
ASSET PURCHASE AGREEMENT

dated as of December __, 2013

by and among

_____, as purchaser

and

COLOR STAR GROWERS OF COLORADO, INC.,

VAST, INC. and COLOR STAR, L.L.C.,

as sellers

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), is made and entered into as of December ____, 2013 (the “Effective Date”), by and among _____, a _____ or its designee (“Purchaser”), Color Star Growers of Colorado, Inc., a Colorado corporation (“Color Star”), Vast, Inc., a Texas corporation (“Vast”), and Color Star, L.L.C., a Colorado limited liability company (“CLLS” and collectively with Color Star and Vast, “Sellers”). Purchaser and Sellers are sometimes referred to herein individually as a “Party” and collectively as the “Parties”. Capitalized terms used in this Agreement have the meaning given such terms in Section 1.1.

W I T N E S S E T H

WHEREAS, Sellers are engaged in the Business;

WHEREAS, Purchaser desires to purchase from Sellers, and Sellers desire to sell, assign, transfer, convey and deliver to Purchaser, the Acquired Assets, together with the Assumed Obligations, all in the manner and subject to the terms and conditions set forth herein;

WHEREAS, the Parties intend to effectuate the transactions contemplated hereby through a sale of the Acquired Assets pursuant to Sections 363 and 365 of the Bankruptcy Code;

WHEREAS, the Parties intend that this Agreement shall be subject to higher or otherwise better offers pursuant to the Bidding Procedures Order; and

WHEREAS, the execution and delivery of this Agreement and Sellers’ ability to consummate the transactions contemplated hereby are subject to, among other things, the entry of an Order of the Bankruptcy Court under, inter alia, Sections 363 and 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree hereby as follows:

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions.

“Acquired Assets” has the meaning set forth in Section 2.1.

“Acquired Flood Insurance Proceeds Amount” means an amount equal to the \$2,500,000.

“Acquired Owned Real Property” has the meaning set forth in Section 2.1(d).

“Adjusted Purchase Price” has the meaning set forth in Section 3.2(c).

“Affiliate” of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether by contract, through the ownership of voting securities or otherwise.

“Affiliated Group” means an “affiliated group” as defined in Section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law) of which any Seller is or has been a member.

“Agreement” means this Asset Purchase Agreement, including all of the Exhibits and Schedules hereto, as the same may be amended from time to time in accordance with its terms.

“Allocation” has the meaning set forth in Section 10.9.

“Alternative Transaction” means (a) the sale (whether by stock sale, merger, consolidation or otherwise) of all or a substantial portion of the Equity Securities of Sellers, (b) the sale of all or a substantial portion of the Acquired Assets to any Person other than Purchaser or Purchaser’s Affiliates or (c) a transaction or series of transactions involving the sale or transfer of all or a substantial portion of the Acquired Assets to a Person other than Purchaser or Purchaser’s Affiliates.

“Assumption Agreement” has the meaning set forth in Section 4.3(f).

“Assumed Contracts” has the meaning set forth in Section 2.1(h).

“Assumed Employee Benefit Plans” has the meaning set forth in Section 2.1(i).

“Assumed Equipment Leases” has the meaning set forth in Section 2.1(f).

“Assumed Executory Contracts” means the Assumed Contracts, the Assumed Facility Leases, the Assumed Equipment Leases and the Assumed Employee Benefit Plans.

“Assumed Facility Leases” has the meaning set forth in Section 2.1(d).

“Assumed Leased Facilities” means the Leased Facilities identified in the Assumed Facility Leases.

“Assumed Obligations” has the meaning set forth in Section 2.3.

“Auction” has the meaning set forth in Section 7.5(a).

“Avoidance Actions” means all causes of action arising under Chapter 5 of the Bankruptcy Code, including causes of action arising under Sections 502, 506, 510, 541, 542, 544, 545, 546, 547 through 551, and 553 of the Bankruptcy Code, or under similar or related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation is commenced to prosecute such causes of action.

“Bankruptcy Code” means Title 11 of the United States Code §§ 101 *et seq.*

“Bankruptcy Court” means the United States Bankruptcy Court for the [Eastern] District of Texas.

“Bidding Procedures Order” means an order of the Bankruptcy Court that, among other things, finds, authorizes, directs and provides for (i) a sale process to approve this Agreement and the sale and assignment of all or part of the Acquired Assets and the Assumed Contracts or to such person(s) (the “Successful Bidder(s)”) as may submit and have accepted the highest and/or best qualified bid(s) submitted and accepted and on a schedule in accordance with the Bidding Procedures Order; (ii) the scheduling of a hearing to approve the Successful Bidder(s) and enter the Sale Order(s) so that it/they is/are effective no later than five (5) days after the Auction or such later date as may be reasonably agreed to by Purchaser(s) in writing; (iii) the approval and authorization of the form, scope, timing and sufficiency of notice to all interested parties and of publication notice of the hearing and of the bidding procedures and the procedures for the assumption and assignment of Assumed Contracts and request for approval of the Sale Order; (iv) the establishment of criteria for a qualifying bid, including (A) the requirement that the initial bid be accompanied by an executed Purchase Agreement substantially similar to this Agreement but with higher and/or better consideration, (C) a good-faith deposit equal to 100% of the Deposit in immediately available funds, forfeitable if the overbid is approved and the overbidder fails to close, (D) not be subject to any diligence contingency, (E) not be subject to any contingency for internal approvals, (F) not be subject to any financing contingency, (G) be made in cash in immediately available funds, (H) be made for all or substantially all the Acquired Assets; and (I) not be subject to any conditions precedent not set forth in this Agreement; and (iv) such other terms and conditions as may be acceptable to the Parties.

“Books and Records” means all records and lists of the Business relating to the Acquired Assets including (i) all Inventory, merchandise, analysis reports, marketing reports, research and development materials and creative material pertaining to the Acquired Assets, the Facilities or the Business, (ii) all records relating to customers, suppliers or personnel of Sellers or of the Business (including customer lists, mailing lists, e-mail address lists, recipient lists, sales records, correspondence with customers, customer files and account histories, supply lists and records of purchases from and correspondence with suppliers), (iii) all records relating to all product, business and marketing plans of any Seller, (iv) all accounting, Tax records and Tax Returns, (v) all books, ledgers, files, reports, plans, drawings and operating records of every kind and (vi) all environmental audits, real property surveys, title commitments, title insurance policies, together with all applicable exception documents, abstracts of title and other evidence of title with respect to the real property and surveys of each parcel of land included in the Facilities.

“Business” means the activities carried on by Sellers relating to the wholesale flower nursery and distribution industry.

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

“Cash Collateral Order” means the *Interim Order Granting Emergency Motion for Interim and Final Orders Authorizing the Use of Cash Collateral and Scheduling a Final order [Docket No. 24]* entered on December 20, 2013.

“Cash Consideration” means an amount of cash equal to [_____] million Dollars (\$xx,xxx,xxx).

“CERCLA” has the meaning set forth in Environmental Laws.

“Chapter 11 Cases” means the cases of Sellers commenced under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

“Claim” has the meaning set forth in Section 101(5) of the Bankruptcy Code.

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

“Closing Date” has the meaning set forth in Section 4.1.

“Closing Working Capital” has the meaning set forth in Section 3.2(a).

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Collective Bargaining Agreement” means any Contract or other binding agreement or arrangement (written or oral) with any labor union or organization, works council or other similar employee representative.

“Colorado Facility” means Sellers’ facility located 11610 County Road 14.5, Fort Lupton, Colorado.

“Consigned Inventory” has the meaning set forth in the definition of Inventory.

“Contingent Obligation” means, as to any Person, any obligation, agreement, understanding or arrangement of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation, agreement, understanding or arrangement of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth, net equity, liquidity, level of income, cash flow or solvency of the primary obligor; (c) to purchase or lease property, securities or services primarily for the purpose of assuring the primary obligor of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) with respect to bankers’ acceptances, letters of credit and similar credit arrangements, until a reimbursement or equivalent obligation arises (which reimbursement obligation shall constitute a primary obligation); or (e) otherwise to assure or hold harmless the primary obligor of any such primary obligation against loss (in whole or in part) in respect thereof; provided, however that the term “Contingent Obligation” shall not include endorsements of instruments for deposit or collection in the ordinary course of business

or any product warranties given in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation, or portion thereof, in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable, whether singly or jointly, pursuant to the terms of the instrument, agreements or other documents or, if applicable, unwritten agreement, evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated Liability in respect thereof (assuming such Person is required to perform thereunder).

“Contract” means any agreement, license, contract, lease (other than a Facility Lease), commitment, Collective Bargaining Agreement or other binding arrangement or understanding, whether written (including via electronic mail) or oral, and with respect to any contract to which any Seller is a party, such contract which any Seller is permitted under the Bankruptcy Code to assume and assign other than an Employee Benefit Plan.

“Cure Amounts” means all cash amounts that, pursuant to Section 365 of the Bankruptcy Code, will be required to be paid as of the Closing Date to cure all defaults on the part of Sellers under any Assumed Executory Contracts, Contracts deemed to be Assumed Executory Contracts pursuant to Section 2.7 and Contracts assumed by Purchaser under Section 2.1(h) (if any), which Cure Amounts all shall be paid before the assumption of such Contracts under Section 365 of the Bankruptcy Code is effective.

“Deposit” means \$[10% of Purchase Price].

“Designated Contracts” has the meaning set forth in Section 2.7.

“DIP Loan” means that certain super-priority, secured debtor-in-possession financing provided to Sellers by certain lenders represented by the Agent.

“Dollar” and the sign “\$” mean the lawful money of the United States.

“Effective Date” has the meaning set forth in the Preamble.

“Employee Benefit Plan” means any “employee benefit plan” (as defined in ERISA § 3(3)) and any other benefit or compensation plan, program, agreement or arrangement maintained, sponsored, or contributed or required to be contributed to by any Seller or any ERISA Affiliate for the benefit of any current or former employee or director of Sellers, exclusive of (i) any Multiemployer Plan and (ii) any plan, program, agreement or arrangement to the extent maintained as required by and pursuant to a statutory or regulatory requirement.

“Environmental Laws” means all Laws, now or hereafter in effect, and in each case as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof relating to the regulation and protection of human health, safety, the environment and natural resources (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation). Environmental Laws include, but are not limited to, the comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.) (“CERCLA”); the Hazardous Material Transportation Act, as amended (49 U.S.C.

§§ 1801 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 et seq.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.) (“RCRA”); the Toxic Substance Control Act, as amended (15 U.S.C. §§ 2601 et seq.); the Clean Air Act, as amended (42 U.S.C. §§ 740 et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.); the Occupational Safety and Health Act, as amended (29 U.S.C. §§ 651 et seq.) (“OSHA”); and the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300(f) et seq.), and any and all regulations promulgated thereunder, and all analogous state and local counterparts or equivalents and any transfer of ownership notification or approval statutes.

“Environmental Liabilities” means, with respect to any Person, all liabilities, obligations, responsibilities, response, remedial and removal costs, investigation and feasibility study costs, operation and maintenance costs, losses, damages, punitive damages, property damages, natural resource damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants), fines, penalties, sanctions and interest incurred as a result of any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, including any arising under or related to any Environmental Laws, Environmental Permits, or in connection with any Release or threatened Release or the presence of a Hazardous Material whether on, at, in, under, from or about or in the vicinity of any real or personal property.

“Environmental Permits” means all permits, licenses, authorizations, certificates, approvals or registrations required by any Governmental Authority under any Environmental Laws.

“Equity Securities” means (i) with respect to any corporation, all shares, interests, participations or other equivalents of capital stock of such corporation (however designated), and any warrants, options or other rights to purchase or acquire any such capital stock and any securities convertible into or exchangeable or exercisable for any such capital stock, (ii) with respect to any partnership, all partnership interests, participations or other equivalents of partnership interests of such partnership (however designated), and any warrants, options or other rights to purchase or acquire any such partnership interests and any securities convertible into or exchangeable or exercisable for any such partnership interests and (iii) with respect to any limited liability company, all membership interests, participations or other equivalents of membership interests of such limited liability company (however designated), and any warrants, options or other rights to purchase or acquire any such membership interests and any securities convertible into or exchangeable or exercisable for any such membership interests.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and all Laws issued thereunder.

“ERISA Affiliate” means any Person that, at any relevant time, is or was treated as a single employer with any Seller for purposes of Code § 414.

“Escrow Agreement” means an escrow agreement among the Parties and an escrow agent reasonably satisfactory to the Parties.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Contracts” has the meaning set forth in Section 2.2(e).

“Excluded Employee Benefit Plans” has the meaning set forth in Section 2.2(f).

“Excluded Environmental Liabilities” means any Liability (including any investigatory, corrective or remedial obligation) relating to or arising from Environmental Laws and (i) Sellers or any predecessor or Affiliate of any Seller, (ii) the operation of the Business prior to the Closing, (iii) any Excluded Asset or (iv) any operations, events, conditions, or circumstances occurring or existing on or prior to the Closing Date, including any Release, threatened Release, treatment, storage, disposal, or arrangement for disposal of or any exposure of any Person to Hazardous Substances occurring or existing on or prior to the Closing Date.

“Excluded Equipment Leases” has the meaning set forth in Section 2.2(d).

“Excluded Facility Leases” has the meaning set forth in Section 2.2(c).

“Excluded Liabilities” has the meaning set forth in Section 2.4(a).

“Excluded Owned Real Property” has the meaning set forth in Section 2.2(b).

“Exhibit” means an exhibit to this Agreement.

“Facilities” means collectively the premises (which shall include all Owned Real Property and all Leased Facilities) at which each Seller operates.

“Facility Lease Assignments” has the meaning set forth in Section 4.3(k).

“Facility Leases” means all right, title and interest of any Seller in all leases, subleases, licenses, and other similar occupancy agreements (written or oral) and all amendments, modifications, extensions, renewals, guaranties and other agreements with respect thereto, including the right to all security deposits and other amounts and instruments deposited by or on behalf of any Seller thereunder, pursuant to which a Seller holds a leasehold or subleasehold estate in, or is granted the right to use or occupy a Leased Facility.

“Final Order” means an action taken or order issued by the applicable Governmental Authority as to which no stay of the action or order is in effect.

“Financial Statements” means, collectively, the audited consolidated balance sheet (including the related notes and independent auditors’ report thereon) of Sellers as of December 31, 2011, and the related audited consolidated statements of operations, shareholders’ equity (deficit) and cash flows of Sellers for the year ended December 31, 2011.

“Flood Event” has the meaning given in Section 2.1(o).

