

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is made and entered into as of March \_\_\_\_, 2005 (the "Contract Date"), by and among Aero Plastics, Inc., a Massachusetts Corporation ("Aero" or "Seller"), on the one hand, and Equity South Advisors, LLC, a \_\_\_\_\_ corporation, or its assignees ("Buyer"), on the other hand.

### WITNESSETH:

WHEREAS, Aero is a debtor-in-possession in a case under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") pending in the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court") as Case No. 05-60451 filed on January 6, 2005; and

WHEREAS Aero is engaged in the business of manufacturing, marketing and distributing a full line of housewares in categories such as storage totes, travel containers, closet organization and food storage. Aero designs, manufactures, and distributes its product throughout the United States and sells its products through a large and diverse network composed of major retail outlets across the country, including K-mart, Wal-Mart, Linens N Things, Home Depot, Dollar General and Family Dollar; and

WHEREAS Aero operates a Manufacturing Facility (as defined below) located in McDonough, Georgia; and

WHEREAS Aero leases Administrative Office Space in Leominster, Massachusetts; and

WHEREAS Seller wishes to sell and Buyer wishes to buy Seller's interest in certain (1) inventory; (2) furniture, fixtures and equipment; (3) other incidental assets, both tangible and intangible, collectively comprising certain operations at the debtor's manufacturing facility (the "Manufacturing Facility") located in McDonough, Georgia; and (4) certain intellectual property related to the Debtor's operations and products (including the "Aero Housewares" and related brands, logos, trade styles, trademarks, trade names, and servicemarks); and

WHEREAS, Seller, in connection with the foregoing, wishes to assign and Buyer wishes to assume certain of the liabilities of Seller; and

WHEREAS, Seller, in connection with the foregoing, wishes to assign and Buyer wishes to assume certain leases and contracts; and

WHEREAS, the Bankruptcy Court must approve the transaction contemplated hereby and the purchase price offered by Buyer;

WHEREAS, Seller has been and will be soliciting bids on the Acquired Assets (as defined below), including but not limited to the items listed on Schedules 1.1 and 2.1 attached to this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, the parties have agreed as follows:

ARTICLE 1  
DEFINITIONS

1.1 Definitions.

(a) As used in this Agreement, the following terms have the meanings specified in this Section 1.1.

“Administrative Office Space” means the physical location of Seller’s office space located at 163 Pioneer Drive, Leominster, Massachusetts and related assets to be sold hereunder, as described on Schedule 1.1 attached hereto.

“Bankruptcy Case” means the case commenced by Aero Plastics, Inc. under Chapter 11 of the Bankruptcy Code, in the Bankruptcy Court.

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division.

“Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq.

“Debtor” means Aero Plastics, Inc.

“Employees” means those employees working at the Debtor’s Manufacturing Facility or at the Debtor’s Administrative Office Space on the Closing Date as updated as of the Closing Date.

“FF&E” means all of the tangible personal property located at the Manufacturing Facility except for personal property that is leased, including equipment leased pursuant to an Assumed Contract, and any equipment that is owned by third party suppliers.

“Manufacturing Facility” means the physical location of Seller’s manufacturing plant located at 237 Greenwood Court, McDonough, Georgia 30253 and related assets to be sold hereunder, as described on Schedule 1.1 attached hereto.

“Petition Date” means January 6, 2005, the date on which the Bankruptcy Case was filed.

(b) Each of the terms set forth below shall have the meaning ascribed thereto in the following Section:

<u>Definition</u>	<u>Location</u>
“ <u>Acquired Assets</u> ”	§ 2.1(a)
“ <u>Agreement</u> ”	Preamble
“ <u>Assumed Liabilities</u> ”	§ 2.2(a)
“ <u>Buyer</u> ”	Preamble
“ <u>Closing Date</u> ”	§ 4.1
“ <u>Closing</u> ”	§ 4.1
“ <u>Excluded Assets</u> ”	§ 2.1(b)

“ <u>Excluded Liabilities</u> ”	§ 2.2(b)
“ <u>Purchase Price</u> ”	§ 3.1
“ <u>Seller</u> ”	Preamble
“ <u>Termination Date</u> ”	§ 9.1(e)

ARTICLE 2  
ASSETS PURCHASED; LIABILITIES ASSUMED

2.1 Acquired and Excluded Assets. On the terms and conditions set forth in this Agreement, at the closing, Seller shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase and acquire from Seller, the Acquired Assets. Notwithstanding the foregoing, Seller shall not be obligated to sell, and Buyer shall not be obligated to purchase or acquire from Seller, the Excluded Assets.

(a) Except as otherwise excluded hereunder, for purposes of this Agreement, “Acquired Assets” means all of Seller’s right, title and interest in, to and under the following:

- (1) the “Aero Housewares” brands, logos, trade styles, trademarks, trade names, and servicemarks as specifically set forth on Schedule 2.1(a)(1) attached hereto;
- (2) the FF&E located at the Manufacturing Facility and at the Administrative Office Space on the Closing Date, including the Manufacturing Facility and Administrative Office Space telephone numbers and mailing addresses and other FF&E set forth on Schedule 2.1(a)(2) attached hereto, provided, however, that, if the assignment or sale of any particular phone number to the Buyer results in any requirement to pay a phone bill for telephone services provided prior to the Petition Date, the payment of such bill shall be the sole responsibility of the Buyer should the Buyer, in its sole discretion, decide that it desires to purchase the telephone number and to pay the bill;
- (3) the contracts and agreements set forth on Schedule 2.1(a)(3), consisting of (i) real estate leases for the physical location of the Manufacturing Facility and the Administrative Office Space; (ii) any lease or service contracts for equipment remaining at the Manufacturing Facility or the Administrative Office Space after the Closing Date which Buyer elects to assume; (iii) any other agreements related to the Manufacturing Facility or the Administrative Office Space for services or goods to be performed or sold to the Manufacturing Facility or to the Administrative Office Space locations or performed or sold by the Manufacturing Facility Business or the Administrative Office Space business which Buyer elects to assume, including but not limited to agreements with sanitation disposal companies, copier or office equipment service contracts, and similar agreements (collectively, the “Assumed Contracts”);
- (4) all deposits with respect to real estate leases included in the Assumed Contracts;
- (5) inventory, including resin inventory, on hand at the Manufacturing Facility on the Closing Date and all resin inventory purchased by Aero but not yet located at the Manufacturing Facility on the Closing Date; and
- (6) all accounts and rights to payment owned by Aero as of the Closing Date.

