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**ASSET PURCHASE AGREEMENT**

by and between

**WERTHAN PACKAGING, INC., as Seller**

and

**GATEWAY PACKAGING COMPANY, LLC as Buyer**

Dated as of December 4, 2016

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (as amended, supplemented or modified from time to time, this “Agreement”) is made and entered into as of the 4<sup>th</sup> day of December, 2016 (the “Execution Date”), by and between (i) GATEWAY PACKAGING COMPANY, LLC, a Delaware limited liability company, on the one hand (“Buyer”), and (ii) WERTHAN PACKAGING, INC., a Tennessee corporation (“Werthan” or “Seller”).

### WITNESSETH

WHEREAS, Seller is currently in the business of manufacturing, distributing, and marketing packaging products (the “Business”); and

WHEREAS Seller intends to file a voluntary petition for reorganization relief (the “Bankruptcy Case”) pursuant to Chapter 11 of Title XI of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and in concert with such filing, seek the entry of an order by the United States Bankruptcy Court for the Middle District of Tennessee (the “Bankruptcy Court”) approving this Agreement and authorizing Seller to consummate the transactions contemplated hereby and by the other transaction documents; and

WHEREAS, Seller desires to sell, convey, assign and transfer the Assets to Buyer, and Buyer desires to purchase the Assets from Seller, on the terms and subject to the conditions set forth in this Agreement and in accordance with §§ 105, 363, 365 and all other applicable provisions of the Bankruptcy Code; and

WHEREAS, the Governing Body of Seller has determined that it is advisable and in the best interests of its estate and the beneficiaries of such estate to consummate the transactions provided for herein pursuant to the Bidding Procedures Order (as defined below) and the Sale Order (as defined below) and each has approved this Agreement; and

WHEREAS, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Sale Order to be entered in the Bankruptcy Cases; and

WHEREAS, capitalized terms used, but not otherwise defined herein, shall have the respective meanings given to such terms in Article 1.

NOW, THEREFORE, for and in consideration of the foregoing premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are acknowledged and accepted, the parties, intending to be legally bound hereby, agree as follows:

#### 1. DEFINITIONS AND REFERENCES

1.1 Definitions. As used in this Agreement, the following terms have the meanings given:

Accounts Receivable: all accounts, accounts receivable and other rights to payments of Seller of whatever kind or nature, including all current or deferred rights to payment for goods, by-products or services rendered on or prior to the Closing Date and all claims, rights, interests and proceeds related thereto.

Adjustment Amount: as defined in Section 5.13.

Adjustment List: as defined in Section 5.13.

Affiliate: any Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another Person, including the power to direct or cause the direction of the management and policies of a Person, whether through the beneficial ownership of more than fifty (50%) percent of the equity securities of such Person, election or appointment of directors, by contract or otherwise.

Alternative Transaction: as defined in Section 9.1(f).

Agreement: as defined in the Preamble.

Assets: as defined in Section 2.1.

Asset Allocation Schedule: as defined in Section 5.16.

Assignment and Assumption Agreement: that certain assignment and assumption agreement substantially in the form attached hereto as Exhibit A.

Assumed Contracts: as defined in Section 2.1(i).

Assumed Liabilities: as defined in Section 2.3.

Auction: the auction contemplated by the Bidding Procedures Order.

Audited Balance Sheets: as defined in Section 3.22(a).

Audited Financial Statements: as defined in Section 3.22(a).

Bankruptcy Case: as defined in the Recitals.

Bankruptcy Code: as defined in the Recitals.

Bankruptcy Court: as defined in the Recitals.

Base Price: as defined in Section 2.5(a).

Best Efforts: means the efforts that a prudent person wanting to achieve the result in question would take and that are commercially reasonable under similar circumstances to achieve that result as expeditiously as reasonably possible but without requiring the payment of money to third parties, resort to litigation or other extraordinary efforts.

Bidding Procedures: as defined in Section 5.1(a).

Bidding Procedures Order: an Order of the Bankruptcy Court that authorizes and directs Seller to conduct an auction for sale of its Assets, in the form attached as Exhibit B with such changes as may be satisfactory to Buyer in its sole and absolute discretion.

Bill of Sale: that certain Bill of Sale substantially in the form attached hereto as Exhibit C.

Breakup Fee: the greater of \$215,000.00 or 3% of the Purchase Price.

Business: as defined in the Recitals.

Business Day: any day other than a Saturday, Sunday, or legal holiday on which banks in the Delaware are permitted to be closed.

Business Employees: as defined in Section 5.4(b).

Buyer: as defined in the Preamble.

Buyer Indemnitees: as defined in Section 11.1.

Closing: as defined in Section 8.1(a).

Closing Date: the date on or as of which the Closing occurs.

Closing Date Balance Sheet: as defined in Section 2.6(b).

Closing Date Net Working Capital Assets Amount: as defined in Section 2.6(b).

COBRA: the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code and of any similar state law.

Code: the Internal Revenue Code of 1986, as amended.

Conflicting Transaction: as defined in Section 5.1(d).

Confidentiality Agreement: any Contract entered into by or on behalf of Seller with any potential purchaser, investor or lender, governing such Person's use of Seller's confidential information.

Contracts: all commitments, contracts, leases (including leases regarding the Leased Real Property), licenses, instruments, indentures, purchase orders, agreements and understandings, written or oral, relating to the Assets or the operation of the Business to which Seller is a party or by which it or any of its Assets are bound.

Controlled Group: with respect to Seller, a Person or group that, together with Seller, would be deemed a "single employer" (or under common control) within the meaning of §4001(b)(1) of ERISA or subsections (b), (c), (m) or (o) of § 414 of the Code.

Deposit Escrow Agent: Bass, Berry & Sims PLC.

Deposit Escrow Agreement: as defined in Section 5.1(e).

Earnest Money Deposit: as defined in Section 5.1(e).

Employee Benefit Plan: any (i) nonqualified deferred compensation or retirement plan or arrangement that is an Employee Pension Benefit Plan, (ii) qualified defined contribution retirement plan or arrangement that is an Employee Pension Benefit Plan (including any Multiemployer Plan), (iii) qualified defined benefit retirement plan or arrangement that is an Employee Pension Benefit Plan (including any Multiemployer Plan), (iv) Employee Welfare Benefit Plan or material fringe benefit plan or program, or (v) any other employee benefit plan as defined in § 3(3) of ERISA whether or not subject to ERISA.

Employee Pension Benefit Plan: as defined in § 3(2) of ERISA.

Employee Welfare Benefit Plan: as defined in § 3(1) of ERISA.

Encumbrances: liabilities, levies, claims, charges, assessments, mortgages, security interests, liens, pledges, conditional sales agreements, title retention contracts, leases, subleases, rights of first refusal, options to purchase, restrictions, easements, covenants and other encumbrances, and agreements or commitments to create or suffer any of the foregoing.

Environmental Claim: any oral or written notice by a Person alleging liability (including liability for investigatory costs, cleanup costs, Governmental Authority response costs, natural resource damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (i) the presence, or release into the environment, of any Materials of Environmental Concern at any location, whether or not owned by Seller; (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Laws; or (iii) circumstances in which Seller has or may have retained or assumed either contractually or by operation of law any liability for any presence or release of any Materials of Environmental concern at any location or any violation, or alleged violation, of any Environmental Laws alleged or asserted against any third party.

Environmental Laws: any and all Legal Requirements relating to pollution, or to protection of human health or the environment (including ground water, land surface or subsurface strata) from pollution, including Legal Requirements relating to emissions, discharges, releases or threatened releases of Materials of Environmental Concern, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, recycling, reporting or handling of Materials of Environmental Concern.

ERISA: the Employee Retirement Income Security Act of 1974, as amended.

Escrow Agreement: that certain agreement to be executed at Closing, substantially in the form attached hereto as Exhibit D.

Escrow Amount: \$200,000.00.



Escrow Fund: the escrow fund established pursuant to the Escrow Agreement.

Estimated Closing Balance Sheet: as defined in Section 2.6(a).

Estimated Closing Inventory Value: as defined in Section 2.6(a).

Estimated Net Working Capital Assets Amount: as defined in Section 2.6(a).

Excluded Assets: as defined in Section 2.2.

Excluded Inventory: as defined in Section 2.2(o).

Excluded Liabilities: as defined in Section 2.4.

Execution Date: as defined in the Preamble.

Executory Contract Assumption and Assignment Order: an Order of the Bankruptcy Court, which may be the Sale Order, in form and substance acceptable to Buyer, that (i) authorizes and directs the Seller, pursuant to § 365 of the Bankruptcy Code, to assume and to assign to Buyer or its assignee(s) the Assumed Contracts, and (ii) determines that Buyer has provided adequate assurance of future performance relative to the Assumed Contracts.

Expenses: means an amount equal to all reasonable expenses (including the reasonable fees and expenses of legal counsel, accounts, investment bankers, environmental consultants, brokers and other representatives or consultants) which are incurred by Buyer or its Affiliates in connection with the transactions contemplated by this Agreement (whether or not consummated), but not to exceed \$200,000 in the aggregate.

Final Order: an order, ruling, judgment or the operation or effect of a judgment or other decree issued and entered by the Bankruptcy Court which has not been reversed, vacated, stayed, modified or amended and as to which: (i) the time to appeal or petition for review, rehearing, certiorari, reargument or retrial has expired and as to which no appeal or petition for review, rehearing, certiorari, reargument or retrial is pending, or (ii) any appeal or petition for review, rehearing, certiorari, reargument or retrial has been finally decided and no further appeal or petition for review, rehearing, certiorari, reargument or retrial can be taken or granted.

Final Net Working Capital Assets Amount: as defined in Section 2.6(g).

Financial Statements: as defined in Section 3.22(b).

Force Majeure Event: any of the following events or conditions, provided that such event or condition did not exist as of the date of execution of this Agreement, was not reasonably foreseeable as of such date and is not reasonably within the control of either party and prevents as a whole or in material part, the performance by a party of its obligations hereunder: acts of state or governmental action; orders, legislation or regulations; governmental restrictions, priorities or rationing; riots, disturbance or war (declared or undeclared); strikes, lockouts or delay of subcontractors or vendors; embargo, fire, earthquake, flood, hurricane, typhoon, explosion and accident.

GAAP: generally accepted accounting principles and practices in effect from time to time as promulgated by the Financial Accounting Standards Board, consistently applied.

Governing Body: as applicable, the board of directors, board of managers, board of trustees, committee or equivalent governing body which has decision making power of a particular entity.

Governing Documents: with respect to a corporation, the articles or certificate of incorporation and the bylaws; or with respect to a limited liability company, the articles of organization and operating agreement; in each case, together with all organization, management or operation of any such Person or relating to the rights, duties and obligations of the equity holders of any such Person, and any amendment or supplement to any of the foregoing.

Governmental Authorities: all agencies, authorities, bodies, boards, commissions, courts (including the Bankruptcy Court), instrumentalities, legislatures and offices of any nature whatsoever of any federal, state, county, district, municipal, city, foreign or other government or quasi-government unit or political subdivision.

Independent Accountants: as defined in Section 2.6(c).

Intellectual Properties: all worldwide intellectual property rights of Seller, including all (i) patents, patent applications and inventions, (ii) trademarks, service marks, trade names and trade dress, expressly including all goodwill and any common law rights associated with the foregoing, including the registered trademarks, (iii) domain names, websites and mobile device applications, (iv) copyrights, including copyrights in computer software, (v) confidential and proprietary information, including trade secrets, confidential business information, formulas, research and development, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, and know-how, (vi) licenses relating to any of the foregoing, (vii) registrations and applications for registration and renewal of the foregoing, (viii) all trade secrets, copyrights, patent rights and other intellectual property rights in any designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used or useful in the Business, and (ix) any past, present or future claims or causes of action arising out of or related to any infringement or misappropriation of any of the foregoing.

Interim Financial Statements: as defined in Section 3.22(b).

Inventory: as defined in Section 2.1(c).

Investments: shares of capital stock of any corporation, interests in partnerships or limited liability companies, or other equity or debt instruments issued by any Person, and proceeds from the sale thereof.

Knowledge of Seller: means actual knowledge of Anthony Werthan, Gary Murphey, and Don Belmont.

Latest Balance Sheet: as defined in Section 3.22(b).

Lease: all leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions, renewals, guaranties, and other agreements with respect thereto, pursuant to which Seller holds any Leased Real Property.

Leased Real Property: all of Seller's right, title and interest as tenant in and to the real property leased pursuant to the leases set forth on Schedule 1.1(A) including any security deposits or other prepaid rent, together with the right to use and occupy the space demised under such leases in accordance with the lease terms.

Legal Requirements: with respect to any Person, all statutes, ordinances, bylaws, codes, rules, regulations, restrictions, judgments, orders, writs, injunctions, decrees, determinations or awards of any Governmental Authority having jurisdiction over such Person or any of such Person's assets or businesses.

Material Adverse Effect: means any change or effect that is or would reasonably be expected to be materially adverse to the Business (including, without limitation, changes in relationships with customers, employees and suppliers), or the assets, operations, financial condition or results of operations of the Business, taken as a whole, except for any such changes or effects resulting directly from: (i) the transactions contemplated by this Agreement; (ii) the filing of the Bankruptcy Case; (iii) the announcement or other disclosure of the transactions contemplated by this Agreement; or (iv) the occurrence of a Force Majeure Event that has had a material adverse effect on the business, assets, operations, financial condition or results of operations of the Business.