“Governmental Authority” means any federal, state, local, municipal, foreign, supranational or other governmental or quasi-governmental authority of any nature (including any governmental agency, branch, bureau, commission, department, official or entity and any court or other tribunal), or any administrative, executive, judicial, legislative, police, regulatory or taxing authority, or arbitral body.

“Hazardous Substances” means any pollutants, contaminants or chemicals, and any industrial, toxic or otherwise hazardous materials, substances or wastes and any other substance with respect to which Liability or standards of conduct may be imposed under any Environmental Laws, including without limitation petroleum and petroleum related substances, products, by products and wastes, asbestos, urea, formaldehyde, ureaformaldehyde and lead-based paint; and including asbestos, polychlorinated biphenyls, or any radioactive substances; and any material regulated as a hazardous substance by any jurisdiction in which any Seller owns or operates or has owned or operated a facility; or (b) any element, pollutant, contaminate or discarded material (including any radioactive material) within the definition of Section 103(6) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6903(6); and any material regulated as hazardous waste by any jurisdiction in which any Seller owns or operates or has owned or operated a facility, or to which any Seller sends or has sent material for treatment, storage or disposal as waste. The term also includes naturally occurring radioactive material concentrated, disposed of, released or present on, resulting from, or in association with oil gas or hydrocarbon activities.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and Laws thereunder.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or advances; (b) all obligations or liabilities of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments; (c) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person (even though the rights and remedies of the seller or lenders under such agreement in the event of default are limited to repossession or sale of such property); (d) all obligations of such Person issued or assumed as part of the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business on normal trade terms and not overdue by more than ninety (90) days); (e) all indebtedness secured by any Lien on property owned or acquired by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not the obligations secured thereby have been assumed, but limited to the lower of (i) the fair market value of such property and (ii) the amount of the Indebtedness secured; (f) all capital lease obligations of such Person; (g) any commitment by which such Person assures a creditor against loss (including all obligations of such Person for the reimbursement of any obligor in respect of letters of credit, letters of guaranty, bankers’ acceptances and similar credit transactions) or other indebtedness guaranteed in any manner by such Person; (h) all uncashed checks issued by such Person that are outstanding as of the Closing Date; and (i) all Contingent Obligations of such Person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (h) above. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest

in or other relationship with such entity, except (other than in the case of general partner Liability) to the extent that terms of such Indebtedness expressly provide that such Person is not liable therefor.

“Intellectual Property” means all of the following in any jurisdiction throughout the world: (i) patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations in part, revisions, divisionals, extensions and reexaminations thereof, (ii) trademarks, service marks, designs, trade dress, logos, slogans, trade names, internet domain names, URLs, corporate names, all applications, registrations and renewals in connection therewith, together with all goodwill associated with any of the foregoing, (iii) copyrights and copyrightable works, and all applications, registrations and renewals in connection therewith, (iv) trade secrets and confidential business information (including chemical formulations, ideas, research and development, know how, inventions, technology, formulas, compositions, manufacturing and production processes and techniques, technical data, customer and supplier lists, designs, drawings, plans and specifications, each deemed to be confidential and maintained in confidence), (v) computer software (including source code, executable code, data, databases and related documentation), websites and telephone numbers, (vi) copies and tangible embodiments of any of the foregoing in whatever form or medium, (vii) all products and products in development, and (viii) all know how related to the foregoing.

“Inventory” means (a) all of Sellers’ inventory of plants, in every location, form and stage of growth, whether or not in the ground, and including work-in-process and finished goods, and all products in development, (b) all inventory of plants subject to a consignment arrangement with any Person (the “Consigned Inventory”), (c) all of Sellers’ non-plant inventory, which includes raw materials and supplies (including plant propagation materials, raw nursery-product materials, chemicals and fertilizers), (d) packaging materials, labels and supplies, samples and other materials included in the inventory of the Business, and (e) any other property the sale or other disposition of which has given rise to Receivables.

“Knowledge of Sellers” means the actual knowledge of either Huibert Verbeek, Brett Verbeek, or Kenney Verbeek.

“Law” means any law, statute, regulation, code, decree, constitution, ordinance, treaty, rule of common law, or Order of, administered or enforced by or on behalf of, any Governmental Authority.

“Latest Balance Sheet” has the meaning set forth in Section 5.5(b).

“Leased Facilities” means any land, buildings, structures, improvements, fixtures or other interest in real property which is used or intended to be used by any Seller pursuant to a Facility Lease.

“Leasehold Improvements” means all buildings, structures, improvements and fixtures located on any Leased Facility which are owned by a Seller, regardless of whether title to such buildings, structures, improvements or fixtures are subject to reversion to the landlord or other Third Party upon the expiration or termination of the Facility Lease for such Leased Facility.

“Lenders” means each of the lenders under the Credit Agreement.

“Lenders’ Agent” means Regions Bank, as the administrative agent under the Credit Agreement.

“Liability” means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and regardless of when asserted), including any liability for Taxes, product liability or infringement liability.

“Lien” or “Liens” means any lien (statutory or otherwise), hypothecation, encumbrance, security interest, interest, mortgage, pledge, restriction, charge, instrument, preference, priority, security agreement, easement, covenant, encroachment, option, right of recovery, right of pre-emption, right of first refusal or other Third Party right, Tax (including foreign, federal, state and local Tax) or Order, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing and (ii) any assignment or deposit arrangement in the nature of a security device).

“Material Adverse Effect” means either (i) the taking in condemnation or under right of eminent domain of any Acquired Real Property, or (ii) with respect to the Acquired Assets, any casualty not covered by insurance resulting in aggregate losses to the Acquired Assets in excess of \$1,000,000.

“Material Contract” has the meaning set forth in Section 5.9(b).

“Multiemployer Plan” means any “multiemployer plan” (as defined in ERISA § 3(37)) contributed to by any Seller or any ERISA Affiliate or with respect to which any Seller or any ERISA Affiliate has any Liability.

“Notice” means any written summons, citation, directive, letter or other communication from the United States Environmental Protection Agency and any Governmental Authority, or any other entity or any individual and shall include the imposition of any Lien on property owned, leased, occupied or used by any Seller pursuant to any Environmental Law.

“Notice of Disagreement” has the meaning set forth in Section 3.2(b).

“Order” means any award, decision, decree, order, injunction, ruling, judgment, or consent of or entered, issued, made or rendered by any Governmental Authority.

“Ordinary Course of Business” means the operation of the Business by Sellers in the usual and ordinary course in a manner substantially similar to the manner in which Sellers have operated the Business since December 15, 2013 (including with respect to quantity and frequency).

“Owned Real Property” means all land, together with all buildings, structures, fixtures and other improvements located thereon (including all electrical, mechanical, plumbing and other building systems; fire protection, security and surveillance systems;

telecommunications computer, wiring and cable installations; utility installations; water distribution systems; and landscaping, as applicable, to the extent so owned) and all easements, rights of way, servitudes, tenements, hereditaments, appurtenances, privileges and other rights and interests appurtenant thereto owned by any Seller.

“Pension Plans” means any defined benefit plan within the meaning of ERISA § 35, exclusive of plans that are not subject to ERISA, but otherwise determined without regard to whether such plan is subject to Title IV of ERISA and further determined without regard to the exclusion from such definition of defined benefit plan of any portion of such plan that is an individual account plan within the meaning of ERISA § 35.

“Periodic Taxes” has the meaning set forth in Section 7.7(c).

“Permits” means licenses, permits, approvals, certificates of occupancy, authorizations, operating permits, registrations, plans and the like.

“Permitted Acquired Asset Lien” means (i) with respect to each Owned Real Property and Leased Facility (as the case may be): (A) zoning, building codes and other land use Laws regulating the use or occupancy of such Owned Real Property or Leasehold Improvement or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such real property with which the current use or occupancy of such Owned Real Property or Leasehold Improvement or the operation of the Business thereon is in material compliance; and (B) easements, covenants, conditions, restrictions and other similar matters of record affecting title to such Owned Real Property or Leasehold Improvement, none of which, individually or in the aggregate, materially interfere with the current use or occupancy of such Owned Real Property or the operation of the Business thereon.

“Permitted Released Lien” means any and all Liens that will be released from the Acquired Assets at or prior to Closing by virtue of the entry of the Sale Order.

“Petition Date” means December 15, 2013.

“Person” means any corporation, partnership (including any limited partnership and any limited liability partnership), joint venture, limited liability company, organization, trust, entity, authority or natural person.

“Post-Closing Tax Period” has the meaning set forth in Section 7.7(c).

“Pre-Closing Tax Period” has the meaning set forth in Section 7.7(c).

“Post-Petition Contract” means any Contract, commitment or order (including customer orders, purchase orders and orders with vendors or other suppliers), in each case executed, agreed or entered into by the parties thereto after the Petition Date.

“Proceeding” means any charge, complaint, dispute, demand, action, litigation, audit, investigation, review, inquiry, arbitration, suit in equity or at Law, administrative, regulatory or quasi-judicial proceeding, account, or cause of action of whatever kind or character.

“Professional” means any Person retained by Sellers or a statutory committee of unsecured creditors in the Chapter 11 Cases pursuant to an Order of the Bankruptcy Court under Sections 327 and 1103 of the Bankruptcy Code.

“Professional Fees” means all fees and disbursements of Professionals relating to services rendered or expenses incurred after the Petition Date allocated to Sellers in accordance with any Orders of the Bankruptcy Court approving the retention of such Professionals and such fees, disbursements and expenses.

“Purchase Price” has the meaning set forth in Section 3.1.

“Purchase Price Adjustment” has the meaning set forth in Section 3.2(c).

“Purchaser” has the meaning set forth in the preamble hereto.

“Qualifying Employment Offer” means, with respect to a given employee of a Seller, an offer of employment providing for (a) employment at a location within a reasonable commuting distance from such employee’s pre-Closing work location and (b) compensation substantially similar to that provided to such employee by such Seller immediately prior to the Closing Date.

“Real Estate Liens” means (i) Liens imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers’, warehousemen’s, materialmen’s and mechanics’ liens and other similar Liens arising in the ordinary course of business; (ii)(x) licenses, sublicenses, leases or subleases granted by Sellers to other Persons not materially interfering with the conduct of the Business and (y) any interest or title of a lessor, sublessor or licensor under any lease or license agreement permitted by this Agreement to which any of Sellers is a party; (iii) with respect any Leased Facility, any Liens imposed upon the fee interest or other interest superior to that of Sellers’ or imposed in favor of the lessor with respect thereto; and (iv) reservations, easements, licenses, and rights of shared use as specifically set forth in any Facility Lease in favor of the lessor thereof or other Third Parties as described in any Facility Lease.

“Real Property Laws” has the meaning set forth in Section 5.16.

“Receivables” means and includes all of Sellers’ presently existing and hereafter arising or acquired accounts, accounts receivable, and all present and future rights of Sellers to payment for goods sold or leased or for services rendered at any time through the Closing Date, whether or not they have been earned by performance, and all rights in any merchandise or goods which any of the same may represent, and all rights, title, security and guaranties with respect to each of the foregoing, including, without limitation, any right of stoppage in transit.

“Release” (a) has the meaning set forth in CERCLA and (b) with respect to any Person, any past or present release or any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or migration of a Hazardous Material into the indoor or outdoor environment by such Person (or by a Person under such Person's direction or control), including (i) the abandonment or discharging of barrels, containers and other closed receptacles containing any Hazardous Substance and (ii) the

movement of a Hazardous Material through or in the air, soil, surface water, ground water or property.

“Restricted Names” has the meaning set forth in Section 10.5.

“Rolling Stock” means all cars, trucks, forklifts, other industrial or motor vehicles including such property for which the title thereto is evidenced by a certificate of title issued by the United States or a state that permits or requires a lien thereon to be evidenced upon such title, together with all spare parts related thereto.

“Sale Order” means an Order of the Bankruptcy Court in a form acceptable to Purchaser in its reasonable discretion pursuant to Sections 105, 363 and 365 of the Bankruptcy Code authorizing and approving, among other things, the sale of the Acquired Assets to Purchaser on the terms and conditions set forth herein, free and clear of all Liens (other than Permitted Acquired Asset Liens) pursuant to Section 363(f) of the Bankruptcy Code, the assumption and assignment of the Assumed Executory Contracts to Purchaser, and containing a finding that Purchaser has acted in “good faith” within the meaning of Section 363(m) of the Bankruptcy Code.

“Schedule” means a schedule attached to this Agreement.

“Section” means a Section of this Agreement, unless otherwise provided.

“Sellers” has the meaning set forth in the preamble hereto.

“Sellers Representative” shall be Bradley Walker

“Service Agreement” has the meaning set forth in Section 7.10(a).

“Specified Commercial Claims” means all claims and causes of action, including, without limitation, commercial tort claims (including, without limitation, any and all claims for malpractice, negligence, professional negligence, negligent misrepresentation, fraudulent misrepresentation, breach of fiduciary duty, and/or conspirator or aider and/or abettor liability for any of these or other torts) that Sellers have or may have against any Person, including Barrier Advisors, EKS&H LLLP, Bell Nunnally & Martin, LLP, Bank of the West, and any past or present (a) equity holder, (b) partner, (c) member, (d) manager, (e) director, (f) officer, (g) employee, or (h) agent thereof.

“Statement” has the meaning set forth in Section 3.2(a).

“Straddle Period” has the meaning set forth in Section 7.7(c).

“Subsidiary” means, with respect to any Person, any corporation a majority of the total voting power of shares of stock of which is entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or any partnership, limited liability company, association or other business entity a majority of the partnership or other similar

ownership interest of which is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes of this definition, a Person is deemed to have a majority ownership interest in a partnership, limited liability company, association or other business entity if such Person is allocated a majority of the gains or losses of such partnership, limited liability company, association or other business entity or is or controls the managing director or general partner of such partnership, limited liability company, association or other business entity.

“Successful Bidder” has the meaning set forth in the definition of Bidding Procedures Order.

“Surveys” means a survey for each Acquired Owned Real Property and Assumed Leased Facility, dated no earlier than the date of this Agreement, prepared by a licensed surveyor reasonably satisfactory to Purchaser, and conforming to 2005 ALTA/ACSM Minimum Detail Requirements for Urban Land Title Surveys, including Table A Items Nos. 1, 2, 3, 4, 6, 7(a), 7(b)(1), 7(c), 8, 9, 10, 11(b), 13, 14, 16, 17 and 18, and such other standards as the Title Company and Purchaser require as a condition to the removal of any survey exceptions from the Title Policies, and certified to Purchaser, Purchaser’s lender(s) and the Title Company, in a form reasonably satisfactory to each of such parties. Purchaser shall pay all fees, costs and expenses with respect to the Surveys.