(b) For purposes of this Agreement, “Excluded Assets” means (i) any assets of Seller not defined as an Acquired Asset above, including without limitation, Seller’s (A) corporate record books, minute books, stock transfer records, corporate seals, and (B) securities; (ii) any assets of Seller that are not identified on Schedule 1.1 attached hereto; (iii) all claims, causes of action, suits debts, obligations, liabilities and demands of any kind, character or nature whatsoever, whether in law or in equity, known or unknown, actual or contingent, or disputed or undisputed, that Seller now has or ever had against any person or entity, including but not limited to any claims under the Bankruptcy Code, including 11 U.S.C. §§105, 542, 544, 546, 547, 548, 549, 550 or 553; (iv) all of Seller’s tax attributes and all tax refunds to which Seller may be entitled with respect to any period of Seller’s operations prior to the Petition Date; (v) any rights of Seller under this Agreement or any other agreement entered into by (or in favor of) Seller in connection with the transactions contemplated hereby; (vi) deposits with utility companies or any other person (except for deposits held by lessors under leases assumed by Buyer); and (vii) tax refunds and general intangibles including prepaid insurance refunds, except for the “intangibles” specifically identified as Acquired Assets.

2.2 Liabilities Assumed and Excluded. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall assume and agree to fully, completely and timely discharge all of the Assumed Liabilities. Notwithstanding the foregoing, at the Closing, Buyer shall have no liability to assume, and does not and shall not agree to assume or discharge, any of the Excluded Liabilities.

For purposes of this Agreement, “Assumed Liabilities” means the following liabilities and obligations of Seller: all liabilities and obligations of the Seller with respect to the Assumed Contracts arising after the Closing Date.

For purposes of this Agreement, “Excluded Liabilities” means any liability or obligation of Seller not defined as an Assumed Liability above, including, without limitation: (i) any liability of Seller for costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby; (ii) any liability of Seller for breach of contract, tort or violation of law; and (iii) any income taxes owed by Seller as a result of the transaction contemplated hereby. It is understood and agreed that Buyer shall not assume and become liable for the payment of any debts, liabilities, losses, accounts payable, bank indebtedness, mortgages, tax liabilities, liabilities relating to Seller’s employees or other obligations of Seller that are directly related to the Acquired Assets purchased and such other liabilities, whether the same are known or unknown, now existing or hereafter arising, of whatever nature or character, whether absolute or contingent, liquidated or disputed except as expressly set forth herein.

### ARTICLE 3 PURCHASE PRICE; DEPOSIT

3.1 Purchase Price. In consideration for the Acquired Assets, and subject to the terms and conditions of this Agreement, and the entry and effectiveness of the Bankruptcy Court Order (as defined in Section 7.5 below), at the Closing, Buyer shall assume the Assumed Liabilities, assume the Assumed Contracts, and pay Seller an amount equal to Eight Million Three Hundred Fifty Thousand and no/100 Dollars (\$8,350,000.00) (the “Purchase Price”). On the Closing Date, Buyer shall pay and deliver to Seller, by wire transfer of immediately available U.S. funds, the Purchase Price. All personal property taxes for 2005 on any of the Acquired Assets will be prorated as of the Closing Date. Further, any adjustments under the Assumed Contracts for taxes and common area maintenance (CAM) for 2005 will be prorated as of the Closing Date based on best estimates arising from billings for previous years.

Debtor will escrow and reserve its pro-rated share and the parties agree to reconcile the amounts to be paid and prorated upon receipt of the bills for these items.

3.2 Bankruptcy Court Auction. Buyer acknowledges that higher and better bids may be entertained by the Debtor at the Bankruptcy Hearing to consider the approval of the sale of the Acquired Assets. The Debtor agrees to request that the Bankruptcy Court approve a procedure whereby any matching bid submitted by the Buyer will be deemed a superior bid to a bid in the same amount submitted by any party other than the Buyer.

3.3 Qualification. Contemporaneously with the execution of this Agreement or prior to the date hereof, Buyer shall furnish to Seller proof that Buyer has undertaken appropriate steps, including, without limitation, the payment of fees to begin the process of obtaining a loan or other financial investment such that Buyer will have the financial ability to close and maintain sufficient working capital to demonstrate that Buyer will be able to comply with all payment obligations with respect to the Assumed Contracts.

3.4 Allocation of Purchase Price. The Purchase Price (as adjusted) and the amount of the Assumed Liabilities shall be allocated among the Acquired Assets as reasonably agreed to by the parties after the Closing.

3.5 Option to Reject Equipment Contracts and Real Estate Lease. The Buyer shall have the option, on or before the Closing Date, not to assume any particular equipment contract and the option not to assume the lease of the Administrative Office Space, and Buyer will not be responsible for the payment of any cure amount for such contract. Buyer will cooperate with lessors or secured parties whose equipment leases are rejected to remove equipment from the Manufacturing Facility if settlements cannot be reached with such parties. No reduction in the Purchase Price shall be made in connection with Buyer's decision to reject any particular equipment lease. Contracts or Leases which Buyer elects not to assume will no longer be included within the definition of Assumed Contracts. Buyer shall have the right to exercise this option with regard to any such lease or equipment contract until the Closing Date, after which such option expires.

#### ARTICLE 4 CLOSING

4.1 Closing. Upon the terms and subject to the satisfaction of the conditions contained in Article 8 of this Agreement, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated by this Agreement (the "Closing") shall take place at the offices of LCSS, 3343 Peachtree Road, N.E., Suite 550, Atlanta, Georgia 30326, at 10:00 a.m., local time, on the first business day that occurs after three (3) days after the entry of the Bankruptcy Court Order or April 8, 2005, whichever is earlier, provided that no stay of the Bankruptcy Court Order is in effect on such date. The date and time at which the Closing actually occurs is herein referred to as the "Closing Date." The Seller shall request that the Bankruptcy Court Order include the provisions listed on the attached Schedule XQ.