Material Contracts: as defined in Section 3.12(a).

Material Customers: as defined in Section 3.21(b).

Material Independent Contractors: an independent contractor to Seller that receives (or has received) payments in excess of \$10,000 per annum since January 1, 2016, but excluding attorneys and accountants (if applicable).

Materials of Environmental Concern: any chemicals, pollutants, contaminants, medical waste or specimens, toxic substances chemicals, petroleum or petroleum products, including hazardous wastes under the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. § 6903 et seq., hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., asbestos, polychlorinated biphenyls and urea formaldehyde, and low-level nuclear materials, special nuclear materials or nuclear-byproduct materials, all within the meaning of the Atomic Energy Act of 1954 as amended, and any rules, regulations or policies promulgated thereunder, and all other materials regulated under Environmental Laws.

Material Suppliers: as defined in Section 3.21(a).

Multiemployer Plan: as defined in §§ 3(35), 3(37) or 4001(a)(3) of ERISA, including any plan subject to Title IV of ERISA or Section 412 of the Code.

Multiple Employer Plan: an Employee Pension Benefit Plan that is not a Multiemployer Plan and for which a Person who is not a member of a Controlled Group that includes Seller is or has been a contributing sponsor.

Nashville Assets: those assets and properties located at the Nashville Facility and set forth on Schedule 1.1(B).

Nashville Facility: Seller's facility located at 600 Taylor St., Nashville, TN 37208.

Net Working Capital Assets Amount: the sum of collectible Accounts Receivable at Closing plus the value of all saleable, usable raw materials and finished goods inventory (but excluding work-in-progress inventory) at Closing minus any defective, damaged, or obsolete inventory. Net Working Capital Assets Amount will be calculated in accordance with the procedures set forth on Exhibit E.

Net Working Capital Assets Target: \$3,164,463.00.

Objection Notice: as defined in Section 2.6(c).

Other Plan: any bonus, pension, profit sharing, deferred compensation, incentive, equity compensation, stock performance, retirement, stock appreciation, phantom-stock, performance, savings, stock bonus, option, cafeteria, paid time off, fringe benefit, vacation, employment contract, independent contractor agreement, consulting agreement, collective bargaining agreement, unemployment insurance or pay, severance, change in control termination, retention, disability, death benefit, hospitalization, medical or welfare benefit or any other Contract, program or arrangement that provides cash or noncash compensation, benefits or perquisites to current or former employees or other service providers of Seller.

Patent Assignment: that certain assignment and assumption agreement substantially in the form attached hereto as Exhibit F.

Permits: all material licenses, permits, consents, approvals and other authorizations of or from all Governmental Authorities that are necessary to the ownership of the Assets or in the conduct of the Business.

Permitted Encumbrances: those Encumbrances set forth on Schedule 1.1(C); and utility easements and other customary easements, covenants and restrictions of record that do not materially adversely affect the leasing, use or occupancy of the Leased Real Property or the conduct of the Business.

Person: any individual, company, body corporate, association, partnership, firm, joint venture, trust, trustee, unincorporated organization or Governmental Authority.

Personal Property: as defined in Section 2.1(b).

Plan of Reorganization: any plan of reorganization or plan of liquidation that has been confirmed by an order entered by the Bankruptcy Court in the Bankruptcy Case.

Purchase Price: as defined in Section 2.5(a).

Qualified Bid: as defined in Section 5.1(c).

Qualified Bidder: as defined in Section 5.1(c).

Related Person: with respect to any Person, all past, present and future directors, officers, members, managers, stockholders, employees, controlling persons, agents, professionals, attorneys, accountants, lenders, investment bankers or representatives of any such Person.

Required Cure Costs: cure amounts necessary to be paid to permit the assumption and assignment of Assumed Contracts, pursuant to § 365 of the Bankruptcy Code, up to \$10,000.

Restrictive Covenant Agreement: that certain Restrictive Covenant Agreement substantially in the form of Exhibit G.

Review Period: as defined in Section 2.6(c).

Sale Motion: the motion or motions, in form and substance reasonably acceptable to Buyer in its sole and absolute discretion, filed by Seller, pursuant to the provisions of §§ 363 and 365 of the Bankruptcy Code in the Bankruptcy Case, among other things, to obtain the Sale Order, approve the Transaction, and authorize the assumption and assignment of the Assumed Contracts to Buyer.

Sale Order: an Order of the Bankruptcy Court, which may also be the Executory Contract Assumption and Assignment Order, in form and substance acceptable to Buyer in its sole and absolute discretion, that, among other things, grants the Sale Motion, approves, authorizes and directs Seller to assume this Agreement and consummate the Transaction, and shall contain substantially the same terms as those set forth in the form of Sale Order attached hereto as Exhibit H.

Section: sections of this Agreement, unless the context indicates otherwise.

Seller: as defined in the Preamble.

Seller Indemnitees: as defined in Section 11.2.

Shortfall: as defined in Section 2.7(a).

Tax or Taxes: any income, unrelated business income, gross receipts, commercial activity, license, payroll, employment, excise, workmen's compensation, severance, stamp, occupation, privilege, premium, windfall profits, environmental (including taxes under § 59A of the Code), customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, stamp, sales, use, transfer, registration, unclaimed property, value added, alternative or add-on minimum, estimated or other

tax, assessment, charge, levy or fee of any kind whatsoever, including payments or services in lieu of Taxes, interest or penalties on and additions to all of the foregoing, that are due or alleged to be due to any Governmental Authority, whether disputed or not, whether payable by reason of contract, assumption, transferee liability, operation of law or Treasury Regulation section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under state, local or foreign law), whether arising before, on or after the Closing Date.

Tax Return: any return, declaration, report, claim for refund, information return or statement, filing or other information, including schedules, exhibits and attachments thereto and amendments to any of the foregoing, required to be filed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).

Trademark Assignment: that certain Trademark Assignment substantially in the form attached hereto as Exhibit I.

Transaction: the sale and purchase of the Assets contemplated in this Agreement, together with any and all related transactions designed to implement, facilitate or expedite such sale and purchase of the Assets.

Utility Deposits: as defined in Section 2.2(i).

WARN Act: the Worker Adjustment and Retraining Notification Act of 1988, as amended, 29 U.S.C. §§ 2101-2109.

Werthan: as defined in the Preamble.

White House Facility: Seller's leased facility located at 605 Highway 76 East, White House, TN 37188.

White House Lease: a new lease for the White House Facility, in form and substance satisfactory to Buyer, between Buyer (or its designee) and the landlord thereof.

1.2 Certain References. As used in this Agreement, and unless the context requires otherwise:

(a) the terms "include," "includes" and "including" are not intended to be limiting and shall be deemed to be followed by the words "without limitation" (whether or not they are in fact followed by such words) or words of like import;

(b) references to "hereof," "herein" and derivative or similar words refer to this Agreement;

(c) references to any document are references to that document as amended, consolidated, supplemented, novated or replaced by the parties thereto from time to time;

(d) references to any law are references to that law as amended, consolidated, supplemented or replaced from time to time and all rules and regulations promulgated thereunder;

(e) unless otherwise specified herein, references to time are references to Nashville, Tennessee time;

(f) the term “or” has the inclusive meaning represented by the phrase “and/or;”

(g) the Exhibits and Schedules identified in this Agreement are incorporated into this Agreement by reference and made a part hereof;

(h) the Article, Section, paragraph, Exhibit and Schedule headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement;

(i) the use of the terms “hereunder,” “hereof,” “hereto” and words of similar import shall refer to this Agreement as a whole and not to any particular Article, Section, paragraph or clause of, or Exhibit or Schedule to, this Agreement; and

(j) the gender of all words includes the masculine, feminine and neuter, and the number of all words includes the singular and plural.

## 2. SALE OF ASSETS AND RELATED MATTERS

2.1 Sale of Assets. Subject to the terms and conditions of this Agreement, at the Closing, Seller shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall purchase from Seller, all of the properties, assets and rights of Seller owned or used by Seller in the Business, wherever located, including those listed in this Section 2.1 or any Schedule referenced in this Section 2.1, but specifically excluding the Excluded Assets, (collectively, the “Assets”) free and clear of all Encumbrances (other than the Permitted Encumbrances):

(a) all notes and Accounts Receivable;

(b) all machinery, equipment, vehicles, tools, tooling, dies, furniture, fixtures and furnishings and other tangible personal property of Seller wherever located, including the Nashville Assets and the items set forth on Schedule 2.1(b) (collectively, the “Personal Property”);

(c) all merchandise, inventory and supplies, parts, and accessories of every kind, nature and description wherever located, including all raw materials, work-in-progress, and finished goods and inventory to be delivered (collectively, “Inventory”);

(d) all books and records relating to the operation of the Business, including marketing materials, customer lists, and vendor lists and all financial and project-related records, in each case, in whatever format held, including equipment records, project plans, documents, catalogs, books, records, files and operating manuals;

(e) to the extent transferable, all Permits and other approvals (including pending approvals) of Governmental Authorities relating to the Business or the Assets, including the Permits described on Schedule 2.1(e);

(f) all interests of Seller in and to all Intellectual Properties and all computer software, programs and similar systems (including data and related documentation), owned or licensed by Seller, including those set forth on Schedule 2.1(f);

(g) general intangibles of the Business, including goodwill, and the rights to the name “Werthan Packaging” and all other trade names currently used by Seller;

(h) any and all claims and causes of action of Seller, including privileges related thereto, including claims against counterparties relating to the Assumed Liabilities or the Assumed Contracts and actions that arise under Chapter 5 of the Bankruptcy Code;

(i) those Contracts set forth on Schedule 2.1(i) (the “Assumed Contracts”), as such Schedule may be amended in accordance herewith;

(j) other than Utility Deposits, all prepaid rentals, deposits, prepayments and similar amounts relating to the Assumed Contracts, the categories and amounts of which as of November 25, 2016, are set forth on Schedule 2.1(j);

(k) Seller’s interests in any Confidentiality Agreements;

(l) to the extent transferable, all rights in all warranties of any manufacturer or vendor in connection with the Personal Property or Inventory;

(m) to the extent transferable, all personnel records of any employee or former employee of Seller, including the Business Employees; and

(n) all telephone number(s), website(s), and email address(es) used in the operation of the Business.

2.2 Excluded Assets. Notwithstanding Section 2.1, the following assets are not a part of the sale and purchase contemplated by this Agreement and are excluded from the Assets (collectively, the “Excluded Assets”):

(a) all machinery, equipment, tools, tooling, dies, furniture, fixtures and furnishings and other tangible personal property of Seller located at the Nashville Facility, except the Nashville Assets;

(b) Inventory sold, and supplies consumed or otherwise exhausted, prior to the Closing Date in the ordinary course of the Business and consistent with the terms of this Agreement;

(c) all Contracts, other than Assumed Contracts;

(d) the Purchase Price;

(e) all cash, other than petty cash at any facility;

(f) all Employee Benefit Plans and all Other Plans of Seller;



- (g) tax refunds;
- (h) Seller's organizational or corporate record books, minute books and tax records;
- (i) all deposits made with any entity that provides utilities to any Leased Real Property (the "Utility Deposits");
- (j) all bank accounts of Seller;
- (k) all writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;
- (l) all director and officer insurance;
- (m) the rights of Seller under this Agreement;
- (n) Seller's interest in any insurance policies, except as provided in Section 2.9;
- (o) any defective, damaged or obsolete raw materials inventory as determined in the Net Working Capital Assets Amount (collectively, "Excluded Inventory"); and
- (p) those other assets of Seller set forth on Schedule 2.2(p).

2.3 Assumed Liabilities. At the Closing, Buyer shall assume no liabilities or obligations of Seller, other than liabilities or obligations under the Assumed Contracts first arising after the Closing (the "Assumed Liabilities"); provided, that, except as set forth in Section 2.8, Seller shall pay, and Buyer shall have no obligation to pay, the Required Cure Costs for each such Assumed Contract.

2.4 Excluded Liabilities. Under no circumstance shall Buyer assume or be obligated to pay, and none of the Assets shall be or become liable for or subject to, any liabilities or obligations of Seller or the Business, including the following liabilities and obligations (collectively, "Excluded Liabilities"), which shall be and remain liabilities of Seller:

- (a) liabilities accrued on any financial statements of Seller;
- (b) liabilities or obligations associated with any Excluded Assets;
- (c) liabilities or obligations associated with any and all indebtedness of Seller for borrowed money;
- (d) liabilities or obligations arising under any Contracts that are not Assumed Contracts;
- (e) liabilities or obligations arising out of or in connection with claims, litigation and proceedings (whether instituted prior to or after Closing) for acts or omissions by

Seller that occurred, or arise from events that occurred, prior to the Closing Date;

(f) liabilities retained by Seller pursuant to Section 5.4 or arising as a result of Seller's breach of Section 5.4, and all other liabilities or obligations to current, former or prospective employees (including Business Employees) of Seller or any member of the Controlled Group and other individual service providers or their respective dependents or beneficiaries;

(g) liabilities or obligations with respect to all Employee Benefit Plans (including any Multiemployer Plan and Multiple Employer Plan) and all Other Plans of Seller or any member of the Controlled Group;

(h) liabilities of Seller to the Internal Revenue Service or any other Governmental Authority including those relating to Seller's employees, including Business Employees (whether or not triggered by the Transaction or the announcement thereof);

(i) penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of any presence or release of any Materials of Environmental Concern at any location or any actual or alleged violation by Seller of any Legal Requirement and/or Environmental Law prior to the Closing Date;

(j) liabilities to any Person arising out of any act or omission under any Legal Requirement, including any Environmental Law;

(k) liabilities or obligations under the WARN Act, if any, arising out of or resulting from (i) layoffs or termination of employees by Seller and/or (ii) the consummation of the Transaction;

(l) any liabilities or obligations arising out of or relating to products of Seller to the extent manufactured or sold prior to the Closing Date for damages to Persons or property including liabilities and obligations to repair or replace, or to refund the sales price or any other related expenses relating to alleged defects in goods sold or services provided by Seller or arising from any warranties or other product and service guarantees issued by Seller;

(m) all liabilities for expenses (i) incurred in connection with the negotiation and preparation of this Agreement and (ii) relating to the Transaction, in each case to the extent incurred by Seller and including those related to legal counsel, accounting, brokerage and investment advisors fees and disbursements; and

(n) any and all other liabilities or obligations not assumed pursuant to Section 2.3.

