

Attorney Docket No. 16532.031400

**RECORDATION FORM COVER SHEET
PATENTS ONLY**

FORM PTO-1595

(Rev. 6-93)

OMB No. 0651-0011 (exp. 4/94)

**U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Kluft, Earl S.

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No**3. Nature of conveyance:**☒ Assignment☐ Security Agreement☐ Other _____☐ Merger☐ Change of Name

Execution Date: August 6, 1999

2. Name and address of receiving party(ies)

Name: Chattam & Wells, Inc.

Internal Address:

Street Address: 134 Spring Street
New York, NY 10012Additional name(s) & address(es) attached? ☐ Yes☒ No**4. Application number(s) or patent number(s):**

If this document is being filed together with a new application, the execution date of the application is _____

A. Patent Application No(s):**B. Patent No(s): 6,223,370**Additional numbers attached? ☐ Yes ☒ No**5. Name and address of party to whom correspondence
Concerning document should be mailed:**Name: James F. Ewing
Address: GREENBERG TRAURIG, LLP
One International Place
Boston, MA 02110**6. Total number of applications and patents involved: [1]****7. Total fee (37 CFR 3.41)**

\$40.00

☐ Enclosed☒ The Commissioner is authorized to charge Deposit Account
No: 50-2678, Reference No. 16532.031400.☒ The Commissioner is hereby authorized to charge any additional fees
that may be due, or to credit any overpayment to Deposit Account
No: 50-2678, Reference No. 16532.031400.

DO NOT USE THIS SPACE

9. Statement and signature*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

James F. Ewing, Reg. No. 52,875

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document: [46]

Mail documents to be recorded with required cover sheet information to:

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Attorney Docket No. 16532.031400

FORM PTO-1595

FINANCE SECTION

RECORDATION FORM COVER SHEET
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Purchase Agreement

This Purchase Agreement (this "Agreement") dated this 6th day of August, 1999, by and among Spring Air Partners-North America, Inc., a New Jersey corporation ("Parent"), Spring Air Partners-California, Inc., a New Jersey corporation and wholly owned subsidiary of Parent ("Deluxe Bedding Purchaser") and Chattam & Wells, Inc., a Delaware corporation and wholly owned subsidiary of Parent ("C&W Purchaser" and, together with Deluxe Bedding Purchaser, each, a "Purchaser" and collectively "Purchasers"), on the one hand, and Earl Kluff, personally, Earl Kluff as custodian for Michelle Kluff under the California Uniform Transfers to Minors Act ("Earl Kluff as Custodian for Michelle Kluff"), Earl Kluff as Custodian for Julianne Kluff under the California Uniform Transfers to Minors Act ("Earl Kluff as Custodian for Julianne Kluff"), Earl Kluff as Custodian for Alexander Kluff under the California Uniform Transfers to Minors Act ("Earl Kluff as Custodian for Alexander Kluff"), (each, a "Kluff Party" and collectively, the "Kluff Parties") and David M. Binke, personally ("Binke" and, together with each of the Kluff Parties, each a "Seller" and collectively, the "Sellers"), on the other hand. The Sellers are the owners of 100% of the issued and outstanding shares of capital stock of Spring Air California - Deluxe Bedding Co., Inc., a California corporation ("Deluxe Bedding") and all membership interests or other evidence representing ownership, of Chattam & Wells Mattress Company, L.L.C., a California limited liability company ("C&W", and, together with Deluxe Bedding, each, a "Company" and collectively, the "Companies").

WHEREAS, Deluxe Bedding manufactures, sells and distributes "Spring Air Mattresses" and related products pursuant to the certain Spring Air Products Related Companies Agreement, dated September 26, 1968, as amended between Deluxe Bedding and the Spring Air Company (the "License Agreement"); and

WHEREAS, C&W manufactures, sells and distributes "Chattam & Wells Mattresses" and related products; and

WHEREAS, Sellers wish to sell, and Purchasers wish to acquire, the businesses of the Companies through (i) the acquisition by Deluxe Bedding Purchaser of all of the issued and outstanding shares of capital stock of Deluxe Bedding and (ii) the acquisition by C&W Purchaser of all of the membership interests or other evidence representing ownership of C&W.

NOW, THEREFORE, Parent, Purchasers and the Sellers approve and adopt this Agreement and mutually covenant and agree with each other as follows:

ARTICLE I

TERMS OF PURCHASE AND SALE

Section 1.01 Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement, Sellers, on the Closing Date (hereinafter defined), will sell, convey, transfer, assign and deliver to (i) Deluxe Bedding Purchaser and Deluxe Bedding Purchaser will purchase and acquire from each of the Sellers, free and clear of all Encumbrances (other than as imposed by any agreement entered into by the Companies at or subsequent to the Closing with the Spring Air Company) the number of shares of Deluxe Bedding's common stock specified on Schedule 1.01, which in the aggregate shall represent % of the issued and outstanding shares of the common stock and any other class of capital stock of Deluxe Bedding (the "Purchased Shares"), and (ii) C&W Purchaser, and C&W Purchaser will purchase and acquire from each of the Sellers, free and clear of all Encumbrances, the membership interests of C&W specified on Schedule 1.01, which in the aggregate shall represent % of the membership interests or other evidence representing ownership of C&W (the "LLC Interests" and, together with the Purchased Shares, the "Ownership Interests"). The certificates representing the Purchased Shares shall be delivered to Deluxe Bedding Purchaser with duly executed and notarized stock powers in blank. The LLC Interests shall be transferred to C&W Purchaser through execution by the Sellers and C&W of an assignment of membership interests in the form attached hereto as Exhibit 1.01.

Section 1.02 Retained Assets. It is expressly agreed and understood that the acquisition of the Companies through the purchase of the Ownership Interests shall not include certain Retained Assets (hereinafter defined). The Retained Assets shall be transferred by the Companies to the Sellers or their designees immediately prior to the Closing Date (hereinafter defined). For purposes of this Agreement, "Retained Assets" shall mean those items listed on Schedule 1.02.

Section 1.03 Tax Payment. Purchasers and the Companies agree that the Sellers shall be entitled to receive from the Companies, on or before the Closing, the aggregate sum of \$ representing a good faith estimate of all state and Federal income taxes owing by Sellers as a result of the taxable income, for the period of 1999 ending as of the Closing, which flows through to the Sellers by reason of Deluxe Bedding's status as an S corporation for state and Federal income tax purposes and C&W's treatment as a partnership for state and Federal income tax purposes, less distributions previously made to the Sellers for the year 1999 (exclusive of interest or penalties) (the "Estimated Tax Payment"). In the event Sellers' tax returns for 1999, as amended, indicate that such Estimated Tax Payment was greater than the amount required, the Sellers shall, within () days after the filing of such returns or any amendments thereto, refund to the Companies such excess and if such returns or any amendments thereto of any applicable taxing authority requires or demands the payment of additional taxes as a result of the taxable income of the Companies for the portion of 1999 prior to the Closing Date by reason of Deluxe Bedding being an S corporation and C&W being a limited liability company and the flow-through of such income to the shareholders of

Deluxe Bedding and the members of C&W, the Companies, Purchasers and the Parent, jointly and severally, agree to pay within () days after receipt from the Sellers of their written request with copies of the applicable tax returns, amounts required to cover such taxes. Any payments required to be made pursuant to this Section 1.03 shall be made by wire transfer to the bank account specified by the Sellers or Purchasers, as applicable, and (x) shall not be subject to any of the limitations on indemnification set forth in Section 6.05 including the Indemnification Basket (hereafter defined) and (y) shall be paid without set-off or deduction of any kind.

Insert Section 1.04

ARTICLE II

PURCHASE PRICE



Section 2.01 Purchase Price. The aggregate purchase price for the Ownership Interests shall be () Dollars (the "Purchase Price") (subject to adjustment as set forth in Section 2.05) payable as follows:

(a) () Dollars () payable in cash (the "Cash Purchase Price") at the Closing via wire-transfer allocated amongst the Sellers as follows:



- (i) Earl Kluff - \$ ();
- (ii) Earl Kluff as Custodian for Julianne Kluff - ();
- (iii) Earl Kluff as Custodian for Alexander Kluff - ();
- (iv) Earl Kluff as Custodian for Michelle Kluff - \$ (); and
- (v) David Binke - ();

(b) () payable in the form of () year subordinated notes of Parent bearing interest at the rate of () per annum, in the form attached hereto as Exhibit 2.01(b)(i) (the "Subordinated Notes") with () year warrants to purchase an aggregate of () shares of Parent's common stock at an exercise price of \$ () per share, in the form attached hereto as Exhibit 2.01(b)(ii) (the "Warrants"), allocated amongst the Sellers as follows:

INSERT 1.04

1.04 Assignment of Kluft Patent and Kluft Goodwill: The parties hereto acknowledge that prior to the consummation of the transactions contemplated by this Agreement, Kluft assigned to C&W Purchaser the following: (a) the pending patent entitled "Anti-Roll Off Mattress Construction" patent application number 08/801830 and (b) all of Kluft's personal good-will associated with C&W for aggregate cash consideration of \$


INSERT 1.04

1.04 Assignment of Kluff Patent and Kluff Goodwill: The parties hereto acknowledge that prior to the consummation of the transactions contemplated by this Agreement, Kluff assigned to C&W Purchaser the following: (a) the pending patent entitled "Anti-Roll Off Mattress Contruction" patent application number 08/801830 and (b) all of Kluff's personal good-will associated with C&W for aggregate cash consideration of \$ .

INSERT 1.04

1.04 Assignment of Kluff Patent and Kluff Goodwill: The parties hereto acknowledge that prior to the consummation of the transactions contemplated by this Agreement, Kluff assigned to C&W Purchaser the following: (a) the pending patent entitled "Anti-Roll Off Mattress Contruction" patent application number 08/801830 and (b) all of Kluff's personal good-will associated with C&W for aggregate cash consideration of \$ [REDACTED]

Subordinated Notes:

- (i) Earl Kluff - [REDACTED];
- (ii) Earl Kluff as Custodian for Julianne Kluff - \$[REDACTED];
- (iii) Earl Kluff as Custodian for Alexander Kluff - \$[REDACTED];
- (iv) Earl Kluff as Custodian for Michelle Kluff - \$[REDACTED]; and
- (v) David Binke - \$[REDACTED];

Warrants:

- (i) Earl Kluff - [REDACTED] shares;
- (ii) Earl Kluff as Custodian for Julianne Kluff - [REDACTED] shares;
- (iii) Earl Kluff as Custodian for Alexander Kluff - [REDACTED] shares;
- (iv) Earl Kluff as Custodian for Michelle Kluff - [REDACTED] shares; and
- (v) David Binke - [REDACTED] shares.

(c) [REDACTED] (\$[REDACTED]) to the account of the Escrow Agent under the Escrow Agreement, by bank wire transfer on behalf of the Sellers. The Escrow Agreement shall be in the form of Exhibit 2.01(c) attached hereto (the "Escrow Agreement");

(d) As amongst the Sellers, the Escrow Account funds shall be allocated as follows:

- (i) Earl Kluff - \$[REDACTED];
- (ii) Earl Kluff as Custodian for Julianne Kluff - \$[REDACTED];
- (iii) Earl Kluff as Custodian for Alexander Kluff - \$[REDACTED];
- (iv) Earl Kluff as Custodian for Michelle Kluff - \$[REDACTED]; and
- (v) David Binke - \$[REDACTED].