4.2 Seller's Closing Deliveries. At or prior to the Closing, in addition to any other documents specifically required to be delivered pursuant to this Agreement, Seller shall, in form and substance reasonably satisfactory to Buyer and its counsel, deliver to Buyer the following:

- (a) a bill of sale and transfer and assignment substantially in such form as attached hereto as Exhibit B and duly executed by Seller;
- (b) such other instruments of conveyance or transfer as are necessary or convenient to convey all of Seller's right, title and interest in, to and under the Acquired Assets to Buyer, duly executed by Seller;
- (c) a certified copy of the Bankruptcy Court Order; and
- (d) such other documents reasonably deemed necessary by Seller and Buyer and their respective counsel to effect the transactions contemplated hereby.

In connection with the transfer of any intangible assets included within the Acquired Assets, Seller shall provide to Buyer any and all available written or recorded information concerning any such property, including, without limitation, documents evidencing Seller's right and title to trademarks, servicemarks and trade names, Seller's sales and purchase records, accounts and similar documentation.

4.3 Buyer's Closing Deliveries. At the Closing, in addition to any other documents specifically required to be delivered pursuant to this Agreement, Buyer shall, in form and substance reasonably satisfactory to Seller and its counsel, deliver to Seller the following:

- (a) the Purchase Price in accordance with Section 3.1;
- (b) a certificate, duly executed by an official of Buyer, dated as of the date of the Closing, certifying that Buyer has performed and complied with all of the terms, provisions and conditions of this Agreement to be performed and complied with by it at or prior to the Closing and that its representations and warranties are true in all material respects as of the date of this Agreement and as of the date of the Closing (except as expressly contemplated or permitted by this Agreement);
- (c) a certificate of the Secretary of Buyer, dated as of the date of the Closing, certifying (i) the resolutions duly adopted by the Board of Directors or governing body of Buyer authorizing and approving the execution, delivery and performance of this Agreement and the transactions contemplated hereby, and (ii) that such resolutions have not been rescinded or modified and remain in full force and effect as of the date of the Closing;
- (d) a Certificate of Existence of Buyer, certified by the Secretary of State of Buyer's state of formation, dated no earlier than ten days prior to the date of the Closing;
- (e) Evidence reasonably satisfactory to Seller that all cure amounts required to be paid as a condition to the assumption and assignment of the Assumed Contracts will be paid for or reserved for in full by Buyer as of the Closing Date;
- (f) proof of insurance for sufficient and adequate property, workers' compensation, and general liability coverage, unless, prior to Closing, Buyer has reached an agreement with Seller to pay

to be added as an insured to Seller's policies (if permissible under the terms of the applicable policies) or to pay for an assignment of Seller's policies (if and to the extent assignable); and

(g) such other documents reasonably deemed necessary by Seller and its counsel to effect the transactions contemplated hereby.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

5.1 Authority Relative to this Agreement. Subject to the applicable provisions of the Bankruptcy Code and the approval of this Agreement by the Bankruptcy Court, Seller has all power to execute and deliver this Agreement and, upon entry and effectiveness of the Bankruptcy Court Order, will have all authority necessary to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller, and assuming that this Agreement constitutes a valid and binding agreement of Buyer, and, subject to the entry and effectiveness of the Bankruptcy Court Order and any applicable Bankruptcy Code provision, constitutes a valid and binding agreement of Seller, enforceable against Seller in accordance with its terms. The consummation of the transactions contemplated by this Agreement and compliance with the provisions hereof will not conflict with or result in a breach of the terms, conditions or provisions of the Assumed Contracts, any order of any court or other agency of government, the charter, organizational documents or bylaws of Seller, or result in the creation or imposition of any lien, charge or encumbrance of any kind whatsoever on any of the Assets, except that approval of this Agreement must be obtained by Seller from the Bankruptcy Court.

5.2 Assets. Except for the Assumed Contracts, Seller has not previously transferred or licensed any Acquired Assets other than in the ordinary course of business consistent with past custom and practice. Seller has good, marketable and valid title to the Acquired Assets and, at the Closing, Buyer, subject to the Bankruptcy Court Order, shall acquire all of Seller's right, title and interest in, to and under all of the Acquired Assets, in each case free and clear of all encumbrances.

5.3 Labor and Employment Matters. Seller is not a party to any collective bargaining agreement, union contract or similar agreement.

5.4 Permits. To the extent of Seller's knowledge, Seller holds all permits that are required by any governmental authority to own and use the Acquired Assets. To the extent of Seller's knowledge, no suspension, cancellation or termination of any of such permits is threatened or imminent.

5.5 Brokers. No broker, investment banker or other Person engaged by Seller is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement.

5.6 Disclaimer of Other Representations and Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE 5, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF ANY OF ITS ASSETS (INCLUDING THE ACQUIRED ASSETS), LIABILITIES OR OPERATIONS, INCLUDING, WITH

RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH IN THIS ARTICLE 5, BUYER IS PURCHASING THE ACQUIRED ASSETS ON AN "AS-IS, WHERE-IS" BASIS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES NO REPRESENTATION OR WARRANTY REGARDING ANY ASSETS OTHER THAN THE ACQUIRED ASSETS, AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY.

ARTICLE 6  
REPRESENTATIONS AND WARRANTIES of BUYER

Buyer hereby represents and warrants to Seller as follows:

6.1 Authority Relative to this Agreement. Buyer has all corporate power and authority necessary to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate proceedings on the part of Buyer. This Agreement has been duly and validly executed and delivered by Buyer, and, assuming that this Agreement constitutes a valid and binding agreement of Seller, constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

6.2 Legal Proceedings and Judgments. There are no actions, suits, labor disputes or other litigation, legal or administrative proceedings or governmental investigations pending or, to the Knowledge of Buyer, threatened against or affecting Buyer or any of its subsidiaries or any of its or their present or former officers, directors, employees, consultants, agents or shareholders, as such, or any of its or their properties, assets or business relating to the transactions contemplated by this Agreement or which could have the effect of delaying or prohibiting the consummation of the transactions contemplated by this Agreement. For purposes of this Agreement, "Knowledge of Buyer," means the actual knowledge of the President and Chief Executive Officer and Chief Financial Officer of Buyer

6.3 Brokers. No broker, investment banker or other Person engaged by Buyer is entitled to any broker's, finder's or other similar fee or commission payable by the Seller in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

6.4 Buyer Financing. As of the date of this Agreement and on the Closing Date, and subject to Buyer's lender's satisfaction with its due diligence with respect to this transaction, Buyer has and will have funds sufficient to pay the Purchase Price and all of its fees and expenses incurred in connection with the transactions contemplated hereby.