## 2.5 Consideration.

(a) Purchase Price. Subject to adjustment in accordance with Section 2.7, the aggregate sale consideration (the "Purchase Price") payable by Buyer for the Assets and in consideration of the assumption of the Assumed Liabilities, shall be an amount equal to \$7,264,463.00 (the "Base Price"), subject to adjustment upwards or downwards in accordance

with the prorations contemplated by Section 5.13, and subject to adjustment upwards or downwards as set forth in Sections 2.6 and 2.7.

(b) Closing Payment. At the Closing:

(i) the Deposit Escrow Agent shall release the entire Earnest Money Deposit to Seller; and

(ii) Buyer shall pay to Seller an aggregate amount equal to:

(A) \$6,538,017.00;

(B) minus the amount by which the Net Working Capital Assets Target exceeds the Estimated Net Working Capital Assets Amount;

(C) minus the Escrow Amount, which shall be deposited with the Escrow Agent; and

(D) plus or minus the amounts of prorations contemplated by Section 5.13.

## 2.6 Net Working Capital Assets.

(a) Three (3) days prior to the Closing Date, Buyer shall have the option to conduct a physical count of all inventory of Seller, and Seller shall have the right to observe such physical count. If Buyer elects to conduct such physical count of inventory, Buyer shall document the quantities and values thereof by item (including Buyer's determination of the value of, and items included in, Excluded Inventory). Buyer's determination of the value of Inventory is referred to herein as the "Estimated Closing Inventory Value". Not later than one (1) day prior to the Closing Date, Seller shall deliver to Buyer (i) an estimated consolidated balance sheet of Seller as of the Closing Date (the "Estimated Closing Balance Sheet"), and (ii) a calculation of the Net Working Capital Assets Amount as set forth on the Estimated Closing Balance Sheet (the "Estimated Net Working Capital Assets Amount"). The value assigned to inventory in both the Estimated Closing Balance Sheet and Estimated Net Working Capital Assets Amount shall be equal to the Estimated Closing Inventory Value. The Estimated Closing Balance Sheet shall be prepared in good faith and in conformity with GAAP applied on a consistent basis with past practice; provided, however, that the calculation of the Estimated Net Working Capital Assets Amount shall be subject to the terms of this Agreement. For purposes of this Agreement, both the Net Working Capital Assets Amount and, the Estimated Net Working Capital Assets Amount, and the Estimated Closing Inventory Value will value finished goods inventory at the Seller's standard costs consistent with the values and procedures previously provided to the Buyer and as set forth in Exhibit E.

(b) No later than thirty (30) days after the Closing Date, Buyer shall deliver to Seller: (i) a consolidated balance sheet of Seller as of the Closing Date (the "Closing Date Balance Sheet") and (ii) a calculation of the Net Working Capital Assets Amount (the "Closing Date Net Working Capital Assets Amount") as set forth on the Closing Date Balance Sheet and the resulting adjustment, if any, in accordance with Section 2.7 below, to the Purchase Price.

The Closing Date Balance Sheet shall be prepared by Buyer in good faith and in conformity with GAAP, applied on a consistent basis with past practice; that the calculation of the Closing Date Net Working Capital Assets Amount shall be subject to the terms of this Agreement. Following the delivery of the Closing Date Balance Sheet to Seller, Buyer shall afford Seller, at reasonable times and upon reasonable notice, the opportunity to examine the Closing Date Balance Sheet, and such supporting schedules, analyses, workpapers, including the audit workpapers (if any), and other underlying records or documentation as are reasonably requested by Seller.

(c) If Seller disputes any items on the Closing Date Balance Sheet or the Closing Date Net Working Capital Assets Amount, Seller must deliver written notice thereof (an “Objection Notice”) to Buyer within thirty (30) days after receipt thereof (the “Review Period”), which written notice shall specify in detail the basis for such disagreement, the amount in dispute, the specific items so disputed and the additional information requested by Seller. The parties shall attempt in good faith to reach an agreement as to any matters identified in such written notice as being in dispute. If Seller timely provides a notice of objection, and if Buyer and Seller fail to resolve the issues outstanding with respect to the calculation of the Closing Date Net Working Capital Assets Amount within thirty (30) days of Buyer’s receipt of Seller’s objection notice, Seller and Buyer shall submit the issues remaining in dispute to RSM US LLP, independent public accountants (the “Independent Accountants”), for resolution; provided, however, the Independent Accountants shall determine only those matters that remain in dispute and the scope of the Independent Accountants’ review shall be limited to the matters set forth in this Section 2.6 and shall not relate to the determination of the Net Working Capital Assets Target nor to the appropriateness of the principles, methodologies, practices or adjustments reflected in this Agreement, which the parties have mutually agreed are acceptable.

(d) The determination by the Independent Accountants, as set forth in a written notice to be delivered by the Independent Accountants to both Seller and Buyer of the Closing Date Net Working Capital Assets Amount, shall be final, binding and conclusive on the parties, absent manifest error, as of the date of the determination notice sent by the Independent Accountants.

(e) If issues are submitted to the Independent Accountants for resolution, then:

(i) Seller and Buyer shall execute any reasonable agreement(s) required by the Independent Accountants to accept their engagement pursuant to this Section 2.6;

(ii) Seller and Buyer shall promptly furnish or cause to be furnished to the Independent Accountants such work papers and other documents and information relating to the disputed issues as the Independent Accountants may reasonably request in accordance with this Section 2.6 and are reasonably available to that party or its accountants or other agents, and shall be afforded the opportunity to present to the Independent Accountants, with a copy to the other party, any written material relating to the disputed issues in accordance and subject to this Section 2.6; and

(iii) Seller and Buyer shall each instruct the Independent Accountants to act independently and in an objective and neutral manner throughout their engagement

hereunder.

(f) Seller, on the one hand, and Buyer, on the other hand, shall each bear the fees and costs of the Independent Accountants for such determination in inverse proportion as the Seller, on the one hand, and Buyer, on the other hand, may prevail on the matters resolved by the Independent Accountants, which proportionate allocation shall be calculated on an aggregate basis based on the relative dollar values of the amounts in dispute and shall be determined by the Independent Accountants at the time the determination of such firm is rendered on the merits of the matters submitted. Notwithstanding the foregoing, the engagement agreement(s) referred to in Section 2.6(e)(i) above may require the parties to be bound jointly and severally to the Independent Accountants for those fees and costs, and in the event Seller or Buyer pays to the Independent Accountants any amount in excess of Seller's or Buyer's portion of the fees and costs of such engagement, the other party agrees to reimburse Seller or Buyer, as applicable, to the extent required to equalize the payments made by Seller and Buyer with respect to the fees and costs of the Independent Accountants.

(g) The Net Working Capital Assets, determined in accordance with this Section 2.6, shall be the "Final Net Working Capital Assets Amount" for purposes of this Agreement.

## 2.7 Adjustment of Purchase Price.

After the Closing, the Purchase Price shall be subject to adjustment as follows:

(a) If the Estimated Net Working Capital Assets Amount is greater than the Final Net Working Capital Assets Amount as finally determined pursuant to this Agreement, Buyer shall be entitled to the amount, without interest, equal to the excess of the Estimated Net Working Capital Assets Amount over the Final Net Working Capital Assets Amount (the "Shortfall"). Buyer shall first be entitled to recover the Shortfall from the Escrow Fund pursuant to the terms of the Escrow Agreement. In the event that the Shortfall exceeds the funds available in the Escrow Fund at the time of determination of the Final Net Working Capital Assets Amount, then such Shortfall shall be due from Seller.

(b) If the Final Net Working Capital Amount is greater than the Estimated Net Working Capital Assets Amount as finally determined pursuant to this Agreement, Seller shall be entitled to the amount, without interest, equal to the excess of the Final Net Working Capital Assets Amount over the Estimated Net Working Capital Assets Amount.

(c) Any amounts due and payable pursuant to this Section 2.7 shall be made no later than five (5) Business Days after the earlier of:

(i) the mutual acceptance by Buyer and Seller of the Closing Date Net Working Capital Assets making it the Final Net Working Capital Assets Amount, with such changes thereto, if any, as may be agreed upon by the parties;

(ii) the expiration of the Review Period without timely written objection by Seller in accordance with Section 2.6(c); or

(iii) the delivery to Buyer and Seller by the Independent Accountants of the report of their determination of all disputed matters submitted to them pursuant to Section 2.6(d).

## 2.8 Modification of Schedules.

(a)

(i) Between the Execution Date and the Business Day immediately after entry of the Bidding Procedures Order, Seller shall notify Buyer of, and shall promptly supplement or amend the Schedules to this Agreement with respect to, any matter that (A) may arise after the Execution Date and that, if existing or occurring at or prior to the Execution Date, would have been required to be set forth or described in the Schedules to this Agreement or (B) makes it necessary to correct any information (including incomplete or missing information) in the Schedules to this Agreement or in any representation and warranty of Seller that has been rendered inaccurate thereby. Each such notification or supplementation shall be made promptly, and in any event no later than the Business Day immediately after the entry of the Bidding Procedures Order.

(ii) Without limiting Section 2.8(a)(i), Seller shall supplement and amend the Schedules to this Agreement (including delivery to Buyer of incomplete or missing information) on or prior to midnight Nashville, Tennessee time on December 9, 2016.

(iii) No supplement or amendment to the Schedules (including delivery of previously incomplete or missing information) to this Agreement or any delivery of Schedules after the Execution Date (unless expressly acknowledged and agreed by Buyer in its sole discretion, as a cure or modification) shall be deemed to cure any inaccuracy of any representation or warranty made in this Agreement or Buyer's right to terminate this Agreement (and receive the Breakup Fee and Expenses and the return of the Earnest Money Deposit) pursuant to Section 9.1(b) (or otherwise).

(b) At any time up to three (3) days prior to the Auction, Buyer may modify Schedule 2.1(i) to remove any Contract therefrom, or to add any Contract thereto; provided that Buyer shall be responsible for the payment of any Required Cure Costs for any Contract listed on Schedule 2.1(i) that is removed therefrom after three (3) days prior to the Auction. Any Contract removed from Schedule 2.1(i) shall become an Excluded Asset and all associated liabilities shall become Excluded Liabilities. At any time prior to Closing, Buyer may modify Schedule 2.2(p) to add any Asset thereto (including any account receivable and any Asset listed on Schedule 2.1(b), 2.1(e), 2.1(f) or 2.1(j)), and thereafter such Asset shall be an Excluded Asset.

## 2.9 Risk of Loss.

If between the Execution Date and the Closing there is any damage or other loss to any item(s) of Personal Property, Inventory, or other items of property, plant or equipment that is covered by insurance, then at the Closing, Buyer shall receive the insurance proceeds that Seller

shall have received (or be entitled to receive), or in the event the proceeds have not been received by Seller at the time of Closing, an assignment by the Seller of all of its rights in and to adjust and receive the insurance proceeds. Seller shall credit to Buyer the amount of any insurance deductible at Closing, and Seller shall not have the right to participate in any insurance adjustment, settlement or claim or condemnation proceeding, but shall, at all times, reasonably cooperate with Buyer in pursuing any claim settlement, adjustment or prosecution, and any and all insurance proceeds shall be the sole property of Buyer. The rights of Buyer in this Section 2.9 are in addition to Buyer's other rights in this Agreement

### 3. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that the statements contained in this Article 3 are correct and complete as of the Execution Date and, except where limited to a specific date, shall be correct and complete as of the Closing Date.

3.1 Organization. Seller is duly formed, validly existing and in good standing under the laws of its state of formation or incorporation, as applicable, as set forth on Schedule 3.1. Seller is licensed, registered, qualified or admitted to do business in each jurisdiction in which the ownership, use or leasing of such Seller's assets or properties (including the Assets), or the conduct or nature of the Business, makes such licensing, qualification or admission necessary, except where such failure would not individually or in the aggregate have a Material Adverse Effect.

#### 3.2 Power and Authority; Due Execution; Valid and Binding Obligation.

(a) Subject to the entry of the Sale Order and approval of this Agreement by the Bankruptcy Court, Seller has the requisite power and authority to conduct its business (including the Business) as now being conducted, to enter into this Agreement and to perform its obligations hereunder, and the execution, delivery and performance by Seller of this Agreement and the consummation of the Transaction are within Seller's powers and have been duly authorized by all necessary action of its Governing Body. No other action, authorization of any kind from any Governmental Authority and no other proceedings on the part of Seller is necessary to authorize Seller's execution, delivery and performance of this Agreement.

