2 Conduct of Business. Except (i) as contemplated or permitted by this Agreement or the Seller Disclosure Schedule, (ii) as contemplated by any of the Ancillary Agreements, (iii) as may be necessary to carry out any of the transactions contemplated by this Agreement or the Ancillary Agreements, (iv) as may be necessary to facilitate compliance with any Legal Requirement or the requirements of any Specified Contract, or (v) as approved by Purchaser, during the Pre-Closing Period:

(a) Seller will (i) conduct its operations at the Facility in the ordinary course and consistent with its past practices, to the extent such operations relate to the Specified Assets, and (ii) use commercially reasonable efforts to maintain good relations with the Available Employees and the parties to the Specified Contracts; and

(b) Seller will not (i) license or dispose of any material Specified Assets other than in the ordinary course, (ii) prematurely terminate or materially amend, or assign any of the Specified Contracts, (iii) commit a material breach of any Specified Contract, (iv) make any material changes to the compensation or benefits provided by Seller to the Available Employees other than in the ordinary course, or (v) enter into any employment, bonus or severance agreement with any of the Available Employees.

If Seller requests Purchaser's approval of a proposed action that would result in a breach by Seller of this Section 4.2, Purchaser will respond promptly to Seller's request and will not unreasonably withhold its approval of the proposed action. All references in this Section 4.2 to the "Available Employees" will be deemed to refer instead only to the "Specified Employees" at such time as the Specified Employees are identified by Purchaser pursuant to Section 5.2.

4.3 Consents. Seller and the Real Property Seller will use commercially reasonable efforts during the Pre-Closing Period to obtain the Consents set forth on Schedule 4.

4.4 Conditions. Seller and the Real Property Seller will use commercially reasonable efforts (i) to cause the conditions set forth in Section 6 to be satisfied on a timely basis, and (ii) otherwise to cause the Closing to take place as soon as reasonably practicable.

4.5 Supplemental Disclosures. Seller and the Real Property Seller shall have the continuing obligation to supplement promptly and amend the Seller Disclosure Schedule as necessary or appropriate with respect to any matter hereafter arising or discovered which, if existing or known at the date of this Agreement, would have been required to be set forth or described in the Seller Disclosure Schedule; provided, however, that for the purpose of the rights and obligations of the Parties hereunder, any such supplemental or amended disclosure shall not, except as Purchaser and the Real Property Purchaser may otherwise agree in writing, be deemed to have cured any breach of any representation or warranty made in this Agreement. Notwithstanding the foregoing, if Purchaser and the Real Property Purchaser elect to proceed with the Closing, Purchaser and the Real Property Purchaser shall be deemed to have waived the right thereafter to assert any claim pursuant to Section 9 hereunder with respect to any matter

specifically and accurately disclosed by Seller and the Real Property Seller in such supplemental or amended disclosure.

## 5. PRE-CLOSING COVENANTS OF PURCHASER.

5.1 Consents; Releases. Purchaser and the Real Property Purchaser will cooperate with Seller and the Real Property Seller, and will provide Seller and the Real Property Seller with such assistance as they may reasonably request, for the purpose of (i) attempting to obtain the Consents set forth on Schedule 4, (ii) arranging for Seller to be released and discharged from its obligations and other liabilities under the Specified Contracts, and (iii) arranging for Seller and the Real Property Seller to be released and discharged from their respective obligations and other liabilities under the obligations specified on Schedule 7 as Group A Liabilities.

5.2 Employment Matters. On or prior to the the date of this Agreement, Purchaser will provide to Seller a list identifying which of the Available Employees (the employees identified on such list being referred to in this Agreement as the “Specified Employees”) it wishes to employ. Prior to the Closing, on a date mutually agreed by the Parties, Purchaser will extend to each Specified Employee an individualized written offer of employment that, if accepted, would contemplate that such Specified Employee would commence his or her employment with Purchaser on the day after the Closing Date and would provide such Specified Employee with compensation, benefits and terms of employment (including terms relating to job responsibilities) that in the aggregate are substantially as favorable to such Specified Employee as the compensation, benefits and terms of employment provided by Seller to such Specified Employee immediately prior to the Closing. On the day after the Closing Date, Purchaser will hire each Specified Employee who accepts the written offer of employment extended to such Specified Employee by Purchaser (it being understood that, except as otherwise provided in any individual employment agreement between Purchaser and a Specified Employee, Purchaser will not be obligated to maintain the employment of or the compensation or employee benefits provided to such Specified Employee for any specified period thereafter).

5.3 Conditions. Purchaser will use commercially reasonable efforts (i) to cause the conditions set forth in Section 7 to be satisfied on a timely basis, and (ii) otherwise to cause the Closing to take place as soon as reasonably practicable.

## 6. CONDITIONS PRECEDENT TO PURCHASER’S AND THE REAL PROPERTY PURCHASER’S RESPECTIVE OBLIGATIONS TO CLOSE.

Purchaser’s and the Real Property Purchaser’s obligations to purchase the Real Property and the Specified Assets and to take the other actions required to be taken by Purchaser and the Real Property Purchaser at the Closing, are subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Purchaser or the Real Property Purchaser, in whole or in part, in writing):

6.1 Accuracy of Representations. Those representations and warranties of Seller and the Real Property Seller set forth in Section 2 that refer specifically to and are made as

of the date of this Agreement shall have been accurate as of the date of this Agreement, and all other representations and warranties of Seller and the Real Property Seller set forth in Section 2 (and any representations and warranties of Seller and the Real Property Seller set forth in the Ancillary Agreements) shall be accurate as of the Closing Date as if made on and as of the Closing Date;

6.2 Performance of Covenants. Seller and the Real Property Seller shall have performed, in all material respects, all covenants required by this Agreement and the Ancillary Agreements to be performed by Seller and the Real Property Seller on or before the Closing Date.