6.5 Consents and Approvals; No Violation. The execution and delivery of this Agreement by Buyer do not, and the consummation of the transactions contemplated hereby and compliance with the provisions hereof will not, result in any violation of, or default (with or without notice or lapse of time, or both) under, or give to others a right of termination, cancellation or acceleration of any obligation or the loss of a material benefit under, or result in the creation of any lien, security interest, charge or encumbrance upon any of the properties or assets of Buyer or any of its subsidiaries under, any provision



of (i) the charter or organization document or bylaws of Buyer, (ii) any provision of the comparable charter or organization documents of any of Buyer's subsidiaries, (iii) any loan or credit agreement, note, bond, mortgage, indenture, lease or other agreement, instrument, permit, concession, franchise or license applicable to Buyer or any of its subsidiaries other than to Buyer's lender or (iv) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Buyer or any of its subsidiaries or any of their respective properties or assets, other than, in the case of clauses (ii), (iii) or (iv), any such violations, defaults, rights, liens, security interests, charges or encumbrances that, individually or in the aggregate, would not prevent the consummation of any of the transactions contemplated hereby in accordance with the terms of this Agreement. To the knowledge of Buyer, no filing or registration with, or authorization, consent or approval of, any Governmental Entity is required by or with respect to Buyer or any of its subsidiaries in connection with the execution and delivery of this Agreement by Buyer or is necessary for the consummation of the transactions contemplated by this Agreement.

6.6 Due Diligence. Buyer acknowledges that Buyer has heretofore conducted substantial due diligence, and Buyer believes it can complete its due diligence in sufficient time to close a sale of the Acquired Assets on or before 5:00 p.m. Eastern Time on April 8, 2005. Seller shall provide Buyer reasonable access to the Seller's books and records as well as the Manufacturing Facility and Administrative Office Space and Seller's employees. Buyer acknowledges that Buyer will be purchasing the Acquired Assets based solely on Buyer's own independent investigations and findings after having reviewed information provided by Seller or Seller's agents. Any information that Seller or any other party may have delivered to Buyer is furnished without any representation or warranty whatsoever, other than Seller's warranty that Seller has title to the Acquired Assets. Seller has made no agreement to alter, repair or improve any of the Acquired Assets, provided, however, that Seller may, prior to the Closing Date, allow the removal of existing equipment for which the equipment leases were rejected prior to the Closing Date; and provided, further, that Buyer shall have the right, at any time prior to the Closing Date to delete any of the Assumed Contracts which it does not desire to assume from the list of Acquired Assets, with no reduction to the Purchase Price. Subsequent to the Closing, Seller shall have no further liability or obligation with respect to the Acquired Assets or their condition, except as expressly set forth in this Agreement.

## ARTICLE 7 COVENANTS OF THE PARTIES

The parties hereto agree as follows with respect to the period between the execution of this Agreement and the Closing:

### 7.1 Further Assurances.

(a) Subject to the terms and conditions of this Agreement, each of the parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws and regulations to consummate and make effective the sale of the Acquired Assets in accordance with this Agreement, including using commercially reasonable efforts to ensure timely satisfaction of the conditions precedent to each party's obligations hereunder. Neither Seller, on the one hand, nor Buyer, on the other hand, shall, without the prior written consent of the other party take any action which would reasonably be expected to prevent or materially impede, interfere with, or delay the transactions contemplated by this Agreement. From time to time, on or after the Closing Date, Seller shall use reasonable efforts, at Buyer's expense, to execute and deliver such documents to Buyer as Buyer may reasonably request in order to more effectively vest in

Buyer Seller's title to the Acquired Assets. From time to time after the date hereof, Buyer shall use reasonable efforts, at Seller's expense, to execute and deliver such documents to Seller as Seller may reasonably request in order to more effectively consummate the sale of the Acquired Assets and the assumption and assignment of the Assumed Liabilities and the Assumed Contracts in accordance with this Agreement.

(b) In the event that any Acquired Asset shall not have been conveyed to Buyer at the Closing, Buyer and Seller shall use their respective commercially reasonable efforts to convey such Acquired Asset to Buyer as promptly as is practicable after the Closing.

(c) Should Buyer desire the services of any employees of the firm of Hays Financial Consulting, LLC to assist in the transition of operations of the Acquired Assets, Buyer may obtain such transition services at Buyer's sole expense by paying the usual and customary rates of the desired employees or agents of Hays Financial Consultants, LLC.

7.2 Seller's Operation of Business Prior to Closing. Seller shall (a) conduct the business in a reasonable and prudent manner in accordance with past practices; (b) engage (exclusively with respect to the business) in no transactions out of the ordinary course of business, without the prior consent of Buyer, not to be unreasonably withheld; and (c) use commercially reasonable efforts to preserve its existing business organization and the relationships it currently maintains with its employees, customers, and suppliers.

7.3 Access to Information; Maintenance of Records. Between the date of this Agreement and the Closing Date, Seller shall, during ordinary business hours, upon reasonable notice, (i) give Buyer reasonable access to all physical locations, books, and records constituting the Acquired Assets to which Buyer is not denied access by law; (ii) permit Buyer to make such reasonable inspections thereof as Buyer may reasonably request; and (iii) furnish Buyer with such financial and operating data and other information to the extent relating to Acquired Assets as Buyer may from time to time reasonably request; provided, however, that (A) any such access shall be conducted in such a manner so as not to interfere unreasonably with the operation of Seller's business and shall be at the expense of Buyer; (B) Seller shall not be required to take any action which would constitute a waiver of the attorney-client privilege; and (C) Seller need not supply Buyer with any information which Seller is under a legal obligation not to supply.