(b) This Agreement has been, and each other agreement executed in connection herewith to which Seller is or will become a party has been, or on the Closing Date, will be, duly executed by an authorized officer of Seller, and, subject to the Bankruptcy Court's entry of the Sale Order, constitutes, or will when executed and delivered constitute, the valid and binding obligation of Seller enforceable against it in accordance with its respective terms.

3.3 No Conflict or Violation. Subject to entry of the Sale Order, the execution, delivery and performance by Seller of this Agreement and each agreement executed in connection with this Agreement to which Seller is or will become a party does not and will not (i) violate or conflict with any provision of the Governing Documents of Seller, (ii) violate any provisions of Legal Requirement, or any order, judgment or decree of any Governmental Authority applicable to Seller, (iii) result in or require the creation or imposition of any

Encumbrances on any of the Assets or (iv) violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any Assumed Contract entered into by Seller, by which Seller is bound or to which the assets of Seller are subject.

3.4 Investments and Third Party Rights. Except as set forth on Schedule 3.4, Seller does not hold any Investments or have any subsidiaries. There are no agreements with, or options, commitments or rights in favor of, any Person to directly or indirectly acquire any of the Assets, or any interest therein.

3.5 Recent Activities. Except as set forth on Schedule 3.5, since January 1, 2016:

(a) no material damage, destruction or loss (whether or not covered by insurance) to the Business or any assets has occurred;

(b) Seller has not sold, assigned, transferred, distributed or otherwise disposed of any of the Assets, except for sales of Inventory in the ordinary course of the Business or as permitted by Order of the Bankruptcy Court;

(c) except in the ordinary course of the Business, Seller has not entered into, amended or terminated any Employee Benefit Plan or Other Plan; and

(d) Seller has not canceled or waived any rights in respect of the Assets, except in the ordinary course of the Business or as permitted by Final Order of the Bankruptcy Court.

3.6 Assets. Except as set forth on Schedule 3.6, no Person, other than Seller, owns, holds title to or has any other direct, indirect or beneficial interest in any of the Assets. The Assets constitute all of the assets, rights and properties used by Seller in the operation of the Business as currently conducted, and are all of the assets necessary to commence the operation of the Business in substantially the same manner previously operated by Seller. The Assets are in working condition and repair and subject to normal wear and tear, consistent with the age of the Assets.

3.7 Title to Personal Property. Except as set forth on Schedule 3.7, Seller owns and holds good, marketable and valid title or leasehold title, as the case may be, to all the Assets, free and clear of any Encumbrances. Subject to the Bankruptcy Court's entry of the Sale Order, at Closing Seller shall convey to Buyer good and valid title to all the Assets free and clear of any Encumbrances.

3.8 Environmental Matters. Except as set forth on Schedule 3.8:

(a) The Business is, and has been, in compliance in all material respects with all applicable Environmental Laws.

(b) Seller has not received any Environmental Claim with respect to the Business or Leased Real Property.



(c) Correct and complete copies of the written reports, and all parts thereof, of all environmental audits or assessments relating to the Assets that have been conducted either by Seller or any environmental consultant or engineer engaged for such purpose and which are in the possession or control of Seller, have been made available to Buyer, and a list of all such reports, audits and assessments and any other similar report, audit or assessment are included on Schedule 3.8(c).

(d) Seller has and holds in good standing all Permits required under applicable Environmental Laws to lease its properties (including the Assets) and to conduct the Business thereon. All Permits currently held by Seller pursuant to the Environmental Laws are identified on Schedule 3.8(d).

(e) (i) all Materials of Environmental Concern are handled and disposed of in compliance in all material respects with all applicable Environmental Laws, (ii) there are no underground storage tanks located on the Leased Real Property, (iii) there is no exposed friable asbestos contained in or forming part of any building, building component, structure or office space leased by Seller and used in the conduct of the Business, and (iv) no polychlorinated biphenyls are used or stored at any Leased Real Property owned or leased by Seller.

3.9 Intellectual Properties; Computer Software. Except as described on Schedule 3.9, (i) the Intellectual Properties, computer software, programs and similar systems set forth on Schedule 2.1(f) are all of the Intellectual Properties, computer software, programs and similar systems used by Seller in the conduct of the Business as currently conducted and (ii) Seller owns or has the right to use pursuant to license, sublicense or other agreement free and clear of any Encumbrances, royalty or other payment obligations, the Intellectual Properties and all computer software, programs or similar systems (including data and related documentation) owned, leased or licensed by Seller necessary to the ownership or use of the Assets. Seller has taken all necessary action to maintain and protect the Intellectual Properties. All Intellectual Properties used or needed by Seller in the conduct of the Business, and all computer software, programs and similar systems owned, licensed or used by Seller in the conduct of the Business, to the Knowledge of Seller, are not in violation or infringement of, nor has Seller received any written notice alleging any conflict with or violation or infringement of, any rights of any other Person with respect to any such Intellectual Properties or computer software, programs or similar systems.

3.10 Insurance. Schedule 3.10 describes all insurance arrangements, including self-insurance, in place for the benefit of the Assets and the conduct of the Business at the Execution Date. Correct and complete copies of all such policies and any endorsements thereto have been made available to Buyer.

3.11 Permits and Licenses. Schedule 3.11 contains a correct and complete list of all Permits (including applications therefor) owned or held by Seller relating to the ownership, development or operations of the Business or the Assets. To the Knowledge of Seller, each such Permit has been duly obtained, is valid and in full force and effect, and is not subject to any pending Government Authority proceeding to revoke, cancel, suspend or declare such Permit or franchise invalid in any respect, and, to the Knowledge of Seller, none of the operations of the

Business are being conducted in a manner that violates in any material way any of the terms or conditions under which any Permit or franchise was granted.

3.12 Agreements and Commitments.

(a) Schedule 3.12(a) sets forth for all Contracts to which Seller is a party and which fall into any of the following categories (collectively, the “Material Contracts”):

(i) Contracts involving payments by or to Seller in excess of Ten Thousand Dollars (\$10,000) or not made in the ordinary course of business;

(ii) any Contract to make a capital expenditure or to purchase a capital asset in excess of Five Thousand Dollars (\$5,000) by or on behalf of Seller in connection with the Assets or the operation of the Business;

(iii) any option or other Contract to purchase or otherwise acquire or sell or otherwise dispose of any interest in any real property;

(iv) any Lease;

(v) any lease of tangible Personal Property;

(vi) any employment, change in control, indemnification, equity-based compensation, executive consulting or compensation agreement with any Person; including Contracts (i) to employ or terminate executive officers or other personnel and other Contracts with present or former officers or directors of Seller, (ii) with any labor union or works council, and (iii) that shall or could result in the payment by or the creation of any commitment or obligation (absolute or contingent) to pay on behalf of Buyer or Seller any severance, termination, “golden parachute,” sale bonus, or other similar payments to any present or former personnel following termination of employment or otherwise as a result of the consummation of the Transaction;

(vii) any agreement pursuant to which any Intellectual Properties are licensed or sublicensed to or from Seller (excluding any agreement relating to the license by Seller of “off-the-shelf” software);

(viii) any joint venture or partnership Contracts;

(ix) any agreement that limits the freedom of Seller to freely compete in any line of business or with any Person or in any area or any other Contract limiting or restricting in any material manner the operation of the Business; and

(x) any agreement for the sale of products or the provision of services, which include “most favored nation,” “meet or release” or similar pricing or delivery arrangements.

(b) Seller has made available to Buyer copies of all Material Contracts.

(c) Schedule 3.12(c) includes a true, accurate and complete copy of the Business' standard product warranty. Each product sold, leased, licensed or delivered by the Business has been in conformity in all material respects with all applicable contractual commitments and all express and implied warranties (including the standard product warranty of the Business set forth on Schedule 3.12(c)), and the Business does not have any liability (nor, to the Knowledge of Seller, is there any reasonable basis for any present or future claim or action of any kind against Seller giving rise to such liability) for replacement or repair thereof or other damages in connection therewith. No product sold, leased, licensed or delivered by the Business is subject to any guaranty, warranty or other indemnity beyond the applicable terms and conditions on Schedule 3.12(c).

(d) Except as set forth on Schedule 3.12(d), no (i) officer, director, member, manager or Affiliate of Seller, (ii) entity in which any such Person described in clause (i) hereof holds an interest (other than beneficial interest of less than five percent (5%) of the issued and outstanding stock of any publicly traded corporation for passive investment purposes) or (ii) to the Seller's Knowledge, any first degree relative (whether by blood, marriage or adoption) of such officer, director, member or manager, is a party to any Contract or transaction with Seller or has any title or interest in any property or assets used by Seller or necessary for the conduct of the Business.

3.13 Assumed Contracts and Required Cure Costs. Subject to the payment of Required Cure Costs and the Bankruptcy Court's entry of the Executory Contract Assumption and Assignment Order, except as set forth on Schedule 3.13(a), Seller shall be permitted to assume and assign to Buyer or its assignee the Assumed Contracts without the consent of any other Person. Seller represents that all Required Cure Costs are set forth on Schedule 3.13(b).

3.14 Employees and Employee Relations. Schedule 3.14 contains a complete list of the names of all Persons who are employees or Material Independent Contractors of Seller, specifying (i) with respect to each hourly employee, the title and rate of hourly pay; (ii) with respect to each salaried employee, the title, rate of salary and commission or bonus structure, if any; (iii) with respect to each Material Independent Contractor, a description of the services performed and the compensation arrangement; and (iv) with respect to each employee listed, the place of employment, date of hire, and whether or not such employee is absent for any reason such as lay-off, leave of absence or workers' compensation and, if so, the date such absence began and the anticipated date of return. Schedule 3.14 also lists all employees of Seller in the United States who are not citizens or permanent residents of the United States, together with a listing of each such employee's work authorization status and work authorization expiration date. Seller is not a party to or bound by any collective bargaining agreement or other labor union Contract or collective bargaining relationship (including any Contract or agreement with any works council, trade union, or other labor-relations entity), and no such collective bargaining agreement or other union Contract is being negotiated by Seller. There is and for the past five years has been no strike, work stoppage, walkout, lockout, picketing, or other material labor dispute against or involving Seller pending or threatened. There are no unfair labor practice charges or complaints pending or threatened against Seller. Seller is not delinquent in payment of, and has not failed to pay, any employee or former employee, consultant or independent contractor any wages (including minimum wage, overtime, meal breaks or waiting time penalties), salaries, fees, commissions, accrued and unused vacation, on-call payments, equal

pay, or collective bargaining payments, bonuses, or other compensation, if any, for any services performed by them to which they would be entitled under applicable Legal Requirement or agreement.

### 3.15 Employee Benefit Plans.

(a) Schedule 3.15 lists each Employee Benefit Plan and Other Plan that Seller or any member of the Controlled Group sponsors, contribute or maintain, or with respect to which they may have any liability, or has within the last five (5) years sponsored or maintained or to which it contributes (including employee elective deferrals) or has within the last five (5) years contributed or been required to contribute. Seller has provided or made available to Buyer, to the extent applicable, correct and complete copies of each such Employee Benefit Plan and Other Plan. Each Employee Benefit Plan and Other Plan has been maintained, funded, operated and administered in accordance with its terms, the terms of any applicable collective bargaining agreements, and with applicable Legal Requirements, except as may be otherwise described on Schedule 3.15.

(b) Seller, and no member of a Controlled Group, contributes to, ever has contributed to, or has any liability with respect to, or ever has been required to contribute to any Multiple Employer Plan or any Multiemployer Plan or has any liability (including withdrawal liability) under any Multiple Employer Plan or any Multiemployer Plan or any other plan subject to the funding requirements of Section 412 of the Code or Section 302 of Title IV of ERISA. Seller, and no member of a Controlled Group, maintains or contribute, ever has maintained or contributed, or ever has been required to maintain or contribute to any Employee Welfare Benefit Plan providing medical, health or life insurance or other welfare-type benefits for current or future retired or terminated employees, their spouses or their dependents (other than in accordance with § 4980B of the Code). Seller does not maintain any compensation or benefit plans, programs or arrangements in any jurisdiction outside of the United States.

3.16 Brokers and Finders. Except as set forth on Schedule 3.16, neither Seller nor any member, officer, director, employee or agent of Seller, has engaged any finder or broker in connection with the Transaction.

3.17 Payments. Except as set forth on Schedule 3.17, Seller has not, directly or indirectly, paid or delivered or agreed to pay or deliver any fee, commission or other sum of money or item of property, however characterized, to any Person that is in any manner related to the Assets or the Business in violation of any Legal Requirement. To the Knowledge of Seller, neither Seller, nor any member, officer, director or employee of Seller, has received or, as a result of the consummation of the Transaction contemplated by this Agreement, shall receive any rebate, kickback or other improper or illegal payment from any Person with whom Seller conducts or has conducted business.

3.18 Compliance with Legal Requirements. Except as set forth on Schedule 3.18 or as reflected in the schedules filed in or in connection with the Bankruptcy Case, (i) Seller is in material compliance with all applicable Legal Requirements and (ii) there are no claims, actions, suits, litigation, arbitration, mediations, investigations or other proceedings (including qui tam

actions) pending or, to the Knowledge of Seller, threatened in writing against Seller or the Assets.

3.19 Accounts Receivable. Except as set forth on Schedule 3.19, all of Seller's accounts receivable are valid accounts receivable arising from the provision of goods and services in the ordinary course of business and are collectible in the ordinary course of business subject to any accrual, allowance, or reserve for doubtful accounts consistent with Seller's past practices.