“Tax” and, with correlative meaning “Taxes,” means with respect to any Person (i) all federal, state, local, county, foreign and other taxes, assessments or other government charges, including any income, alternative or add-on minimum tax, estimated gross income, gross receipts, sales, use, *ad valorem*, value added, transfer, capital stock franchise, profits, license, registration, recording, documentary, intangibles, conveyancing, gains, withholding, payroll, employment, social security (or similar), unemployment, disability, excise, severance, stamp, occupation, premium, property (real and personal), environmental or windfall profit tax, custom duty or other tax, governmental fee or other like assessment, charge, or tax of any kind whatsoever, together with any interest, penalty, addition to tax or additional amount imposed by any Governmental Authority responsible for the imposition of any such tax (domestic or foreign) whether such Tax is disputed or not, (ii) Liability for the payment of any amounts of the type described in clause (i) above relating to any other Person as a result of being party to any agreement to indemnify such other Person, being a successor or transferee of such other Person, or being a member of the same affiliated, consolidated, combined, unitary or other group with such other Person, or (iii) Liability for the payment of any amounts of the type described in clause (i) arising as a result of being (or ceasing to be) a member of any Affiliated Group (or being included (or required to be included) in any Tax Return relating thereto).

“Tax Liens” means inchoate Liens for taxes, assessments or governmental charges or levies not yet due and payable or Liens for taxes, assessments or governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves have been established.

“Tax Return” means any report, return, declaration, claim for refund or other information or statement supplied or required to be supplied by any Person relating to Taxes, including any schedules or attachments thereto and any amendments thereof.

“Termination Notice” has the meaning set forth in Section 9.1(b)(ii).

“Third Party” means any Person other than Sellers, Purchaser or any of their respective Affiliates.

“Title Commitments” means a commitment for an ALTA Owner’s Title Insurance Policy 2006 Form (or other form of policy acceptable to Purchaser) for each Acquired Owned Real Property (other than Owned Real Property located outside the United States) and each Assumed Facility Lease (except as set forth on Schedule 2.1(e)), issued by the Title Company, together with a copy of all documents referenced therein.

“Title Company” means a title insurance company reasonably satisfactory to Purchaser.

“Title Policies” means title insurance policies from the Title Company (which may be in the form of a mark-up of a pro forma of the Title Commitments) in accordance with the Title Commitments, insuring Purchaser’s fee simple title to each Acquired Owned Real Property or Purchaser’s legal, valid, binding and enforceable leasehold interest in each Assumed Leased Facility (as the case may be) (except as set forth on Schedule 2.1(e)) as of the Closing Date (including all recorded appurtenant easements insured as separate legal parcels) with gap coverage from the Title Company through the date of recording, subject only to Permitted Acquired Asset Liens, in such amount as Purchaser reasonably determines to be the value of the real property insured thereunder and including an extended coverage endorsement, ALTA Form 31 zoning and such other endorsements reasonably requested by Purchaser in form and substance reasonably acceptable to Purchaser. Purchaser shall pay all fees, costs and expenses with respect to the Title Commitments and Title Policies.

“Transaction Documents” means this Agreement, and all other agreements, instruments, certificates and other documents to be entered into or delivered by any party in connection with the transactions contemplated to be consummated pursuant to this Agreement.

“Transferred Employees” means each employee of Sellers who accepts an offer of employment by Purchaser as described in Section 10.1.

“Transfer Taxes” has the meaning set forth in Section 7.7(b).

“Trustee Fees” means the fees payable by Sellers to the United States Trustee pursuant to 28 U.S.C. § 1930.

“Working Capital” has the meaning given it in Section 3.2(d).

“Vegetable Receivables” means all rights to proceeds or money due from or related to the sale of vegetables.

1.2 Rules of Construction. Unless the context otherwise clearly indicates, in this Agreement:

(a) the singular includes the plural;

- (b) “includes” and “including” are not limiting;
- (c) “may not” is prohibitive and not permissive; and
- (d) “or” is not exclusive.

ARTICLE II
PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

2.1 Purchase and Sale of Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing, Sellers shall sell, contribute, convey, assign, transfer and deliver to Purchaser or its designee, free and clear of all Liens (other than Permitted Acquired Asset Liens) and Claims, whether arising prior to or subsequent to the Petition Date, and Purchaser shall purchase, acquire and take assignment and delivery of, for the consideration specified in Article III, all rights, titles and interests of every kind and nature whatsoever of Sellers (including indirect and other forms of beneficial ownership) in and to all of the properties, assets and rights (contractual or otherwise) of Sellers as of the Closing Date, whether tangible or intangible, real or personal and wherever located and by whomever possessed, including all of the following properties, assets and rights, but excluding the Excluded Assets (collectively, the “Acquired Assets”):

(a) all deposits, advances, prepayments, rights under warranties and guaranties, rights in respect of promotional allowances, vendor rebates and to other refunds, and with respect to customers of Sellers all causes of action against such customers, all rights of recovery relating to such customers, rights of set-off relating to such customers and rights of recoupment against such customers of every kind and nature (whether or not known or unknown or contingent or non-contingent) (provided, however, that Acquired Assets shall not include, and Sellers shall retain, all claims and causes of action of Sellers against customers of the Business to the extent necessary to establish any defense to third-party claims relating to the Acquired Assets or the operation of the Business arising out of transactions occurring prior to the Closing Date) and the right to receive and retain mail, Receivable payments and other communications of Sellers and the right to bill and receive payment for products shipped or delivered and services performed but unbilled or unpaid as of the Closing;

(b) all Inventory, including without limitation all Consigned Inventory;

(c) the Owned Real Property of each Seller, and any part or parcel thereof (the “Acquired Owned Real Property”), set forth on Schedule 2.1(c), other than Excluded Owned Real Property, if any, together with all improvements thereon, including without limitation any and all greenhouses, shade houses and other improvements related to the Business whether or not affixed thereto and all water or riparian rights related thereto;

(d) all Facility Leases of each Seller (the “Assumed Facility Leases”), including the Facility Leases set forth on Schedule 2.1(e), other than the Excluded Facility Leases, if any;

(e) all tangible personal property, including all machinery, equipment (including all transportation and office equipment), Rolling Stock (including all certificates of

title and other documentation related thereto), computers, mobile phones, personal digital assistants, fixtures, trade fixtures, computer equipment, hardware, peripherals, information technology infrastructure, telephone systems, furniture, office supplies, production supplies, other miscellaneous supplies, and other tangible personal property of any kind owned by Sellers, wherever located, including all such items which are located in any building, warehouse, office or other space leased, owned or occupied by Sellers or any other space where any of Sellers' properties and or any other assets may be situated, and including all of Sellers' non-attached plant and equipment located on any of the Facilities;

(f) all equipment leases of each Seller (the "Assumed Equipment Leases"), including the equipment leases set forth on Schedule 2.1(g), other than the Excluded Equipment Leases, if any;

(g) all Intellectual Property owned by Sellers (including all of the Intellectual Property set forth on Schedule 5.8(a)), along with all income, royalties, damages and payments arising out of or relating to enforcement, licensing, transfer or sale of such Intellectual Property and due or payable to Sellers as of the Closing or thereafter, including damages and payments for past, present or future infringements or misappropriations thereof, or other conflicts therewith, the right to sue and recover for past, present or future infringements or misappropriations thereof, or other conflicts therewith, and any and all corresponding rights that, now or hereafter, may be secured throughout the world, including all copies and tangible embodiments of any such Intellectual Property in Sellers' possession or control and all licenses of Intellectual Property to the extent they are assignable under applicable law;

(h) all rights of Sellers under all Contracts of each Seller set forth on Schedule 2.1(h), including all security deposits thereunder, all contractual rights of Sellers to indemnification, exculpation, advancement or reimbursement of expenses, and, subject to Section 2.1(o) and Section 2.2(j), all rights to all insurance policies of Sellers and to proceeds and credits under such insurance policies, in each case to the extent transferable and to the extent solely related to the Acquired Assets (excluding, for avoidance of doubt, any director and officer insurance maintained by Sellers), all confidentiality agreements of Sellers and all rights of access to and use of safety deposit boxes (collectively, the "Assumed Contracts");

(i) all rights of Sellers under all of the Employee Benefit Plans set forth on Schedule 2.1(i) (the "Assumed Employee Benefit Plans"), including all pre-payments, deposits and refunds thereunder and any assets maintained pursuant thereto or in connection therewith;

(j) subject to Article XI, all Books and Records and all advertising, marketing and promotional materials and all other printed or written materials except those by which they are required by law to retain or any which are Excluded Assets;

(k) all Permits from all permitting, licensing, accrediting and certifying agencies, and the rights to all data and records held by such permitting, licensing and certifying agencies, in each case, of Sellers and to the extent assignable;

(l) all goodwill as a going concern and all other intangible property of Sellers including without limitation all of Sellers' right, title and interest in and to Sellers' retail and wholesale customers;

(m) all of the Leasehold Improvements of each Seller, and any part or parcel thereof, other than the Leasehold Improvements located on Leased Facilities subject to Excluded Facility Leases, if any;

(n) all Receivables other than Vegetable Receivables;

(o) all unpaid insurance proceeds in excess of the Acquired Flood Insurance Proceeds, payable under Sellers' insurance policies in connection with Sellers' claim for coverage of the Colorado Facility, arising out of the flood event that occurred in September 2013 (the "Flood Event"); and

(p) all such other properties, assets and rights (contractual or otherwise) of Sellers as of the Closing Date, whether tangible or intangible, real or personal and wherever located and by whomever possessed which are not otherwise expressly set forth above as Acquired Assets and are not Excluded Assets.

2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the following assets of Sellers shall be retained by Sellers and are not being sold or assigned to any Purchaser hereunder (collectively, the "Excluded Assets"):

(a) all cash, cash equivalents, financial contracts, investment securities and other financial assets;

(b) the Owned Real Property of each Seller (the "Excluded Owned Real Property"), set forth on Schedule 2.2(b), together with all improvements thereon, including without limitation any and all greenhouses, shade houses and other improvements related to the Business whether or not affixed thereto and all water or riparian rights related thereto;

(c) the real property leases of each Seller set forth on Schedule 2.2(c) (the "Excluded Facility Leases")

(d) the equipment leases of each Seller set forth on Schedule 2.2(d) (the "Excluded Equipment Leases");

(e) all Contracts of each Seller set forth on Schedule 2.2(e) (the "Excluded Contracts"), including all Collective Bargaining Agreements unless specifically listed as an Assumed Contract;

(f) other than the Assumed Employee Benefit Plans, if any, all Employee Benefit Plans of each Seller, including the Employee Benefit Plans set forth on Schedule 2.2(f) and, for avoidance of doubt, including the Pension Plans (the "Excluded Employee Benefit Plans");

(g) originals of any Seller's minute books and stock books;

(h) the Equity Securities or other ownership interest of Sellers or any Subsidiary;

(i) all assets, rights, pre-payments, deposits and refunds under any Excluded Employee Benefit Plan;

(j) to the extent only related to the Excluded Assets, all insurance policies of Sellers and all credits, refunds and proceeds thereunder;

(k) all Acquired Flood Insurance Proceeds Amount payable under Sellers' insurance policies (and Sellers' rights and causes of action against such insurer) in connection with Sellers' claim for coverage of the Colorado Facility, arising out of the Flood Event; provided, however, that "Excluded Assets" shall not include any right, title or interest in any loans, grants, or any similar assistance provided by any federal, state, local or municipal governmental agency or charitable organization related to such flood event or otherwise);

(l) any and all rights of Sellers under this Agreement;

(m) any litigation claims or causes of action held by any Seller against any other Seller, any past or current shareholder of a Seller, any past or current member of management of a Seller;

(n) except as provided in Section 2.1(a) or 2.1(g), all rights, claims, and causes of action of any Seller of any kind, including such rights, claims, and causes of action against third parties (other than customers of the Business relating to the Acquired Assets or the operation of the Business arising out of transactions occurring prior to the Closing Date), including all Specified Commercial Claims, and against federal, state, and local taxing authorities for all Tax refunds and all Tax-loss carryforward benefits and other benefits, rights, and claims of Seller arising in connection with or otherwise relating to Taxes relating to the Business for any period or partial period prior to the Closing;

(o) all Avoidance Actions of Sellers (other than those against the customers listed on Schedule 2.2(o));

(p) all Vegetable Receivables; and

(q) all other assets listed on Schedule 2.2(p).

2.3 Assignment and Assumption of Liabilities. Subject to the terms and conditions set forth in this Agreement, Purchaser or its designee shall assume from Sellers and thereafter be responsible for the payment, performance or discharge of only the following liabilities and obligations of Sellers or any of their respective predecessors in interest (collectively, the "Assumed Obligations"):

(a) all obligations under the Assumed Executory Contracts arising after the Closing Date;

(b) all secured obligations for purchase money Indebtedness (including capitalized leases) on Acquired Assets; and

(c) all Cure Amounts.

This Section 2.3 shall not limit any Claims or defenses Purchaser may have against any Person other than Sellers. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any Third Party against Purchaser or Sellers as compared to the rights and remedies that such Third Party would have had against Sellers absent the Chapter 11 Cases had Purchaser not assumed the Assumed Obligations.