6.3 Additional Documents. Each of the Ancillary Agreements shall have been executed on behalf of Seller and the Real Property Seller and delivered to Purchaser and the Real Property Purchaser, as applicable, and each of the following additional documents shall have been delivered to Purchaser:

(a) a certificate, executed by an executive officer of Seller and the Real Property Seller, confirming that, to the actual knowledge of such executive officer and solely in his capacity as an executive officer of Seller, the conditions set forth in Sections 6.1 and 6.2 have been satisfied;

(b) such bills of sale, assignments and other instruments as Seller may be required to execute in order to evidence and effectuate the transfer of the Specified Assets to Purchaser;

(c) such good standing certificates and other similar documents as Purchaser and the Real Property Purchaser may reasonably request to ensure that the actions required to be taken by Seller and the Real Property Seller at the Closing have been properly authorized;

(d) the legal opinion dated the Closing Date of Berkowitz, Trager & Trager, LLC, substantially in the form of Exhibit H; and

(e) David Dallis shall have entered into a Consulting and Non-Competition Agreement with Purchaser, substantially in the form of Exhibit F hereto.

(f) Herb Dallis shall have entered into a Non-Competition Agreement with Purchaser, substantially in the form of Exhibit J hereto.

6.4 No Restraints. No injunction or other order preventing the consummation of the transactions contemplated by this Agreement shall have been issued since the date of this Agreement by any United States federal or state court of competent jurisdiction and shall remain in effect; and no United States federal or state Legal Requirement that makes consummation of the transactions contemplated by this Agreement illegal shall have been enacted or adopted since the date of this Agreement and shall remain in effect.

6.5 Consents. The Consents identified on Schedule 4 shall have been obtained.

6.6 Releases. Releases and/or acknowledgements in respect of the obligations specified on Schedule 7 comprising Group A Liabilities and Group B Liabilities shall have been obtained and shall be in form and substance satisfactory to Purchaser.

6.7 Schedules. All amendments or supplements to the Schedules made by Seller and the Real Property Seller pursuant to Section 4.5 shall be reasonably acceptable to Purchaser and the Real Property Purchaser.

6.8 UCC, Tax Lien and Judgment Search Results. Purchaser and the Real Property Purchaser shall have obtained a report, in form and substance satisfactory to Purchaser and the Real Property Purchaser, as to the results of an examination of financing statements filed under the Uniform Commercial Code, and tax lien and judgment records, in each in such jurisdiction as Purchaser and the Real Property Purchaser shall require, and such report shall indicate no material security interests, tax liens, judgments or other liens.

## 7. CONDITIONS PRECEDENT TO SELLER'S AND THE REAL PROPERTY SELLER'S RESPECTIVE OBLIGATIONS TO CLOSE.

Seller's obligation to sell and transfer the Specified Assets to Purchaser and to take the other actions required to be taken by Seller at the Closing, and the Real Property Seller's obligation to sell and transfer the Real Property to the Real Property Purchaser and to take the other actions required to be taken by the Real Property Seller at the Closing pursuant to the Ancillary Agreements, is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller, in whole or in part, in writing):

### 7.1 Accuracy of Representations.

(a) The representations and warranties set forth in Section 3.2 shall be accurate in all material respects as of the Closing Date as if made on and as of the Closing Date.

(b) All other representations and warranties of Purchaser and the Real Property Purchaser set forth in Section 3 (and any representations and warranties of Purchaser and the Real Property Purchaser set forth in the Ancillary Agreements) shall be accurate as of the Closing Date as if made on and as of the Closing Date.

7.2 Performance of Covenants. Purchaser and the Real Property Purchaser shall have performed, in all material respects, all covenants required by this Agreement and by the Ancillary Agreements to be performed by Purchaser and the Real Property Purchaser on or before the Closing Date.

7.3 Delivery of Consideration. Seller and the Real Property Seller shall have received the cash payments referred to in Section 1.3(a)-(c) and Purchaser shall have delivered to the Escrow Agent the payment required pursuant to Section 1.3(d);

7.4 Additional Documents.

(a) Each of the Ancillary Agreements and the Assumption Agreement shall have been executed on behalf of Purchaser or the Real Property Purchaser, as the case may be, and delivered to Seller and the Real Property Seller, as the case may be, and each of the following additional documents shall have been delivered to Seller or the Real Property Seller:

(i) a certificate, executed by an executive officer of Purchaser and the Real Property Purchaser, and solely in their capacities as executive officers of Purchaser and the Real Property Purchaser, confirming that, to the actual knowledge of such executive officers, the conditions set forth in Sections 7.1 and 7.2 have been satisfied; and

(ii) such good standing certificates and other similar documents as Seller and the Real Property Seller may reasonably request to ensure that the actions required to be taken by Purchaser and the Real Property Purchaser at the Closing have been properly authorized.