7.4 Notices and Consents. Each of the parties hereto shall give any notices to third parties, and will use commercially reasonable efforts, to (a) obtain any third party consents necessary to consummate the transactions contemplated by this Agreement; and (b) obtain any authorizations, consents, and approvals of governments and governmental agencies necessary to consummate the transactions contemplated by this Agreement.

7.5 Bankruptcy Court Approval Seller will file motions with the Bankruptcy Court under §§ 363 and 365 of the Bankruptcy Code, and any other applicable law (the "Sale Motion") requesting the Bankruptcy Court to enter an order containing provisions which are substantially similar to those set forth on Schedule XQ attached hereto (the "Bankruptcy Court Order") (i) approving the sale of the Acquired Assets to the Buyer in accordance with Section 363 of the Bankruptcy Code; (ii) approving the assignment and assumption of the Assumed Contracts in accordance with Section 365 of the Bankruptcy Code without any requirement that Buyer provide a letter of credit, deposit, personal guaranty or any other financial accommodations of Buyer's members, shareholders or affiliates; (iii) vacating the

automatic stay of the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure as they relate to the Buyer and the Acquired Assets, (iv) finding that Buyer is a "good faith purchaser," as that term is defined in Bankruptcy Code Section 363(m); (v) providing all Acquired Assets will be transferred to the Buyer free and clear of all liens, claims and encumbrances pursuant to Bankruptcy Code Section 363(f); and (vi) except as otherwise provided in this Agreement, providing that the Buyer shall not be deemed a successor of Seller and shall acquire no successor liability for any obligation of Seller for any claims against Seller as a result of the sale of the Acquired Assets to the Buyer(s). Buyer will cooperate with Seller in seeking the Bankruptcy Court Order. The hearing at which the Bankruptcy Court considers entering the Bankruptcy Court Order being referred to as the "Bankruptcy Hearing". Seller shall not amend the Sale Motion once it is filed with the Bankruptcy Court without the prior written consent of the Buyer.

#### 7.6 Public Announcements.

(a) Prior to Closing, Seller and Buyer will consult with each other before issuing any press release or otherwise making any public statement with respect to the sale, and will not issue any such press release or make any such public statement without the prior approval of the other party, except as may be required by applicable law in which event the other party shall have the right to review and comment upon (but not approve) any such press release or public statement prior to its issuance.

(b) Seller will provide Buyer and its counsel with copies of all proposed pleadings and orders in the Bankruptcy Case pertaining to the sale with sufficient time to permit review and comment by Buyer. Except as may be required by applicable law, Seller will not make any public disclosure or issue any press release in which Buyer is mentioned without Buyer's prior review and approval.

7.7 Power of Attorney; Right of Endorsement, Etc. Effective as of the Closing, Seller hereby constitutes and appoints Buyer and its successors and assigns the true and lawful attorney of Seller with full power of substitution, in the name of Buyer or the name of Seller, on behalf of and for the benefit of Buyer, (a) to collect all Acquired Assets, (b) to endorse, without recourse, checks, notes and other instruments attributable to the Acquired Assets, (c) to defend and compromise all actions, suits or proceedings with respect to any of the Acquired Assets, (d) to institute and prosecute all proceedings which Buyer may deem proper in order to collect, assert or enforce any claim, right or title in or to the Acquired Assets and (e) to do all such reasonable acts and things with respect to the Acquired Assets as Buyer may deem advisable, subject to the consent of Seller, which consent shall not be unreasonably withheld. Seller agrees that the foregoing powers are coupled with an interest and shall be irrevocable by Seller directly or indirectly by the dissolution of Seller or in any other manner. Buyer shall retain for its own account any amounts lawfully collected pursuant to the foregoing powers and Seller shall promptly pay to Buyer any amounts received by Seller after the Closing with respect to the Acquired Assets to which Buyer may be entitled.

7.8 Employees. Seller shall terminate the employment of all its employees working in the Manufacturing Facility and in the Administrative Office Space effective at the Closing. Buyer is not assuming any obligation or liability of any kind which Seller may have to Seller's employees through the Closing Date for compensation, pension or retirement plan contributions, or any other obligation or responsibility of any kind. Buyer shall not be obligated to hire or employ any of Seller's employees as of the Closing Date, but may hire or employ any of Seller's former employees in Buyer's sole discretion and upon such terms as it determines. Seller makes no representation as to whether any such Employee will accept employment with Buyer. Buyer has no obligation to offer continued employment after the Closing

Date to all or any of Seller's Employees. The employment of the Seller's Employees shall be subject to all of Buyer's practices and policies.

7.9 Litigation Support. In the event and for so long as any party actively is contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand in connection with (a) any transaction contemplated under this Agreement or (b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the date of the Closing involving the business sold hereby, the other party will cooperate with the contesting or defending party and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending party (unless the contesting or defending party is entitled to indemnification therefor under this Agreement).

7.10 Indemnity.

(a) Buyer shall indemnify, defend and hold harmless Seller from, against and in respect of any and all losses, liabilities, deficiencies, penalties, fines, costs, damages and expenses whatsoever (including, without limitation, reasonable professional fees and costs of investigation, litigation, settlement and judgment and interest) that may be suffered or incurred by Seller from or by reason of (i) any inaccuracy of a representation or breach of a warranty made by Buyer in this Agreement, (ii) any breach of any covenant or agreement made by Buyer in this Agreement, (iii) any of the Assumed Liabilities, and (iv) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses (including, without limitation, interest, penalties, reasonable legal fees and accounting fees) incident to the foregoing and the enforcement of the provisions of this Section 7.10(a).

(b) Seller shall indemnify, defend and hold harmless Buyer from, against and in respect of any and all losses, liabilities, deficiencies, penalties, fines, costs, damages and expenses whatsoever (including, without limitation, reasonable professional fees and costs of investigation, litigation, settlement and judgment and interest) that may be suffered or incurred by Buyer from and by reason of any breach of a warranty of title made by Seller in this Agreement; and (ii) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses (including, without limitation, interest, penalties, reasonable legal fees and accounting fees) incident to the foregoing and the enforcement of the provision of this Section 7.10(b).