3.20 Inventories. Except as set forth on Schedule 3.20, all of Seller's existing Inventory (i) is of such quality and quantity as to be usable and, with respect to finished goods, saleable by Seller in the ordinary course of business, for and (ii) has not been revalued by Seller since January 1, 2016.

### 3.21 Customers and Suppliers

(a) Schedule 3.21(a) sets forth a true and complete list of the names and addresses of the five (5) largest vendors/suppliers (collectively, "Material Suppliers") of the Business (in terms of dollar volume) for the fiscal years ending December 31, 2014 and December 31, 2015, showing the approximate total purchases in dollars from each such Material Supplier during such fiscal years. As of the date hereof, Seller has not received any notice, whether in writing or otherwise, from any such Material Supplier that such Material Supplier has any intention to terminate or materially amend, increase, decrease, accelerate or delay sales or supplies to the Business, and there has not been, as of the date hereof, any Materially Adverse Effect in the business relationship between the Seller and such Material Supplier. The current payables to such Material Suppliers is set forth on Schedule 3.21(a), and the Business has no other liability to any such Material Supplier.

(b) Schedule 3.21(b) sets forth a true and complete list of the names and addresses of the five (5) largest customers (collectively, "Material Customers") of the Business (in terms of dollar volume) for the fiscal years ending December 31, 2014 and December 31, 2015, showing the approximate total purchases in sales to the Business by each such Material Customer during such fiscal years. As of the date hereof, Seller has not received any notice, whether in writing or otherwise, from any such Material Customer that such Material Customer has any intention to terminate or materially amend, increase, decrease, accelerate or delay purchases from the Business, and there has not been, as of the date hereof, any Material Adverse Effect in the business relationship between the Seller and such Material Customer. The current receivables from such Material Customers is set forth on Schedule 3.21(b). The Business has no liability to any such Material Customer.

(c) Schedule 3.21(c) sets forth any notices from a Material Customer or a Material Supplier of any intention to terminate or materially amend, increase, decrease, accelerate or delay purchases from, or supplies to, the Business, and there has not been, as of the date hereof, any Material Adverse Effect in the business relationship between the Seller and any Material Customer or Material Supplier.

### 3.22 Financial Statements

(a) Schedule 3.22(a) sets forth the audited Balance Sheet of the Seller as of December 31, 2014 and as of December 31, 2015 (the “Audited Balance Sheets”), and the related audited statement of income, statement of equity and statement of cash flows for the fiscal years ended as of December 31, 2014 and as of December 31, 2015 (collectively, with the Audited Balance Sheet, the “Audited Financial Statements”).

(b) Attached as Schedule 3.22(b) is the unaudited balance sheet of the Seller as at September 30, 2016 (the “Latest Balance Sheet”), and the related unaudited consolidated statement of income, statement of equity and statement of cash flows for the nine (9)-month period ended September 30, 2016 (collectively, with the Latest Balance Sheet, the “Interim Financial Statements” and together with the Audited Financial Statements, the “Financial Statements”).

(c) The Financial Statements have been prepared in accordance with GAAP and fairly present in all material respects the financial condition of the Seller, as of the dates thereof, and the results of operations and cash flows of the Seller, for the periods related thereto (except that the Interim Financial Statements lack the footnote disclosure and are subject to normal year-end adjustments otherwise required by GAAP, in each case, which would not be material to the Seller), other than as set forth on Schedule 3.22(c).

#### 4. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that the statements contained in this Article 4 are correct and complete as of the Execution Date and, except where expressly limited to a specific date, shall be correct and complete as of the Closing Date:

4.1 Organization. Buyer is a limited liability company duly organized and validly existing in good standing under the laws of the State of Delaware.

4.2 Power and Authority.

(a) Subject to the entry of the Sale Order and approval of this Agreement by the Bankruptcy Court, Buyer has the requisite power and authority to enter into this Agreement and to perform its obligations hereunder, and the execution, delivery and performance by Buyer of this Agreement and the consummation of the Transaction are within Buyer’s powers and have been duly authorized by all necessary action of its Governing Body. No other action, authorization of any kind from any Governmental Authority and no other proceedings on the part of Buyer is necessary to authorize Buyer’s execution, delivery and performance of this Agreement.

(b) This Agreement has been, and each other agreement executed in connection herewith to which Buyer is or will become a party has been, or on the Closing Date, will be, duly executed by an authorized officer of Buyer, and, subject to the Bankruptcy Court’s entry of the Sale Order, constitutes, or will when executed and delivered constitute, the valid and binding obligation of Buyer enforceable against it in accordance with its respective terms.

4.3 No Conflict or Violation. Subject to entry of the Sale Order, the execution, delivery and performance by Buyer of this Agreement and each agreement executed in

connection with this Agreement to which Buyer is or will become a party does not and will not (i) violate or conflict with any provision of the Governing Documents of Buyer, or (ii) violate any provisions of Legal Requirement, or any order, judgment or decree of any Governmental Authority applicable to Buyer.

4.4 Binding Agreement. Subject to the entry of the Sale Order and approval of the Bankruptcy Court, this Agreement and all instruments and agreements hereunder to which Buyer is or becomes a party are (or upon execution shall be) valid and legally binding obligations of Buyer enforceable against Buyer in accordance with the respective terms hereof and thereof, except as enforceability against Buyer may be restricted, limited or delayed by applicable bankruptcy or other laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity.

4.5 Brokers and Finders. Neither Buyer, nor any Affiliate of Buyer, nor any officer, director, employee or agent thereof, has engaged any finder or broker in connection with the transactions contemplated hereunder.

4.6 Adequate Assurance. Buyer is capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to the Assumed Contracts to be assigned to Buyer and is capable of producing/providing any and all information required by the Bankruptcy Code and the Bankruptcy Court in connection therewith. In addition, Buyer shall at Closing have available to it all amounts necessary to allow Buyer to pay the Purchase Price and otherwise perform all of Buyer's obligations under this Agreement.

## 5. COVENANTS AND AGREEMENTS OF THE PARTIES

### 5.1 Filing of Petition; Bidding Procedures Order; Deposit.

(a) (i) On the Execution Date, Seller shall file a petition with the Bankruptcy Court seeking relief from its creditors under Chapter 11 of the Bankruptcy Code. (ii) Within one (1) Business Day of the execution and delivery of this Agreement, Seller shall file with the Bankruptcy Court a motion seeking (A) the approval of the Bidding Procedures Order and approval of this Agreement as the "stalking horse bid" (the "Bid Procedures Motion"), including bidding procedures attached to the Bidding Procedures Order (the "Bidding Procedures"), and (B) the approval of the proposed Breakup Fee and reimbursement of Expenses to be paid to Buyer under the terms and provisions of this Agreement. (iii) In addition, within one (1) Business Day of the execution and delivery of this Agreement, Seller shall file with the Bankruptcy Court (A) a motion seeking authority to pay certain pre-petition wages, salaries, compensation, reimbursable employee business expenses and benefits liabilities, (B) a motion seeking authority to use cash collateral, and (C) such other first-day and other motions customary under the circumstances, with all such motions being acceptable to the Buyer in its reasonable discretion.

(b) Seller shall file all pleadings with the Bankruptcy Court and take all other actions necessary or appropriate to secure entry of the Bidding Procedures Order and the Sale Order, shall serve all parties entitled to notice of such pleadings under applicable provisions of the Bankruptcy Code and all related rules and orders of the Bankruptcy Court and shall diligently

pursue the issuance of such Bidding Procedures Order and Sale Order (including by presenting all evidence reasonably necessary, as determined by Seller in its business judgment to support the Bid Procedures Motion and the Sale Motion, responding to objections and discovery request made by any party in interest and, where practical, taking all such other actions as may be necessary to obtain the issuance of the Sale Order). At least two (2) days prior to filing any pleading, Seller shall deliver to Buyer a copy in the substantially the form as is to be filed with the Bankruptcy Court. Seller shall reasonably cooperate with Buyer with respect to all such filings and incorporate any reasonable comments of Buyer and its counsel into such order, amendment, supplement, motion or pleading. If commercially reasonable, Seller shall oppose and seek the dismissal of any appeal (including a petition for certiorari, motion for rehearing, re-argument, reconsideration or revocation) of the Bidding Procedures Order or the Sale Order that is filed. Each party hereto shall promptly notify the other party if, at any time before the Closing Date such party becomes aware that any information provided to the Bankruptcy Court contains any untrue statement of a material fact or omits to state a material fact required to be stated herein or necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. In the event an appeal is taken, or a stay pending appeal is requested, from the Sale Order, the Executory Contract Assumption and Assignment Order or the Bidding Procedures Order or any other order, Seller shall immediately notify Buyer of such appeal or stay request and shall provide to Buyer within one (1) Business Day a copy of the related notice of appeal or order of stay. Seller shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from either of such orders.

(c) Subject to Section 5.1(d), Seller shall offer the Assets for sale in accordance with the Bidding Procedures and shall solicit qualified bids only in accordance with the terms of the Bidding Procedures Order (each, a “Qualified Bid”) and only from bidders who comply with all the requirements of the Bidding Procedures Order (each, a “Qualified Bidder”). If one or more Qualified Bids is timely received by Seller, Seller shall conduct the Auction. Consummation of the sale is subject to the determination by the Bankruptcy Court that this Agreement is the highest or otherwise best offer from a Qualified Bidder for the Assets and the Assumed Liabilities. Buyer is a Qualified Bidder and this Agreement constitutes a Qualified Bid.

(d) Between the Execution Date and the date on which the Bidding Procedures Order is entered, Seller may not, and it shall cause its Affiliates and Related Persons not to, solicit or discuss with any Person any transaction for the purchase and sale of Seller’s assets except on terms and conditions contemplated by the Bidding Procedures Order. Between the Execution Date and the date on which the Bidding Procedures Order is approved by the Bankruptcy Court, Seller shall not enter into any agreement with any Person (whether or not a Qualified Bidder) regarding a sale, merger, consolidation, restructuring, financing or other transaction (whether or not contemplated by the Bidding Procedures) that would conflict with the transactions contemplated by this Agreement (a “Conflicting Transaction”). Seller shall support Buyer as the “stalking horse” bidder and use its Best Efforts to obtain entry of the Bidding Procedures.

(e) Within two (2) Business days of approval of the Bidding Procedures Order, Buyer shall deposit with the Deposit Escrow Agent \$726,446.00 (“Earnest Money Deposit”), which shall be held and disbursed in accordance with the Deposit Escrow Agreement in the form attached hereto as Exhibit J (the “Deposit Escrow Agreement”).



5.2 Operations. From the Execution Date until the Closing Date, except as otherwise expressly provided in this Agreement (including Section 5.3) and subject to the obligations of Seller to comply with applicable Legal Requirements or any order of the Bankruptcy Court, and the provisions of the Bankruptcy Code, Seller shall:

- (a) operate in the ordinary course of business and carry on the Business in substantially the same manner as it has prior to the Execution Date;
- (b) maintain the Assets in substantially the same condition as the Assets were maintained as of the Execution Date, ordinary wear and tear excepted;
- (c) take all actions reasonably necessary and appropriate to deliver to Buyer title to the Assets free and clear of all Encumbrances (other than Permitted Encumbrances) pursuant to the Sale Order and cooperate with Buyer to obtain appropriate releases, consents, estoppels, certificates and other instruments as Buyer may reasonably request;
- (d) keep in full force and effect present insurance policies or other comparable insurance benefiting the Assets and the conduct of the Business; and
- (e) maintain and preserve its status as a corporation, limited liability company or limited partnership, as applicable.

5.3 Certain Actions. From the Execution Date until the Closing Date, except as otherwise expressly provided in this Agreement, as set forth on Schedule 5.3, or as required by the Bankruptcy Court and the provisions of the Bankruptcy Code, Seller, except in the ordinary course of business consistent with past practice, shall not take any of the following actions without first obtaining the written consent of Buyer:

- (a) amend or terminate any Assumed Contract;
- (b) sell, assign, transfer, distribute or otherwise transfer or dispose of any Assets or other, plant, equipment account receivable, supply or other assets or property, in each case, other than sales of Inventory in the ordinary course of business;
- (c) take, cause or permit to occur any action or event that would result in any representation or warranty of Seller being materially inaccurate as of the Closing Date;
- (d) make any changes in cash management practices, pricing policies, credit or allowance policies, monetary policies, or accounting policies;
- (e) make any payment to, or undertake any transaction with, any Affiliate, officer, director, owner or manager of Seller other than sales of Inventory at market price;
- (f) adopt, amend or terminate any Employee Benefit Plan or Other Plan; or
- (g) change the compensation, or benefits, or terminate without cause or change the position of any Business Employees.

#### 5.4 Employee Matters.

(a) Subject to necessary Bankruptcy Court approval and subject to applicable law, Seller shall pay all post-petition employee salaries wages and benefits when due.

(b) As of the Closing Date, Seller shall terminate the employment of all its employees and Buyer shall have the right to offer employment to any and all employees of Seller actively or previously employed by Seller (the “Business Employees”) on terms and conditions of employment, including salaries and benefits, as Buyer should determine in its sole discretion; provided that Buyer and Seller expressly agree that Buyer shall not be deemed for any purpose to be a “successor employer” of Seller and that Buyer’s operation of the Business following the Closing Date shall for all purposes be deemed to have occurred with a substantial interruption and substantial change from the operation of the Business by Seller prior to the Closing Date. Furthermore, notwithstanding any of the above, Buyer shall have no obligation to offer employment as of the Closing Date to any employee of Seller.