The Purchase Price shall be allocated between the Purchased Shares and the LLC Interests as set forth on Schedule 2.01.

1 **Section 2.02 Closing Date.** The closing of the transactions contemplated hereby (the
2 "Closing") shall take place at the offices of Drinker, Biddle & Reath LLP, One Logan Square,
3 Philadelphia, Pennsylvania, at 9:00 a.m., local time on the date hereof. (The time and date on
4 which the Closing actually occurs referred to herein as the "Closing Date").

5
6 **Section 2.03 Transfer of Ownership Interests.** On the Closing Date, Sellers shall
7 sell, transfer, convey, assign and deliver the Ownership Interests by delivery to Purchasers of
8 the deeds, stock powers, bills of sale, assignments, transfers of title and other documents of
9 transfer and conveyance, duly executed by the Sellers, as set forth in Section 2.04
10 (collectively, the "Transfer Documents").

11
12 **Section 2.04 Closing Deliveries.**

13
14 A. Concurrently with the execution of this Agreement, Sellers shall have delivered
15 to Parent and Purchasers the following:

16 (a) Certificates representing the Purchased Shares with duly executed and
17 notarized stock powers in blank;

18 (b) A duly executed assignment of membership interests assigning to C&W
19 Purchaser 100% of the LLC Interests;

20 (c) Secretary's certification of Deluxe Bedding in the form attached hereto
21 as Exhibit 2.04(A)(c);

22 (d) Managing Member's certification of C&W in the form attached hereto
23 as Exhibit 2.04(A)(d).

24 (e) Written resignations effective on the Closing Date of all directors,
25 officers and managers of each Company, except as otherwise designated by Purchasers;

26 (f) [Intentionally Omitted].

27 (g) A written opinion from counsel for Sellers dated as of the Closing Date
28 in the form attached hereto as Exhibit 2.04(A)(g);

29 (h) An executed copy of the Escrow Agreement;

30 (i) An executed copy of a Subscription Agreement, in the form of Exhibit
31 2.04(A)(i);

32 (j) An executed copy of a lease in the form of Exhibit 2.04(A)(j) (the
33 "Affiliate Lease");

1 (k) An executed copy of each of the Employment Agreements in the form
2 of Exhibit 2.04(A)(k);

3
4 (l) A consent from the Spring Air Company and a termination letter
5 regarding the License Agreement in the forms of Exhibit 2.04(A)(l)(i) and 204(A)(L)(ii);

6
7 (m) \$1,100,000 payable as an offset to the Cash Purchase Price on payment
8 for the shares of Parent stock being purchased by Sellers pursuant to the Subscription
9 Agreement;

10
11 (n) A release of all claims Sutro & Co., Incorporated ("Sutro") may have to
12 the date of Closing against the Companies and the directors, officers, agents and employees of
13 the Companies, the Sellers, Parent and Purchasers in the form attached hereto as Exhibit
14 2.04(A)(n) (which release shall also contain language releasing Sutro from any claims against
15 it by the Companies and the Sellers).

16
17 (o) An executed copy of the Pledge Agreement, in the form attached hereto
18 as Exhibit 2.04(A)(o);

19
20 (p) An executed copy of the Subordination Agreement, in the form attached
21 hereto as Exhibit 2.04(A)(p); and

22
23 (q) An executed copy of the proxies in the form attached hereto as Exhibit
24 2.04(A)(q).

25
26 B. Concurrently with the execution of this Agreement, Parent and Purchasers shall
27 have delivered to the Sellers the following:

28
29 (a) An executed copy of the Escrow Agreement;

30
31 (b) An executed copy of the Subscription Agreement, together with
32 certificates representing the shares of stock of Parent being purchased thereunder (which
33 certificates are being delivered on behalf of the Sellers to Mellon Bank, N.A. pursuant to the
34 Pledge Agreement);

35
36 (c) An executed copy of each of the Employment Agreements;

37
38 (d) Certified copies of resolutions adopted by the Board of Directors of
39 Parent and each Purchaser approving the transactions contemplated hereby;

40
41 (e) A written opinion from counsel for Parent and Purchasers dated as of
42 the Closing Date addressed to Sellers in the form attached hereto as Exhibit 2.04(B)(e);

1 (f) the Subordinated Notes and Warrants (to Escrow Agent on behalf of
2 Sellers); and

3 (g) the Cash Purchase Price as provided for in Section 2.01.

4
5
6 Section 2.05 Post-Closing Adjustment

7
8 (a) As provided in subsection (c) of this Section 2.05, the Purchase Price
9 may be adjusted based upon the total Federal and state tax liability to the Companies as a
10 result of the transfer of the Retained Assets contemplated hereby (the "Retained Assets Tax
11 Amount").

12
13 (b) As soon as practicable, Purchasers shall provide the Kluft Parties with a
14 copy of the Companies' tax returns which indicate the Retained Assets Tax Amount
15 pertaining to the Companies, and the Kluft Parties shall provide Purchasers with a copy of the
16 Kluft Parties' tax return, which indicate the Retained Assets Tax Amount pertaining to the
17 Kluft Parties. If within 30 days following delivery of the foregoing, either party has not
18 given the other party notice of their objection to the Retained Assets Tax Amount, such
19 amount shall be used for purposes of subsection (c). If a notice of objection is given by
20 either party, then the dispute will be settled by arbitration in accordance with the procedures
21 set forth in Section 6.04.

22
23 (c) On the tenth business day following the aforementioned determination
24 of the Retained Assets Tax Amount, to the extent such amount exceeds \$[REDACTED], Sellers will
25 pay [REDACTED]% of such excess to Purchasers; to the extent the Retained Assets Tax Amount is less
26 than \$[REDACTED], Purchasers shall pay [REDACTED]% of such difference to the Sellers (prorata as set forth
27 in Section 2.01(a)). If the Retained Assets Tax Amount is between \$[REDACTED] and \$[REDACTED],
28 no adjustment to the Purchase Price shall be made. Payment shall be in immediately
29 available funds. Payments to Sellers shall be made in the manner and will be allocated in the
30 proportions set forth in Section 2.01(a). Payment to Purchasers shall be made by wire
31 transfer to such bank account as Purchasers shall specify. Sellers shall be jointly and
32 severally liable for any payments required to be made by the Sellers under this Section 2.05.

33
34 (d) In the event an adjustment is made to the Retained Assets Tax Amount
35 as a result of a final determination made by the Internal Revenue Service or state income tax
36 authority, a corresponding adjustment shall be made to the amounts payable under
37 subsection (c). Any payments made pursuant to Section 2.05 shall be without set-off or
38 deduction and shall be outside of the Indemnification Basket.
39

ARTICLE III

REPRESENTATIONS AND WARRANTIES

As an inducement for Parent and Purchasers to enter into this Agreement, the Kluff Parties, jointly and severally, and Binke, severally and not jointly, represent and warrant to Parent and Purchasers as follows:

Section 3.01 Organization and Authority.

(a) Deluxe Bedding is a corporation duly organized, validly existing and in good standing under the laws of the State of California with all requisite corporate power and authority to own, operate and lease its properties and to carry on its business as now being conducted, and is duly qualified and in good standing in every jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes qualification necessary, except where the failure to be so qualified would not have a material adverse effect upon the business, results of operation, financial condition, or prospects of Deluxe Bedding and C&W, taken as a whole ("Material Adverse Effect"). The authorized capital stock of the Company consists of [REDACTED] shares of common stock, \$[REDACTED] par value, of which [REDACTED] shares of common stock are issued and outstanding. No other shares of any other class or series of capital stock are issued and outstanding. Deluxe Bedding has delivered to Purchasers complete and correct copies of Deluxe Bedding's Articles of Incorporation and all amendments thereto to the date hereof, and the Bylaws as presently in effect for Deluxe Bedding.

(b) The outstanding shares of capital stock of Deluxe Bedding are legally and validly issued, fully paid and nonassessable. Deluxe Bedding has not issued and does not have outstanding any options, warrants or convertible securities or other rights to purchase or convert any obligation into Deluxe Bedding securities, and has not agreed to issue or sell any additional securities.

(c) The execution and delivery of this Agreement does not, and, the consummation of the transactions contemplated hereby will not violate any provision of Deluxe Bedding's Articles of Incorporation or Bylaws, or except as would not have a Material Adverse Effect or materially interfere with the ability of the parties to consummate the transactions contemplated hereby, (i) violate any provisions of, or result in the acceleration of any obligation under, any mortgage, lien, lease, agreement, instrument, court order, arbitration award, judgment or decree to which Deluxe Bedding is a party or by which it is bound and (ii) will not violate any other restriction of any kind or character to which it is subject.

(d) Except for this Agreement, there are no outstanding options, contracts, interests, calls, or commitments relating to the authorized or issued stock of Deluxe Bedding or membership interests of C&W.

and except for rights
which have been waived,

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(except for preemptive
rights which right
have been waived)

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(e) C&W is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California with all requisite limited liability company power and authority to own, operate and lease its properties and to carry on its business as now being conducted, and is duly qualified and in good standing in every jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes qualification necessary, except where the failure to be so qualified would not have a Material Adverse Effect. █% of the outstanding membership interests of C&W are owned by the Sellers. No other ownership interests of C&W are issued and outstanding. C&W has delivered to Purchasers complete and correct copies of C&W's Articles of Organization and Operating Agreement and all amendments thereto to the date hereof.

(f) The outstanding evidences of ownership of C&W are legally and validly issued and fully paid. C&W has not issued and does not have outstanding any options, warrants or convertible securities or other rights to purchase or convert any obligation into ownership interests of C&W and has not agreed to issue or sell any additional ownership interests except for the purchase rights held by the Sellers and C&W as set forth in the C&W Operating Agreement.

(g) The execution and delivery of this Agreement does not, and, the consummation of the transactions contemplated hereby will not violate any provision of C&W's Articles of Organization or Operating Agreement, or except as would not have a Material Adverse Effect or materially interfere with the ability of the parties to consummate the transactions contemplated hereby, (i) violate any provisions of, or result in the acceleration of any obligation under, any mortgage, lien, lease, agreement, instrument, court order, arbitration award, judgment or decree to which C&W is a party or by which it is bound and (ii) will not violate any other restriction of any kind or character to which it is subject.

(h) Deluxe Bedding has been, and, until the Closing shall continue to qualify as, an S corporation for Federal and California tax purposes. Since its inception, C&W has been, and, until the Closing shall continue to be treated as a partnership for Federal and California tax purposes.

Section 3.02 Ownership of Stock and LLC Interests. At the Closing, each Seller will be the record, beneficial and lawful owner and holder of the number of fully paid and nonassessable shares of common stock of Deluxe Bedding, and such certificates of membership or participation or other evidence representing ownership of C&W as, in each case are listed in Schedule 1.01. On the Closing Date, Purchaser will acquire title to █% of the shares of capital stock of Deluxe Bedding and █% of the certificates of membership or participation or other evidence representing ownership of C&W free and clear of all Encumbrances, charges and assessments of every nature and subject to no restrictions with respect to transferability except for restrictions imposed by applicable state and Federal securities laws, and, with respect to the Purchased Shares, by the License Agreement. Each Seller will, on the Closing Date, have full power and authority to assign and transfer their

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PATENT

-12 REEL: 015190 FRAME: 0167

interests in the Purchased Shares and the LLC Interests in accordance with the terms of this Agreement. The shares of common stock of Deluxe Bedding and C&W Interests held by each Kluff Party (other than Earl Kluff) is custodial property over which Kluff is custodian; Kluff has the authority to transfer such shares and interests.