(b) David Dallis shall have entered into a Consulting and Non-Competition Agreement with Purchaser, substantially in the form of Exhibit F hereto.

7.5 No Restraints. No injunction or other order preventing the consummation of the transactions contemplated by this Agreement shall have been issued since the date of this Agreement by any United States federal or state court of competent jurisdiction and shall remain in effect; and no United States federal or state Legal Requirement that makes consummation of the transactions contemplated by this Agreement illegal shall have been enacted or adopted since the date of this Agreement and shall remain in effect.

8. TERMINATION.

8.1 Right to Terminate Agreement. This Agreement may be terminated prior to the Closing:

(a) by the mutual written consent of the Parties;

(b) by either Party (by delivery of a written termination notification in accordance with Section 8.2) at any time after March 30, 2007 if the Closing has not taken place on or before March 30, 2007, unless the failure of the Closing to take place on or before such date is attributable to a breach by such Party of any of its obligations set forth in this Agreement or in any of the Ancillary Agreements;

(c) by Seller (by delivery of a written termination notification in accordance with Section 8.2) if (i) there shall have been a breach on the part of Purchaser or the Real Property Purchaser of any of their respective representations, warranties or covenants such that the conditions set forth in Section 7.1 or Section 7.2, as the case may be, would not be satisfied as of the time of such breach, (ii) Seller shall have given written notice of

such breach to Purchaser, (iii) at least twenty (20) days shall have elapsed since the delivery of such written notice to Purchaser, (iv) such breach shall not have been cured, and Purchaser or the Real Property Purchaser, as the case may be, shall not be using its commercially reasonable efforts to attempt to cure such breach; or

(d) by Purchaser (by delivery of a written termination notification in accordance with Section 8.2) if (i) there shall have been a breach on the part of Seller or the Real Property Seller of any of their respective representations, warranties or covenants such that the condition set forth in Section 6.1 or Section 6.2, as the case may be, would not be satisfied as of the time of such breach, (ii) Purchaser shall have given written notice of such breach to Seller, (iii) at least twenty (20) days shall have elapsed since the delivery of such written notice to Seller, (iv) such breach shall not have been cured, and (v) Seller or the Real Property Seller, as the case may be, shall not be using its commercially reasonable efforts to attempt to cure such breach.

8.2 Termination Procedures. If either Party wishes to terminate this Agreement pursuant to Section 8.1, such Party will deliver to the other Party a written termination notification stating that such Party is terminating this Agreement and setting forth a brief statement of the basis on which such Party is terminating this Agreement.

8.3 Effect of Termination. Upon the termination of this Agreement pursuant to Section 8.1, neither Party will have any obligation or other liability to the other Party, except that (i) the Parties will remain bound by the provisions of Section 10, and (ii) no Party will be relieved of any liability for any breach of its obligation to consummate the transactions contemplated by this Agreement or its obligation to take any other action required to be taken by such Party at or before the Closing.

## 9. INDEMNIFICATION.

9.1 Survival of Representations, Warranties and Indemnity. The representations and warranties of the Parties hereto contained in Sections 2 and 3 and the indemnification obligations contained in this Section 9 shall survive the Closing and expire two (2) years following the Closing Date; provided, however, that any claims which involve fraud or intentional misrepresentation shall survive the Closing indefinitely; and provided, further, that if at the stated expiration of any indemnification obligation there shall be pending any indemnification claim by a Party pursuant to which notice has been given pursuant to Section 9.5, such Party shall continue to have the right to seek such indemnification with respect to such claim notwithstanding such expiration.

9.2 Indemnification by Seller and the Real Property Seller. Seller and the Real Property Seller, jointly and severally, shall indemnify, defend and hold harmless Purchaser, the Real Property Purchaser, their respective stockholders, officers, directors, employees and agents after the Closing Date from and against any loss, liability, obligation, lien, damage, cost and expense (including reasonable legal and accounting fees incurred in defending or prosecuting any claim for any such liability, loss or damage) ("Purchaser Losses") arising out of or resulting from:

(a) the untruth or inaccuracy as of the date hereof or on the Closing Date of any representation or warranty of Seller or the Real Property Seller contained in this Agreement, the Schedules hereto or in any Ancillary Agreement (or in any document, writing, or certificate delivered by Seller or the Real Property Seller under Section 6.3 of this Agreement);

(b) any Seller Liabilities;

(c) whether or not disclosed by Seller or the Real Property Seller in this Agreement or on the Seller's Disclosure Schedules, any obligation or liability of Seller or the Real Property Seller related to any actual or alleged violation or liability arising under any Environmental Laws, including, without limitation, any release or threatened release of Hazardous Substances occurring prior to, or if as a result of Seller's or the Real Property Seller's activities, present, or if not as a result of Seller's or the Real Property Seller's activities, to the extent present on, the Closing Date, and any Environmental Claims arising out of events or circumstances occurring prior to or continuing on the Closing Date; or

(d) the failure by Seller or the Real Property Seller to perform any of its covenants or obligations hereunder or under any of the Ancillary Agreements.