2.4 No Other Liabilities Assumed.

(a) Except for to the Assumed Obligations, each Seller acknowledges and agrees that pursuant to the terms and provisions of this Agreement, Purchaser will not assume, nor in any way be liable or responsible for, any Liability, successor Liability, or obligation of any Seller (including Liabilities relating to the pre-petition or post-petition operation of the Business, the Excluded Assets or to the Acquired Assets (and the use thereof)), whether relating to or arising out of the Business, the Excluded Assets or the Acquired Assets or otherwise, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any Indebtedness, Employee Benefit Plan, Collective Bargaining Agreement or other obligation of any Seller or any predecessor or Affiliate of any Seller whatsoever or any ERISA Affiliate (collectively, the “Excluded Liabilities”); provided, however, that, in furtherance and not in limitation of the foregoing, Purchaser is expressly not assuming any of the following Liabilities, whether accrued or fixed, absolute or contingent, known or unknown, determined or determinable, and whenever or wherever arising:

(i) all Liabilities of any Seller that relate to any of the Excluded Assets;

(ii) all Liabilities of any Seller relating to Taxes (including with respect to the Acquired Assets or otherwise), including Taxes that may arise as a result of (i) any claim, audit, investigation, assessment, adjustment for any amount of Tax proposed, asserted, or assessed by any taxing authority, court, or other Governmental Authority against any Seller or (ii) other than applicable Transfer Taxes, the sale of the Acquired Assets or the assumption of the Assumed Obligations pursuant to this Agreement and any deferred Taxes of any nature;

(iii) all Liabilities in respect of Indebtedness of Sellers;

(iv) all Excluded Environmental Liabilities;

(v) [reserved];

(vi) all Liabilities of Sellers resulting from, caused by or arising out of, or which relate to, directly or indirectly, the conduct of Sellers (or any of their current or former officers, directors, employees or agents) anywhere or ownership or lease of any properties or assets or any properties or assets previously used by Sellers at any time, or other actions,

omissions or events occurring prior to the Closing and which (i) constitute, may constitute or are alleged to constitute a tort, breach of contract or violation of any Law or (ii) relate to any and all Proceedings against Sellers whether past, present, future, known or unknown, liquidated or unliquidated, accrued or unaccrued, pending or threatened;

(vii) all Liabilities arising out of or relating to any infringement or misappropriation of, or other conflict with, the Intellectual Property of any Third Party arising out of or related to the conduct of the Business or any act or omission of Seller or any predecessor or Affiliate of any Seller prior to the Closing;

(viii) except as set forth in Section 2.4(a)(xiii), all Liabilities arising out of, or relating to, any indemnification obligations of any Seller, including indemnification obligations pursuant to supply agreements, service agreements, purchase agreements, leases and any other type of Contract, and Liabilities to indemnify or advance amounts to any officer, director, employee or agent of Sellers;

(ix) all Liabilities (whether known or unknown) with respect to the employees or former employees, or both (or their representatives) of any Seller arising prior to the Closing Date, including payroll, wages, salaries, bonuses, commissions, benefits, retention or stay bonus arrangements, other compensation, sick leave, worker's compensation, unemployment benefits, pension benefits, employee stock option or profit sharing plans, health care plans or benefits, or any other employee plans or benefits or other compensation of any kind to any employee, and obligations of any kind, including Liabilities arising under any Collective Bargaining Agreement, or employment, severance, retention or termination agreement with any employee, consultant or contractor (or their representatives) of any Seller;

(x) all Liabilities relating to or arising under or in connection with any Employee Benefit Plan not assumed by Purchaser;

(xi) all Liabilities arising out of or relating to the Pension Plans or any post-retirement benefits;

(xii) all Liabilities arising out of or relating to services, products, product or service warranties of Sellers or any predecessor or Affiliate of any Seller to the extent provided, developed, designed, manufactured, marketed, sold or distributed prior to the Closing;

(xiii) except for indemnification agreements that are assumed as part of the Assumed Contracts, all Liabilities of any Seller to any current, former or prospective shareholder or other Equity Security holder of any Seller, including all Liabilities of Sellers related to the right to or issuance of any capital stock or other Equity Securities;

(xiv) all Liabilities for any legal, accounting, investment banking, reorganization, restructuring (including bankruptcy administrative expenses), brokerage or similar fees or expenses incurred by any Seller in connection with, resulting from or attributable to the transactions contemplated by this Agreement, the Chapter 11 Cases or otherwise;

(xv) all Liabilities of Sellers to Purchaser, Purchaser's Affiliates, and Purchaser and Purchaser's Affiliates' agents, advisors and representatives, whether under the Transaction Agreements or otherwise; and

(xvi) all Liabilities of Sellers to any professionals.

(b) The Parties acknowledge and agree that disclosure of any Liability on any Schedule to this Agreement or otherwise shall not create an Assumed Obligation or other Liability of Purchaser, except where such disclosed obligation has been expressly assumed by Purchaser as an Assumed Obligation.

2.5 Revisions to Schedules. Notwithstanding anything in this Agreement to the contrary, Purchaser may revise the Schedules hereto at any time by giving written notice to Sellers on or before the Closing Date in order to (a) exclude from the definition of Acquired Assets and Assumed Obligations, and include in the definition of Excluded Assets and Excluded Liabilities, as applicable, any Contract, equipment lease, Employee Benefit Plan, Owned Real Property or Facility Lease not otherwise excluded therefrom, (b) include in the definition of Acquired Assets and Assumed Obligations, and exclude from the definition of Excluded Assets or Excluded Liabilities, as applicable, any Contract, equipment lease, Employee Benefit Plan, or Facility Lease not otherwise included therein, or (c) add a Facility Lease, Employee Benefit Plan, equipment lease or Contract; provided, however, that (i) any modification to the definitions of Acquired Assets, Assumed Obligations, Excluded Assets, or Excluded Obligations effected by Purchaser pursuant to this Section 2.5 shall not serve to reduce or otherwise affect the amount of the Purchase Price, (ii) except as expressly set forth in this Section 2.5 and Section 2.7, Purchaser has no right to revise any Schedule or otherwise modify the definitions of Acquired Assets, Assumed Obligations, Excluded Assets, or Excluded Obligations, and (iii) notwithstanding anything to the contrary in this Section 2.5, no revisions may be made to Schedule 2.1(d), Schedule 2.1(f), Schedule 2.1(h), or Schedule 2.1(i) after the date that is two days prior to the Sale Hearing. If Purchaser causes a Contract, executory contract, or unexpired lease to be added or removed from a Schedule pursuant to this Section 2.5, Sellers agree to give required notice to each Person that is a party to such Contract, executory contract, or unexpired lease or as otherwise reasonably requested by Purchaser. Notwithstanding anything herein to the contrary, in no event shall the Specified Commercial Claims identified in Section 2.2(m), the litigation claims or causes of action held by any Seller against any Person, including claims or causes against any other Seller, any past or current shareholder of a Seller, any past or current member of management of a Seller, or the Avoidance Actions become Acquired Assets under this Agreement.

2.6 Deemed Consents and Cures. For all purposes of this Agreement (including all representations and warranties of Sellers contained herein), Purchaser agrees that Sellers shall be deemed to have obtained all required consents, including all required consents of lenders and other parties under reciprocal easement agreements, in respect of the assignment of any Assumed Executory Contracts, Contracts deemed to be Assumed Executory Contracts pursuant to Section 2.7 and Contracts assumed by Purchaser under Section 2.1(h) (if any), if, and to the extent that, pursuant to the Sale Order or other Bankruptcy Court Order, Sellers are authorized to assume and assign to Purchaser and Purchaser is authorized to accept such Contracts pursuant to Section 365 of the Bankruptcy Code, and any applicable Cure Amount has been satisfied by Purchaser. If the

consent required to effectuate the assignment of any Assumed Executory Contracts, Contracts deemed to be Assumed Executory Contracts pursuant to Section 2.7 or Contracts assumed by Purchaser under Section 2.1(h) (if any) to Purchaser cannot be obtained pursuant to the Sale Order or other Bankruptcy Court Order, then the Parties shall reasonably endeavor to obtain such consent pursuant to Section 7.1; provided, however, to avoid doubt, failure of the Parties to obtain such consent shall neither (a) give rise to any right of Purchaser to terminate this Agreement nor (b) excuse Purchaser's performance of any of its obligations under this Agreement.

2.7 Procedures Regarding Assumed Executory Contracts. Not later than two days prior to the Auction, Purchaser shall provide the list (the "Designated Contracts List") of executory contracts and unexpired leases (collectively, the "Designated Contracts") that it wishes Seller to assume and assign to Purchaser. The Designated Contracts List shall include all Assumed Executory Contracts (as such terms may be modified by Purchaser pursuant to Section 2.5). To the extent that, after delivery of the Designated Contracts List, Purchaser revises Schedule 2.1(d), Schedule 2.1(f), Schedule 2.1(h), or Schedule 2.1(i) pursuant to Section 2.5, Purchaser shall give written notice of such change to each counterparty to any Designated Contract added or removed as a result of such revision. On the Closing Date, Seller shall assume and assign to Purchaser all Designated Contracts, to the extent assignable pursuant to this Agreement and the Sale Order.

ARTICLE III PURCHASE PRICE

3.1 Purchase Price. The aggregate purchase price (the "Purchase Price") for the purchase, sale, contribution, conveyance, assignment, transfer and delivery of Sellers' right, title and interest in, to and under the Acquired Assets to Purchaser shall consist of:

- (a) the Cash Consideration; plus
- (b) Purchaser's assumption of the Assumed Obligations; and
- (c) Purchaser's payment of all Cure Amounts, if any.

3.2 Purchase-Price Adjustment.

(a) If the Sellers prior to Closing receive any amounts under Sellers' insurance policies in connection with the Sellers' claim for coverage for the Flood Event (the "Collected Insurance Proceeds") in excess of \$2,500,000.00, the Cash Consideration will be reduced at Closing by the amount that the Collected Insurance Proceeds exceed the Acquired Flood Insurance Proceeds Amount.

(b) If prior to Closing, a Seller leases, assigns, conveys, transfers, or otherwise makes a disposition (a "Disposition") of any assets or properties of any kind outside the Ordinary Course of Business that would otherwise have been an Acquired Asset but for such Disposition, then the Cash Consideration shall be reduced by the amount the Sellers received for such asset or property.

(c) In the event that: (i) all the conditions precedent in Section 8.1 and Section 8.2 are satisfied other than the requirement in Section 8.1(c) that the Sale Order be a Final Order; (ii) the Sale Order has been entered and no request for stay of Sale Order is pending, no such stay is in effect, no petition for rehearing or reconsideration of the Sale Order or protest of any kind is pending, there is no notice of appeal or other application for judicial review of the Sale order pending, and the Sale Order is not under reconsideration or review on the Bankruptcy Court's own motion; and (iii) Sellers are prepared to close the transaction, then if the Closing shall not occur on or prior to five days after entry of the Sale Order solely on account of Purchaser's failure to consummate the closing, then the Purchase Price shall be increased by one million Dollars (\$1,000,000).

ARTICLE IV CLOSING

4.1 Closing. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the closing of the transaction contemplated by this Agreement (the "Closing") will take place at the offices of Gardere Wynne Sewell LLP, 1601 Elm Street, Suite 3000, Dallas, Texas 75201-4757, at 10:00 a.m., Central Time, as soon as practicable after the date on which the conditions set forth in Article VIII have been satisfied or waived but no later than January 10, 2014; or on such other date or place as the Parties may mutually agree (the "Closing Date"). The transactions contemplated by this Agreement shall be considered closed, and possession of the Acquired Assets and the risk of their loss shall be deemed to have been passed to Purchaser, at 12:01 a.m., Central Time, on the Closing Date.

4.2 Closing Payments. On the Closing Date:

(a) Purchaser shall pay the Cash Consideration (other than the portion constituting the Deposit, which shall be delivered by the escrow agent by wire transfer of immediately available funds) to Lenders or Lenders' Agent by wire transfer of immediately available funds to the account(s) designated by Lenders' Agent (which account shall be designated by Lenders' Agent and confirmed by Sellers to Purchaser in writing at least two (2) Business Days before the Closing Date); and

(b) Purchaser shall pay the Cure Amounts, if any.

4.3 Deliveries by Sellers. At the Closing, Sellers shall deliver or procure delivery to Purchaser of:

(a) a certificate signed by each Seller, dated as of the Closing Date (in form and substance reasonably satisfactory to Purchaser) certifying that the conditions specified in Section 8.1 and Section 8.2 have been satisfied as of the Closing;

(b) copies of the resolutions of the board of directors or board of managers (as applicable) of each Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby;

(c) originals (or, to the extent originals are not available, copies) of all Assumed Executory Contracts (together with all amendments, supplements or modifications thereto) to the extent not already located at the Acquired Owned Real Property or an Assumed Leased Facility;

(d) physical possession of all of the Acquired Assets capable of passing by delivery with the intent that title in such Acquired Assets shall pass by and upon delivery;

(e) a bill of sale, substantially in the form attached hereto as Exhibit A, conveying in the aggregate all of the owned personal property of Sellers included in the Acquired Assets, duly executed by Sellers;

(f) an assignment and assumption of the Assumed Obligations, substantially in the form attached hereto as Exhibit B (collectively, the “Assumption Agreement”), duly executed by the relevant Seller or Sellers;

(g) duly executed Intellectual Property assignments in the forms attached hereto as Exhibit C each in recordable form to the extent necessary to assign such rights;

(h) reserved;

(i) an affidavit from each Seller, sworn under penalty of perjury and dated as of the Closing Date, in form and substance required under the Treasury Laws issued pursuant to Section 1445 of the Code stating that such Seller is not a foreign person as defined in Section 1445 of the Code;

(j) special warranty or limited warranty deeds (as customary in the applicable jurisdiction) with respect to each Acquired Owned Real Property in form and substance reasonably satisfactory to Purchaser and Sellers, together with executed and (if applicable) notarized transfer Tax Returns and other documentation as may be required to effectuate the recordation of said deeds in the applicable real property records with respect to all Acquired Owned Real Property;

(k) an assignment and assumption of lease with respect to each of the Assumed Facility Leases in form and substance reasonably satisfactory to Purchaser and Sellers (the “Facility Lease Assignments”);

(l) originals (or, to the extent originals are not available, copies) of all certificates of title, registrations and title transfer documents to all titled Rolling Stock;

(m) an assignment and assumption agreement with respect to Sellers’ Permits and warranties in form and substance reasonably acceptable to the Parties, whereby Sellers shall assign to Purchaser all of their respective rights in and to any Permits and warranties (to the extent such Permits and warranties are assignable) relating (directly or indirectly) to the Acquired Assets or the Business;

(n) all the Books and Records;

(o) such other instruments, in form and substance, reasonably satisfactory to the applicable Purchaser, as are necessary to vest in the applicable Purchaser good and marketable title in and to the Acquired Assets in accordance with the provisions hereof;

(p) such documentation as may be necessary to change the authorized signatories on any bank accounts or powers of attorney relating (directly or indirectly) to the Acquired Assets;

(q) evidence of the required name changes of Sellers and their Affiliates as more fully set forth in Section 10.5;

(r) a copy of the Sale Order for each Acquired Owned Real Property and each Assumed Leased Facility; and

(s) such other documents or instruments as are reasonably required to be delivered by any Seller at the Closing pursuant to the terms hereof or that any Purchaser reasonably requests prior to the Closing Date to effect the transactions contemplated hereby.