(c) Seller, through its Bankruptcy Case, shall retain any and all liabilities related to (i) any failure of Seller to notify and/or consult with any applicable works council, union, employee representative, or similar body required under applicable Legal Requirement or Contract, (ii) all Employee Benefit Plans and Other Plans of Seller and its Controlled Group, (iii) the employment or termination of employment of any Business Employee as of or prior to the Closing, including as a result of the transactions contemplated by this Agreement, and (iv) worker’s compensation, short- and long-term disability, medical, prescription drug, dental, vision, life insurance, accidental death and dismemberment insurance or other welfare benefit claims incurred by any Business Employee (or their dependents or beneficiaries) on or prior to the Closing. In addition, subject to any necessary Bankruptcy Court approval and subject to applicable Legal Requirement, Seller shall pay or shall cause to be paid all amounts payable to Business Employees through and including the Closing Date, including all accrued vacation, sick leave, paid time off and other benefits.

(d) As of the Closing Date, Seller shall make all contributions with respect to periods prior to the Closing on behalf of each Business Employee (disregarding any requirement that such employee be employed on the last day of the applicable plan year to receive an allocation of any employer contributions) and shall fully vest all Business Employees’ account balances in the Seller’s applicable 401(k) plan. As soon as practicable following the Closing Date, Seller shall cause the vested account balances of all Business Employees in Seller’s applicable 401(k) plan to be distributed at the election of such Business Employee in accordance with terms of such 401(k) plan (treating the Business Employees as having severed from employment within the meaning of such 401(k) plan).

(e) Seller shall retain and shall be responsible for all liabilities and obligations related to, and for providing the notices and making available the health continuation coverage as required by, COBRA for all Business Employees (or any other employee of Seller or its Controlled Group) and their respective covered dependents whose qualifying events (as defined in Code Section 4980B) occur on or prior to the Closing Date.

(f) After the Execution Date, Buyer may interview and have contact with

Seller's employees and former employees regarding possible future employment, and Seller shall permit and allow reasonable access by Buyer to all of Seller's Business Employees.

(g) Nothing in this Agreement shall prohibit Buyer or any of its Affiliates from amending, modifying or terminating, or shall be construed as an amendment or modification to, any or all compensation or benefit plans, programs, policies, practices, agreements and arrangements sponsored or maintained by Buyer or any of Buyer's Affiliates, and nothing in this Agreement shall require Buyer or any of its Affiliates to continue any particular compensation or benefit plan, program, policy, practice, agreement or arrangement after the Closing Date or to employ any particular individual on any particular terms or for any particular term or period. The provisions of this Section 5.4 are for the sole benefit of the Parties and nothing herein, express or implied, is intended or shall be construed to confer upon or give to any Person (including for the avoidance any Employee), other than the Parties and their respective permitted successors and assigns, any legal or equitable or other rights or remedies (with respect to the matters provided for in this Section 5.4) under or by reason of any provision of this Agreement.

#### 5.5 Access to and Provision of Additional Information.

(a) From the Execution Date until the Closing Date, Seller shall cooperate fully with Buyer and Buyer's representatives in connection with Buyer's investigation of the business, Assets, Contracts, rights, liabilities and obligations of Seller and its Business, and provide to Buyer and Buyer's representatives reasonable access to and the right to inspect the Business, any facilities associated with or used in the Business, the Assets, books and records of Seller relating to Seller, the Assets and the Business, and shall furnish to Buyer and its representatives all material information concerning the Assets and the Business not otherwise disclosed pursuant to this Agreement and all financial, operating and other data and information regarding the Business as Buyer may from time to time reasonably request, without regard to where such information may be located. In addition, Seller shall use its Best Efforts to cause Seller's agents, representatives, remaining employees, officers, directors, vendors, and suppliers to cooperate with Buyer and Buyer's representatives in connection with Buyer's due diligence review as it reasonably relates to any Contracts between any such vendors and suppliers and Seller.

(b) From the Execution Date until the Closing Date, Seller shall use its Best Efforts to cause its officers and employees to confer with one or more representatives of Buyer and to answer Buyer's questions regarding matters relating to the conduct of the Business and the status of the Transaction.

(c) Buyer agrees that it shall not, in the exercise by Buyer of any right of access granted herein, unreasonably interfere with the business operations of Seller.

(d) Seller shall not disclose any diligence information (i) received from Buyer or its Related Persons, or (ii) derived from materials provided to Seller by Buyer or its Related Persons, to any Person that is or is seeking to become a Qualified Bidder, or that is or is seeking to evaluate, negotiate or consummate a Conflicting Transaction.

(e) Prior to disclosure of any information to any Qualified Bidder, Seller shall require that such Qualified Bidder enter into a confidentiality agreement customary under the circumstances and acceptable to Buyer.

(f) Seller shall reasonably cooperate with Buyer and its authorized representatives and attorneys: (i) in Buyer's efforts to obtain all consents, approvals, authorizations, clearances and licenses required to carry out the transactions contemplated by this Agreement (including, without limitation, those of governmental and regulatory authorities) or which Buyer reasonably deems necessary or appropriate, (ii) in the preparation of any document or other material which may be required by any governmental agency as a predicate to or result of the transactions contemplated in this Agreement, and (iii) in Buyer's efforts to effectuate the assignment of Assumed Contracts to Buyer as of the Closing Date. To the extent Buyer needs certain information and data which is in the possession of Seller in order for Buyer to complete Buyer's license and permit approval applications, Buyer shall receive, upon request, reasonable assistance from Seller in connection with the provision of such information.

(g) Within thirty (30) calendar days following the end of each calendar month prior to Closing, Seller shall deliver to Buyer complete copies of the unaudited balance sheet and related unaudited statements of income for each month then ended, together with corresponding year-to-date amounts.

(h) Each party shall be responsible for its own costs and expenses incurred pursuant to this Section 5.5.

#### 5.6 Post-Closing Maintenance of and Access to Information.

(a) The parties acknowledge that after Closing, each party may need access to information or documents in the control or possession of the other party for the purposes of concluding the transactions herein contemplated, Tax Returns or audits, the Assumed Contracts and other Legal Requirements, the prosecution or defense of third party claims and any other valid purpose. Accordingly, each party shall keep, preserve and maintain in the ordinary course of business, and as required by Legal Requirements and relevant insurance carriers, all books, records, documents and other information in the possession or control of such party and relevant to the foregoing purposes until the longer of (i) six (6) years after the Closing and (ii) the expiration of any applicable statute of limitations. Neither party shall destroy or otherwise dispose of any of the items referenced in this Section 5.6(a) unless the party seeking to destroy or dispose of such items provides one hundred twenty (120) days' prior written notice to the other party of the intent to seek or destroy such items and affords such other party an opportunity to copy or otherwise remove such items.

(b) Each party shall cooperate fully with, and make available for inspection and copying by, the other party, its employees, agents, counsel and accountants and/or Governmental Authorities, upon written request and at the expense of the requesting party, such books, records, documents and other information in its possession or control to the extent reasonably necessary to facilitate the foregoing purposes. Such cooperation shall include the on-site and off-site inspection of any equipment or components by experts, engineers, attorneys and other agents of the parties during normal business hours and upon reasonable prior notice. In

addition, each party shall cooperate with, and shall permit and use its Best Efforts to cause, at the expense of the requesting party, its respective former and present general or limited partners, members, directors, officers and employees, as applicable, to cooperate with the other party on and after Closing in furnishing information, evidence, testimony and other assistance in connection with any action, proceeding, arrangement or dispute of any nature with respect to the subject matters of this Agreement and pertaining to periods prior to the Closing Date.

(c) The exercise by either party of any right of access granted herein shall not materially interfere with the business operations of the other party.

(d) For a period of four up to (4) weeks after the Closing Date, Buyer shall have access to the Nashville Facility to remove the Nashville Assets and any Inventory located at the Nashville Facility, and in connection therewith, Seller shall provide Buyer reasonable assistance and cooperation as requested by Buyer.

#### 5.7 Governmental Authority Approvals; Consents to Assignment.

(a) Seller, with Buyer's cooperation, shall use its Best Efforts to obtain Bankruptcy Court approval of the assumption by and assignment to Buyer of the Assumed Contracts, and Seller and Buyer shall use their respective efforts to obtain all other consents and approvals, if any, required to assign the Assumed Contracts to Buyer.

(b) Upon the request of Buyer, Seller shall use its Best Efforts to assist Buyer to obtain any Permits and other approvals of Governmental Authorities relating to the ownership, development and operations of the Business or the Assets.

(c) To the extent Buyer requests Seller's assistance under Section 5.7(b), Buyer shall use its Best Efforts to obtain any Permits and other approvals of Governmental authorities relating to the ownership, development and operations of the Business or the Assets.

5.8 Further Acts and Assurances. At any time, and from time to time, at and after the Closing, upon request of Buyer, Seller shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such further acts, deeds, assignments, transfers, conveyances, powers of attorney, confirmations and assurances as Buyer may reasonably request to more effectively convey, assign and transfer to and vest in Buyer, its successors and assigns, full legal right, title and interest in and actual possession of the Assets and the Business and to generally carry out the purposes and intent of this Agreement. Seller shall also furnish Buyer with such information and documents in its possession or under its control, or that such Seller can execute or cause to be executed, as shall enable Buyer to prosecute any and all petitions, applications, claims and demands relating to or constituting a part of the Assets and the Business. Seller shall, to the extent permitted by Governmental Authorities, allow Buyer to operate under any Permit of Seller that cannot be assigned to Buyer until such time as Buyer obtains a substitute or replacement permit for such Permit.

5.9 Costs and Expenses. Except as otherwise expressly set forth in this Agreement, including Section 9.2, all expenses of the negotiation and preparation of this Agreement and related to the Transaction, including legal counsel, accounting, brokerage and investment advisor fees and disbursements, shall be borne by the respective party incurring such expense, whether or

not the Transaction is consummated.

5.10 Fulfillment of Conditions. Each party shall execute and deliver at Closing each agreement, instrument or other document that such party is required by this Agreement to execute and deliver as a condition to Closing, and shall take all commercially reasonable steps necessary or desirable and proceed diligently and in good faith to satisfy each other condition to the obligations of the parties contained in this Agreement, to the extent that satisfaction of such condition is within the control of such party.

5.11 Assumed and Assigned Contracts; Rejected Contracts; Excess Cure Amounts.

(a) Assumed Contracts. Subject to the approval of the Bankruptcy Court and pursuant to the Executory Contract Assumption and Assignment Order, the Assumed Contracts shall be assumed by Seller and assigned to Buyer or Buyer's designee on the Closing Date under §365 of the Bankruptcy Code. In the Sale Motion, or in such additional or subsequent motions as may be appropriate, Seller shall seek authority to assume and assign the Assumed Contracts to Buyer (or Buyer's Designee) in accordance with §365 of the Bankruptcy Code. All Assumed Contracts shall be assigned to and assumed by Buyer (or Buyer's designee) at Closing or such later date as agreed by Buyer and Seller. Subject to Section 2.3 and the remainder of this Section 5.11, the final determination of which Contracts Seller shall assume and assign to Buyer shall be within the sole discretion of Buyer.

(b) Required Cure Amounts. Subject to Section 2.8, at or prior to the Closing, Seller shall pay in full and fully discharge all Required Cure Costs for all Assumed Contracts up to an aggregate of \$10,000; provided, however, that in the event that any Required Cure Costs remain the subject of a dispute at the time of Closing, then Seller shall pay the such disputed Required Cure Costs upon the entry of an order of the Bankruptcy Court settling such dispute.

(c) Notice of Rejection. Prior to the Closing, Seller shall give Buyer ten (10) days' prior notice before rejecting any Contract (which requirement may be satisfied by providing a copy of any motion seeking authority to reject such Contract). In addition to the rights of Buyer in Section 2.8 and subject to Section 2.8, Buyer may at any time prior to rejection of a Contract designate any Contract for assumption and assignment to Buyer and Seller shall assume and assign such Contract to Buyer.

5.12 Bankruptcy Court Approval.

(a) Seller shall obtain Bankruptcy Court entry of the Bidding Procedures Order on or before twelve (12) calendar days after the Execution Date.

(b) Seller shall obtain Bankruptcy Court entry of the Sale Order and the Executory Contract Assumption and Assignment Order on or before thirty (30) calendar days after the Execution Date.

(c) Seller shall promptly make any filings, take all reasonable actions, and use Seller's Best Efforts to obtain any and all other approvals and orders necessary or appropriate for consummation of the Transaction, subject to Seller's obligations to comply with any order of the Bankruptcy Court and the Bankruptcy Code.

5.13 Transfer Taxes and Recording Fees; Real Estate Taxes.

(a) Any personal property Taxes shall be conclusively prorated between the parties as of the Closing Date, such that all amounts attributable to periods ending on or before the Closing Date are allocated to Seller, and all amounts attributable to periods ending after the Closing Date are allocated to Buyer.