Section 3.03 No Subsidiaries. Except as set forth in Schedule 3.03, as of the Closing, and after taking into account the transfer by the Sellers of the Retained Assets, neither of the Companies will own, directly or indirectly, any capital or other equity securities of any corporation or have any direct or indirect equity or ownership interest in any partnership, joint venture or other business.

Section 3.04 Power and Authority; Effect of Agreement; No Violation.

(a) The execution, delivery, and performance by each Seller of this Agreement and the Seller Ancillary Documents and the consummation by each Seller of the transactions contemplated hereunder and thereunder have been duly authorized by all necessary action on the part of such Seller. Each Seller has full legal capacity, power and authority to execute, deliver and perform this Agreement and the Seller Ancillary Documents contemplated hereby and to consummate the transactions contemplated hereby and thereby. On the Closing Date, each Seller will have the full right, power and authority to sell, assign, transfer and deliver the Ownership Interests as provided in this Agreement. This Agreement has been, and the Seller Party Ancillary Documents, when executed, will be, duly executed and delivered by each Seller and constitutes, or when executed, will constitute, as the case may be, the valid and binding obligations of each Seller, enforceable against each Seller in accordance with their respective terms, subject to applicable bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium and similar laws now or hereafter in effect relating to or affecting creditors' rights and remedies generally and to general principles of equity.

(b) Neither the execution, delivery and performance of this Agreement and the Seller Ancillary Documents by each Seller, nor the consummation of any of the transactions provided for hereby and thereby, nor compliance with or fulfillment of the terms, conditions and provisions hereof or thereof, will violate or conflict with any Legal Requirement to which any Seller is subject to or bound.

Section 3.05 Financial Statements. Schedule 3.05 contains: (i) the combined balance sheets (the "Audited Balance Sheets") of Deluxe Bedding and C&W at December 26, 1998, together with related statements of income and retained earnings and cash flows for the year ended December 26, 1998, which have been audited by Black, Plant, Eisner, Florito & Belak-Berger; and (ii) the combined balance sheets (the "Unaudited Balance Sheets") of Deluxe Bedding and C&W at June 26, 1999, together with related statements of income and retained earnings and cash flows for the six months ended June 26, 1999 (the "Interim Financial Statements"). The financial statements referred to in clauses (i) and (ii) of the preceding sentence are herein referred to collectively as the "Financial Statements," and have been prepared from the books and records of each of the Companies in accordance with

generally accepted accounting principles applied on a basis consistent with prior periods, except as explained in any notes to the Financial Statements subject, in the case of the Interim Financial Statements, to normal recurring year-end adjustments and the absence of notes (that if presented would not differ materially from those included in the Audited Balance Sheets). The Financial Statements:

(i) fairly present in all material respects the financial position, assets, and liabilities, as the case may be, of the Companies as of December 26, 1998 and June 26, 1999;

(ii) fairly present in all material respects the results of the operations of each of the Companies for the periods covered thereby; and

(iii) contain or reflect all necessary adjustments so as to fairly present true and complete statements of the financial conditions and results of operations of each of the Companies for the respective periods then ended in all material respects (subject, in the case of the Interim Financial Statements, to normal recurring year-end adjustments and the absence of notes (that if presented would not differ materially from those included in the Audited Balance Sheets)).

Section 3.06 Absence of Certain Changes

(a) Except as set forth on Schedule 3.06(a), since June 26, 1999 (the "Balance Sheet Date") there has been:

(i) no material adverse change in the assets, properties, business, results of operations, liabilities or condition (financial or otherwise) (collectively, referred to herein as the "Business Condition") of the Companies, except for changes in the Ordinary Course of Business; and

(ii) no damage (ordinary wear and tear excepted), destruction, loss or claim affecting any tangible assets (whether or not covered by insurance) or condemnation or other taking which adversely affects the Business Condition of the Companies and none of the foregoing has experienced any material shortage, cessation or interruption of raw materials, supplies, or other services required to conduct its business or operations;

(iii) no change in the compensation pattern of either of the Companies as established in preceding years, nor any material increase in the compensation payable or to become payable to any of their officers, directors, employees or agents;

(iv) no labor dispute or disturbance, litigation, event or condition of any character, which could reasonably be expected to have a Material Adverse Effect; or

(v) no distribution to any shareholder of Deluxe Bedding or member of C&W.

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(b) Except (x) as set forth in Schedule 3.06(b), (y) for the transfer by the Companies of the Retained Assets and (z) as otherwise contemplated by this Agreement since the Balance Sheet Date, each of the Companies has conducted its business in the Ordinary Course of Business, and, subject to the foregoing, neither of the Companies has, except in the Ordinary Course of Business:

(i) incurred any liability or made any expenditure, other than such as which individually do not exceed \$~~100,000~~, or created, incurred, assumed or guaranteed any indebtedness for borrowed money or entered into any capitalized leases;

(ii) made or suffered any amendment or termination of any agreement to which it is or was a party or beneficiary or by which it is or was bound, canceled, modified or waived any debts owed to or claims held by it (including the settlement of any claims or litigation), or waived any substantial right;

(iii) sold, transferred, distributed, leased or otherwise disposed of or mortgaged, pledged or imposed or suffered to be imposed any Encumbrance on, any of its properties or assets.

(iv) materially delayed payment of any account payable or other liability beyond its due date or the date when such liability would have been paid in the ordinary course of its business consistent with past practices;

(v) sold, assigned or transferred any patents, trademarks, trade names, copyrights, trade secrets or other intangible assets owned or held by either of the Companies;

(vi) extended credit or permitted any change in its credit practices, its method of accounting or accounting practice, or its methods of maintaining its books, accounts or business records;

(vii) merged, consolidated, liquidated or reorganized (it being agreed that any of the foregoing actions would not be in the Ordinary Course of Business);

(viii) amended its Articles of Incorporation or By-laws (with respect to Deluxe Bedding) or its Articles of Organization or Operating Agreement (with respect to C&W) (it being agreed that any of the foregoing actions would not be in the Ordinary Course of Business); or

(ix) other than as specifically contemplated by this Agreement, agreed or committed to do, or authorized or approved any action looking to, any of the foregoing.

Section 3.07 No Undisclosed Liabilities. Except as set forth on Schedule 3.07, except as would not have a Material Adverse Effect, and except as set forth in Schedules

1 3.06(a) and 3.06(b), to the knowledge of any of Earl Kluft, David Binke or Ian Wilcox,
2 neither of the Companies has any liabilities except:

3
4 (i) those liabilities set forth on the Unaudited Balance Sheets and not
5 heretofore paid or discharged; or

6
7 (ii) liabilities of the same nature as those set forth on the Unaudited Balance
8 Sheet in the Ordinary Course of Business after June 30, 1999.

9
10 **Section 3.08 Title to and Condition of Properties and Assets.** Except for Permitted
11 Encumbrances and as set forth on Schedule 3.08(a):

12
13 (a) each of the Companies has good and marketable title to its assets free and clear
14 of any and all Encumbrances;

15
16 (b) The assets of the Companies include all assets used by each of the Companies in
17 connection with its respective business and which are necessary for the conduct of its
18 respective business as currently conducted. Each of the Companies has the sole and exclusive
19 right to the use of all assets owned, leased or operated by it, including all items of personal
20 property (including, without limitation, all machinery, equipment, vehicles, tractors and
21 trailers), subject to the rights of licensors or lessors.

22
23 (c) (i) All assets and their uses conform in all material respects with applicable
24 Legal Requirements (including without limitation, all electrical, building, zoning,
25 environmental and occupational safety and health requirements); and (ii) no notice of any
26 existing violation of any matters referred to in clause (i) above relating to such assets or their
27 use has been received by any of the Companies or any Seller. To the best knowledge of
28 either of the Companies or any of the Sellers, the Companies and the Sellers have each taken
29 all reasonable action necessary to protect the computer system of each Company from any
30 problems related to the advent of the Year 2000, other than problems which, individually or
31 in the aggregate, would not have a Material Adverse Effect.

32
33 **Section 3.09 Tangible Personal Property.** All of the machinery, equipment,
34 vehicles, tractors, trailers and other tangible personal property set forth on Schedule 3.09, will
35 be, as of the Closing Date, owned or leased by either of the Companies.

36
37 **Section 3.10 Tax Matters.** Except as set forth in Schedule 3.10(a),

38
39 (a) All Federal, state, local and other tax returns and reports required to be filed by
40 or on behalf each of the Companies prior to the Closing have been, or will be, timely filed,
41 and such returns, reports and declarations as so filed are, or will be when so filed, complete
42 and accurate and disclose all taxes required to be paid for the periods covered thereby; no
43 extension of time in which to file any such returns, reports and declarations is in effect.

1 Except as set forth in Schedule 3.10(a), no adjustments relating to such returns, reports and
2 declarations have been proposed by any Governmental Body.

3
4 (b) Except as set forth in Schedule 3.10(b), all taxes of every nature and any
5 deficiency assessments, penalties and interest for which either of the Companies is liable
6 relating to any period ending prior to the Closing which are due prior to the Closing shall
7 have been paid as of the Closing. All taxes, including estimated taxes, for which either of the
8 Companies is liable for periods beginning before and ending on or after the Closing have been
9 paid as required by law in a timely manner or, if not yet due and payable, have been properly
10 accrued for.

11
12 (c) Except as set forth in Schedule 3.10(c), all taxes and other assessments and
13 levies which either of the Companies is required by law to withhold or to collect for payment
14 have been duly withheld and collected, and have been paid when due to the proper
15 Governmental Body. There are no tax liens on any property of either of the Companies.

16
17 (d) None of the Companies nor any of the Sellers has been advised in writing by
18 any Governmental Body of any issue or question relating to any return, report or declaration
19 that could result in the assertion of any deficiency for any Federal, state, local or other tax, or
20 interest or penalties in connection therewith. None of the Companies nor any of the Sellers
21 has (i) agreed to, nor is bound by, any extension or waiver of the statute of limitations
22 relating to the assessment or collection of any tax or (ii) incurred any tax liability except in
23 the Ordinary Course of Business or liabilities for interest or penalties with respect to the
24 foregoing. Except as set forth in Schedule 3.10(d), neither of the Companies is part of any
25 consolidated, combined or unitary group for Federal or state income tax purposes.

26
27 (e) Attached hereto as Schedule 3.10(e) are true and complete copies of all Federal,
28 state and local income tax returns filed by the Companies for their taxable years ended
29 December 31, 1997 and 1996.