4.4 Deliveries of Purchaser. At the Closing, Purchaser will deliver to Sellers:

(a) the Assumption Agreement duly executed by Purchaser;

(b) a certificate signed by Purchaser, dated as of the Closing Date (in form and substance reasonably satisfactory to Sellers) certifying that the conditions specified in Section 8.1 and Section 8.3 have been satisfied as of the Closing;

(c) certified copies of the resolutions of the Purchaser's board of directors authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby;

(d) the Facility Lease Assignments, duly executed by Purchaser; and

(e) such other documents or instruments as are required to be delivered by any Purchaser at the Closing pursuant to the terms hereof or that Sellers reasonably request prior to the Closing Date to effect the transactions contemplated hereby.

4.5 Form of Instruments. To the extent that a form of any document to be delivered pursuant to this Agreement is not attached as an Exhibit hereto, such documents shall be in form and substance, and shall be executed and delivered in a manner, reasonably satisfactory to the Parties.

4.6 Further Assurances. From time to time after the Closing and without further consideration, (a) upon the reasonable request of Purchaser, Sellers shall execute and deliver such documents and instruments of conveyance and transfer as Purchaser may request in order to (i) consummate more effectively the purchase and sale of the Acquired Assets as contemplated by this Agreement, (ii) vest in Purchaser title to the Acquired Assets and permit Purchaser to perfect, record or protect its interests in the Acquired Assets, or (iii) otherwise more fully consummate the transactions contemplated by this Agreement, and (b) upon the reasonable

request of Sellers, Purchaser shall execute and deliver such documents and instruments of contract or lease assumption as Sellers may request in order to confirm Purchaser's Liability for the Assumed Obligations or otherwise to more fully consummate the transactions contemplated by this Agreement. Sellers shall provide notice of the transactions contemplated by this Agreement to all Persons entitled to notice, including all environmental authorities in jurisdictions applicable to Sellers and all other Persons with current Claims with respect to any Excluded Environmental Liabilities or other Liabilities or obligations arising under Environmental Laws. Prior to the Closing, Purchaser and Sellers shall each execute such documents and use their reasonable efforts to take or cause to be taken all action and do or cause to be done all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLERS

As an inducement to Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, each Seller jointly and severally represents and warrants to Purchaser that the statements contained in this Article V are correct and complete as of Effective Date and as of the Closing Date.

5.1 Organization, Standing. Each Seller is a legal entity duly organized and validly existing under the Laws of the state or country of its organization, is qualified to do business in every jurisdiction in which it is required to be qualified and has all requisite corporate or similar power and authority to own, lease and operate its respective properties and assets and to carry on its business as presently conducted and is qualified to do business and in good standing or with active status as a foreign corporation in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified, in good standing or to have such power or authority, has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.2 [reserved]

5.3 Validity of Agreement; Power. Subject to any necessary authorization from the Bankruptcy Court, each Seller has full power and authority to execute and deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. All Transaction Documents to which any Seller is a party have been duly executed and delivered by such Seller, except such Transaction Documents that are required by the terms hereof to be executed and delivered by such Seller after the Effective Date, in which case such Transaction Documents will be duly executed and delivered by such Seller at or prior to the Closing, and, subject to any necessary authorization from the Bankruptcy Court, all Transaction Documents constitute, or will constitute, as the case may be, the valid and binding agreements of Sellers enforceable against Sellers in accordance with their terms. No other corporate or organizational proceedings on the part of any Seller are necessary to approve and authorize the execution and delivery of the Transaction Documents to which such Seller is a party and the consummation of the transactions contemplated thereby.

5.4 No Conflicts or Violations. Subject to entry of the Sale Order, and except (a) as set forth on Schedule 5.4, (b) for breaches or defaults that will be cured in connection with the Closing and (c) any of the following that will not be enforceable due to operation of the Sale Order, the execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated thereby by Sellers does not and shall not conflict with, result in any breach, default or violation of, give rise to a right of modification, termination, acceleration or loss of a material benefit under, result in the creation of any Lien (other than any Permitted Released Lien) or Liability under, require any authorization, consent, approval, exemption or other action by or notice or declaration to, or filing with, any Governmental Authority, under (i) any provision of the articles of incorporation or bylaws or other equivalent organizational document of any Seller, (ii) any Material Contract to which any Seller is a party to or by which it is bound, (iii) any determination or Order of any Governmental Authority or Law applicable to any Seller or its property or assets, or (iv) any material Permit applicable to any of the Acquired Assets or the Business.

5.5 Financial Statements and Related Matters.

(a) Each Seller has included in Schedule 5.5(a) the Financial Statements.

(b) Sellers have included in Schedule 5.5(b) the unaudited consolidated balance sheet of Sellers as of [September 30, 2013] and the related unaudited consolidated income statements, retained earnings (deficit), and cash flows of Sellers for the nine-month period ended September 30, 2013 (the "Latest Balance Sheet").

5.6 Title to Assets. To the Knowledge of the Sellers, Sellers have good and marketable title to, or a valid leasehold interest in or all rights to use, all Acquired Assets. Except for Permitted Acquired Asset Liens, Tax Liens and Real Estate Liens, there are no leasehold interests, licenses or other rights, in favor of a Third Party, to use or acquire, lease or otherwise encumber any material portion of the Acquired Assets. Other than the Consigned Inventory, no Inventory is subject to a consignment agreement or arrangement.

5.7 Real Property.

(a) Schedule 5.7(a) sets forth (i) the address and description of the Acquired Owned Real Property and (ii) a description of all water rights, fixtures, buildings and improvements thereon or associated therewith. To the extent available, true and complete copies of the most recent certificate of occupancy for each plant or building included on each Acquired Owned Real Property has been delivered or made available to Purchaser. Except as set forth on Schedule 5.7(a), there are no easements, rights of way or licenses necessary for the possession, use or occupancy of the Acquired Owned Real Property other than those shown on surveys and title insurance policies delivered to Purchaser on or prior to the date that is thirty (30) days prior to Closing. The Acquired Owned Real Property is not subject to any lease, license, sublease or sublicense except as disclosed on Schedule 5.7(a). To the extent available, true, correct and complete copies of all title insurance policies, together with all applicable exception documents, abstracts of title and other evidence of title with respect to the Acquired Owned Real Property and surveys of each parcel of land included in the Real Property, have been delivered or made available to Purchaser. Except as set forth on Schedule 5.7(a), with respect to each Acquired

Owned Real Property: (i) there are no leases, subleases, licenses, or other agreements, written or oral, granting to any Person the right of use or occupancy of any portion of such Owned Real Property; and (ii) there are no outstanding purchase options, rights of first offer, or rights of first refusal or other rights to purchase such Owned Real Property (other than the rights of Purchaser pursuant to this Agreement), or any portion thereof or interest therein.

(b) Schedule 5.7(b) sets forth the title and parties to, and date of, each of the Facility Leases, and the address of each Leased Facility and a true and complete list of all Facility Leases (including all amendments, modifications, extensions, renewals, guaranties, and other agreements with respect thereto). In addition, except for the Facility Leases identified on Schedule 5.7(b), (i) Sellers have heretofore delivered or made available to Purchaser true and complete copies of each of the Facility Leases (or in the case of an oral lease, a written summary of the material terms of such lease) and none of such leases has been amended, modified or terminated except as disclosed to Purchaser; (ii) the Facility Leases are in full force and effect; (iii) except as set forth on Schedule 5.7(b), to the Knowledge of Sellers, there is no option to purchase, right of first offer, right of first refusal or other provision granting any Seller or any other Person any right to acquire the Leased Facilities; (iv) subject to entry of the Sale Order, the assignment of the Facility Leases to Purchaser pursuant to this Agreement does not require the consent of any other Persons that is party to such Facility Leases, will not result in a breach of or default under such Facility Leases, or otherwise cause such Facility Leases to cease to be legal, valid, binding, enforceable and in full force and effect following the Closing; (v) to the Knowledge of Sellers, neither Sellers nor any other party to the Facility Leases is in material breach or default under such Facility Leases (other than breaches and defaults that will be cured in connection with the assumption and assignment of the Facility Leases), and no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a material breach or default thereunder; and (vi) Sellers have not subleased, licensed or otherwise granted any Person the right to use or occupy such Facility Leases or any portion thereof.

5.8 Intellectual Property.

(a) Schedule 5.8(a) sets forth a complete and correct list of all patents and patent applications, trademark registrations and applications, copyright registrations and applications, internet domain name registrations, and other applications for registrations of Intellectual Property that are owned by any Seller. Except as set forth on Schedule 5.8(a), no Seller licenses any of the Intellectual Property set forth on Schedule 5.8(a) to a Third Party.

5.9 Contracts.

(a) Except as set forth on Schedule 5.9(a)(i), no Seller is a party to or bound by, whether written or oral, any:

(i) Collective Bargaining Agreement;

(ii) management agreement or Contract for the employment of any officer, individual employee or other Person on a full-time, part-time, consulting or other basis (A) providing annual cash or other compensation in excess of \$100,000, (B) providing for the

payment of any cash or other compensation or benefits as a result of the execution of this Agreement or the consummation of the transactions contemplated hereby or (C) otherwise restricting its ability to terminate the employment of any employee at any time for any lawful reason or for no reason without Liability other than notice or payment required by Law;

(iii) Contract with any Governmental Authority;

(iv) Contract under which any Seller is a (A) lessee of or holds or operates any personal property owned by any other Person, except for any lease of personal property under which the aggregate annual rental payments do not exceed \$100,000 in any twelve-month period or (B) lessor of or permits any Person to hold, operate or occupy any property, real or personal, owned or controlled by any Seller;

(v) license, royalty or other Contracts with respect to any Intellectual Property, including any such Contracts under which any Seller is a licensor or licensee but excluding licenses for commercially available off-the-shelf software with a replacement cost and/or annual license or subscription fee of less than a total cost of \$25,000 in the aggregate;

(vi) agent, sales representative, sales or distribution Contracts (other than purchase and sale orders entered into in the Ordinary Course of Business);

(vii) Contract relating to the marketing or advertising of any Seller's products or services;

(viii) Contract prohibiting it, now or in the future, from freely engaging in any business or competing anywhere in the world or restricting its use, registration or disposition of any Intellectual Property owned by any Seller, including any non-competition, settlement, coexistence or standstill agreements;

(ix) Contract (i) providing for any Seller to be the exclusive provider of any product or service to any Person or the exclusive recipient of any product or service of any Person or that otherwise involves the granting by any Person to any Seller of exclusive rights of any kind, (ii) providing for any Person to be the exclusive provider of any product or service to any Seller or (iii) granting to any Person a right of first refusal or right of first offer on the sale of any part of the business of any Seller; and

(x) any other individual Contract that is otherwise material to the assets, operations or financial condition of the Company Group, taken as a whole.

(b) All of the Contracts set forth or required to be set forth on Schedule 5.9(a)(i) are referred to as the "Material Contracts". Except as disclosed on Schedule 5.9(b) attached hereto, (i) to the Knowledge of Sellers, no Material Contract has been breached or canceled by the other party, (ii) except for defaults that will be cured in connection with the Closing or arising solely as a consequence of the commencement of the Chapter 11 Cases, neither any Seller nor any other party thereto is in default or breach in any material respect under the terms of any Material Contract and, to the Knowledge of Sellers, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute a default or breach thereunder, (iii) no Seller has assigned, delegated or otherwise transferred to any Person any of

its rights, title or interest under any Material Contract, and (iv) to the Knowledge of Sellers, each Material Contract is legal, valid, binding, enforceable and in full force and effect and, subject to the terms of this Agreement, will continue as such following the consummation of the transactions contemplated hereby.

(c) No Seller has received written notice, nor does any Seller otherwise have knowledge, that any party to any Assumed Contract or Post-Petition Contract intends to cancel, terminate or refuse to renew such Assumed Contract or Post-Petition Contract or to exercise or decline to exercise any option or right thereunder and each such Assumed Contract or Post-Petition Contract is valid and binding upon such parties in accordance with its terms, except to the extent excused by or unenforceable as a result of the commencement or pendency of the Chapter 11 Cases or the application of any provision of the Bankruptcy Code.

5.10 Insurance. Schedule 5.10 sets forth, as of the date hereof, all property and casualty insurance policies and programs currently in effect with respect to the Acquired Assets.

5.11 Taxes.

(a) There are no material liens for Taxes upon the Acquired Assets which are not provided for in the Financial Statements or the Latest Balance Sheet, except liens for Taxes not yet due and payable and liens for Taxes that are being contested in good faith.

(b) Each of Sellers has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other Third Party, and all Forms W-2 and 1099 (or any other applicable form) required with respect thereto have been properly completed and timely filed.

5.12 Employment Matters. Schedule 5.12 sets forth a list as of the date hereof of each material Employee Benefit Plan, including Pension Plans.

5.13 Labor and Employment Matters. Except as set forth on Schedule 5.13(a), as of the date hereof (i) there is no labor strike, dispute, slowdown, stoppage or lockout pending, or to the Knowledge of Sellers, threatened against any Seller; (ii) no Seller is a party to, or bound by, any Collective Bargaining Agreement, Multiemployer Plan, or written shop agreement; (iii) no labor union, labor organization, works council, or group of employees of any Seller has made a pending demand for recognition or certification, and to the Knowledge of Sellers there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority; and (iv) there is no unfair labor practice Proceeding pending or, to the Knowledge of Sellers, threatened against any Seller.

5.14 Compliance with Law. To the Knowledge of Sellers, no written notices have been received by Sellers, and no claims filed against Sellers, alleging a violation of any applicable Laws and Orders of any Governmental Authority relating to the operation of the Business. To the Knowledge of Sellers, the Owned Real Property and Leased Facilities are in material compliance with all applicable building, zoning, subdivision, health and safety and other land use Laws, including The Americans with Disabilities Act of 1990, as amended, and all insurance requirements affecting the real property (collectively, the "Real Property Laws"), and

the current use or occupancy of the real property or operation of the Business thereon does not violate any Real Property Laws. No Seller has received any written notice of violation of any Real Property Law.

5.15 Environmental Matters.

(a) To the Knowledge of Sellers, (i) Sellers have all Environmental Permits required by or under all Environmental Laws and is, and for each Seller's existence, each Seller has been in compliance in all material respects with such permits and is otherwise in compliance with all applicable Environmental Laws, (ii) except those not in violation of Environmental Laws, there has been no Release, disposal, event, condition, circumstance, activity, practice or incident concerning any land, facility, asset or property that constitutes a past or continuing violation by a Seller of, or otherwise interferes, or prevents compliance or continued compliance by any Seller with, any Environmental Law, and (iii) there is no obligation under Environmental Laws to perform remedial action relating to any Release of a hazardous substance, waste, pollutant or contamination.