(b) For purposes of making the adjustments pursuant to Section 5.13(a), within sixty (60) days following the Closing Date, or such earlier or later date as shall be mutually agreed to by Buyer and Seller, Buyer and Seller shall agree on an itemized list (the "Adjustment List") of all sums to be credited to or charged against the account of Buyer, with a brief explanation in reasonable detail thereof. Such list shall show the net amount credited to or charged against Buyer (the "Adjustment Amount"). If the Adjustment Amount is a credit to Buyer, Buyer shall first be entitled to recover the Adjustment Amount from the Escrow Fund pursuant to the terms of the Escrow Agreement. In the event that the Adjustment Amount exceeds the funds available in the Escrow Fund at the time of determination of the Final Net Working Capital Assets Amount, then such Adjustment Amount shall be due from Seller on a joint and several basis. If the Adjustment Amount is a charge to Buyer, Buyer shall pay such amount to Seller by delivery of a check payable to the order of Seller for immediately available funds or by wire transfer to an account designated in writing by Seller and delivered to Buyer prior to the date of such payment. Payment of the Adjustment Amount shall be made not later than twenty (20) days following the completion of the Adjustment List.

(c) In the event that Seller and Buyer cannot agree on the Adjustment List, any disputed items shall be resolved by the Independent Accountant and the Independent Accountant's determination shall be conclusive and binding on both parties.

(d) In addition, if Buyer enters into the White House Lease (as determined by Buyer in its sole discretion), real estate taxes and assessments, both general and special, shall be allocated consistent with this Section 5.13.

5.14 Name Change. Immediately following the Closing, Seller shall change its name to a name that does not use the words "Werthan," "Packaging," or any combination or derivative thereof.

5.15 Adequate Assurances. Buyer shall provide in a timely fashion any and all information required by the Bankruptcy Code and the Bankruptcy Court to evidence Buyer's capability of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to the Assumed Contracts to be assigned to Buyer.

5.16 Allocation of Purchase Price for Tax Purposes. Within fifteen (15) days after the Execution Date, Buyer shall deliver to Seller for Seller's review a schedule setting forth the allocation of the Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for United States federal income Tax purposes) among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (such schedule, as may be amended as contemplated below in this Section 5.16, the "Asset Allocation Schedule"). The Asset Allocation Schedule shall be deemed final and binding upon

the parties upon Seller's approval thereof (which shall not be unreasonably conditioned or delayed). The parties shall cooperate in good faith to finalize the Asset Allocation Schedule within ten (10) days after delivery of the initial draft of the schedule by Buyer to Seller. If within such ten (10) day period (or such other period as the parties may agree), the parties are unable to reach agreement on a final Asset Allocation Schedule, the parties shall have no further obligations under this Section 5.16. If the parties are able to agree on an Asset Allocation Schedule, the parties shall refrain from taking any position that is inconsistent with the Asset Allocation Schedule. Seller and Buyer covenant to report gain or loss or cost basis, as the case may be, in a manner consistent with such Asset Allocation Schedule on all Tax Returns filed by any of them after Closing and not to voluntarily take any inconsistent position therewith in any administrative or judicial proceeding relating to such returns. Seller and Buyer shall exchange mutually acceptable and completed IRS Forms 8594 (including supplemental forms, if required), which they shall use to report the transaction contemplated hereunder to the Internal Revenue Service in accordance with such Asset Allocation Schedule. Notwithstanding anything to the contrary, no allocation hereunder shall supersede or otherwise usurp the jurisdiction of the Bankruptcy Court to value the assets for purposes of distribution to the debtor's estate under the Bankruptcy Code.

## 6. CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligations of Seller hereunder are subject to the satisfaction on or prior to the Closing Date of the following conditions unless waived in writing by Seller:

### 6.1 Representations and Warranties; Covenants.

(a) Each of the representations and warranties of Buyer in Article 4 shall be true and correct in all material respects as of the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such date), except that those representations and warranties that are qualified by materiality or material adverse effect or a similar qualification shall be true and correct in all respects as of the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such date); and

(b) Each and all of the terms, covenants and agreements to be complied with or performed by Buyer on or before the Closing Date shall have been complied with and performed in all material respects, including the obligations of Buyer in Section 8.3.

6.2 Adverse Actions or Proceedings. No Governmental Authority shall have taken any action or made any request of Seller or Buyer as a result of which Seller reasonably and in good faith deems it inadvisable to proceed with the Transaction, and there shall not be in effect any order restraining, enjoining or otherwise preventing consummation of the Transaction; provided that the parties shall have used their respective Best Efforts to cause any such order to be vacated or lifted.

## 7. CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER

The obligations of Buyer hereunder are subject to the satisfaction on or prior to the Closing Date of each of the following conditions, unless waived in writing by Buyer:



7.1 Representations and Warranties; Covenants.

(a) Each of the representations and warranties of Seller in Article 3 shall be true and correct in all material respects as of the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such date), except that those representations and warranties that are qualified by materiality or material adverse effect or a similar qualification shall be true and correct in all respects as of the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such date); and

(b) Each and all of the terms, covenants and agreements to be complied with or performed by Seller on or before the Closing Date shall have been complied with or performed in all material respects, including the obligations of Seller in Section 8.2.

7.2 Pre-Closing Confirmations and Contractual Consents. Buyer shall have obtained or received from Seller documentation or other evidence reasonably satisfactory to Buyer that:

(a) the Sale Order, Executory Contract Assumption and Assignment Order and the Bidding Procedures Order have been entered by the Bankruptcy Court and have become Final Orders, unless Buyer, in its sole discretion, waives the requirement that one or more of these orders be a Final Order – in such case, no notice of such waiver need be given except to Seller, it being the intention of the parties that Buyer shall be entitled to, and is not waiving, the protections of § 363(m) of the Bankruptcy Code, the mootness doctrine and any similar statute or body of law if the Closing occurs in the absence of the above orders being each a Final Order; and

(b) Buyer has obtained the consents, permits, approvals, authorizations and clearances of Governmental Authorities listed on Schedule 7.2(b).

7.3 Adverse Actions or Proceedings. No Governmental Authority shall have taken any action against or made any request of Seller or Buyer as a result of which Buyer reasonably and in good faith deems it inadvisable to proceed with the Transaction, and there shall not be in effect any order restraining, enjoining or otherwise preventing consummation of the Transaction; provided that the parties shall have used their respective Best Efforts to cause any such order to be vacated or lifted.

7.4 Deliveries at Closing. Seller shall have delivered to Buyer, in form reasonably acceptable to Buyer and approved by Buyer's counsel, deeds, bills of sale, assignments or other instruments of transfer, and estoppels, consents and waivers by others, necessary or appropriate to transfer to and effectively vest in Buyer the Assets and all agreements, instruments, certificates or other documents contemplated or required to be executed by Seller pursuant to this Agreement.

7.5 No Material Adverse Effect. There shall not have been any Material Adverse Effect since the date of this Agreement.

7.6 Cure Costs. Seller shall have paid, or made arrangements for the payment of, all Required Cure Costs required to be paid for the assignment and assumption of the Assumed Contracts.

7.7 Employee Compensation. Seller shall have paid, or shall pay concurrently with Closing, all salary and hourly salary and wages for all employees through and including the date of the Closing.

## 8. CLOSING

### 8.1 Closing.

(a) Consummation of the sale and purchase of the Assets and the Business and the other transactions contemplated by and described in this Agreement (the “Closing”) shall take place at such time or place as the parties may mutually agree, or at such time or place as the parties may mutually agree. Unless otherwise agreed in writing by the parties at Closing, the Closing shall be effective for accounting purposes as of 12:01 A.M. on the day of the Closing Date.

(b) No later than ten (10) days prior to Closing, Buyer may designate one or more Affiliates to take title to the Assets. Buyer shall notify Seller prior to Closing of the names of such approved designees.

8.2 Actions of Seller at Closing. At the Closing, unless otherwise waived in writing by Buyer, Seller shall deliver (or cause to be delivered):

- (a) a duly executed counterpart of the Bill of Sale;
- (b) a duly executed counterpart of the Assignment and Assumption Agreement;
- (c) duly executed counterparts of the Patent Assignment and Trademark Assignment;
- (d) a duly executed counterpart of the Escrow Agreement;
- (e) a duly executed certificate of an officer of Seller certifying to Buyer (i) the incumbency of the officers of Seller on the Execution Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement, and (ii) the due adoption and text of the resolutions of (A) the Governing Board of each such Seller authorizing (I) the transfer of the Assets and transfer of the Assumed Liabilities by such Seller to Buyer and (II) the due execution, delivery and performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;
- (f) a certificate of an officer of Seller certifying to Buyer that, to the knowledge of such person, the covenants of Seller set forth in Article 5 have been satisfied or waived;
- (g) a certificate of an officer of Seller certifying to Buyer the matters set forth in Sections 7.1(a) and (b);

(h) favorable original certificates of good standing, or comparable status, of each Seller, issued by the Tennessee Secretary of State dated no earlier than a date which is seven (7) calendar days prior to the Closing Date;

(i) a subordination, attornment and non-disturbance agreement with respect to the White House Facility, executed by each Person with an Encumbrance against any portion of the White House Facility (if that Encumbrance shall survive the Closing), in form and substance reasonably satisfactory to Buyer; provided that if Seller has such an agreement which is an executory contract capable of assumption and assignment, then assignment and assumption of such agreement shall satisfy this delivery requirement;

(j) the White House Lease, duly executed by the landlord;

(k) certified copies of the Sale Order, the Executory Contract Assumption and Assignment Order and the Bidding Procedures Order issued by the Bankruptcy Court;

(l) a subordination, attornment and non-disturbance agreement and approval from the landlord of the Nashville Facility in connection with Buyer's removal of the Nashville Assets as contemplated by Section 5.6(d);

(m) evidence that Buyer has been named as a loss payee on all relevant policies of insurance covering the Nashville Assets until such time as the Nashville Assets are removed from the Nashville Facility in accordance with Section 5.6(d);

(n) the Restrictive Covenant Agreement, duly executed by Anthony Werthan;

(o) certificates of title for all vehicles and any other Asset the ownership of which is evidenced by a certificate of title, in each case, duly endorsed for transfer to Buyer; and

(p) such other instruments, agreements, certificates and documents as Buyer reasonably deems necessary to effect the Transaction.

8.3 Actions of Buyer at Closing. At the Closing and unless otherwise waived in writing by Seller, Buyer shall deliver to Seller:

(a) the Purchase Price in accordance with Section 2.5;

(b) a duly executed counterpart of the Bill of Sale;

(c) a duly executed counterpart of the Assignment and Assumption Agreement;

(d) duly executed counterparts of the Patent Assignment and Trademark Assignment;

(e) a duly executed counterpart of the Escrow Agreement;

(f) a duly executed certificate of an officer Buyer certifying to Seller (i) the

incumbency of the officers of Buyer on the Execution Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement, and (ii) the due adoption and text of the resolutions of (A) the Governing Board of Buyer authorizing (I) the transfer of the Assets and transfer of the Assumed Liabilities to Buyer and (II) the due execution, delivery and performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

(g) a certificate of an officer of Buyer certifying to Seller that, to the knowledge of such person, the covenants of Buyer set forth in Article 5 (other than Section 5.7(c)) have been satisfied or waived;

(h) a certificate of an officer of Buyer certifying to Seller the matters set forth in Sections 6.1(a);

(i) favorable original certificate of good standing, or comparable status, of Buyer, issued by the Delaware Secretary of State dated no earlier than a date which is seven (7) calendar days prior to the Closing Date; and

(j) the Restrictive Covenant, duly executed by Buyer.

## 9. TERMINATION OF AGREEMENT

9.1 Termination Prior to Closing. Notwithstanding anything herein to the contrary, this Agreement may be terminated, and the transactions contemplated by this Agreement abandoned, only as provided in this Section 9.1, upon notice by the terminating party to the party:

(a) At any time before the Closing, by the mutual consent of Buyer and Seller.

(b) At any time before the Closing, by Buyer if there is a material breach of this Agreement by Seller, or a material inaccuracy of any representation or warranty of Seller, in either case, that is not cured within three (3) Business Days after notice thereof by Buyer.

(c) At any time before the Closing, by Seller if there is a material breach of this Agreement by Buyer, or a material inaccuracy of any representation or warranty of Buyer, in either case, that is not cured within three (3) Business Days after notice thereof by Seller.

(d) At any time before the Closing, by Buyer if any of the conditions in Section 8.2 have not been satisfied as of January 15, 2017, or if satisfaction of any condition in Section 8.2 is or becomes impossible and Buyer has not waived such condition in writing on or before on or before January 15, 2017, (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Buyer to comply with its obligations under this Agreement or (ii) Seller's failure to provide its closing deliveries on the Closing Date as a result of Buyer not being ready, willing and able to close the transaction on the Closing Date).

(e) At any time before the Closing, by Seller if any of the conditions in Section 8.3 have not been satisfied as of January 15, 2017, or if satisfaction of any such condition in Section 8.3 is or becomes impossible and Seller has not waived such condition in writing on or before January 15, 2017 (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Seller to comply with its obligations under this Agreement or (ii) Buyer's failure to provide its closing deliveries on the Closing Date as a result of Seller not being ready, willing and able to close the transaction on the Closing Date).

(f) Automatically, upon Bankruptcy Court approval of (i) any refinancing of Seller, and (ii) any agreement that contemplates a transaction or series of related transactions, other than the transactions to be consummated under this Agreement, pursuant to which a material portion of the Assets shall be acquired by, or transferred to, a third party other than Buyer, whether pursuant to an asset sale, merger, stock purchase, a Chapter 11 Plan of Reorganization or otherwise (any such transaction, an "Alternative Transaction"); provided, however, that in the event that Buyer is the Back-up Bidder as contemplated by the Bidding Procedures then termination pursuant to this Section 9.1(f) shall not be effective until ten (10) days after the Auction.