ARTICLE 8  
CONDITIONS PRECEDENT

8.1 Conditions to Each Party's Obligations to Effect the Closing. The respective obligations of each party to effect the sale and purchase of the Acquired Assets shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) no preliminary or permanent injunction, stay pending appeal or other order or decree by any federal or state court which prevents the consummation of the sale of any part of the Acquired Assets contemplated hereby shall have been issued and remain in effect (each party agreeing to use its commercially reasonable efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted by any governmental authority which prohibits the consummation of the sale of the Acquired Assets; and

(b) the Bankruptcy Court Order shall have been entered by the Bankruptcy Court. Any condition specified in this Section 8.1 may be waived by Buyer; provided that no such waiver shall be effective against Buyer unless it is set forth in a writing executed by Buyer.

8.2 Conditions to Obligations of Buyer. The obligation of Buyer to effect the purchase of the Acquired Assets and the assumption of the Assumed Liabilities and Assumed Contracts contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) Seller shall have performed and complied in all material respects with the covenants contained in this Agreement which are required to be performed and complied with by Seller on or prior to the Closing Date and the representations and warranties of Seller which are set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date (except to the extent that any such representation or warranty speaks as of a particular date) as though made at and as of the Closing Date; and

(b) Buyer shall have received the other items to be delivered to it pursuant to Section 4.2.

Any condition specified in this Section 8.2 may be waived by Buyer; provided that no such waiver shall be effective against Buyer unless it is set forth in a writing executed by Buyer.

8.3 Conditions to Obligations of Seller. The obligation of Seller to effect the sale of the Acquired Assets contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) Buyer shall have performed and complied in all material respects with the covenants contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing Date and the representations and warranties of Buyer which are set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date (except to the extent that any such representation or warranty speaks as of a particular date) as though made at and as of the Closing Date; and

(b) Seller shall have received the other items to be delivered to it pursuant to Section 4.3.

Any condition specified in Section 8.3 may be waived by Seller; provided that no such waiver shall be effective against Seller unless it is set forth in a writing executed by Seller.

## ARTICLE 9 TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to the Closing Date by:

(a) mutual written consent of Seller and Buyer;

(b) Seller, if there has been a material violation or breach by Buyer of any covenant, representation or warranty made by it contained in this Agreement which has prevented the satisfaction of

any condition to the obligations of Seller to effect the Closing and such violation or breach has not been cured by Buyer within ten (10) Business Days of receipt of written notice thereof or is waived by Seller;

(c) Seller or Buyer, if (i) there shall be any law or regulation that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or (ii) there shall be any nonappealable final order, decree or judgment of (A) the Bankruptcy Court or (B) any other court or governmental authority having competent jurisdiction which prohibits the consummation of the transactions contemplated hereby or otherwise alters the terms and conditions of the transactions contemplated hereby in any material respect, including, without limitation, the approval of a Bankruptcy Court Order which contains terms which are not substantially similar to those set forth on Schedule XQ attached hereto;

(d) Buyer or Seller, if the Closing shall not have occurred by April 8, 2005 (the Termination Date"), unless extended by mutual written agreement of Buyer and Seller; provided that Buyer or Seller, as the case may be, shall not be entitled to terminate this Agreement pursuant to this Section 9.1(d) if the failure of the Closing to occur on or prior to such date results primarily from such party itself breaching any representation, warranty or covenant contained in this Agreement;

(e) Buyer, if there has been a material violation or breach by Seller of any covenant, representation or warranty made by it contained in this Agreement which has prevented the satisfaction of any condition to the obligations of Buyer to effect the Closing and such violation or breach has not been cured by Seller within ten (10) Business Days of receipt of written notice thereof or is waived by Buyer.

9.2 Procedure and Effect of Termination. In the event of termination of this Agreement and abandonment of the transactions contemplated hereby by either or both of the parties pursuant to Section 9.1, written notice thereof shall forthwith be given by the terminating party to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further order of the Bankruptcy Court and without further action by any of the parties hereto. If this Agreement is terminated as provided herein, all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency to which they were made.

9.3 Liability if Agreement Terminated; Higher Bid. Termination of this Agreement shall not relieve any party of any liability for breaches of this Agreement prior to the date of termination. Buyer shall be entitled to no remedy or damages in the event that the Bankruptcy Court accepts a higher or better offer for the Acquired Assets, provided, however, that Seller shall request that Buyer be provided with overbid protection and shall be paid its actual expenses out of the proceeds of the higher and better bid up to a cap of \$100,000. If Buyer shall fail or refuse to close in breach of this Agreement, Seller shall be entitled to recover \$250,000 from Buyer as liquidated damages incurred as a result of such breach by Buyer

## ARTICLE 10 MISCELLANEOUS

10.1 Notices. All notices, requests, consents and other communications hereunder (each, a "Notice") shall be in writing and shall be deemed to have been given (a) if mailed, the date of receipt of such Notice when sent via first class United States registered mail, return receipt requested, postage prepaid to the address listed below for the party to whom the Notice is being sent (the "Notice Party"); or (b) if hand delivered or delivered by courier, upon actual delivery of such Notice to the Notice Party at the

address listed below for such Notice Party. The addresses for each party to this Agreement, as of the date hereof, are:

Seller:

c/o J. Michael Lamberth, Esq.  
Lamberth, Cifelli, Stokes & Stout, P.A.  
Suite 550  
3343 Peachtree Road  
Atlanta, GA 30326

S. Gregory Hays  
Hays Financial Consulting, LLC  
3343 Peachtree Road NE, Suite 750  
Atlanta, GA 30326

Buyer: Equity South Advisors, LLC

with a copy to: C. Edward Dobbs, Esq.  
Parker, Hudson, Rainer & Dobbs, LLP  
285 Peachtree Center Avenue NE, Suite 1500  
Atlanta, GA 30303

Either party may change its address by providing written notice, in accordance with the foregoing provisions of this Section 10.1, to the other party of such change.

10.2 Expenses. Each party hereto will pay all costs, fees and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements contained herein on its part to be performed, including the fees, expenses and disbursements of its respective counsel and accountants. In the event of any litigation between the parties arising out of this Agreement, the prevailing party shall be entitled to recover from the other party its court costs and reasonable attorneys' fees at the trial and all appellate levels.

10.3 Governing Law; Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to such jurisdiction's conflict of laws principles. The Bankruptcy Court shall have exclusive jurisdiction with regard to any action brought to enforce this Agreement or any disputes arising thereunder, and each party covenants and agrees that it will not bring any such action in any other court without the prior approval of the Bankruptcy Court.