30
31 **Section 3.11 Governmental Permits.** Each of the Companies owns, holds or
32 possesses all governmental licenses, franchises, permits, zoning permits, privileges,
33 immunities, approvals, registrations, easements, rights and other authorizations which are
34 necessary to entitle it to own, lease, operate and use its assets and properties and to carry on
35 and conduct its business as currently conducted in all material respects ("Permits")(provided
36 that, with respect to foreign qualifications, except where the failure to be so qualified would
37 not have a Material Adverse Effect). All acts required of each of the Companies have been
38 taken and, to the Sellers' knowledge, all reports and returns required to be filed by them with
39 any governmental agency have been filed to enable them to conduct their respective
40 businesses as currently conducted. Each of the Companies are in substantial compliance with
41 all, and have no written notice of any claimed violation of any, applicable Federal, state,
42 county and local laws, ordinances or regulations.
43

Section 3.12 Personal Property Leases. Schedule 3.12 contains a list of each lease, other agreement or right whether written or oral (including in each case the parties, the annual rent, the expiration date thereof and a brief description of the property covered), under which either of the Companies is lessee of, or holds or operates, any machinery, equipment, vehicle or other tangible personal property owned by a third party. Each lease described in Schedule 3.12 is in full force and effect; neither of the Companies has received written notice, or has knowledge of any defaults by either of the Companies or any other party to any such lease; and neither of the Companies nor any of the Sellers has knowledge of the occurrence of any event which, but for the passage of time, would constitute a default thereunder by either of the Companies. Each of the Companies has good title and right to the interest in the property and assets leased thereby. Each of the Companies enjoys peaceful and undisturbed possession under all leases necessary for the operation of its respective properties and business.

Section 3.13 Intellectual Property. Schedule 3.13 contains a list and brief description of:

(i) all United States and foreign patents and patent applications, all United States, state and foreign trademarks, service marks, trade names and copyrights for which registrations have been issued or applied for, and all other United States, state and foreign trademarks, service marks, trade names and copyrights owned or used by either of the Companies or in which any of the foregoing holds any right, license or interest (collectively, the "Intellectual Property Rights"), showing in each case the product, device, process, service, business or publication covered thereby, the registered or other owner, the registration or application date, as applicable, the expiration date and the registration number, if any;

(ii) all agreements, contracts, licenses, commitments, assignments and indemnities relating or pertaining to any Intellectual Property Rights; and

(iii) all registered, assumed or fictitious names under which either of the Companies are conducting its business.

Section 3.14 Accounts Receivable.

(a) Schedule 3.14 sets forth a true, and complete list of all of the accounts receivable of each of the Companies as of June 26, 1999 (the "Account Receivable"), which list sets forth the aging of such Accounts Receivable. Except as set forth in Schedule 3.14, all such Accounts Receivable (i) have arisen from bona fide transactions, (ii) constitute only valid claims which, subject to aggregate reserves set forth on Schedule 3.14, are not subject to valid counterclaims or set-offs and (iii) are collectable within days, or, with respect to receivables from department stores, days.

(b) The allowance for collection losses on the Audited Balance Sheet was determined in accordance with generally accepted accounting principles consistent with past practice. Since the Balance Sheet Date:

(i) to the knowledge of either of the Companies or any of the Sellers, no event has occurred that would require a material increase in the aggregate reserves for uncollectible Accounts Receivable; and

(ii) there has been no material adverse change in the composition of such Accounts Receivable in terms of aging.

(c) The parties acknowledge and agree that Parent's and Purchasers' rights under this Agreement with respect to claims relating to the Companies' failure to collect Accounts Receivables in existence as of the Closing Date shall be subject to there being no material change in either of the Companies' standard collection policies as in effect on the Closing Date.

(d) The parties acknowledge and agree that, notwithstanding any other provisions in this Agreement to the contrary, if and to the extent any Indemnifiable Purchaser Claims (as defined) are paid by the Sellers as a result of a failure by the Companies to collect any Accounts Receivables as required by Section 3.14(c) ("Uncollected Receivables"), and, subsequent to such payment by the Sellers, funds are collected by the Companies with respect to all or a portion of the Uncollected Receivables, the Purchasers shall refund to the Sellers the amount so collected (net of costs of collection) (up to the amount of the Indemnifiable Purchaser Claims paid by the Sellers with respect to such Uncollected Receivables) by returning funds to the Escrow Account, increasing the amount due on the Subordinated Note, or reissuing shares of common stock of the Parent, (the manner of such refund to correspond to the manner in which the Indemnifiable Purchaser Claim was originally paid).

Section 3.15 Inventory. Except as set forth in Schedule 3.15 or as reserved for on the Unaudited Balance Sheets, all of each of the Companies' inventory of finished goods is in good, merchantable and useable condition, saleable at the usual markups (provided that such sales are made in accordance with past practices as set forth in Schedule 3.15) and other than with respect to sales of inventory occurring in the Ordinary Course of Business since the Balance Sheet Date, is reflected in the Audited Balance Sheet in accordance with generally accepted accounting principles.

Section 3.16 Employees. At June 26, 1999, the Companies employed approximately 164 persons.

Section 3.17 Employee Relations.

(a) Each of the Companies has complied with all material applicable Legal Requirements relating to wages, hours, discrimination in employment, and other employment matters and neither is liable for any arrears of wages or any taxes or penalties for failure to comply with any of the foregoing.

1 (b) Except as set forth in Schedule 3.17(b), neither of the Companies is a party to
2 any collective bargaining agreements. The Purchasers agree to assume and abide by the
3 applicable collective bargaining agreements as set forth in Schedule 3.17(b), and to continue
4 such agreements in full force and effect until such time as they expire and/or are renegotiated.
5

6 (c) The Purchasers covenant and agree that they intend to continue current
7 operations of the Companies, the same terms and conditions of employment for all union-
8 represented employees, and operations of the Companies at their current locations, in each
9 case as required by the terms of the applicable collective bargaining agreements or by any
10 applicable Legal Requirements. In addition, Purchasers currently intend to retain all non-
11 union employees (except to the extent such employees are fired for cause) and to retain all
12 union employees employed by the Companies as of the Closing (except to the extent such
13 employees are fired for cause, as defined under the applicable collective bargaining
14 agreement).
15

16 (d) Except as set forth in Schedule 3.17(c), there exist no written or oral employment,
17 consulting, severance or indemnification agreements that would give any person the right to
18 receive any payment from either of the Companies as a result of this Agreement or the
19 consummation of the transactions contemplated hereby.
20

21 (e) Schedule 3.17(d) contains a complete list of (i) each "employee pension
22 benefit plan" ("Business Pension Plans"); (ii) each "employee welfare benefit plan" ("Business
23 Welfare Plans"), as such terms are defined in Section 3 of the Employee Retirement Income
24 Security Act of 1974, as amended ("ERISA"), including plans otherwise excluded from the
25 operation of ERISA by Section 4(b)(4) or 4(b)(5) thereof, maintained or contributed to by
26 either of the Companies for or on behalf of employees, or to which any employee contributes
27 on account of his employment (such Business Pension Plans and Business Welfare Plans
28 collectively referred to as "Business Plans"); and (iii) each plan, salary practice or
29 arrangement, including bonus, incentive compensation, stock option, stock purchase, unit
30 option, unit purchase, sick pay, vacation pay, severance pay or other fringe benefit plan or
31 program, whether formal or informal, which is not a Business Plan, which is applicable to any
32 employee (such plans, salary practices and arrangements collectively referred to as "Business
33 Benefit Arrangements"). Each of the Companies has furnished to Purchasers copies of all
34 Business Plans and of all material documents relating to Business Plans or Business Benefit
35 Arrangements.
36

37 (f) To the knowledge of any of the Sellers, each Business Plan is in compliance
38 with the provisions of ERISA (if applicable), the applicable provisions of the Internal
39 Revenue Code of 1986, as amended (the "Code"), and all other applicable laws. To the
40 knowledge of any of the Sellers, no Business Plan, no trust created under any Business Plan,
41 and no trustee or administrator thereof has engaged in a transaction which might subject either
42 of the Companies or any of the Subsidiaries to the tax or penalty on prohibited transactions
43 imposed by Section 4975 of the Code or to a civil penalty imposed by Section 502 of ERISA.
44

(g) To the knowledge of any of the Sellers, no Business Plan subject to Title IV of ERISA (other than "multi-employer plans" (as defined in Section 3 (37) of ERISA)) has been completely or partially terminated, nor has there been a "reportable event," as such term is defined in Section 4043(b) of ERISA, with respect to any such plan, except as may occur as a result of this Agreement.

(h) Except as set forth in Schedule 3.17(h), neither Company contributes to any plan which is a "multi-employer plan" as defined in Section 3(37) of ERISA.

(i) Neither of the Companies maintains or contributes to any plan which is subject to Section 404A of the Code for or on behalf of its employees.

Section 3.18 Employee Health Plan. Set forth in Schedule 3.18 is a true and complete summary of each of the Companies' health plans for their employees.

Section 3.19 Contracts. Except for (i) the License Agreement, (ii) the Affiliate Lease, (iii) as set forth in Schedule 3.19 or (iv) otherwise as set forth specifically in any other Section or Schedule hereto, neither of the Companies is a party to or bound by:

(a) any contract for the purchase, sale or lease of real property or any option to purchase or sell real property or any management contract relating to real property;

(b) except for agreements entered into in the Ordinary Course of Business, any agreement which (i) is not terminable by it without payment or penalty upon ■ days' (or less) notice, or (ii) relates to amounts exceeding \$■;

(c) any agreement made with an Affiliate;

(d) any joint venture, partnership or other arrangement involving a sharing of the profits of either of the Companies;

(e) any agreement pursuant to which a rebate, discount, bonus, commission or other payment with respect to the sale of any of its products will be payable or required after the Closing;

(f) any guarantee of the obligations of any of its customers, suppliers, officers, directors, employees or Affiliates or others;

(g) except as set forth in Schedule 3.15, any consignment, distributor (other than distributor contracts terminable by it without payment or penalty upon ■ days' (or less) notice) dealer, manufacturer's representative, sales agency, advertising representative or public relations contract;

1 (h) any agreement limiting its ability to engage in any business or in any
2 geographic area or during any period of time; or

3
4 (i) any confidentiality agreement related to its products (other than this
5 Agreement) pursuant to which it or any of the Sellers is prohibited from disclosing any
6 confidential information with respect to such products.

7
8 **Section 3.20 No Violation, Litigation or Regulatory Action.** Except as set forth in
9 Schedule 3.20:

10
11 (a) Other than customer complaints in the Ordinary Course of Business and other
12 than notices served by any non-Governmental Body with respect to matters that have been
13 resolved, no written notice has been served upon either of the Companies or any of the Sellers
14 by any Person of any violation of any Legal Requirement within the past three years.

15
16 (b) There are no lawsuits, claims, suits or proceedings pending or, to the
17 knowledge of any of the Sellers, threatened in writing against either of the Companies and
18 there are no actions, suits or proceedings pending in which either of the Companies is the
19 plaintiff or claimant.

20
21 (c) There are no legal, administrative or other proceedings, product liability or
22 other claims, judgments or injunctions or, to the knowledge of either of the Companies or any
23 of the Sellers, investigations or inquiries, pending or outstanding or, to the best knowledge of
24 any of the Sellers, threatened in writing against or involving either of the Companies, or any
25 of their respective assets, properties, or operations, or which questions the legality or propriety
26 of the transactions contemplated by this Agreement or which seeks to prevent or materially
27 delay the transactions contemplated by this Agreement.

28
29 (d) Except for the transactions contemplated by this Agreement, neither of the
30 Companies nor any of the Sellers has taken any action that would require notification of the
31 union or employees of either of the Companies pursuant to the provisions of the WARN Act
32 or that would cause either of the Companies to have any liability thereunder.

33
34 (e) There are no injunctions, orders, awards or decrees of any Governmental Body
35 currently in effect against either of the Companies.