(b) Except as set forth on Schedule 5.17(b), to the Knowledge of Sellers neither any Seller nor any predecessor or Affiliate of any Seller have received written or oral Notice, report or other information regarding any actual or alleged material violation of Environmental Laws, or any material Liabilities or potential material Liabilities, including any material investigatory, remedial or corrective obligations arising under Environmental Laws, relating to any of them, or any of their current or former Facilities, properties, products or assets.

(c) As of the Closing Date, Sellers have delivered to Purchaser all Phase I, Phase II and similar environmental assessments, environmental audits, evaluations, assessments, studies, or tests, and correspondence to or from any Governmental Authority related to or in connection with any of the Facilities or otherwise affecting the Acquired Assets or Business.

(d) To the Knowledge of Sellers, no underground storage tanks are or have been located on any facility.

5.16 Consigned Inventory. There is no Consigned Inventory other than as set forth on Schedule 5.18.

5.17 AS IS; WHERE IS. THE ACQUIRED ASSETS ARE BEING SOLD, CONVEYED, TRANSFERRED, ASSIGNED AND DELIVERED IN AN "AS IS" AND "WHERE IS" CONDITION. EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE V, SELLERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE ACQUIRED ASSETS, INCLUDING, BUT NOT LIMITED TO WARRANTIES AS TO QUALITY AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF PURCHASER**

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser represents and warrants to Sellers that the

statements contained in this Article VI are correct and complete as of the date of this Agreement and as of the Closing Date.

6.1 Organization. Purchaser is a legal entity validly existing and in good standing under the Laws of its jurisdiction of organization and has the full power and authority to execute, deliver and perform this Agreement and to consummate all transactions contemplated by this Agreement.

6.2 Authority. The execution, delivery and performance by Purchaser of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Purchaser and do not and will not violate any provisions of Purchaser's organizational documents, any applicable Law or any contract or Order binding upon Purchaser. This Agreement constitutes a valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally from time to time in effect, and to general equitable principles.

6.3 Consents. No notice to, filing with, authorization of, exemption by, or consent (other than the approval of the Bankruptcy Court, under the HSR Act and any required competition filings with foreign Governmental Authorities) of any Person is required in order for Purchaser to consummate the transactions contemplated hereby.

6.4 Financial Ability. Purchaser has sufficient cash, available lines of credit, or other sources of immediately available funds to enable Purchaser to pay the full Cash Consideration, consummate the transactions contemplated by this Agreement, and fulfill Purchaser's obligations under this Agreement.

ARTICLE VII PRE-CLOSING COVENANTS

7.1 Consents and Approvals.

(a) *Consents*. Sellers shall, at their sole cost and expense, use reasonable best efforts (i) to obtain all necessary consents and approvals, as reasonably requested by Purchaser, to consummate the purchase and sale of the Acquired Assets and the assignment of the Assumed Obligations, including obtaining entry of the Sale Order, in each case, without modification except as Purchaser may consent, such consent not to be unreasonably withheld (ii) to make, as reasonably requested by Purchaser, all filings, applications, statements and reports to all authorities that are required to be made prior to the Closing Date by or on behalf of Sellers or any of their Affiliates pursuant to any applicable Law in connection with this Agreement and the transactions contemplated hereby, and (iii) to assist Purchaser in obtaining replacements for any Permits that are not freely transferable. Purchaser shall give any notices to, make any other filings with, and use reasonable best efforts to cooperate with Sellers to obtain, any authorizations, consents and approvals in connection with the matters contemplated by this Section 7.1(a).

7.2 Access to Information and Facilities. The Company Group agrees that, prior to the Closing Date, Purchaser, Purchaser's lender(s), if any, and their respective representatives

shall, upon reasonable advance notice and so long as such access does not unreasonably interfere with the business operations of any Seller, have reasonable access during normal business hours to all Facilities and shall be entitled to make such reasonable investigation of the properties, businesses and operations of Sellers (including any environmental audits and investigations or to conduct a physical inventory of the Inventory) and such examination of the Books and Records and financial condition of Sellers as it reasonably requests and to make extracts and copies to the extent necessary of the Books and Records; provided, however, that (a) no investigation pursuant to this Section 7.2 shall affect any representations or warranties made herein or the conditions to the obligations of the respective Parties, and (b) Purchaser shall indemnify and hold harmless Sellers from and against all liabilities related to any environmental investigations or audits and arising from the negligence or willful misconduct of Purchaser, Purchaser's Affiliates, or Purchaser's agents, employees, consultants, and advisors.

7.3 Conduct of the Business Pending Closing. (a) Except as otherwise expressly contemplated by this Agreement, (b) with the prior written consent of Purchaser, (c) as approved by the Bankruptcy Court, or (d) except as described on Schedule 7.3, from the date hereof until the Closing Date, Sellers:

(a) shall not sell, transfer, abandon, permit to lapse or otherwise dispose of any of the assets of any Seller except in the Ordinary Course of Business;

(b) shall and shall cause the other Sellers to conduct the Business in the Ordinary Course of Business (including timely payment of post-petition accounts payable, purchasing and maintaining appropriate levels of Inventory in accordance with the Cash Collateral Order, entering into and fulfilling customer contracts consistent with past practices, performing all required maintenance and repairs, maintaining all insurance policies in effect as of the Petition Date, making capital expenditures and collecting Receivables);

(c) shall not (A) authorize, declare or pay any dividends on or make any distribution with respect to its outstanding shares of capital stock or other Equity Securities (whether in cash, assets, stock or other securities), (B) make any capital contributions to, or enter into any intercompany loan or other intercompany arrangement with, any other Seller or (C) forgive or repay any intercompany loan or obligation owed to or by any other Seller (and Sellers represent and warrant that no action contemplated by this Section 7.3(c) has been taken by any Seller since September 30, 2013 except to the extent set forth on Schedule 7.3);

(d) shall not reclassify, combine, split, subdivide, redeem, or purchase or otherwise acquire, directly or indirectly, any of its capital stock or membership interests, or make any other change with respect to its capital structure;

(e) shall not issue, sell, pledge, dispose of or encumber, or authorize the issuance, sale, pledge, disposition or encumbrance of, any shares of its capital stock or other ownership interest in any Seller or any securities convertible into or exchangeable for any such shares or ownership interest, or any rights, warrants or options to acquire or with respect to any such shares of capital stock, ownership interest or convertible or exchangeable securities or take any action to cause to be exercisable any otherwise unexercisable option under any existing stock option plan;

(f) shall and shall cause the other Sellers to use commercially reasonable efforts to preserve intact the Business, to keep available the services of its current employees and agents and to maintain its relations and goodwill with its suppliers, customers, distributors and any others with whom or with which it has business relations;

(g) shall not and shall cause the other Sellers to not (A) grant or announce any stock option, equity or incentive awards or the increase in the salaries, bonuses or other compensation and benefits payable by any Seller to any of the employees, directors or other service providers of the Business except in the Ordinary Course of Business; (B) hire any new employees to the Business, except in the Ordinary Course of Business consistent with past practice, or terminate any existing employees of the Business except for terminations for cause, (C) pay or agree to pay any pension, retirement allowance, termination or severance pay, bonus or other employee benefit not required by any existing Employee Benefit Plan to any employee, director or other service provider of the Business, whether past or present, (D) enter into or amend any Contracts of employment or any consulting, bonus, severance, retention, retirement or similar agreement except for agreements for newly hired employees in the Ordinary Course of Business consistent with past practice, or (E) except as required to ensure that any Employee Benefit Plan is not then out of compliance with applicable Law, enter into or adopt any new, or materially increase benefits under or renew, amend or terminate any existing, Employee Benefit Plan or any Collective Bargaining Agreement;

(h) shall not fail to pay any Tax when it becomes due and payable;

(i) shall not modify, amend, terminate, or waive any right under any Material Contract or any Contract that would be a Material Contract if in effect on the date of this Agreement, in any material respect;

(j) shall not enter into any Material Contract;

(k) shall not enter into any new line of business or discontinue any line of business or enter into any agreement or arrangement that would restrict, prevent, or limit any Seller from entering into any new line of business or from conducting business in any location;

(l) shall not authorize, or make any commitment with respect thereto, any capital expenditure in excess of the amount permitted under the Cash Collateral Order;

(m) shall not adopt any amendments to its articles of incorporation or bylaws or similar applicable charter documents;

(n) shall not create any new Subsidiary;

(o) shall not incur, assume, guarantee, prepay or otherwise become liable for, modify in any material respect the terms of, any Indebtedness for borrowed money or incur Contingent Obligations and not to sell, lease, license, transfer, exchange or swap, mortgage or otherwise encumber (including securitizations), or subject to any Lien (other than Permitted Acquired Asset Liens or Permitted Released Liens) or otherwise dispose of (whether by merger, consolidation or acquisition of stock or assets, license or otherwise), or otherwise grant any Third Party any rights or interest in or with respect to any material portion of its or its Affiliates'

properties or assets, including the capital stock or other Equity Securities of Affiliates, other than (i) pursuant to existing agreements in effect prior to the execution of this Agreement, pursuant to the Cash Collateral Order, or pursuant to the Order of any court of competent jurisdiction, (ii) as may be required by applicable Law or any Governmental Authority in order to permit or facilitate the consummation of the transactions contemplated by this Agreement, or (iii) dispositions of assets in the Ordinary Course of Business; and

(p) shall not, and shall not permit any Seller to, agree, in writing or otherwise, or announce an intention, to take any of the foregoing actions.

7.4 Notification of Certain Matters. Sellers shall give notice to Purchaser of (a) the occurrence or nonoccurrence of any event that causes either (i) any representation or warranty of Sellers contained in this Agreement to be untrue or inaccurate in any material respect at any time from the Effective Date to the Closing or (ii) any Material Adverse Effect, or (b) any material failure of any Seller to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by them under this Agreement. Notwithstanding the foregoing, the delivery of any notice pursuant to this Section 7.4 shall not (x) be deemed to amend or supplement any Schedule, (y) be deemed to cure any breach of any representation, warranty, covenant, or agreement, or to satisfy any condition set forth in this Agreement, or (z) limit or otherwise affect the remedies available pursuant to this Agreement to the Party receiving such notice.

7.5 Bankruptcy Actions.

(a) Sellers shall (i) conduct an auction (if necessary) no later than January 31, 2014 (the "Auction"); (ii) no later than five (5) days after the auction, obtain entry of the Sale Order and (iii) subject to satisfaction of the conditions precedent contained in this Agreement, consummate the Closing as soon as practicable after the entry of the Sale Order but no later than fifteen (15) days after entry of the Sale Order.

(b) Any pleadings filed by Sellers in connection with seeking approval of this Agreement and entry of the Sale Order, including any exhibits thereto and any notices or other materials in connection therewith must be acceptable in form and substance to Purchaser in its reasonable discretion.

(c) The Parties will cooperate to promptly take such actions as are reasonably requested by the other party to assist in obtaining entry of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance by Purchaser of their obligations under this Agreement and the Transaction Documents, adequate assurance of performance by Purchaser from and after the Closing under the Assumed Executory Contracts, and demonstrating that Purchaser are good faith buyers under Section 363(m) of the Bankruptcy Code.

7.6 No Solicitation of Transactions; Alternative Transaction. Following entry of the Sale Order on the Bankruptcy Court's docket, no Seller shall, directly or indirectly, through any officer, director, employee, agent, professional, or advisor, solicit any Alternative Transaction or participate in any negotiations or discussions with respect to any Alternative Transaction, and no Seller shall (i) execute an agreement with respect to an Alternative Transaction or (ii) seek or support Bankruptcy Court approval of a motion or Order inconsistent in any material respect with the transactions contemplated by this Agreement.

7.7 Taxes.

(a) On or prior to the Closing, Sellers shall pay all sales Taxes, use Taxes and payroll Taxes that are then due and owing with respect to the Acquired Assets and attributable to Tax periods or portions thereof commencing after the filing of the Chapter 11 Cases and ending prior to the Closing; provided, however, that a Seller shall not be obligated to pay any such Tax that is disputed in good faith by such Seller as long as appropriate reserves have been established.

(b) Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or other similar Taxes and recording charges ("Transfer Taxes") due and which may be payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Obligations under this Agreement or the transactions contemplated herein shall be borne and timely paid by Purchaser. The Parties shall use reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Acquired Assets from any such Transfer Taxes. Purchaser shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes; provided, however, that in the event any such Tax Return requires execution by Sellers, Purchaser shall prepare and deliver to Sellers a copy of such Tax Return at least three days before the due date thereof, and Sellers shall promptly execute such Tax Return and deliver it to Purchaser, which shall cause it to be filed.

(c) All real and personal property Taxes and similar ad valorem obligations levied with respect to the Acquired Assets, whether imposed or assessed before or after the Closing Date ("Periodic Taxes") for a taxable period that includes (but does not end on) the Closing Date (a "Straddle Period"), shall be apportioned between Sellers and Purchaser as of the Closing Date based on the number of days of such taxable period included in the period ending with and including the Closing Date (together with periods ending before the Closing Date, the "Pre-Closing Tax Period"), and the number of days of such taxable period beginning after the Closing Date (together with any periods beginning after the Closing Date, the "Post-Closing Tax Period"). At the Closing, Periodic Taxes with respect to each Acquired Asset for the applicable Tax period shall be prorated in accordance with the foregoing provisions based on the Tax assessment for such Acquired Asset for the applicable Tax period, if available, or otherwise, based on the last available Tax assessment with respect to such Acquired Asset. Sellers shall be responsible for such Periodic Taxes attributable to Pre-Closing Tax Periods and Purchaser shall be responsible for such Periodic Taxes attributable to Post-Closing Tax Periods. At the Closing, (i) Sellers shall pay to Purchaser an amount equal to excess, if any, of the (A) unpaid Periodic Taxes attributable to Pre-Closing Tax Periods over (B) Periodic Taxes paid by Sellers but apportioned hereunder to Purchaser for Straddle Periods (each determined in accordance with the foregoing principles), or (ii) Purchaser shall pay to Sellers an amount equal to Periodic Taxes

apportioned to Purchaser with respect to Straddle Periods but previously paid by Sellers, as applicable. Purchaser shall also be responsible for preparing and filing all Periodic Tax returns required to be filed after the Closing Date.

(d) Each Party shall cooperate fully, as and to the extent reasonably requested by any other Party, in connection with the filing of Tax Returns and any audit, litigation or other Proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information that are reasonably relevant to any such Tax Return, audit, litigation or other Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

(e) Any Tax sharing agreement, Contract or similar arrangement, including any Seller or, on the one hand, and any other Seller or other Person, on the other hand, shall be terminated as of the Closing Date and shall have no further effect with respect to any taxable year.