9.3 Limits on Indemnification by Seller and the Real Property Seller. The amount of liability of Seller and the Real Property Seller for the Purchaser Losses shall be subject to the following limitations:

(a) Except as otherwise provided in Section 9.3(c), Seller and the Real Property Seller shall have no liability under Section 9.2(a) or (c) until the aggregate amount of all Purchaser Losses for which Seller and the Real Property Seller would, but for this Section 9.3(a), be liable, exceeds Twenty-Five Thousand Dollars (\$25,000) (the "Indemnity Basket"), in which event Seller and the Real Property Seller shall, subject to Section 9.3(b), be liable for the total amount of all Purchaser Losses to the extent such Purchaser Losses exceed \$25,000.

(b) Except as provided in Section 9.3(c), the aggregate liability of Seller and the Real Property Seller under Section 9.2 (after giving effect to the application of Section 9.3(a)), shall not exceed the aggregate amount of the Purchase Price (the "Indemnity Cap").

(c) The Indemnity Basket shall not be applicable to Purchaser Losses (i) arising or resulting from Seller Liabilities, or (ii) arising or relating to any breach or violation of any agreement or covenant contained in this Agreement or other documents contemplated hereby.

9.4 Cross-indemnification for Broker's, Consultant's or Finder's Fees. Purchaser, on the one hand, and Seller, on the other hand, each agree to indemnify and hold harmless the other from and against any and all losses, liabilities, obligations, liens, damages, costs and expenses of any kind or character arising from any claims for broker's, consultant's or



finder's fees or commissions or other similar fees in connection with the transactions covered by this Agreement and the Ancillary Agreements, insofar as such claims shall be based upon alleged arrangements or agreements made by such party or on its behalf, which indemnity expressly shall survive any termination of this Agreement or any Closing hereunder.

9.5 Indemnification by Purchaser and the Real Property Purchaser. Purchaser and the Real Property Purchaser, jointly and severally, shall indemnify, defend and hold harmless Seller, the Real Property Seller, their respective stockholders, members, officers, directors, employees and agents after the Closing Date from and against any loss, liability, obligation, damage, cost and expense (including reasonable legal and accounting fees incurred in defending or prosecuting any claim for any such liability, loss or damage) ("Seller Losses") arising out of or resulting from:

- (a) the untruth or inaccuracy as of the date hereof or on the Closing Date of any representation or warranty of Purchaser or the Real Property Purchaser contained in this Agreement, the Schedules hereto or in any Ancillary Agreement (or in any document, writing, or certificate delivered by Purchaser or the Real Property Purchaser under Section 7.4 of this Agreement);
- (b) any Assumed Liabilities; or
- (c) the failure by Purchaser or the Real Property Purchaser to perform any of its covenants or obligations hereunder or under any of the Ancillary Agreements.

9.6 Procedure for Indemnification.

(a) If Purchaser or the Real Property Purchaser or Seller or the Real Property Seller shall claim indemnification (the "Indemnified Party") hereunder for any claim other than a third party claim, the Indemnified Party shall promptly give written notice to the other party from whom indemnification is sought (the "Indemnifying Party") of the nature of the claim in detail and amount of the claim. If the Indemnified Party shall claim indemnification hereunder arising from any claim or demand of a third party (a "Third-Party Claim"), the Indemnified Party shall promptly give written notice (a "Third-Party Notice") to the Indemnifying Party of the basis for such claim or demand, setting forth the nature of the claim or demand in detail and the amount of the claim.

(b) In the event that an Indemnifying Party which receives notice of an indemnification claim contests its liability for such indemnification claim, such party shall send written notice to the Indemnified Party of its dispute of indemnification within fifteen (15) days thereof. If the parties are unable to resolve such dispute of indemnification within sixty (60) days after the date of the notice of dispute, the Indemnified Party may bring an action against the Indemnifying Party to enforce such indemnification claim.

(c) The Indemnifying Party shall have the right to compromise or, if appropriate, defend at its own cost and through counsel of its own choosing, any claim or demand giving rise to any such claim for indemnification. In the event the Indemnifying

Party undertakes to compromise or defend any such claim or demand, it shall promptly (and in any event, no later than fifteen (15) days after receipt of a Third-Party Notice) notify the Indemnified Party in writing of its intention to do so. The Indemnified Party shall fully cooperate with the Indemnifying Party and its counsel in the defense or compromise of such claim or demand. After the assumption of the defense by the Indemnifying Party, the Indemnified Party shall not be liable for any legal or other expenses subsequently incurred by the Indemnifying Party, in connection with such defense (unless the Indemnifying Party disputes its liability for such indemnification claim and it is judicially determined that the Indemnifying Party is not liable to indemnify the Indemnified Party), but the Indemnified Party may participate in such defense at its own expense. No settlement of a Third-Party Claim defended by the Indemnifying Party shall be made without the written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed. The Indemnifying Party shall not, except with the written consent of the Indemnified Party, consent to the entry of a judgment or settlement of a Third-Party Claim which does not include as an unconditional term thereof, the giving by the claimant or plaintiff to the Indemnified Party of an unconditional release from all liability in respect of such Third-Party Claim.