(g) By Buyer, by notice to Seller, if a Bankruptcy Case of Seller is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

(h) By Buyer, by notice to Seller, if there is appointed in any Bankruptcy Case of Seller, a trustee or examiner with enlarged powers under §1106(b) of the Bankruptcy Code.

(i) By Buyer, by notice to Seller, if: (i) the Bidding Procedures Order including approval of the proposed Breakup Fee and reimbursement of Expenses to be paid to Buyer, has not been entered on or before seven (7) calendar days after the Execution Date, (ii) following the entry of the Bidding Procedures Order, such order is reversed, vacated or otherwise modified, (iii) the Bidding Procedures Order is stayed as of the date the Auction is scheduled to commence, (iv) the Bidding Procedures Order is not a Final Order prior to the date the Auction commences, or (v) the Sale Order has not been entered on or before thirty (30) calendar days after the Execution Date.

(j) By Buyer, if Seller breaches any of its covenants contained in Section 5.1(a), 5.1(d) or 5.12.

(k) By Seller, if Buyer breaches any of its covenants contained in Section 5.1(e).

(l) By Buyer, upon the occurrence of a Material Adverse Effect.

## 9.2 Effect of Termination.

(a) If this Agreement is validly terminated pursuant to this Article 9, this Agreement shall be null and void, and there shall be no liability on the part of any party (or any of their respective officers, directors, trustees, employees, agents, consultants or other representatives) except the parties' obligations as provided for in this Section 9.2 shall survive

any termination and shall apply thereafter to the extent applicable and as set forth herein.

(b) If this Agreement is terminated pursuant to Section 9.1, other than pursuant to Sections 9.1(a), (c), (e) or (k), then Seller, in consideration of Buyer's due diligence, good faith negotiations of and entering into this Agreement, and in recognition of Buyer's work in (i) establishing a bid standard or minimum for other bidders, (ii) placing estate property in a sales configuration mode attracting other bidders to the auction and bidding process, (iii) serving, by its name and its expressed interest, as a catalyst for other bidders, and (iv) as reimbursement of Buyer's Expenses incurred in connection with the proposed sale, shall, at and as a condition precedent to the Closing or consummation of an Alternative Transaction, pay the Breakup Fee and the Expenses to Buyer with such amount being payable upon the Closing or consummation of such Alternative Transaction from the proceeds thereof. The Breakup Fee, the Expenses, and any obligations of Seller hereunder or under the Bidding Procedures Order shall constitute administrative expenses allowable under Section 503(b)(1) of the Bankruptcy Code (which shall also be super-priority administrative expense claims senior to all other administrative expense claims under § 364(c)(1) of the Bankruptcy Code), except that Buyer's super-priority administrative expense claims shall be earned upon the Bankruptcy Court's approval of an Alternative Transaction and shall be paid by Seller pursuant to this Agreement from the sale proceeds, without any further Bankruptcy Court approval or order, as a super-priority administrative claim under Sections 364(c)(1) and 503(b)(1) of the Bankruptcy Code. The obligation to pay in full in cash when due any amount owed by Seller to Buyer under this Agreement, including the Breakup Fee and the reimbursement of Expenses, shall not be discharged, modified or otherwise affected by any Plan of Reorganization or plan of liquidation for Seller or by any other Order of the Bankruptcy Court.

(c) If this Agreement is terminated pursuant to Section 9.1(c) or (e), then Seller may retain the Earnest Money Deposit as liquidated damages for such termination in accordance with the Deposit Escrow Agreement.

(d) If this Agreement is terminated pursuant to this Article 9 (other than Section 9.1(c) or (e)), then within one (1) Business Day of termination, the Earnest Money Deposit shall be returned to Buyer in accordance with the Deposit Escrow Agreement.

## 10. SURVIVAL

The representations and warranties of Seller contained in Article 3 and of Buyer contained in Article 4 of this Agreement shall terminate as of the Closing, and all of such representations and warranties shall be extinguished as of such date. All other covenants and agreements of the parties contained in this Agreement shall survive the Closing.

## 11. INDEMNITY.

### 11.1 Indemnification by Seller.

After the Closing, Seller shall indemnify, defend and hold harmless Buyer and its officers, directors, equityholders, employees, and Affiliates (collectively, "Buyer Indemnitees") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all losses incurred or sustained by, or imposed upon, the Buyer Indemnitees

based upon, arising out of, with respect to or by reason of:

- (a) any Excluded Asset or any Excluded Liability; or
- (b) any third party claim based upon, resulting from or arising out of the business, operations, leased properties, assets or obligations of Seller or any of its Affiliates (other than the Assets or Assumed Liabilities) conducted, existing or arising on or prior to Closing.

#### 11.2 Indemnification by Buyer.

After the Closing, Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, equityholders, employees, and Affiliates (collectively, "Seller Indemnitees") against, and shall each of them harmless from and against, and shall pay and reimburse each of them for, any and all losses incurred or sustained by, or imposed upon, Seller Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or
- (b) any Assumed Liability; or
- (c) any conduct of the business after the Closing.

## 12. **GENERAL**

#### 12.1 Schedules.

The Schedules and all Exhibits and documents referred to in or attached to this Agreement are integral parts of this Agreement as if fully set forth herein and all statements appearing therein shall be deemed to be representations. Nothing in the Schedules shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the Schedule identifies the exception with reasonable particularity.

#### 12.2 Reproduction of Documents.

This Agreement and all documents relating hereto, including consents, waivers and modifications that may hereafter be executed, the documents delivered at the Closing, and financial statements, certificates and other information previously or hereafter furnished to any party may be reproduced by any party by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process and the parties may destroy any original documents so reproduced. The parties stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial, arbitral or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the ordinary course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

#### 12.3 Choice of Law; Submission to Jurisdiction. This Agreement shall be construed,

performed, and enforced in accordance with, and governed by, the laws of the State of New York (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law. For so long as Seller is subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement (including equitable relief under Section 12.13), and consent to the exclusive jurisdiction of, the Bankruptcy Court. The parties hereby consent to the jurisdiction of such court and waive their right to challenge any proceeding involving or relating to this Agreement on the basis of lack of jurisdiction over the Person or forum non conveniens.

12.4 Benefit; Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. Seller may not assign any of its rights, interests, Contracts, or obligations under this Agreement without the prior written consent of Buyer. Buyer may assign this Agreement, in whole or in part, to any Affiliate of Buyer and/or to any of Buyer's lenders. In the event Buyer elects to assign this Agreement in whole or in part to any Affiliate of Buyer, Buyer shall remain responsible for payment of the Purchase Price.

12.5 No Third Party Beneficiary. The terms and provisions of this Agreement (including provisions regarding employee and employee benefit matters) are intended solely for the benefit of the parties and their respective successors and permitted assigns, and are not intended to confer third-party beneficiary rights upon any other Person. Any reference in this Agreement to one or more Employee Benefit Plans of Buyer or Seller includes provisions, if any, in such plans permitting their termination or amendment and any covenant in this Agreement to provide benefits under any Employee Benefit Plan shall not be deemed or construed to limit Buyer's right to terminate or amend such plan of Buyer in accordance with its terms.

12.6 Waiver of Breach, Right or Remedy. The waiver by any party of any breach or violation by another party of any provision of this Agreement or of any right or remedy of the waiving party in this Agreement (a) shall not waive or be construed to waive any subsequent breach or violation of the same provision, (b) shall not waive or be construed to waive a breach or violation of any other provision, and (c) shall be in writing and may not be presumed or inferred from any party's conduct. Except as expressly provided otherwise in this Agreement no remedy conferred by this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be in addition to every other remedy granted in this Agreement or now or hereafter existing at law or in equity, by statute or otherwise. The election of one or more remedies by a party shall not constitute a waiver of the right of such waiving party to pursue other available remedies. In addition to any other rights and remedies any party may have at law or in equity for breach of this Agreement, each party shall be entitled to seek an injunction to enforce the provisions of this Agreement.

12.7 Notices. Any notice, demand or communication required, permitted or desired to be given hereunder shall be deemed effectively given if given in writing (a) on the date tendered by personal delivery, (b) on the date received by facsimile or other electronic means, (c) one (1) day after the date tendered for delivery by nationally recognized overnight courier, or (d) one (1) days after the date tendered for delivery by United States mail with postage prepaid thereon, certified or registered mail, return receipt requested, in any event addressed as follows:



If to Buyer:

Gateway Packaging Company  
c/o Saw Mill Capital LLC

20 Central Industrial Drive  
Granite City, IL 62040  
Attn: Omar Abuaita  
Telephone: (618) 219-4446  
Facsimile: (618) 219-4455

555 Pleasantville Road South Building, Suite 220  
Briarcliff Manor, NY 10510  
Attn: Timothy J. Nelson  
Telephone: (914) 741-9095  
Electronic Mail: tnelson@sawmillcapital.com

with a copy (that shall not  
constitute notice) to:

McDonald Hopkins LLC  
330 North LaSalle Street  
Suite 2100  
Chicago, Illinois 60654  
Attention: David A. Agay, Esq.  
Telephone: (312) 642-2217  
Facsimile: (312) 280-8232

If to Seller:

Werthan Packaging, Inc.  
605 Highway 76  
White House, Tennessee 37188  
Attention: Gary M. Murphey  
Telephone: (404) 886-9104  
Facsimile: (404) 252-1839

with a copy (that shall not  
constitute notice) to:

Bass, Berry & Sims, PLC  
150 Third Avenue South  
Suite 2800  
Nashville, Tennessee 37201  
Attention: Paul G. Jennings  
Telephone: (615) 742-6267  
Facsimile: (615) 742-6293

or to such other address or number, and to the attention of such other Person, as any party may designate at any time in writing in conformity with this Section 12.7.

12.8 Misdirected Payments; Offset Rights. Seller shall remit to Buyer with reasonable promptness any monies received by Seller constituting or in respect of the Assets, Assumed Contracts, and/or Assumed Liabilities. Buyer shall remit to Seller with reasonable promptness any monies received by Buyer constituting or in respect of the Excluded Assets and/or Excluded Liabilities. If any Person determines that funds previously paid or credited to Seller or the

Business in respect of services rendered prior to the Closing Date have resulted in an overpayment or must be repaid, Seller shall be responsible for the repayment of said monies (and the defense of such actions), except to the extent that the repayment obligation was an Assumed Liability, and Buyer shall have the right to recover such funds from the Escrow Account.

12.9 Severability. If any provision of this Agreement is held or determined to be illegal, invalid or unenforceable under any present or future law by a court of competent jurisdiction: (i) such provision shall be fully severable; (ii) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; (iii) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom; and (iv) in lieu of such illegal, invalid or unenforceable provision, Seller and Buyer agree to negotiate in good faith a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

12.10 Entire Agreement; Counterparts; Amendment. This Agreement supersedes all prior or contemporaneous contracts, agreements and understandings and constitutes the entire agreement of whatsoever kind or nature existing between or among the parties representing the subject matter of this Agreement and no party shall be entitled to benefits other than those specified herein. Each representation, warranty and covenant contained in this Agreement has independent significance and if any party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative level of specificity) that such party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty or covenant. This Agreement may be executed in two (2) or more counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument. This Agreement may not be amended except in a written instrument executed by the parties.

12.11 Drafting. No provision of this Agreement shall be interpreted for or against any Person on the basis that such Person was the draftsman of such provision, and no presumption or burden of proof shall arise favoring or disfavoring any Person by virtue of the authorship of any provision of this Agreement.

12.12 Joint and Several Liability.

All liabilities and obligations of Seller under this Agreement shall be joint and several.

12.13 Equitable Relief.

Seller and Buyer agree that money damages alone may not be a sufficient remedy for any breach of the provisions of this Agreement, and that in addition to all other remedies, either Seller or Buyer will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach, and Seller and Buyer waive the securing or posting of any bond in connection with such remedy.

12.14 Acknowledgment by Buyer. Buyer acknowledges that it has conducted, to its satisfaction, an independent investigation and verification of the Assets and, in making its

determination to proceed with the transactions contemplated by this Agreement, Buyer has relied on the results of its own independent investigation. OTHER THAN IN CASES OF FRAUD, THE REPRESENTATIONS AND WARRANTIES OF SELLER CONTAINED IN THIS AGREEMENT CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF SELLER TO BUYER IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, AND BUYER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED ARE HEREBY DISCLAIMED.

(b) In connection with Buyer's investigation of Seller, Buyer has received from or on behalf of Seller certain estimates, projections and other forecasts and plans. Buyer acknowledges and agrees that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Buyer is familiar with such uncertainties, that Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to it (including the reasonableness of the assumptions underlying such estimates, projections and forecasts), and that, other than as explicitly set forth herein (including Sections 2.6 and 2.7) or in cases of fraud, Buyer shall have no claim against the Seller with respect thereto.

*(Remainder of Page Intentionally Left Blank)*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in multiple originals by their duly authorized officers as of the Execution Date.

SELLER:

**WERTHAN PACKAGING, INC.**

By: \_\_\_\_\_


By:  \_\_\_\_\_

Name: Anthony Werthan

Title: Chairman

BUYER:

**GATEWAY PACKAGING COMPANY,  
LLC**

By:  \_\_\_\_\_

Name: Omar Albuaita

Title: Chief Executive Officer