36
37 **Section 3.21 Insurance.** Schedule 3.21 sets forth information (including nature of
38 coverage, limits, deductibles and premiums) pertaining to all policies or binders of fire,
39 casualty, liability, burglary, fidelity, workers' compensation, vehicular, health, life and other
40 insurance maintained, owned or held by each of the Companies on the date hereof ("Insurance
41 Policies"). True, correct and complete copies of each such policy or binder have previously
42 been delivered to Purchasers (including without limitation copies of all written amendments,
43 supplements and other modifications thereto or waivers of rights thereunder). Such Insurance
44 Policies are valid and enforceable and in full force and effect as of the date hereof. The

product liability and personal injury insurance maintained by each of the Companies provide coverage on an occurrence basis for the three year period prior to the Closing. Neither of the Companies nor any of the Sellers has received notice of cancellation or non-renewal of any Insurance Policy. All premiums which are due and payable under any Insurance Policies have been duly paid.

Section 3.22 Environmental Protection. Except as set forth in Schedule 3.22:

(a) The operations of each of the Companies comply in all material respects with all applicable Environmental Laws;

(b) Each of the Companies has obtained, or has taken appropriate steps as required by Environmental Laws to obtain, all environmental, health and safety Permits necessary for its respective operations, and all such Permits are in good standing and each of the Companies is currently in compliance with all terms and conditions of their respective Permits;

(c) None of the Companies' Primary Facilities or operations are and, to the knowledge of either of the Companies or any of the Sellers, none of the Companies' Secondary Facilities are, subject to any judicial or administrative proceeding, order, judgment, decree or settlement addressing (i) violation of any Environmental Law or (ii) any Remedial Action;

(d) During the past years, neither of the Companies nor any of the Sellers has received any written notice of any claims or liabilities arising from the Release of a Contaminant into the environment, or claims, notices or requests for information with respect to any alleged violation of any Environmental Law or notices regarding potential liability under any Environmental Law;

(e) Neither of the Companies is the owner or operator of any Facility which:

(i) has any on-site generation, treatment, recycling, storage or disposal of any "hazardous waste", as that term is defined under 40 C.F.R. Part 261 or any state equivalent; or

(ii) has any landfill,

(it being understood that, as relating to any Secondary Facility, the representations made in this Section 3.22 when based upon "knowledge" of either of the Companies or any of the Sellers, are based upon the actual knowledge of Binke, Kluft or Ian Wilcox, after telephonic inquiry to the owner or operator of such Secondary Facility);

(f) No environmental Encumbrance has attached to any Primary Facility and, to the knowledge of either of the Companies or any of the Sellers, no environmental Encumbrance has attached to any Secondary Facility;

1 (g) To the knowledge of any of the Sellers, (i) there have been no Releases of any
2 Contaminants to the environment in reportable quantities by either of the Companies and (ii)
3 neither of the Companies has any liability in connection with any Release of any Contaminant
4 into the environment;

5
6 (h) Neither of the Companies' Facilities are listed on the National Priorities List
7 pursuant to CERCLA or on the Comprehensive Environmental Response Compensation
8 Liability Information System List or any similar state list of sites requiring Remedial Action;

9
10 (i) To the knowledge of either of the Companies or any of the Sellers, there is not
11 now and, to the knowledge of any of the Sellers, has not been at any time in the past any
12 underground storage tank or pipeline at any Primary Facility or, when utilized, leased or
13 owned by the Company, any Former Primary Facility where the installation, use, maintenance,
14 repair, testing, shut-in or removal of such tank or pipeline was not in compliance with all
15 Environmental Laws then in effect and, to the knowledge of either of the Companies or any
16 of the Sellers, there has been no spill, leakage or other Release from or rupture of any such
17 tank or pipeline;

18
19 (j) To the knowledge of either of the Companies or any of the Sellers, no current
20 or, to the knowledge of any of the Sellers, past use, generation, treatment, transportation,
21 storage or disposal practice of either of the Companies has or will result in any liability under
22 any Environmental Law;

23
24 (k) Copies of the most recent Phase I reports on the Facility and any other written
25 reports, and all parts thereof, of all environmental audits or assessments which have been
26 conducted at any Facility or Former Facility within the past ~~10~~ (10) years, either by either of
27 the Companies or any environmental consultant or engineer engaged by either of the
28 Companies for such purpose and delivered to either of the Companies (or, if not so engaged
29 by either of the Companies, in the possession of either of the Companies or any of the
30 Sellers) have been delivered to Purchasers and are attached hereto as Exhibit 3.22(k);

31
32 (l) To the knowledge of either of the Companies or any of the Sellers, neither of
33 the Companies is a party, whether as a direct signatory or as a successor, assign or, to the
34 knowledge of any of the Sellers, third party beneficiary, or otherwise bound, to any lease or
35 other contract (excluding Insurance Policies disclosed elsewhere in this Agreement) under
36 which the foregoing is obligated by or entitled to the benefits of, directly or indirectly, any
37 representation, warranty, indemnification, covenant, restriction or other undertaking
38 concerning environmental conditions;

39
40 (m) To the knowledge of any of the Sellers, neither of the Companies has released
41 any other person from claims under any Environmental Law or has waived, in writing, any
42 rights concerning any other environmental condition;

1 (n) To the knowledge of either of the Companies or any of the Sellers, each of the
2 Companies has, for the past [REDACTED] years, (x) given all notices and warnings, (y) made all
3 reports, and (z) has kept and maintained all records required by and in material compliance
4 with all Environmental Laws; and

5
6 (o) Neither of the Companies has made any filing under any Environmental Law
7 during the past [REDACTED] years.

8
9 **Section 3.23 Books and Records.** To any of the Sellers' knowledge, the books and
10 records of the Companies have been maintained accurately and completely in all material
11 respects and have been maintained in accordance with good business practices and applicable
12 legal, regulatory and accounting requirements, reflect only valid transactions, are complete and
13 correct and accurately reflect the basis for the Companies' financial position and results of
14 operation, in all material respects.

15
16 **Section 3.24 Securities Law Matters.** Neither of the Companies has ever issued any
17 security covered by (or required to be covered by) a registration statement filed with (x) the
18 Securities and Exchange Commission pursuant to the Securities Act of 1933 or the Investment
19 Company Act of 1940 or (y) the California Department of Corporations pursuant to the
20 California Corporate Securities Law, and no security issued by either of the Companies has
21 ever been registered or required to be registered pursuant to the Securities Exchange Act of
22 1934.

23
24 **Section 3.25 No Finder.** Except as set forth in Schedule 3.25, (i) neither of the
25 Companies has paid or become obligated to pay any fee or commission to any broker, finder,
26 consultant or intermediary for or on account of the transactions contemplated by this
27 Agreement, and (ii) neither of the Companies has engaged, consented to or authorized any
28 broker, investment banker or third party to act on its behalf directly as broker or finder in
29 connection with the transactions contemplated by this Agreement. Complete copies of any
30 agreements with respect to the foregoing are included in Schedule 3.25.

31
32 **Section 3.26 Reliance By Parent and Purchasers on Representations and**
33 **Warranties.** Each Seller is aware that Parent and Purchasers are entitled to rely on the
34 covenants, representations and warranties made by the Sellers in this Agreement and that
35 Parent and Purchasers are in fact relying on each covenant, representation and warranty made
36 by the Sellers as an inducement to enter into this Agreement and the transactions
37 contemplated hereby.

38
39 **Section 3.27 Approval of Issuances to Binke.** The issuance of shares of Deluxe
40 Bedding common stock and ownership interests in C&W to Binke have been unanimously
41 approved by the Shareholders of Deluxe Bedding and the members of C&W, respectively.
42

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND PURCHASERS

In addition to the representations and warranties made by Parent to the Sellers in the Subscription Agreement, which representations and warranties are hereby incorporated by reference into this Agreement, Parent and each Purchaser represents and warrants to the Sellers, jointly and severally, as follows:

Section 4.01 Corporate Organization. It is a corporation duly organized, validly existing and in good standing under the laws of its state of organization and has the corporate power and authority to carry on its business as now being conducted by it.

Section 4.02 Authority; No Violation.

(a) The execution and delivery of this Agreement and all other agreements and instruments contemplated hereby to be executed and delivered by Purchasers and Parent (the "Purchaser Ancillary Documents") and the performance hereof and thereof, including the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by the Board of Directors and/or the shareholders of Purchasers and Parent and no other corporate proceedings on the part of Purchasers or Parent are necessary to authorize such execution, delivery and performance. Purchasers and Parent each has full corporate power and corporate authority to execute, deliver and perform this Agreement and the Purchaser Ancillary Documents and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Purchasers and Parent and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms. The Purchaser Ancillary Documents, when executed and delivered, will be the legal, valid and binding obligations of Purchasers and Parent, enforceable against it in accordance with their respective terms.

(b) Neither the execution, delivery and performance of this Agreement and the Purchaser Ancillary Documents by Purchasers and Parent, nor the consummation of the transactions provided for hereby and thereby (i) will violate or conflict with any provision of its charter or By-Laws; (ii) will result in any violation or breach of or default under any of its properties or assets under, (A) any agreement, franchise, permit, or other authorization, right, restriction or obligation of any kind to which Purchaser is a party or beneficiary or by which it is bound or to which any of its properties or assets are subject or (B) any legal Requirement affecting it or any of its properties or assets or (iii) requires it to obtain any consent, permit, license, authorization or approval from, or make any registration or filing with, any Person, or which in any case is reasonably likely to prevent or materially delay its ability to consummate the transactions contemplated by this Agreement.

Section 4.03 No Finder. Except as set forth in Schedule 3.25, the Sellers will not become obligated to pay any fee or commission to any broker, finder, consultant or

intermediary for or on account of the transactions contemplated by this Agreement as a result of any action taken by Purchasers or Parent.

ARTICLE V

OTHER COVENANTS AND AGREEMENTS

Section 5.01 Sales and Transfer Taxes. Purchasers shall be liable to pay all sales, transfer, use, excise and similar taxes, if any, that shall become due and payable as a result of the transactions contemplated by this Agreement.

Section 5.02 Confidential Nature of Obligations. Purchasers and Parent, on the one hand, and each of the Sellers, on the other hand, agree that they will treat in confidence all documents, materials and other information either shall have obtained regarding the other during the course of the investigations and negotiations leading to the consummation of the transactions contemplated hereby, and the preparation of this Agreement and other related documents. In the event of the actual or threatened breach by any party of any of the provisions of this Section 5.02, the other party may, in addition and supplementary to any other rights and remedies existing in its favor, apply to any court of law or equity of competent jurisdiction for specific performance, injunctive or other relief in order to enforce or prevent any violation of the provisions hereof. Each party agrees not to raise the defense of an adequate remedy at law in any such proceeding.

Section 5.03 Noncompetition; Confidentiality.

(a) As of the Closing Date, Deluxe Bedding Purchaser and Earl Kluff and David Binke will separately enter into employment agreements. Earl Kluff and David Binke each agree that for the period commencing on the Closing Date and ending on the earlier of the date five years after the Closing Date or three years after the termination of their respective employment agreements (or such shorter period of time required by applicable law) (each a "Noncompetition Period"), he will not, directly or indirectly, either for himself or for any other person, partnership, corporation or entity, participate in any enterprise or business involved in the sale, manufacture or distribution of mattresses in the "Territory." For purposes of this Agreement, "Territory shall mean, during the first three years following the Closing Date, the continental United States and Canada and, thereafter, such markets in the continental United States and Canada in which the Parent or any of its subsidiaries is selling, manufacturing, or distributing mattresses, or in which it has an actual plan to do so in the near future (or such reduced area as required by applicable law). For purposes of this Agreement, the term "participate" includes any direct or indirect interest in any enterprise, whether as an officer, director, employee, sole proprietor, partner, employer, agent, representative, independent contractor, consultant, creditor, owner (other than by ownership of less than five percent of the stock of a publicly-held corporation whose stock is listed on a national securities exchange) or otherwise.