9.7 Payment. Except for Third-Party Claims being defended in good faith by the Indemnifying Party in accordance with Section 9.6, the Indemnifying Party shall satisfy its obligations hereunder within fifteen (15) days after receipt of notice of a claim, unless the Indemnifying Party has contested its liability for indemnification in which case no payment shall be due from the Indemnifying Party unless its liability therefore is established by final non-appealable court order or judgment and fifteen (15) days have passed since the entry of such order or judgment. Any amount not paid to the Indemnified Party by such date shall bear interest at a rate equal to the prime lending rate as announced by Citibank, N.A., or, if Citibank, N.A. ceases to exist, any other major New York bank reasonably selected by the Indemnified Party. In the event that Seller and/or the Real Estate Seller fails to satisfy any payment obligation arising pursuant to this Section 9.7 in a timely manner and any amount of the Escrowed Amount is then being held by the Escrow Agent, each of Seller and Purchaser shall provide the Escrow Agent with written notice to disburse such amount to Purchaser.

## 10. MISCELLANEOUS.

10.1 Time of Essence. Time is of the essence with respect to the obligations of the Parties set forth in this Agreement.

10.2 No Other Representations. The Parties acknowledge that, except as expressly set forth in Sections 2 and 3 and in the Ancillary Agreements, no Party has made or is making any representations or warranties whatsoever to the other, implied or otherwise.

10.3 Access of Seller to Books and Records. At all times after the Closing Date, Purchaser will give Seller and Seller's advisors and representatives reasonable access to all books and records of Seller that are included in the Specified Assets (to the extent such books and records relate to any period prior to the Closing Date).

10.4 Governing Law. This Agreement will be construed in accordance with, and governed in all respects by, the laws of the State of New York (without giving effect to principles of conflicts of law).

10.5 Venue and Jurisdiction. If any legal proceeding or other legal action relating to this Agreement is brought or otherwise initiated, the venue therefor will be in the State of New York, which will be deemed to be a convenient forum. Purchaser, the Real Property Purchaser, Seller and the Real Property Seller each hereby expressly and irrevocably consent and submit to the jurisdiction of the state and federal courts in New York County in the State of New York.

10.6 Notices. Any notice or other communication required or permitted to be delivered to a Party under this Agreement must be in writing and will be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service or by facsimile) to the address or facsimile telephone number set forth beneath the name of such Party below (or to such other address or facsimile telephone number as such Party shall have specified in a written notice given to the other Party):

if to Purchaser and the Real Property Purchaser:

Attention: Marcelo Crescente  
c/o Greenberg Traurig, LLP  
200 Park Avenue  
New York, New York 10166  
Attention: Ross Kaufman

Facsimile: (212) 805-9380

with a copy to:

Greenberg Traurig, LLP  
200 Park Avenue  
New York, New York 10166  
Attention: Ross Kaufman  
Facsimile: (212) 805-9380

if to Seller and the Real Property Seller:

Dallis Bros., Inc.  
216 Manor Road  
Douglas Manor, New York 11363  
Attention: David Dallis  
Facsimile: (718) 279-2324

with a copy to:

Berkowitz, Trager & Trager, LLC

275 Madison Avenue – 36<sup>th</sup> Floor  
New York, New York 10016  
Attention: Steven T. Gersh  
Facsimile: (212) 682- 0030

10.7 Public Announcements. Except as may be required by any Legal Requirement, no Party will (and no Party will permit any of its advisors or representatives to) issue any press release or make any public statement regarding this Agreement or any of the transactions contemplated by this Agreement or the Ancillary Agreements, without the other Parties' prior written consent (which will not be unreasonably withheld or delayed).

10.8 Assignment. No Party may assign any of its rights or delegate any of its obligations under this Agreement (whether voluntarily, involuntarily, by way of merger or otherwise) to any other Person without the prior written consent of the other Party; provided, however, that Seller may, before or after the Closing, assign to any Person its right to receive all or any portion of any of the cash payments to be made by Purchaser pursuant to Section 1.3; and provided further, that (without limiting Purchaser's obligations under or relating to this Agreement) Purchaser may, before the Closing, assign its right to receive all or any of the Specified Assets to an affiliate of Purchaser.

10.9 Parties in Interest. Nothing in this Agreement is intended to provide any rights or remedies to any employee of Seller or the Real Property Seller or to any other Person other than the Parties.

10.10 Severability. In the event that any provision of this Agreement, or the application of such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, will not be affected and will continue to be valid and enforceable to the fullest extent permitted by law.

10.11 Entire Agreement. This Agreement, the Assumption Agreement and the Ancillary Agreements set forth the entire understanding of the Parties and supersede all other agreements and understandings between the Parties relating to the subject matter hereof and thereof.

10.12 Waiver. No failure on the part of either Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of either Party in exercising any power, right, privilege or remedy under this Agreement, will operate as a waiver thereof; and no single or partial exercise of any such power, right, privilege or remedy will preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

10.13 Amendments. This Agreement may not be amended, modified, altered or supplemented except by means of a written instrument executed on behalf of both Parties.

10.14 Counterparts. This Agreement may be executed in several counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement.

10.15 Interpretation of Agreement.

(a) Each Party acknowledges that it has participated in the drafting of this Agreement, and any applicable rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in connection with the construction or interpretation of this Agreement.

(b) Whenever required by the context hereof, the singular number will include the plural, and vice versa; the masculine gender will include the feminine and neuter genders; and the neuter gender will include the masculine and feminine genders.

(c) As used in this Agreement, the words “include” and “including,” and variations thereof, will not be deemed to be terms of limitation, and will be deemed to be followed by the words “without limitation.”

(d) Unless the context otherwise requires, references in this Agreement to “Sections,” “Schedules” and “Exhibits” are intended to refer to Sections of and Schedules and Exhibits to this Agreement.