10.4 Assignment. Buyer may assign this contract in parts to another single purpose entity controlled by Douglas Diamond.

10.5 Partial Invalidity. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be

construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

10.6 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered an original counterpart, and all of which shall be considered to be but one agreement and shall become a binding agreement when each party shall have executed one counterpart and delivered it to the other party hereto.

10.7 Titles and Headings; Rules of Construction. Titles and headings to articles and sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Whenever the context so requires the use of or reference to any gender includes the masculine, feminine and neuter genders; and all terms used in the singular shall have comparable meanings when used in the plural and vice versa.

10.8 Entire Agreement; Amendments and Waivers. This Agreement contains the entire understanding of the parties hereto with regard to the subject matter contained in this Agreement and supersedes all prior agreements or understandings of the parties. The parties, only by mutual agreement in writing, may amend, modify and supplement this Agreement. The failure of any party to this Agreement to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

10.9 Survival of Representations, Warranties and Agreements. The representations, warranties and agreements set forth in this Agreement or in any schedule, exhibit or instrument delivered pursuant to this Agreement shall terminate within one year of the Closing Date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

BUYER

EQUITY SOUTH ADVISORS, LLC

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

Its: \_\_\_\_\_



SELLER

AERO PLASTICS, INC.

By: \_\_\_\_\_  
S. Gregory Hays, in his Office  
and Capacity as court-appointed  
Managing Director

## SCHEDULE 1.1 (LIST OF LOCATIONS)

“Manufacturing Facility” located at 237 Greenwood Court, McDonough, Georgia 30253
“Administrative Office Space” located at 163 Pioneer Drive, Leominster, Massachusetts

## SCHEDULE 2.1(a)(1) – TRADEMARKS

### Trademarks/ServiceMarks/Trade Names

[TO BE COMPLETED BY SELLER AND APPROVED BY BUYER  
PRIOR TO APRIL 5, 2005]

## SCHEDULE 2.1(a)(2) – FF&E

### Fixed Asset Detail Attached

[TO BE COMPLETED BY SELLER AND APPROVED BY BUYER  
PRIOR TO APRIL 5, 2005]

## SCHEDULE 2.1(a)(3) – CONTRACTS AND AGREEMENTS

Lease Agreements with the following lessors for the Restaurant Locations listed below:

Lessor	Store/Restaurant Location
A.P. Realty, LLC 163 Pioneer Drive Leominster, MA 01453	“Administrative Office Space” located at 163 Pioneer Drive, Leominster, Massachusetts
McDonough NI Industrial, LLC c/o John Mill, III and David Geiger Kilpatrick Stockton LLP Suite 2800 1100 Peachtree Street Atlanta, GA 30309-4530	“Manufacturing Facility” located at 237 Greenwood Court, McDonough, Georgia 30253
Barack Ferrazzano Kirschbaum Perlman & Nagelberg LLC Attn: Suzanne Bessette-Smith 333 West Wacker Drive Suite 2700 Chicago, IL 60606	“Manufacturing Facility” located at 237 Greenwood Court, McDonough, Georgia 30253
First Industrial Development Services, Inc. Attn: Vice President – Operations Management 311 South Wacker Drive, Suite 4000 Chicago, IL 60606  First Industrial Realty Trust, Inc. Attn: Samuel O’Briant 1255 Terminus Drive, Suite 100 Lithia Springs, GA 30122	“Manufacturing Facility” located at 237 Greenwood Court, McDonough, Georgia 30253

Exhibit "A"

BILL OF SALE, ABSOLUTE

KNOW ALL MEN BY THESE PRESENTS, that AERO PLASTICS, INC., a Massachusetts Corporation ("Seller") for and in consideration of the sum of Ten Dollars and other good and valuable consideration paid to it by \_\_\_\_\_, a \_\_\_\_\_ corporation ("Buyer"), the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does hereby grant, bargain, sell, transfer and deliver unto Buyer, its successors and assigns, the following assets owned by Seller, such transfer being made pursuant to an Asset Purchase Agreement dated \_\_\_\_\_, 2005, between Seller and Buyer (the "Agreement"):

(a) All of the Acquired Assets (as defined in the Agreement), including but not limited to, the items listed on Schedule 1 attached hereto (the "Assets").

Seller warrants that it is conveying good and valid title to the Acquired Assets (as defined in the Agreement) free and clear of liens, claims, charges, equities, licenses, restrictions, encumbrances and the like pursuant to order of the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court") entered in case number 05-60451.

**OTHER THAN THE WARRANTIES SET FORTH HEREIN AND IN THE AGREEMENT, SELLER DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS AS TO THE ACQUIRED ASSETS, INCLUDING, WITHOUT LIMITATION, THE QUANTITY OR QUALITY THEREOF. THE ASSETS ARE BEING SOLD AS IS, WHERE IS, WITH ALL FAULTS AND SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY OF THE ASSETS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY DISCLAIMED.**

IN WITNESS WHEREOF, Seller has executed and delivered this Bill of Sale on \_\_\_\_\_,  
2005

SELLER

AERO PLASTICS, INC.

By: \_\_\_\_\_  
S. Gregory Hays, in his Office  
and Capacity as court-appointed  
Managing Director

STATE OF GEORGIA            )  
COUNTY OF \_\_\_\_\_  )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2005, by \_\_\_\_\_, as \_\_\_\_\_  
of \_\_\_\_\_, who is personally known to me or who has produced his \_\_\_\_\_  
\_\_\_\_\_ as identification and who did not take an oath.

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

[Print Name]  
My Commission Expires:

## SCHEDULE '1'

The Assumed Contracts set forth on Schedule 2.1(a)(3) hereof

The furniture, fixtures and equipment set forth on Schedule 2.1(a)(2) hereof.

All of Seller's right, title and interest in the trademarks and licenses set forth on Schedule 2.1(a)(1) hereof.

All inventory set forth on Schedule 1(D) hereof.

The accounts set forth on Schedule 1(E) hereof.