(f) Each Party hereby waives compliance with all "bulk sales," "bulk transfer" and similar Laws that may be applicable with respect to the sale and transfer of any or all of the Acquired Assets to Purchaser.

7.8 [Reserved].

7.9 Real Property. From and after the date of this Agreement through (a) the Assignment Effective Date or the Rejection Effective Date, as applicable, for the Designated Remaining Leases and (b) the Closing, for the Acquired Owned Real Property and all Facility Leases that are not Designated Remaining Leases:

(a) *Maintenance of Real Property*. Sellers shall maintain the Acquired Owned Real Property and the Leased Facilities, including all of the improvements thereon, in substantially the same condition as exists on the Effective Date, ordinary wear and tear, casualty and condemnation excepted, and shall not demolish or remove any of the existing improvements, or erect new improvements on the Acquired Owned Real Property or the Leased Facilities or any portion thereof, without the prior written consent of Purchaser.

(b) *Leases*. Sellers shall not amend, modify, extend, renew or terminate any Facility Lease, and shall not enter into any new lease, sublease, license or other agreement for the use or occupancy of any real property, without the prior written consent of Purchaser, which shall not be unreasonably withheld or delayed.

(c) *Title Insurance*. Sellers shall use their commercially reasonable efforts to assist Purchaser in obtaining the Title Commitments and Title Policies. Sellers shall provide the Title Company with any customary affidavit or certificate reasonably required by the Title Company to issue the Title Policies.

(d) *Non-Disturbance Agreements*. Sellers shall use commercially reasonable efforts to assist Purchaser in obtaining a non-disturbance agreement with respect to each of the Assumed Facility Leases in form and substance reasonably satisfactory to Purchaser from each

lender encumbering any real property underlying the Assumed Leased Facilities for such Assumed Facility Lease.

7.10 Further Assurances. At any time and from time to time after the Effective Date, Sellers and Purchaser agree to use their respective reasonable efforts to cooperate with each other and (a) at the reasonable request of any other Party, execute and deliver any instruments or documents and (b) take, or cause to be taken, all such further action as the other Party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated by this Agreement and to otherwise carry out the intent of the Parties as set forth in this Agreement.

7.11 Non-Solicitation. Sellers shall ask each of Huibert Verbeek, Kenney Verbeek, and Brett Verbeek to enter into one or more agreements satisfactory to Purchaser barring the solicitation of Transferred Employees post-closing for a period of not less than 6 months after the Closing Date.

7.12 Third Party Intellectual Property. Upon Purchaser's request, Sellers shall use commercially reasonable efforts to cause any third party licensors of Intellectual Property used in the Business to convey such Intellectual Property to Purchaser on the Closing Date.

ARTICLE VIII CONDITIONS TO CLOSING

8.1 Conditions to Parties' Obligations. The obligations of Purchaser and Sellers under this Agreement are, at the option of Purchaser and Sellers, respectively, subject to satisfaction of the following conditions precedent on or before the Closing Date:

(a) *Required Approvals*. All authorizations, consents, filings and approvals by a Governmental Authority necessary to permit the parties to consummate the transactions contemplated hereby shall have been duly obtained, made or given, shall be in form and substance, reasonably satisfactory to the parties, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect. All terminations or expirations of waiting periods imposed (and any extension thereof) by any Governmental Authority necessary for the transactions contemplated under this Agreement, if any, shall have occurred.

(b) *No Order or Proceeding*. No Order shall be issued by a Governmental Authority restraining or prohibiting the consummation of the transactions contemplated by this Agreement, or involving a claim that the consummation thereof would result in the violation of any Law of any Governmental Authority having appropriate jurisdiction.

(c) *Bankruptcy Condition*. The Sale Order shall have been entered in the Chapter 11 Cases and shall have become a Final Order and shall have approved the sale of the Business and the Acquired Assets to Purchaser free and clear of all Liens (other than Permitted Acquired Asset Liens) pursuant to Section 363(f) of the Bankruptcy Code.

8.2 Conditions to Purchaser's Obligations. The obligations of Purchaser under this Agreement are, at the option of Purchaser, subject to satisfaction of the following conditions precedent on or before the Closing Date:

(a) *Accuracy of Representations and Warranties.* Each of the representations and warranties of Sellers contained herein shall be (i) with respect to representations and warranties qualified by materiality or material adverse effect on the results of operations of Sellers, true and correct in all respects and (ii) with respect to all other representations and warranties, true and correct in all respects except where the failure of any such representation and warranty to be true and correct, individually or in the aggregate with other such failures has not had and would not reasonably be expected to have a material adverse effect on the results of operations of Sellers, on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date) with the same force and effect as though made by Sellers on and as of the Closing Date.

(b) *Performance of Covenants.* Sellers shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Sellers on or prior to the Closing Date.

(c) *Material Adverse Effect.* There shall not have occurred a Material Adverse Effect.

(d) *Deliveries.* Sellers shall have delivered to Purchaser the items set forth in Section 4.3 of this Agreement.

(e) *Excluded Liabilities.* There shall be no Person that shall have obtained an Order holding that Purchaser is liable for any Excluded Liabilities.

(f) *Non-Solicitation; Agreements Not to Compete.* Sellers shall have asked Huibert Verbeek, Kenny Verbeek, and Brett Verbeek to enter into the agreements contemplated by Section 7.13.

8.3 Conditions to Sellers' Obligations. The obligations of Sellers under this Agreement are, at the option of Sellers, subject to the satisfaction of the following conditions precedent on or before the Closing Date:

(a) *Accuracy of Representations and Warranties.* The representations and warranties of Purchaser contained herein shall be true and correct in all material respects on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date in all material respects) with the same force and effect as though made by Purchaser on and as of the Closing Date, except those qualified by materiality shall be true and correct in all respects.

(b) *Performance of Covenants.* Purchaser shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date.

(c) *Consideration.* Purchaser and the escrow agent shall have delivered the Cash Consideration.

ARTICLE IX TERMINATION

9.1 Termination Events. Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

(a) by either Sellers or Purchaser:

(i) if a Governmental Authority issues an Order prohibiting the transactions contemplated hereby; or

(ii) by mutual written consent of Sellers and Purchaser; provided, however, that Sellers shall obtain the written consent of the Bankruptcy Court or Lenders' Agent prior to consenting to the termination of this Agreement pursuant to this Section 9.1(a)(ii);

(b) by Purchaser:

(i) if (A) the Sale Order has not been entered by the Bankruptcy Court on or before the date that is five (5) days after the Auction and (B) the Closing shall not have occurred on or before fifteen (15) days after entry of the Sale Order; provided, however, that the right to terminate this Agreement under Section 9.1(b)(i)(y) shall not be available to Purchaser to the extent Purchaser's breach of this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur by such date;

(ii) in the event of any breach by Sellers of any of Sellers' agreements, covenants, representations or warranties contained in this Agreement or in the Sale Order, where such breach or failure to perform has or is reasonably expected to have a material adverse effect on the results of operations of Sellers and is not curable, and if curable the failure of Sellers to cure such breach within seven days after receipt of the Termination Notice specified in this subsection; provided, however, that Purchaser (A) is not itself in material breach of its representations, warranties or covenants contained in this Agreement or in the Sale Order, (B) notifies Sellers in writing (the "Termination Notice") of its intention to exercise its rights under this Section 9.1(b)(ii) as a result of the breach, and (C) specifies in such Termination Notice the representation, warranty or covenant contained in this Agreement or in the Sale Order of which Sellers are allegedly in material breach;

(iii) if a Material Adverse Effect occurs;

(iv) if the Chapter 11 Cases are dismissed or converted to cases under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement, or a trustee is appointed for Sellers and such trustee rejects the transactions contemplated by this Agreement; provided, however, that Purchaser shall have no right to terminate this Agreement pursuant to this Section 9.1(b)(iv) if Purchaser, any Affiliate of Purchaser, the Agent, or any lender under the DIP Loan supported such dismissal or conversion;

(v) if Sellers file a stand-alone plan of reorganization or liquidation (or supporting any such plan filed by any other party) that does not seek approval of this Agreement; or

(vi) if the Bankruptcy Court declines to approve this Agreement for any reason.

(c) by Sellers, in the event of any material breach by Purchaser of any of Purchaser's representations, warranties or covenants contained herein or in the Sale Order, and the failure of Purchaser to cure such breach within seven (7) days after receipt of the Termination Notice specified in this subsection; provided, however, that Sellers (i) are not themselves in material breach of their representations, warranties or covenants contained herein or in the Sale Order, (ii) send a Termination Notice to Purchaser, and (iii) specify in such Termination Notice the representation, warranty or covenant contained herein or in the Sale Order of which such Purchaser is allegedly in material breach.

9.2 Effect of Termination.

(a) In the event of termination of this Agreement pursuant to Section 9.1, which shall survive any such termination, this Agreement shall forthwith become void and there shall be no liability under this Agreement on the part of any Party (other than (x) the return of the Deposit if any, to Purchaser within 3 days of termination of this Agreement, which shall be effectuated in accordance with the Escrow Agreement) or any of their respective officers or directors and all rights and obligations of each Party shall cease; *provided, however*, that nothing herein shall relieve any party from liability for any material breach.

(b) In the event that:

(i) a Person other than Purchaser is selected as the Successful Bidder;

(ii) this Agreement has been terminated by Sellers for any reason other than pursuant to Section 9.2(a) or 9.2(c); or

(iii) this Agreement has been terminated by Purchaser pursuant to Section 9.1(b)(ii), (iv), (v) or (vii).

ARTICLE X POST-CLOSING COVENANTS

10.1 Transferred Employees. Purchaser shall have the right but not the obligation to offer employment to any of Sellers' employees prior to the Closing (but contingent on the occurrence of the Closing) to such employees of Sellers actively employed or engaged principally in the Business as of the Closing Date as determined Purchaser in its sole discretion (such employees who accept such offer of employment, the "Transferred Employees") on terms and conditions as determined by Purchaser in its sole discretion; provided, however, that, notwithstanding the foregoing, on or before the Closing Date, Purchaser shall make Qualifying Employment Offers to at least 85% of Sellers' employees at each Facility. Nothing contained in this Agreement shall confer upon any Transferred Employee any right to any term or condition

of employment or to continuance of employment by Purchaser or any of its Affiliates, nor shall anything herein interfere with the right of Purchaser or any of its Affiliates to terminate the employment of any employee, including any Transferred Employee, at any time, with or without notice and for any or no reason, or restrict Purchaser or any of its Affiliates in modifying any of the terms or conditions of employment of any employee, including any Transferred Employee, after the Closing. Termination by Sellers of the employment of the Transferred Employees shall occur on or prior to the Closing Date.

10.2 Employee Benefit Plans. Except for the Assumed Employee Benefit Plans, if any, and the Assumed Obligations, Purchaser shall not assume any Employee Benefit Plan or any Liability thereunder or related thereto and Purchaser shall provide only those benefits to Transferred Employees as of or after the Closing as Purchaser shall determine. Nothing contained in this Agreement, express or implied: (a) shall be construed to establish, amend, or modify any benefit or compensation plan, program, agreement or arrangement; (b) shall alter or limit the ability of Purchaser or any of its Affiliates to amend, modify or terminate any benefit or compensation plan, program, agreement or arrangement at any time assumed, established, sponsored or maintained by any of them; or (c) is intended to confer upon any Person (including employees, retirees, or dependents or beneficiaries of employees or retirees) any rights as a Third Party beneficiary of this Agreement.

10.3 Joint Post-Closing Covenant of Purchaser and Sellers. Purchaser and Sellers agree that, from and after the Closing Date, Purchaser and Sellers will each use commercially reasonable efforts to cooperate with each other in connection with any action, suit, Proceeding, investigation or audit of the other relating to (a) the preparation of an audit of any Tax Return of any Seller or any Purchaser for all periods prior to or including the Closing Date and (b) any audit of any Purchaser and/or any audit of any Seller with respect to the sales, transfer and similar Taxes imposed by the Laws of any state or political subdivision thereof, relating to the transactions contemplated by this Agreement. In furtherance hereof, Purchaser and Sellers agree to promptly respond to all reasonable inquiries related to such matters and to provide, to the extent reasonably possible, substantiation of transactions and to make available and furnish appropriate documents and personnel in connection therewith. All costs and expenses incurred in connection with this Section 10.4 referred to herein shall be borne by the party who is subject to such action.

10.4 Name Changes. Within five Business Days following the Closing Date, each Seller shall take all necessary action to change its name and the names of all Affiliates of Sellers to a name that does not include the word "Color Star" or any other name or mark owned by Sellers and used in connection with the Business (including any name set forth on the signature pages to this Agreement) or any translations, adaptations, derivations or combinations of any of the foregoing or any name or mark confusingly similar thereto (collectively, the "Restricted Names"), and Sellers shall promptly notify Purchaser of such name changes and the new name chosen by each Seller and all Affiliates of Seller, as applicable, and Purchaser agrees and acknowledges that it shall not change its name to the name of any Seller prior to the Closing. From and after Closing, Sellers and all Affiliates of Sellers shall cease all use of any Restricted Name, including by removing all Restricted Names from all packaging and promotional materials, displays, manuals, forms, websites, email, computer software, letterhead, stationary, signage and tangible assets included in the Excluded Assets; provided, however, that

notwithstanding any other provision of this Agreement, to the extent Sellers desire to use the Restricted Names in connection with the wind-down and liquidation of their bankruptcy estates in any publicly filed document or in communication with former customers, suppliers or vendors of Sellers, Sellers (and their successors in interest, including any Chapter 7 trustee) shall not use such Restricted Names in the caption, title or header of such documentation or communication and shall only be permitted to use the Restricted Names to clarify that they are the successors in interest to the debtors in Chapter 11 Cases and that they no longer use the name "Color Star."

10.5 Receivables; Collections. After the Closing, Sellers shall permit, and hereby authorize, Purchaser to collect, in the name of Sellers, all Receivables constituting part of the Acquired Assets and to endorse with the name of any applicable Seller for deposit in Purchaser's account any checks or drafts received in payment thereof. Sellers shall promptly deliver to the Purchaser any cash, checks or other property that they may receive after the Closing in respect of any Receivables or other asset constituting part of the Acquired Assets. Sellers shall promptly deliver to the applicable Purchaser any cash, proceeds or refunds that they may receive after the Closing in respect of insurance policies to the extent related solely to the Acquired Assets.