(e) The table of contents of this Agreement and the bold-faced headings contained in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement and will not be referred to in connection with the construction or interpretation of this Agreement.

10.16 Further Assurances. For a period of one (1) year following the Closing, (i) Seller will use commercially reasonable efforts to make available to Purchaser and the Real Property Purchaser, as the case may be, the material benefits of any Specified Contract that (a) was not assigned to Purchaser or the Real Property Purchaser, as the case may be, as a result of the failure to obtain any Consent identified on Schedule 4, or (b) is not assignable and for which a waiver has not been received or obtained, and (ii) each Party will, to the extent reasonably requested by the other Party and at such other Party’s sole expense, execute and deliver such documents and instruments and take such other actions as such other Party may reasonably request in order to consummate and make effective the transactions contemplated by this Agreement.

10.17 Release of the Escrowed Amount. Each of Purchaser and Seller shall comply with their respective obligations set forth in Section 9.7 and on Schedule 10 with respect to the Escrowed Amount, including, without limitation, the obligation of Purchaser to provide accurate sales information to Seller and the obligation of Purchaser and Seller to instruct the Escrow Agent to make disbursements of the Escrowed Amount. In the event that either party fails to comply in a timely manner, time being of the essence, with its obligation to instruct the Escrow Agent to make disbursements of the Escrowed Amount and a court of competent jurisdiction finds that such failure was in bad faith and without a reasonable justification, the

party failing to so comply will pay the reasonable legal fees of the other party incurred in connection with obtaining a court order of release of the Escrowed Amount, plus interest on the amount that should have been disbursed from the Escrowed Amount calculated at the rate of twelve percent (12%) per annum.

10.18. Collection of Accounts Receivable. Each of Seller and Purchaser acknowledge and agree that from and after the date of the Closing, Purchaser may receive on behalf of Seller payment on all accounts receivable with respect to invoices sent by Seller for goods sold and services rendered prior to the Closing ("**Prior Invoices**"). All payments received from customers of Seller and Purchaser will be posted by Purchaser toward accounts receivable in accordance with the customer's directions. In the event that payments are received that are marked as "on account" or with no instructions as to how to apply the payment, Seller and Purchaser agree to act in good faith to determine whether all or part of the payment is to be applied to a Prior Invoice. Octavio will transfer and pay to Seller on a weekly basis, without offset, deduction or charge, all amounts collected by Purchaser with respect to by Prior Invoices. Nothing contained in this paragraph shall be deemed (x) to apply in any way to invoices rendered by Purchaser after the Closing, or (y) to impose any obligation on Purchaser with respect to the collection from customers of any Prior Invoice.

The Parties have caused this Asset Purchase Agreement to be executed as of the date first written above.

OCTAVIO, INC.

By: /s/ Orestes Quercia  
Name: Orestes Quercia  
Title: President

OCTAVIO REALTY, INC.

By: /s/ Orestes Quercia  
Name: Orestes Quercia  
Title:

DALLIS BROS., INC.

By: /s/ David B. Dallis  
David B. Dallis  
President

DALLIS REALTY HOLDINGS, LLC

By: /s/ David B. Dallis  
David B. Dallis  
Manager

EXHIBIT A  
CERTAIN DEFINITIONS

For purposes of the Agreement:

“Agreement” means the Asset Purchase Agreement to which this Exhibit A is attached, including the Seller Disclosure Schedule.

“Allocation” has the meaning set forth in Section 1.5(a).

“Ancillary Agreements” has the meaning set forth in Section 1.6.

“Assumed Liabilities” means the following obligations and other liabilities (whether known, unknown, accrued, absolute, matured, unmatured, contingent or otherwise, and whether arising before or after the Closing) as they may exist at and/or after the Closing: all obligations and other liabilities of Seller or the Real Property Seller under or relating to the Specified Contracts.

“Assumption Agreement” has the meaning set forth in Section 1.3(e).

“Available Employees” means the employees of Seller who are based at the Facility or are listed on Schedule 5.

“Closing” has the meaning set forth in Section 1.7.

“Closing Date” has the meaning set forth in Section 1.7.

“Consent” means any consent, approval or waiver.

“Consenting Employees” has the meaning set forth in Section 4.1.

“Environmental Laws” means all federal, state or local laws (including any statute, rule, regulation, ordinance, code or rule of common law), and all judicial or administrative interpretations thereof, and all decrees, judgments, policies, written guidance or judicial or administrative orders relating to the environment, health, safety or Hazardous Substances, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9901 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, U.S.C. § 300f et seq., the Occupational Safety and Health Act, 42 U.S.C. § 1801 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., and their state counterparts or equivalents, all as amended, and any regulations or rules adopted or promulgated pursuant thereto.



“Environmental Permits” has the meaning set forth in Section 2.3(d).

“Escrow Agent” means The Bank of New York.

“Escrow Agreement” means the Escrow Agreement to be entered into at the Closing among Seller, Purchaser and Escrow Agent, substantially in the form of Exhibit G.

“Escrowed Amount” has the meaning set forth in Section 1.3(d).

“Facility” means the premises located at 100-32 Atlantic Avenue, Queens, New York, owned by the Real Property Seller, and at 100-30 Atlantic Avenue, Queens, New York and 101-09 94<sup>th</sup> Avenue, Queens, New York, that are owned by Seller, and that are being conveyed at the Closing to the Real Property Purchaser pursuant to certain Real Estate Contracts of Sale in the form of Exhibit C, Exhibit D and Exhibit I.