(b) Earl Kluff and David Binke each agree that subsequent to the Closing he shall not at any time prior to the termination of their respective Noncompetition Period use or, without the written consent of Purchasers, disclose to any person (other than an executive of Purchasers or a person to whom disclosure is legally required) any Confidential Information of either of the Companies. The term "Confidential Information" includes, without limitation, information not then previously known to the public or to the trade or in the public domain with respect to either of the Companies' products, facilities and methods of manufacturing, processing or distribution, trade secrets, and other intellectual property, confidential reports, product price lists, customer lists, financial information (including the revenues, costs or profits associated with any of the products of either Company), business plans, prospects or opportunities. Earl Kluff and David Binke each understand and agree that the rights and obligations set forth in this Section 5.03 (b) shall terminate at the end of their respective Noncompetition Period.

(c) The parties hereto agree that Purchasers and Parent would suffer irreparable harm from a breach by either of Messrs. Kluff or Binke of any of the covenants or agreements contained in this Section 5.03. Therefore, in the event of the actual or threatened breach by either of Messrs. Kluff or Binke of any of the provisions of this Section 5.03, and notwithstanding any other provisions in this Agreement to the contrary, Purchasers and Parent may, in addition and supplementary to any other rights and remedies existing in their favor, apply to any court of law or equity of competent jurisdiction for specific performance, injunctive or other relief in order to enforce or prevent any violation of the provisions hereof. Earl Kluff and David Binke each agree not to raise the defense of an adequate remedy at law in any such proceeding.

Section 5.04 Books and Records. Each of the Sellers, on the one hand, and Purchasers and Parent, on the other hand will provide each other with such information as either of them reasonably may request of the other for any legitimate business purpose, including in filing any tax return, amended return or claim for refund, determining a liability for taxes or a right to a refund of taxes, or in conducting any audit or other proceeding in respect of taxes and shall cooperate with each other in connection with any of the foregoing. Such tax information shall include providing copies of all relevant tax returns, documents and records, or portions thereof, relating exclusively to each Company's business. Each party hereto shall make its employees available on a mutually convenient basis to provide explanation of any documents or information provided hereunder. Each party hereto will retain all returns, schedules and work papers and all records or other documents relating to tax matters of each Company's business for the taxable year of each Company ending after the Closing Date and for all previous years, until the expiration of the statute of limitations of the taxable years to which such returns and other documents relate (and, to the extent notified by the other party in writing, any extensions thereof). The Sellers shall give any and all of each Companies' documents to Purchasers at Closing. Personal books and records are specifically excluded and only documents pertaining to the Companies will be transferred. Any information obtained by Sellers under this Section 5.04 shall be kept confidential, except as

1 may be otherwise necessary in connection with the filing of returns or claims for refund or in
2 conducting an audit or other proceeding.

3
4 The parties acknowledge and agree that the Companies, at their sole expense, shall be
5 responsible for filing all final Federal and state income tax returns; and Sellers and Purchasers
6 agree to cooperate in connection with the preparation thereof.

7
8 **Section 5.05 Additional Obligations of Companies, Purchasers and Parent to the**
9 **Kluft Parties.** From and after the Closing Date, Purchasers agree to make available to the
10 Kluft Parties, for the Kluft Parties own personal use, any mattress or related product then
11 manufactured or distributed by either of the Companies, in such quantities as the Kluft Parties
12 shall reasonably request. During the Noncompetition Period relating to Mr. Kluft, there shall
13 be no charge to the Kluft Parties for the forgoing; thereafter, the Kluft Parties shall be
14 charged the wholesale cost of any such item.

15
16 **Section 5.06 Wilcox Payment.** Subsequent to the Closing, the Companies shall
17 purchase an automobile on behalf of Ian Wilcox in the amount of at least \$[REDACTED] (the
18 "Wilcox Payment"). In connection with the Wilcox Payment, Purchaser agrees to pay all
19 employer withholding and related taxes. Wilcox shall be responsible for all employee
20 withholding taxes and income and other taxes with respect to such payment.

21 22 ARTICLE VI

23 24 INDEMNIFICATION

25 26 **Section 6.01 Indemnification by Sellers.**

27
28 (a) Each of the Kluft Parties agrees, jointly and severally, and Birke agrees,
29 severally and not jointly, to indemnify and hold harmless Parent, Purchasers and each of their
30 respective successors and permitted assigns (collectively the "Purchaser Indemnified Party")
31 from and against any and all Losses and Expenses incurred by any Purchaser Indemnified
32 Party in connection with, resulting from or arising out of:

33
34 (i) any breach by Sellers, or any other failure of Sellers to perform any of
35 Sellers' covenants, agreements or other obligations contained herein or contained in any other
36 Seller Ancillary Document; or

37
38 (ii) any inaccuracy of any representation of Sellers contained in this
39 Agreement or in any Seller Ancillary Document, or any misrepresentation or omission in any
40 Schedule, Exhibit or closing certificate furnished to Parent or Purchasers hereunder by Sellers
41 pursuant to this Agreement or the Seller Ancillary Documents;

42
43 (i) and (ii) above collectively "Indemnifiable Purchaser Claims."
44

1 **Section 6.02 Indemnification by Parent and Purchasers.** Parent and Purchasers
2 agree to indemnify and hold harmless Sellers and each of their respective heirs, executors,
3 successors and permitted assigns (collectively, the "Seller Indemnified Parties") from and
4 against any and all Losses and Expenses incurred by any Seller Indemnified Party in
5 connection with, resulting from or arising out of:

6
7 (i) any breach by Parent or Purchasers, or any other failure of Parent or
8 Purchasers to perform any of Parent's or Purchasers' covenants, agreements or other
9 obligations contained herein or contained in any other Purchaser Ancillary Document;

10
11 (ii) any inaccuracy of any representation of Parent or Purchasers contained
12 in this Agreement or in any Purchaser Ancillary Document, or any misrepresentation or
13 omission in any Schedule, Exhibit or closing certificate furnished or to be furnished to Sellers
14 hereunder by Parent or Purchasers pursuant to this Agreement or the Purchaser Ancillary
15 Documents.

16
17 **Section 6.03 Claims Procedure.**

18
19 (a) Purchaser Indemnified Party shall give notices of any claims for
20 indemnification to the Sellers, and, until all funds held in the escrow account established
21 pursuant to the Escrow Agreement have been disbursed, all such claims shall be satisfied in
22 accordance with the terms of the Escrow Agreement.

23
24 (b) At such time as the funds remaining in the Escrow Account are less than the
25 amount of outstanding Indemnifiable Purchaser Claims, any subsequent Indemnifiable
26 Purchaser Claims shall be payable solely (i) first, as a reduction to the amount of outstanding
27 interest and principal due on the Subordinated Notes (together with the cancellation of the
28 number of Warrants which bears the same ratio to the total number of Warrants as the amount
29 set-off against the Subordinated Notes bears to the original total amount of the Subordinated
30 Notes) and (ii) second, through the cancellation of all or a portion of the shares of stock of
31 Parent delivered to Sellers pursuant to the Subscription Agreement (it being agreed that, in
32 lieu of payment of Indemnification Purchase Claims through reduction of the amount of
33 outstanding Subordinated Notes or cancellation of shares of stock of Parent as specified in
34 clause (i) and (ii), Sellers may, at their option, fully satisfy such claims through a cash
35 payment). For purposes of the foregoing, the shares of Parent common stock shall be valued
36 at \$[REDACTED] per share, the shares of Parent preferred stock shall be valued at \$[REDACTED] per share and
37 the Warrants shall be given no value. Any Purchaser Indemnified Party or Seller Indemnified
38 Party (an "Indemnified Party") who wishes to make a claim for indemnification pursuant to
39 this Agreement shall notify each Person from whom indemnification is being claimed (an
40 "Indemnifying Party") with reasonable promptness under the circumstances of such
41 Indemnified Party's discovery of the matter giving rise to a claim of indemnity pursuant
42 hereto. The Indemnifying Party shall pay to the Indemnified Party any amount required to be
43 paid pursuant to this Article VI within thirty days after receipt by the Indemnifying Party of
44 such notice and such evidence that the claimed Losses and Expenses have been incurred or

come due as the Indemnifying Party may reasonably request unless the payment of such amount is contested prior to the expiration of such thirty day period by notice to the Indemnified Party. If such payment is so contested, then such payment shall be made within thirty days after the first to occur of the following: (i) such payment has been agreed to in writing by the Indemnifying Party and the Indemnified Party, or (ii) such payment has been declared due in a judgment or award entered against the Indemnifying Party by arbitration as provided for herein. The failure to give the notice referred to herein with reasonable promptness shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent that the Indemnifying Party is actually prejudiced as a result of the failure to give such notice.

Section 6.04 Third Party Claims.

(a) If any action at law or suit in equity is instituted by a third party against an Indemnified Party with respect to which an Indemnified Party intends to claim any Losses or Expenses under this Article VI ("Third Party Claim"), such Indemnified Party shall notify the Indemnifying Party of such action or suit with reasonable promptness. The failure to give the notice required by this Section 6.04 with reasonable promptness shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent that the Indemnifying Party is actually prejudiced as a result of the failure to give such notice.

(b) With respect to any claim made or to any action or suit brought by a third party against the Indemnified Party under Section 6.03(a) the following shall apply:

(i) With respect to claims by a third party, the Indemnifying Party shall have a period of three months from notice of any claim to which this paragraph 6.03(b) applies in which it shall attempt in good faith to resolve the claim, provided, however, that the Indemnified Party may participate at its own expense in such settlement negotiations although the settlement thereof shall be controlled by the Indemnifying Party. If the Indemnifying Party is unable to resolve the claim within that three month period, then the conduct and control of the third party claim shall be by the Indemnified Party which shall attempt in good faith to resolve the claim, provided, however, that the Indemnifying Party may participate at its own expense in such settlement negotiations although the settlement thereof shall be controlled by the Indemnified Party (but no settlement shall be made without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld). Any compromise or settlement of the claim under this Section 6.04(b)(i) shall include as an unconditional term thereof the giving by the claimant in question to the Indemnifying Party and the Indemnified Party a release of all liabilities in respect of such claims.