10.6 Access to Information. For a period of twenty-four (24) months after the Closing Date, upon reasonable advance notice, Purchaser and Sellers will afford promptly to such other requesting party and their agents reasonable access during normal business hours to their properties, books, records, employees, auditors and counsel to the extent necessary for financial reporting and accounting matters, employee benefits matters, the preparation and filing of any Tax Returns, reports or forms, the defense of any Tax audit, claim or assessment, the reconciliation of Claims in the Chapter 11 Cases or otherwise to enable Purchaser or Sellers, as applicable, to address issues arising in connection with or relating to the Chapter 11 Cases or to permit Purchaser or Sellers, as applicable, to determine any matter relating to their rights and obligations hereunder or any other reasonable business purpose related to the Excluded Assets or Excluded Liabilities; provided, however, that any such access by Sellers or Purchaser, as applicable, shall not unreasonably interfere with the conduct of the business of Sellers or Purchaser, as applicable. Sellers or Purchaser, as applicable, will hold, and will use their commercially reasonable efforts to cause their officers, directors, employees, accountants, counsel, consultants, advisors and agents to hold, in confidence, unless compelled to disclose by judicial or administrative process or by other requirements of Law, all confidential documents and information concerning Sellers or Purchaser, as applicable, or the Business provided to them pursuant to this Section 10.7.

10.7 Confidentiality. Following the Closing, Sellers shall maintain as confidential and shall not use or disclose (except as required by Law or as authorized in writing by Purchaser) (a) any information or materials relating to the Business, operations and affairs of Sellers and (b) any materials developed by Purchaser or any of their representatives (including their accountants, advisors, environmental, labor, employee benefits and any other consultants, lenders and legal counsel). Except as otherwise permitted and provided above, in the event any Seller is required by Law to disclose any such confidential information, such Seller shall promptly notify Purchaser in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and shall cooperate with Purchaser in connection with Purchaser's efforts to obtain a protective Order and otherwise preserve the confidentiality of such information consistent with applicable Law. Information subject to the

confidentiality obligations in this Section 10.8 does not include any information which (x) at the time of disclosure is generally available to or known by the public (other than as a result of its disclosure in breach of this Agreement) or (y) becomes available on a non-confidential basis from a Person who is not known to be bound by a confidentiality agreement with a Purchaser or its respective Affiliates, or who is not otherwise prohibited from transmitting the information.

10.8 Tax Matters. Other than with respect to amounts to be withheld pursuant to Section 4.7 of this Agreement, which amounts, for avoidance of doubt, shall be agreed upon in good faith by Sellers and Purchaser prior to Closing, within the later of (i) ninety (90) days after the Closing Date, or (ii) thirty (30) days prior to the date by which Sellers' federal income Tax Returns must be filed, Sellers and Purchaser shall jointly and in good faith prepare a schedule allocating the Purchase Price (and any other items that are required for federal income Tax purposes to be treated as part of the Purchase Price) among the Acquired Assets (such schedule, the "Allocation"), in accordance with Section 1060 of the Code and the treasury regulations thereunder (and any similar provision of state, local, or foreign Law). The Allocation shall be binding upon the Parties. The Parties shall report and file all Tax Returns (including amended Tax Returns and claims for refund) consistent with the Allocation, and shall take no position contrary thereto or inconsistent therewith unless required by applicable Law (including in any audits or examinations by any Governmental Authority or any other Proceeding). Purchaser and Sellers shall cooperate in the filing of any forms (including Internal Revenue Service Form 8594 under Section 1060 of the Code) with respect to such Allocation. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 10.9 shall survive the Closing without limitation.

ARTICLE XI DOCUMENT HANDLING

11.1 Document Handling.

(a) After completion of the Closing, Purchaser shall abide by all applicable state and federal laws, rules and regulations regarding the handling and maintenance of documents and records relating to the Acquired Assets and all loans made to Sellers, including, without limitation, regulations specifying the length of time such documents and records are to be retained.

(b) Purchaser represents and acknowledges that it has received a copy of a litigation hold letter sent to Sellers dated [, 2013], ("Litigation Hold Letter") in which Sellers were notified that the Bank Group reasonably anticipates litigation with respect to loans made to the Sellers.

(c) Purchaser agrees to comply with the requests for the preservation of information made by the Lenders to Sellers in the Litigation Hold Letter to the same extent, and with the same care, as if those document preservation requests were made to Purchaser, consistent with Purchaser's existing document-retention policies. Among those actions consistent with Purchaser's document-retention policies are preserving and not destroying documents, servers, databases, electronically-stored information, accounting information, email, and all other data that relates to the loans made to the Sellers, the events and representations made by the Sellers or other Persons prior to receipt of such loans. To the extent that Purchaser

elects to modify or delete information from electronic servers, databases, or other sources, Purchaser agrees to make, at its expense, a forensically-sound image of those servers, databases, or other sources that would comply with the requests made on Sellers in the Litigation Hold Letter.

(d) Purchaser further agrees that Sellers and/or Lenders may use, inspect, and/or at Sellers' or Lenders' expense, respectively, make extracts from or copies of any electronic or physical files, document, and/or records related to the loans received by the Sellers, the Acquired Assets, the Specified Commercial Claims, the Avoidance Actions, the Business, or the operation of the Business that are in Purchaser's actual or constructive possession, upon reasonable notice by Sellers or Lenders to Purchaser. Purchasers acknowledge that Sellers or Lenders may make complete copies of any and all servers – e.g., voicemail, email, or accounting servers, pursuant to this paragraph.

(e) Before destroying, altering, or disposing of any documents or electronic or physical files that are maintained in the Ordinary Course of Business pertaining to (x) (i) the loans from the Lenders to the Sellers, (ii) the Acquired Assets, (iii) the Specified Commercial Claims, (iv) the Avoidance Actions, (v) the Business, (vi) the operation of the Business, or (vii) otherwise within the scope of the Litigation Hold Letter, where such destruction, alteration, or disposition varies in any manner not expressly set forth in Purchaser's document-retention policy, Purchaser shall (i) give reasonable notice of the same to Sellers and Lenders and (y) allow Sellers and Lenders to recover the same from Purchaser.

ARTICLE XII MISCELLANEOUS

12.1 Non-Survival of Representations and Warranties. The representations and warranties respectively made by the Parties in this Agreement and in any certificate delivered hereunder will expire as of the Closing. Subsequent to Closing, no Claim with respect to any breach of any representation or warranty contained in this Agreement and no Claim with respect to any known breach of a covenant to be performed at or prior to Closing contained in this Agreement may be pursued or maintained (either hereunder or otherwise) against any other Party. The Parties agree that the covenants contained in this Agreement to be performed after the Closing shall survive the Closing hereunder, and each Party shall be liable to the other after the Closing for any breach thereof.

12.2 Expenses.

(a) Subject to Section 9.2, each Party shall bear its own costs and expenses, including attorneys' fees, with respect to the transactions contemplated hereby.

(b) The Parties agree that if any Claims for commissions, fees or other compensation, including brokerage fees, finder's fees, or commissions are ever asserted against a Party in connection with this transaction, all such Claims shall be handled and paid by the Party whose actions form the basis of such Claim and such party shall indemnify (with counsel reasonably satisfactory to the Parties entitled to indemnification) and hold the other harmless from and against any and all such Claims or demands asserted by any Person in connection with the transactions contemplated by this Agreement.

12.3 Amendment. This Agreement may not be amended, modified or supplemented except by a written instrument signed by the Parties; provided, however, that Sellers shall obtain the written consent of the Bankruptcy Court or Lenders' Agent prior to agreeing to any amendment to this Agreement.

12.4 Notices. Any notice, request, instruction or other document to be given hereunder by a Party shall be in writing and shall be deemed to have been given, (a) when received if given in Person, (b) on the date of transmission if sent by facsimile, e-mail, or other wire transmission (with answer back confirmation of such transmission), (c) upon delivery, or refusal of delivery, if delivered by a nationally known commercial courier service providing next day delivery service (such as Federal Express), or (d) upon delivery, or refusal of delivery, if deposited in the U.S. mail, certified or registered mail, return receipt requested, postage prepaid:

To Sellers:

c/o Vast, Inc.
4122 Cowling Road
Sanger, Texas 76266
Attn: Kenney Verbeek
Fax Number: (303) 535-5110

with a copy to:

Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201
Attn: Marcus Helt
Fax Number: (214) 999-3526

To Purchaser:

Attn: _____

Fax:

With a copy to:

Attn: _____

Fax:

or to such other individual or address as a Party may designate for itself by notice given as herein provided.

12.5 Waivers. The failure of a Party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing by Sellers, in the case of a waiver by any Seller, or Purchaser, in the case of any waiver by Purchaser, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach of other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

12.6 Counterparts and Execution. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Except to the extent an original signature is required for filing with any Governmental Authority or as reasonably requested by a Party, any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

12.7 Headings. The headings preceding the text of the Articles and Sections of this Agreement and the Exhibits and the Schedules are for convenience only and shall not be deemed part of this Agreement.

12.8 SUBMISSION TO JURISDICTION. THE PARTIES HEREBY AGREE THAT ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS, AND PROCEEDINGS RELATING TO THIS AGREEMENT OR THE OTHER AGREEMENTS CONTEMPLATED HEREIN SHALL BE FILED AND MAINTAINED ONLY IN THE BANKRUPTCY COURT, AND THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF SUCH COURT.

12.9 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Texas as to all matters, including matters of validity, construction, effect, performance and remedies.

12.10 Binding Nature; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties without prior written consent of the other parties (which shall not be unreasonably withheld or delayed); except (a) that Purchaser may assign any of its rights and obligations hereunder to any Person including, without limitation, an Affiliate or Subsidiary of Purchaser (whether wholly owned or otherwise) or to Purchaser's lenders (b) the rights and interests of Sellers hereunder may be assigned to a trustee or other authorized representative appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code; (c) this Agreement may be assigned to any entity appointed as a successor to Sellers pursuant to a confirmed Chapter 11 plan; and (d) as otherwise provided in this Agreement. Sellers hereby agree that Purchaser may grant a security interest in its rights and interests hereunder to Purchaser's lenders, and Sellers will sign a consent with respect thereto if reasonably requested by Purchaser or one of its lenders, and that the terms of this Agreement shall be binding upon any subsequent trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code.

12.11 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and nothing contained herein, express or implied, is intended to confer on any Person

other than (a) the Parties or their successors and permitted assigns and (b) Lenders' Agent and the Lenders (each of which is an intended third-party beneficiary of this Agreement), any rights, remedies, obligations, Claims, or causes of action under or by reason of this Agreement.

12.12 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to this Agreement to express their mutual intent, and no rule of strict construction shall be applied against any party. Any reference to any Law shall be deemed also to refer to all rules and Laws promulgated thereunder, unless the context requires otherwise. Whenever a Party's consent, approval or satisfaction is required under this Agreement, the decision as to whether or not to consent or approve or be satisfied shall be in the sole and exclusive discretion of such party unless otherwise specifically stated in this Agreement, and such party's decision shall be final and conclusive.

12.13 Public Announcements. Except as required by Law or in connection with the Chapter 11 Cases, no Party shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Parties relating to the contents and manner of presentation and publication thereof, which approval will not be unreasonably withheld, delayed or conditioned. Prior to making any public disclosure required by applicable Law, the disclosing Party shall give the other Parties a copy of the proposed disclosure and reasonable opportunity to comment on the same. Notwithstanding the foregoing, Purchaser shall not be restricted from making any public announcements or issuing any press releases after the Closing. Notwithstanding anything herein to the contrary, each Party agrees (on behalf of itself and each Affiliate and Person acting on behalf of such Party) that such Party (and each employee, representative, and other agent of any Party) may not disclose to any and all Persons, without limitation of any kind, the Tax treatment and Tax structure of the transaction and all materials of any kind (including opinions or other Tax analyses) that are provided to any Party or any Person relating to such Tax treatment and Tax structure, except to the extent necessary to comply with any applicable federal or state securities Laws. Each Party agrees that the authorization contained in the immediately preceding sentence is not intended to permit disclosure of any other information, including (a) any portion of any materials to the extent not related to the Tax treatment or Tax structure of the transaction, (b) the identities of participants or potential participants in the transaction, (c) the existence or status of any negotiations, (d) any pricing or financial information (except to the extent such pricing or financial information is related to the Tax treatment or Tax structure of the transaction), or (e) any other term or detail not relevant to the Tax treatment or the Tax structure of the transaction.

12.14 Schedules. The information disclosed in any numbered part in the Schedules delivered by Sellers to Purchaser on the date hereof shall be deemed to relate to and to qualify only the particular representation or warranty set forth in the corresponding numbered section in this Agreement unless such information is disclosed in such a way that its relevance to another particular representation in the Agreement is reasonably apparent on its face.

12.15 Entire Understanding. This Agreement (including the Exhibits and the Schedules) and the other Transaction Documents set forth the entire agreement and understanding of the Parties and supersede all prior agreements, arrangements and understandings relating to the transaction contemplated by this Agreement.

12.16 Closing Actions. All deliveries, payments and other transactions and documents relating to the Closing shall be interdependent, and none shall be effective unless and until all are effective (except to the extent that the party entitled to the benefit thereof has waived satisfaction or performance thereof as a condition precedent to the Closing).

12.17 Conflict between Transaction Documents. The Parties agree and acknowledge that to the extent any terms and provisions of this Agreement are in any way inconsistent with or in conflict with any term, condition or provision of any other Transaction Document or any documents related to the DIP Loan, this Agreement shall govern and control.

12.18 Enforcement. The Parties agree that if a Party breaches this Agreement or refuses to perform under the provisions of this Agreement, monetary damages alone would not be adequate to compensate the non-breaching Parties for their injuries. A non-breaching Party shall therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of the terms of this Agreement. If any action is brought by a non-breaching Party to enforce this Agreement, each breaching Party shall waive the defense that there is an adequate remedy at Law for such non-breaching Party.

12.19 Time is of the Essence. Time is of the essence with respect to this Agreement.

12.20 Notwithstanding anything herein to the contrary, in no event shall the Specified Commercial Claims, the litigation claims held by any Seller against any other Seller, any shareholder of a Seller or any member of management of a Seller, or the Avoidance Actions, be transferred, conveyed, assigned, or otherwise become Acquired Assets under this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

PURCHASER:

By: _____
Name:
Title:

SELLERS:

**COLOR STAR GROWERS OF COLORADO,
INC.**

By: _____
Name:
Title:

COLOR STAR, LLC

By: _____
Name:
Title:

VAST, INC.

By: _____
Name:
Title:

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]