## SCHEDULE XO

### Provisions of Bankruptcy Court Order

It is uncontroverted (a) that the Debtor owns sole, unconditional, good and full title to the Acquired Assets identified in the Asset Purchase Agreement (the “APA”); (b) that the Debtor has full power and authority to execute the APA and all other documents contemplated thereby and that the sale of the Acquired Assets by the Debtor contemplated thereby has been duly and validly authorized; (c) that the Debtor has all the power and authority necessary to consummate the transaction contemplated by the APA upon entry of this Order and that the consummation of the transaction contemplated by said agreement is in compliance with the provisions hereof, will not conflict with or result in a breach of any provision of law, the terms, conditions or provisions of, any order of any court or other agency of government, the charter or bylaws of any of the Debtor, or result in the creation or imposition of any lien, charge or encumbrance of any kind whatsoever on any of the Acquired Assets; and (d) that no consents or approvals, other than those expressly provided for in the APA, are required for the Debtor to consummate the transaction contemplated by the APA.

The purchase price to be paid under the APA is fair, adequate, and reasonable.

The APA was negotiated, proposed and entered into by the parties without collusion, in good faith, and from arm’s length bargaining positions. BUYER is a good faith purchaser as such term is used in § 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby. Neither the Debtor nor BUYER have engaged in any conduct that would cause or permit the APA to be avoided under § 363(n) of the Bankruptcy Code.

The Debtor have shown sufficient grounds for authorization of the sale of the Acquired Assets pursuant to the APA free and clear of any liens, claims, charges, equities, licenses, restrictions, security interests, encumbrances or the like pursuant to § 363(f) and other applicable provisions of the Bankruptcy Code including those: (a) that purport to give any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtor’s or BUYER’s interest in the Acquired Assets, or any similar rights and (b) relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Debtor’s business prior to the Closing Date. Consequently, the transfer of the Acquired Assets pursuant to the APA (a) shall constitute a legal, valid and effective transfer of property of the Debtor’s estate to BUYER, and (b) will vest BUYER with all right, title, of the Debtor in and to the Acquired Assets free and clear of all liens, claims, charges, equities, licenses, restrictions, security interests, encumbrances or the like under § 363(f) and other applicable sections of the Bankruptcy Code and shall not subject BUYER to any liability whatsoever with respect to the operation of the Debtor’s businesses prior to the Closing Date as applicable to BUYER or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly, indirectly, contingently or otherwise, on any theory of law or equity, including, without limitation, any liability or obligation (including, without limitation, under any theory of successor or transferee liability

whatsoever) for any of the following items which relate in any way to either of the Debtor or its business:

- a. all accounts and other payables, including, without limitation, any liabilities for cooperative advertising, rebates, volume discounts and any other retailer/customer programs.
- b. all warranty, product return, product liability or product recalls or similar claims or liabilities.
- c. all wages or benefits or obligations of any nature whatsoever related to current or former employees or independent contractors of the Debtor, including any claimed liabilities under any Federal or state employment related or safety laws, rules or regulations, including, without limitation, workers compensation claims, or any liabilities under any collective bargaining, pension, severance or similar agreement or plan relating to any of Debtor's current or former employees or any premiums or other amounts due or underfunding of the same.
- d. all inter-company obligations among the Debtor or its affiliates.
- e. all liabilities for any kinds of taxes, including, without limitation, income, sales, payroll, other withholding, personal property, transfer or other taxes related to Debtor or this transaction.
- f. any claim, action, suit or proceeding arising from or related to the presence, generation, emissions, storage, treatment, transport or disposal of any Hazardous Material (as defined below) from to, at, in, on or under any facility owned or used by Debtor or its affiliates and any other environmental related liabilities related in any way to either Debtor or any of its affiliates. As used herein, "Hazardous Material" means any explosives, radioactive materials, polychlorinated biphenyls, petroleum and petroleum by-products, hazardous waste as defined by Section 1004(5) of the Solid Waste Disposal Act, as amended from time to time and hazardous substances as defined by Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, or any successor or supplementary act related thereto and all related regulations of applicable governmental entities.
- g. any claim, action, suit or proceeding arising from or related to any antitrust laws.
- h. any COBRA (as defined in Sections 601 through 607 of ERISA and Section 4980B of the Internal Revenue Code) liabilities or COBRA continuation coverage for employees or former employees of Debtor.
- i. any claim, action, suit or proceeding arising from or related to any non-compliance with the bulk sales act of any state, the compliance of which the Debtor and purchaser hereunder are expressly relieved from. Such acts are superseded by Section 363 of the Bankruptcy Code and the supremacy clause of the United States Constitution. The notice to all creditors and opportunity to object to this sale in this Court and other aspects of this sale fairly address the concerns covered by any applicable bulk sales act.

Section 1146(c) of the Bankruptcy Code is applicable to the transactions proposed herein. Consequently, the Debtor shall be authorized to consummate the transactions contemplated hereby, and to convey the Acquired Assets, without the payment of any stamp or other similar tax that may be applicable to the conveyance of the Acquired Assets pursuant to the APA.

Due and adequate notice with regard to the request to assume and assign leases and executory contracts has been provided in accordance with § 102(1) of the Bankruptcy Code to all landlords and other parties to the executory contracts. All objections to the assumption and the assignment of the executory contracts and unexpired leases (the "Assumed Contracts") as described in the Sale Motion have been withdrawn or are hereby overruled; the Debtor has shown assumption and assignment of the Assumed Contracts to be in the best interest of the Debtor, the Estate of the Debtor, and the creditors; and the Buyer has provided adequate assurance of future performance under the Assumed Contracts, without the requirement that Buyer, its members, shareholders or affiliates provide a letter of credit, deposit, personal guaranty or any other financial accommodation. The Debtor is AUTHORIZED to assume and assign all Assumed Contracts to the Purchaser without further Order of this Court.

By consent of the Purchaser as evidenced by signature of counsel for the Buyer below, Buyer acknowledges that it reviewed all Assumed Contracts and that, with regard to the Assumed Contracts that are leases of non-residential real property, Buyer is bound by the terms of those leases. Furthermore, Buyer is deemed to be the tenant under the leases that are included within the Assumed Contracts without the necessity of consent by the landlords under those leases notwithstanding any non-assignment provisions contained in the leases pursuant to §365 of the Bankruptcy Code.