(ii) With respect to actions or suits brought by a third party, the Indemnified Party shall have the right to conduct and control, through counsel of its choosing (provided such counsel is approved by the Indemnifying Party, which approval shall not be unreasonably withheld), the defense of such third party action or suit and shall do so in good faith, provided, however, that the Indemnifying Party may participate at its own expense, with

1 counsel of its choosing in the defense of such third party action or suit although such action
2 or suit shall be controlled by the Indemnified Party. The Indemnified Party may in good faith
3 consent to the entry of a judgment or compromise or settle the action or suit provided that it
4 includes as an unconditional term thereof the giving by the plaintiff in question to the
5 Indemnifying Party a release of all liabilities in respect of such claims. If the Indemnifying
6 Party elects not to participate in the defense of such action or suit the Indemnified Party shall
7 give the Indemnifying Party 30 days advance notice in writing of any proposed consent to the
8 entry of judgment or compromise or settlement thereof.
9

10 (iii) The requirement in Section 6.04(b) that the parties act in good faith
11 shall include, without limitation, the consideration of the third party claim (whether in an
12 action or suit or otherwise) solely on its own merits and shall exclude from such consideration
13 any benefit, incidental or otherwise, that might inure to the Purchaser or its business by the
14 compromise or settlement of such claim or consent to entry of judgment on such claim.
15

16 (iv) If the Indemnifying Party and the Indemnified Party are both in
17 agreement with any compromise, settlement or entry of judgment reached under Section
18 6.03(b)(i) or (ii), such agreed upon result shall be deemed final and, if the Indemnified Party
19 is the Purchaser, it shall make demand upon the Escrow Agent to make payment thereof to
20 the extent funds are in the escrow account under the Escrow Agreement, and, to the extent the
21 funds under the Escrow Agreement are insufficient or the escrow account is no longer open,
22 the Indemnifying Party shall pay such insufficiency.
23

24 (v) In the event either: (i) the third party claimant proposes a monetary
25 settlement which fully releases both the Indemnifying Party and the Indemnified Party with
26 respect to a Third Party Claim which is acceptable to the Indemnifying Party or (ii) the
27 Indemnifying Party proposes a monetary settlement which fully releases both the
28 Indemnifying Party and the Indemnified Party with respect to such Third Party which is
29 acceptable to the third party claimant (collectively the "Proposed Settlement") and the
30 Indemnified Party rejects such Proposed Settlement; then and in such event, the Indemnified
31 Party shall bear all of the costs and expenses of the defense of such Third Party Claim
32 thereafter and, irrespective of the outcome of the matter, the Indemnifying Party's obligation
33 shall be fixed at the amount of the Proposed Settlement.
34

35 **Section 6.05 Limits on Indemnification.**
36

37 (a) No amount shall be payable by Sellers with respect to claims asserted pursuant
38 to Section 6.01 unless such claim is first asserted in accordance with Section 6.03 prior to the
39 expiration of the Survival Period (as defined in Section 7.02); provided, however, that if any
40 claim is first asserted prior to the expiration of such Survival Period, such claim may continue
41 to be maintained and the Purchaser Indemnified Parties shall continue to be indemnified until
42 the final determination and, if applicable, satisfaction thereof in accordance with the terms and
43 provisions of this Article VI.
44

(b) No amount shall be payable by Purchaser with respect to claims asserted pursuant to Section 6.02 unless such claim is first asserted in accordance with Section 6.03 prior to the expiration of the Survival Period relating to the representation or warranty claimed to have been inaccurate or breached; provided, however, that if any claim is first asserted prior to the expiration of such Survival Period, such claim may continue to be maintained and Seller Indemnified Parties shall continue to be indemnified until the final determination and, if applicable, satisfaction thereof in accordance with the terms and provisions of this Article VI.

(c) Sellers are not responsible for any customer returns or warranty claims if said returns or claims are directly as a result of any change in the warranty or return policy or the accounting for such claims from what those policies are on the date of Closing. Customer returns and warranty claims shall not include any such returns or warranty claims from Kaufman or Hechts. Further, Sellers are not responsible for any customer returns or warranty claims if merchandise is submitted to the Company for repair, and is in fact repaired and returned to the customer. The parties agree that to the extent customer returns and warranty claims are below █% of sales, such returns and claims are not the responsibility of Sellers and no claim for such returns or warranty claims may be made against the escrow. The parties also agree that, even if the customer returns and warranty claims exceed █%, neither Sellers nor the escrow shall be responsible for any customer returns or warranty claims received by either of the Companies more than two years after the date of Closing. The parties further agree that, in the event and to the extent the purchase price with respect to any merchandise subject to customer returns or warranty claims is not refunded, but, in lieu thereof, new merchandise is issued to a customer and the original merchandise is returned to the Companies, then the amount of the customer return and warranty claims shall be limited to the cost of such returned merchandise.

(d) Parent and Purchasers shall only be entitled to indemnification for Losses and Expenses pursuant to this Article VI in the event the Indemnifiable Purchaser Claims in the aggregate exceed \$█ (the "Indemnification Basket"). In no event shall Purchasers or Parent be entitled to seek payment for Indemnifiable Purchaser Claims from any Seller other than through funds in the Escrow Account, as a set-off against the principal and outstanding interest due on the Subordinated Notes (including the cancellation of a proportional amount of Warrants), or as a cancellation of all or a portion of the shares of Parent stock issued to Sellers pursuant to the Subscription Agreement.

(e) Notwithstanding any other provisions in this Agreement to the contrary, the limitations set forth in subsection (d) shall not apply to any Losses and Expenses arising from a breach by Sellers of their obligations to refund a portion of the Purchase Price to the extent required by the provisions of Section 2.05 or to make any required payments under Section 1.03 or any Losses and Expenses arising from any fraud committed by the Sellers in connection with this Agreement ("Fraud Claims"). Further, nothing in this Agreement shall limit the ability of Parent or Purchasers to seek specific performance, injunctive or other relief

1 against any Seller in order to enforce or prevent any violation of the provisions of Section
2 5.03 of this Agreement.

3 4 ARTICLE VII

5 6 GENERAL PROVISIONS

7
8 **Section 7.01 Expenses.** Purchaser and Sellers will pay all of his or its own costs and
9 expenses incident to his or its negotiation and preparation of this Agreement and to his or its
10 performance and compliance with all agreements and conditions contained herein on his or its
11 part to be performed or complied with, including, without limitation, the fees, expenses and
12 disbursements of his or its counsel and accountants provided, however, that the Companies
13 may pay for up to \$[REDACTED] of the fees, expenses and disbursements of the Sellers' counsel
14 incurred since March 12, 1999.

15 16 **Section 7.02 Survival.**

17
18 (a) All representations and warranties contained in Articles III and IV of this
19 Agreement shall survive the Closing Date for the following periods of time (the period
20 specified as to each such representation and warranty being referred to herein as the "Survival
21 Period" with respect to such representation and warranty): (i) the representations and
22 warranties contained in Section 3.10 shall survive until the twentieth (20th) day after the
23 expiration of all applicable statutes of limitations for liability or collection of any taxes,
24 penalties or interest (after taking into account all extensions and suspensions thereof); and (ii)
25 all remaining representations and warranties contained in Articles III and IV shall survive for
26 two years following the Closing Date.

27
28 (b) All the covenants, agreements and obligations contained in this Agreement shall
29 survive in accordance with their terms.

30
31 **Section 7.03 Governing Law.** This Agreement shall be governed by and construed
32 in accordance with the internal laws of the State of New Jersey with respect to contracts
33 negotiated in such state (without reference to its choice of law rules).

34 35 **Section 7.04 Dispute Adjudication; Consent to Jurisdiction.**

36
37 (a) Except with respect to any Fraud Claims and except for any action brought by
38 Parent or Purchasers against Kluft or Binke seeking specific performance, injunction or other
39 relief in order to enforce or prevent any violation of the provisions of Section 5.03, any
40 dispute arising from this Agreement shall be settled by arbitration in St. Louis, Missouri (if
41 the Party bringing the claim is Parent or a Purchaser) or Bergen County, New Jersey (if the
42 Party bringing the claim is a Seller). The parties shall mutually agree on an arbitrator. In the
43 event the parties are unable to so agree, each party shall prepare a list of 5 proposed
44 arbitrators. The parties agree to select as an arbitrator any name which appears on both lists.

1 If no common name appears on the lists, the parties shall repeat the procedure (up to three
2 times). If this procedure does not result in the selection of an arbitrator, the arbitrator shall be
3 chosen by the American Arbitration Association. The award of the arbitrator shall be final
4 and binding on the parties. Said arbitration shall be conducted under the rules of the American
5 Arbitration Association which shall be in effect at the time of the arbitration proceedings. All
6 cost incurred by the parties in connection with the arbitration, including but not limited to the
7 fees and expenses of the arbitrator, legal counsel, accountants and other experts shall be
8 allocated by the arbitrator based on the arbitrator's determination as to the merits of the
9 parties' respective positions in the arbitration.

10
11 (b) Solely to adjudicate any Fraud Claims asserted by Parent or Purchasers against
12 Sellers and solely with respect to any action brought by Parent or Purchasers against Kluft or
13 Binke seeking specific performance, injunction or other relief in order to enforce or prevent
14 any violation of the provisions of Section 5.03 Seller, Parent and each Purchaser hereby
15 irrevocably submits to the jurisdiction of any Federal court located in the City of St. Louis,
16 State of Missouri, and each Seller, Parent and each Purchaser hereby irrevocably agrees that
17 all claims in respect to any such action may be heard and determined in such court of the City
18 of St. Louis, State of Missouri. Each Seller, Parent and each Purchaser hereby irrevocably
19 submits to the jurisdiction of any Federal court located in the State of New Jersey, Bergen
20 County solely to adjudicate any Fraud Claim asserted by Sellers against Parent or Purchasers
21 and each Seller, Parent and each Purchaser hereby irrevocably agrees that all Fraud Claims so
22 brought may be heard or determined in such court of the State of New Jersey, Bergen County.

23
24 (c) For purposes of this Section 7.04, mandatory counterclaims shall be brought in
25 the same venue in which the original claim was required to have been brought. Each Seller,
26 Parent and each Purchaser hereby irrevocably waives, to the fullest extent it may effectively
27 do so under law, the defense of an inconvenient forum to the maintenance of such action or
28 proceeding. Each Seller, Parent and each Purchaser agrees that a final judgment in any such
29 action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on
30 the judgment or in any other manner provided by law.

31
32 (d) Nothing in this Section 7.04 shall affect the arbitration provisions contained in
33 Section 6.03.