“Hazardous Substance” means any: contaminant or pollutant; toxic, radioactive or hazardous waste, chemical, substance, material or constituent; asbestos; polychlorinated biphenyls (PCBs); paint containing lead or mercury; fixtures containing mercury or urea formaldehyde; natural or liquefied gas; flammable, explosive, corrosive, radioactive, medical and infectious waste; and oil or other petroleum product, all as defined in Environmental Laws.

“Indemnified Party” has the meaning set forth in Section 9.6(a).

“Indemnifying Party” has the meaning set forth in Section 9.6(a).

“Indemnity Basket” has the meaning set forth in Section 9.3(a).

“Indemnity Cap” has the meaning set forth in Section 9.3(b).

“Legal Requirement” means any law, rule or regulation of any governmental body having jurisdiction over the Specified Assets.

“Milestones” has the meaning set forth on Schedule 10.

“Most Recent Balance Sheet” has the meaning set forth in Section 2.6(a).

“Parties” has the meaning set forth in the introductory paragraph of the Agreement.

“Person” means any individual, corporation, general partnership, limited partnership, limited liability company, trust, association, firm, organization, company, business, entity, union, society or governmental body.

“Pre-Closing Period” has the meaning set forth in Section 4.1.

“Prepaid Expenses” has the meaning set forth in Section 1.1(i).

“Purchaser Losses” has the meaning set forth in Section 9.2.

“Purchase Price” means the aggregate amount to be paid by Purchaser and the Real Property Purchaser to Seller and the Real Property Seller pursuant to this Agreement and the Ancillary Agreements in consideration for the transfer of the Specified Assets and the Real Property.

“Real Property” has the meaning set forth in Section 1.1(a).

“Seller Disclosure Schedule” means the disclosure schedule delivered by Seller and the Real Property Seller to Purchaser and the Real Property Purchaser contemporaneously with the execution and delivery of the Agreement.

“Seller Financial Statements” has the meaning set forth in Section 2.6(a).

“Seller Liabilities” has the meaning set forth in Section 1.3.

“Seller Losses” has the meaning set forth in Section 9.5.

“Specified Assets” has the meaning set forth in Section 1.1.

“Specified Contracts” means (1) the contracts and other instruments identified on Schedule 2, and (ii) each other contract or other instrument relating exclusively to any one or more of the operations conducted at the Facility that is executed or entered into on behalf of Seller on or after the date of this Agreement and prior to the Closing in the ordinary course of business or with the approval of Purchaser.

“Specified Employees” has the meaning set forth in Section 5.2.

“Specified Regulatory Filings” means the regulatory and governmental registrations, licenses, permits, orders and approvals identified on Schedule 3.

“Third-Party Claim” has the meaning set forth in Section 9.6(a).

“Third-Party Notice” has the meaning set forth in Section 9.6(a).

“Trademark” means the tradename “Dallis Coffee”, the distinctive logo of Seller and the domain name “www.dalliscoffee.com”.

State of New York }  
Department of State } ss:

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

**April 3, 2007**



A handwritten signature in black ink, appearing to read "D. A. ...", is written over the seal area.

*Special Deputy Secretary of State*

DOS-1266 (Rev. 11/05)

**Certificate of Assumed Name**  
Pursuant to General Business Law, §130

1 NAME OF ENTITY

OCTAVIO, INC.

1a FOREIGN ENTITIES ONLY. If applicable, the fictitious name the entity agreed to use in New York State is:

2 NEW YORK LAW FORMED OR AUTHORIZED UNDER (CHECK ONE):

- Business Corporation Law
- Limited Liability Company Law
- Education Law
- Not-for-Profit Corporation Law
- Insurance Law
- Revised Limited Partnership Act
- Other (specify law):

3 ASSUMED NAME

DALLIS COFFEE

4 PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST BE NUMBER AND STREET. IF NONE, INSERT OUT-OF-STATE ADDRESS)

100-32 ATLANTIC AVENUE, OZONE PARK, N.Y. 11416

5 COUNTIES IN WHICH BUSINESS WILL BE CONDUCTED UNDER ASSUMED NAME

ALL COUNTIES (if not, circle county[ies] below)

Albany	Clinton	Genesee	Montroe	Orleans	Saratoga	Tompkins
Alegany	Columbia	Greene	Montgomery	Oswego	Schenectady	Ulster
Bronx	Cortland	Hamilton	Nassau	Otsego	Schoharie	Warren
Broome	Delaware	Herkimer	New York	Putnam	Schuyler	Washington
Cattaraugus	Dutchess	Jefferson	Niagara	<u>Queens</u>	Seneca	Wayne
Cayuga	Erie	Kings	Oneida	Rensselaer	Stauben	Westchester
Chautauque	Essex	Lewis	Orondaga	Richmond	Suffolk	Wyoming
Chemung	Franklin	Livingston	Ontario	Rockland	Sullivan	Yates
Chenango	Fulton	Madison	Orange	St. Lawrence	Tioga	

6 INSERT THE ADDRESS OF EACH LOCATION WHERE BUSINESS WILL BE CARRIED ON OR TRANSACTED UNDER THE ASSUMED NAME. Use a continuous sheet, if needed. (The address must be set forth in terms of a number and street, city, state and zip code. Please note that the address(es) reflected in paragraph 6 must be within the county(ies) circled in paragraph 5. If the entity does not have a specific location where it will conduct business under the assumed name please check the statement below.)

100-32 ATLANTIC AVE  
OZONE PARK N.Y. 11416

No New York State Business Location

20070403024

INSTRUCTIONS FOR SIGNATURE: If corporation, by an officer; if limited partnership, by a general partner; if limited liability company, by a member or manager or by an attorney-in-fact or authorized person for such corporation, limited partnership, or limited liability company.

MARCELO SEDANO CRESCENTE  
Name and Title VICE PRESIDENT

*Marcelo Sedano Crescente*  
Signature

FILED

2007 APR -3 AM 11:04

CERTIFICATE OF ASSUMED NAME  
OF  
OCTAVIO, INC.  
(Insert Entity Name)

Pursuant to §130, General Business Law

070213000691 LLB

FILER'S NAME AND MAILING ADDRESS

OCTAVIO, INC  
100-32 ATLANTIC AVE  
OZONE PARK, N.Y. 11416

CUSTOMER REF. #  
825352 JBA

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$25 fee. The Department of State also collects the following, additional, county clerk fees for each county in which a corporation does or transacts business: \$100 for each county within New York City (Bronx, Kings, New York, Queens and Richmond) and \$25 for each county outside New York City. All checks over \$500 must be certified.

(For office use only)

ICC  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 03 2007

TAX \$ 176541  
BY: LLB

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2007 APR -2 PM 4:12

RECEIVED

TRADEMARK  
REEL: 003754 FRAME: 0407

FILING RECEIPT

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ENTITY NAME : OCTAVIO, INC.

DOCUMENT TYPE : ASSUMED NAME CERTIFICATE

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SERVICE COMPANY : CORPORATION SERVICE COMPANY

CODE: 45  
BOX : 23

FILED: 04/03/2007

CASH#: 176541

FILM#: 20070403024

PRINCIPAL LOCATION

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100-32 ATLANTIC AVENUE

OZONE PARK  
NY 11416

COMMENT:

ASSUMED NAME  
-----  
DALLIS COFFEE

* FEES	185.00	PAYMENTS:	185.00
* ----		-----	
* FILING :	25.00	CASH :	
* COUNTY :	100.00	CHECK :	185.00
* COPIES :	10.00	C CARD :	
* MISC :	.00		
* HANDLE :	50.00		
* REFUND:			
* -----			

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FILER:

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OCTAVIO, INC.  
100-32 ATLANTIC AVE

OZONE PARK NY 11416

825352JBA

DO3HD104

DOS-281 (8/98)

TRADEMARK  
REEL: 003754 FRAME: 0408

## ASSIGNMENT OF TRADEMARKS

WHEREAS, DALLIS BROS. INC., a corporation organized and existing under the laws of the State of New York and having a business address at 100-30 Atlantic Avenue, Ozone Park, New York 11416 (the "Assignor"), is the owner of all right, title, and interest in and to the trademarks DALLIS COFFEE in word mark and stylized form (as set forth on the attached schedule) for coffee and tea and United States Trademark Registration 3053322 therefor, and the common-law trademark WHERE FAMILY TRADITION MEANS QUALITY for coffee and tea (hereinafter the "Marks"); and

WHEREAS, Octavio, Inc., a corporation organized and existing under the laws of the State of Delaware and having a business address at c/o Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166 Attention: Ross Kaufman ("Assignee"), is acquiring substantially all of Assignor's business and goodwill appurtenant to the Marks, and Assignor has agreed to assign the Marks to Assignee;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor hereby assigns, sells and transfers to Assignee all right, title, and interest in and to the Marks, together with the goodwill of the business symbolized by the Marks, and the right to sue and recover damages and profits for all past, present, and future third-party infringements of the Marks, if any.

IN WITNESS WHEREOF, the parties have caused this Assignment of Trademarks to be duly executed by its officer thereunto duly authorized as of this \_\_\_\_ day of March, 2007.

DALLIS BROS., INC.

By: \_\_\_\_\_  
David B. Dallis  
President

OCTAVIO, INC.

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

**NOTARIAL ACKNOWLEDGEMENT**

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 2007 before me personally appeared David B. Dallis, to me known, who, being by me duly sworn, did depose and say that he is the President of Dallis Bros., Inc., the New York corporation described in and which executed the foregoing instrument; and that he signed his name thereto pursuant to the authorization of said corporation.

\_\_\_\_\_  
Notary Public

STAMP AND SEAL

Z:\stg\Assignments\Dallis - Assignment of Trademarks 031307.DOC



Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 3,053,322

**United States Patent and Trademark Office**

Registered Jan. 31, 2006

**TRADEMARK  
PRINCIPAL REGISTER**

**DALLIS COFFEE**

DALLIS BROS. INC. (NEW YORK CORPORATION)

100-30 ATLANTIC AVE.

OZONE PARK, NY 11416

FOR: COFFEE AND TEA, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-19-1987; IN COMMERCE 5-19-1987.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE COFFEE, APART FROM THE MARK AS SHOWN.

SER. NO. 78-424,507, FILED 5-25-2004.

HOWARD B. LEVINE, EXAMINING ATTORNEY