34
35 **Section 7.05 Notices.** All notices or other communications required or permitted
36 hereunder shall be in writing and shall be deemed given or delivered and received (a) when
37 delivered, if delivered personally, (b) upon receipt, if mailed by registered or certified mail,
38 return receipt requested and postage prepaid, or (c) on the next business day after delivery to
39 a private courier service with overnight delivery requested, if delivered to a private courier

1 service providing documented overnight service, or (d) on the date received if transmitted by
2 facsimile, in each case addressed as follows:

3
4 If to Purchaser, to:

5
6 Spring Air Partners-California
7 134 Spring Street
8 New York, NY 10012
9 Attention: President

10
11 with copies to:

12
13 Edmund V. McCann, Esq.
14 McCann & McCann, Esqs.
15 291 Main Street
16 Ridgefield Park, New Jersey 07660
17 Fax No.: (201) 440-6392

18
19 and:

20
21 Troy & Gould
22 Professional Corporation
23 Lawrence P. Schnapp
24 1801 Century Park East
25 Los Angeles, California 90067
26 Fax: 310-201-4746

27
28
29 If to any Kluff Party, to:

30
31 Mr. Earl S. Kluff
32 3924 Ethel Avenue
33 Studio City, California 91604
34 FAX: (818) 907-9743
35
36

1 with a copy to:

2
3 Barry Burten, Esq.
4 Jeffer, Mangels, Butler, & Marmaro LLP
5 2121 Avenue of the Stars 10th Floor
6 Los Angeles, CA 90067-5010
7 FAX: (310) 203-0567
8

9 If to Binke, to:

10
11 Mr. David M. Binke
12 6304 Deerbrook Road
13 Oakpark, California 01377
14 FAX: (818) 707-0443
15

16 with a copy to:

17
18 Edward Swanson, Esq.
19 Case, Knowlson, Burnett & Wright
20 2049 Century Park East
21 Suite 3350
22 Los Angeles, California 90067
23 FAX:
24
25

26 or to such other address as the recipient party has specified by prior written notice to the
27 sending party (which change of address notice will be deemed to have been given, delivered
28 and received upon actual receipt thereof by the recipient party).
29

30 **Section 7.06 Successors and Assigns; Benefit.**
31

32 (a) Except as set forth in Schedule 7.06, the rights of the Sellers under this
33 Agreement shall not be assignable by any such party (except to a Seller's family members of
34 by way of testamentary disposition) without the written consent of Purchasers and the rights
35 of Parent and Purchasers under this Agreement shall not be assignable by Purchasers without
36 the written consent of Sellers.
37

38 (b) This Agreement shall inure to the benefit of and be enforceable by the parties
39 hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to
40 confer upon any Person, other than the parties and successors and assigns permitted by this
41 Section 7.06, any right, remedy or claim by reason of this Agreement.
42

1 **Section 7.07 Entire Agreement; Amendments; Waiver.**

2
3 (a) This Agreement, the Seller and Purchaser Ancillary Documents, and the
4 Attachments, Exhibits and Schedules referred to herein or therein and the other agreements
5 and documents delivered pursuant hereto contain the entire understanding of the parties hereto
6 with regard to the subject matter contained herein or therein, and supersede all prior
7 agreements, understandings or intents between or among any of the parties hereto.
8

9 (b) No amendment, modification or waiver of this Agreement shall be binding or
10 effective for any purpose unless it is made in a writing signed by the party against whom
11 enforcement of such amendment, modification or waiver is sought. No course of dealing
12 between the parties to this Agreement shall be deemed to modify, amend or discharge any
13 provision or term of this Agreement. No delay by any party to or beneficiary of this
14 Agreement in the exercise of any of its rights or remedies shall operate as a waiver thereof,
15 and no single or partial exercise by any party to or beneficiary of this Agreement of any such
16 right or remedy shall preclude the other or further exercise thereof. A waiver of any right or
17 remedy on any one occasion shall not be construed as a bar to or waiver of any such right or
18 remedy on any other occasion.
19

20 **Section 7.08 Interpretation.** Article titles and headings to Sections herein are
21 inserted for convenience of reference only and are not intended to be a part of or to affect the
22 meaning or interpretation of this Agreement. The Schedules and Exhibits referred to herein
23 shall be construed with and as an integral part of this Agreement to the same extent as if they
24 were set forth verbatim herein. The references herein to Sections, Exhibits and Schedules,
25 unless otherwise indicated, are references to Sections of and Exhibits and Schedules to this
26 Agreement. Words used herein, regardless of the number and gender specifically used, shall
27 be deemed and construed to include any other number, singular or plural, and any other
28 gender, masculine, feminine or neuter, as the context requires.
29

30 **Section 7.09 Severability.** The parties agree that (i) the provisions of this
31 Agreement shall be severable in the event that any of the provisions hereof are held by a
32 court of competent jurisdiction to be invalid, void or otherwise unenforceable, and (ii) such
33 invalid, void or otherwise unenforceable provisions shall be automatically replaced by other
34 provisions which are as similar as possible in terms to such invalid, void or otherwise
35 unenforceable provisions but are valid and enforceable and (iii) the remaining provisions shall
36 remain enforceable to the fullest extent permitted by law.
37

38 **Section 7.10 Execution in Counterparts.** This Agreement may be executed in one
39 or more counterparts, each of which shall be considered an original instrument, but all of
40 which shall be considered one and the same Agreement, and shall become binding when one
41 or more counterparts have been signed by each of the parties hereto and delivered to each of
42 the other parties hereto.
43

1 **Section 7.11 Definitions.** As used in this Agreement, the following terms shall have
2 the meanings specified or referred to in this Section 7.11. Certain other capitalized terms are
3 defined where they appear in this Agreement.
4

5 **"Affiliates"** means, with respect to any Person, and Persons directly or
6 indirectly controlling or controlled by or under direct or indirect common control with such
7 Person. The term "control" means the power to direct the management and policies of such
8 Person, directly or through one or more intermediaries, whether through the ownership of
9 voting securities, by contract, or otherwise.
10

11 **"agreement"** means any contract, note, mortgage, lease, license, instrument,
12 agreement, or understanding of any nature whatsoever whether oral or written.
13

14 **"Contaminant"** means any pollutant, hazardous substance, toxic substance,
15 radioactive substance, hazardous waste, petroleum or petroleum-derived substance or waste or
16 radioactive waste.
17

18 **"Encumbrance"** means any lien, claim, charge, security interest, mortgage,
19 pledge, easement, conditional sale or other title retention agreement.
20

21 **"Environmental Law"** means, to the extent applicable to the Companies, any
22 applicable Federal, state, local or foreign statute, ordinance, regulation, rule, judgment, order,
23 notice requirement, court decision or agency guideline which relates to the protection or
24 clean-up of the environment, the preservation or protection of water, air, wildlife, plants or
25 other natural resources, or the health and safety of persons and property, including but not
26 limited to any law, regulation, or order relating to the use, handling, or disposal of any
27 Contaminant.
28

29 **"Facility"** means each parcel of real property, each building and any and every
30 part thereof, currently owned, leased or operated by any of the Companies;
31

32 **"Former Facility"** means each parcel of real property, each building and any
33 and every part thereof, owned, leased or operated by any of the Companies at any time,
34 excluding Facilities;
35

36 **"GAAP"** means generally accepted accounting principles, consistently applied.
37

38 **"Governmental Body"** means any court, government (Federal, state or local)
39 department, commission, board, agency, bureau, official or other regulatory, administrative or
40 governmental authority.
41

42 **"IRS"** means the Internal Revenue Service.
43

1 **"Knowledge"**, when used with respect to an individual, means that such
2 individual is actually aware of a particular fact or matter. The parties agree that with respect
3 to any representation or warranty hereunder by Seller qualified by the phrase "to the
4 knowledge of any of the Sellers" or similar languages: (i) Binke shall only be deemed to be
5 making such representation or warranty to the extent he has knowledge of the particular fact
6 or matter, and (ii) the Kluff Parties shall only be deemed to be making such representation or
7 warranty to the extent any of the Kluff Parties has knowledge of the particular fact or matter.

8
9 **"Legal Requirement"** means any law, statute, rule, regulation, governmental
10 permits, judgment, decree, order, ordinance, variance, directive, code or requirement of any
11 Governmental Body.

12
13 **"Losses and Expenses"** means any and all losses, costs, obligations, liabilities,
14 settlement payments, awards, judgments, fines, penalties, damages, expenses, deficiencies or
15 other charges, whether incurred by any Purchaser Indemnified Party or Seller Indemnified
16 Party directly or indirectly, including without limitation pursuant to such an indemnified
17 party's obligation to indemnify another Person.

18
19 **"Order"** means any order, writ, injunction, ruling, judgment, stipulation or
20 decree by or with any Governmental Body.

21
22 **"Ordinary Course of Business"** means an action taken by the Companies if:

23
24 (a) such action is consistent with the past practices of the Companies and is
25 taken in the ordinary course of the normal operations of the Companies; and

26
27 (b) such action is not required to be authorized by the Companies' Board of
28 Directors.

29
30 **"Permitted Encumbrance"** means (i) liens for current real or personal property
31 taxes not yet due and payable and other statutory liens for amounts not yet due and payable
32 except for any such liens that have been imposed by reason of any breach or default of a
33 Seller or either of the Companies, and (ii) security interests of installment sellers/lessors of
34 finance leases for equipment being transferred to the Purchaser hereunder.

35
36 **"Person"** means and includes an individual, a partnership, a corporation, a trust,
37 a joint venture, an unincorporated organization and any Governmental Body or other agency
38 or authority.

39
40 **"Primary Facility"** means the Companies' facility located at 111 N. Baldwin
41 Park Blvd., City of Industry, California.

1 "Release" means any release, spill, emission, leaking, pumping, injection,
2 deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor
3 environment or into or out of any Facility, including the movement of Contaminants through
4 or in the air, soil, surface water or groundwater of any Facility and any other meaning as
5 defined in any Environmental Law.

6 "Remedial Action" means any and all actions required to (i) clean up, remove,
7 treat or in any other way address Contaminants in the indoor or outdoor environment, (ii)
8 prevent the Release or threat of Release or minimize the further Release of Contaminants so
9 they do not migrate or endanger public health or welfare or the indoor or outdoor
10 environment or (iii) perform pre-remedial studies and investigations and post-remedial
11 monitoring and care.

12 "Secondary Facility" means a Facility which is not a Primary Facility.

13 "Seller Ancillary Documents" means any agreement or instrument contemplated
14 hereby to be executed and delivered by any Seller in connection with the transactions
15 contemplated hereby.

16 "Substance" shall mean and refer to asbestos, PCB's, radon gas, petroleum
17 products or by-products, toxic, infectious, reactive, corrosive, ignitable or flammable
18 chemicals or chemical compounds and any other hazardous substance, material or waste (as
19 defined in any Environmental Law), whether solid, liquid or gas.

20 "WARN Act" means the Worker Adjustment and Retraining Notification Act of
21 1988.

22 Section 7.12 Legal Counsel.

23 Each party to this Agreement represents that it has been represented by legal counsel
24 in connection with the preparation, negotiation and execution of this Agreement and the other
25 agreements contemplated hereby.

26 Section 7.12 Costs of Litigation. All costs incurred by the parties in connection
27 with any litigation brought to enforce any of the parties' rights hereunder, including but not
28 limited to the fees and expenses of legal counsel, accountants and other experts shall be
29 allocated by the trier of fact based on a determination as to the merits of the parties'
30 respective positions in the litigation.


31 Section 7.13. Limitations Under This Agreement. Purchasers and Parent agree that,
32 with the exception of Fraud Claims, claims seeking recovery for amounts due under Sections
33 1.03 and 2.05, and actions brought against Kluft or Binke seeking specific performance,
34 injunctive relief or other relief in order to enforce or prevent any violation of the provisions
35 of Section 5.03, the sole and exclusive remedy for any violation by Sellers of this Agreement
36

1 or any of the Seller Ancillary Documents or claims by Parent or Purchaser under this
2 Agreement or any of the Seller Ancillary Documents shall be to seek indemnification pursuant
3 to the terms of Article VI, and any such claims shall be subject to the Indemnification Basket.
4
5
6

7 IN WITNESS WHEREOF, the parties have duly executed this Agreement as of
8 the date first above written.
9


10 "PARENT"

11 SPRING AIR PARTNERS-NORTH AMERICA, INC.

12
13 By: 
14 Name: Daniel J. Sullivan, Sr.
15 Title: President
16
17
18
19
20

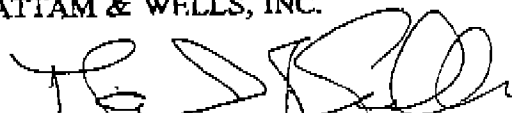
21 "DELUXE BEDDING PURCHASER"

22 SPRING AIR PARTNERS-CALIFORNIA, INC.

23
24 By: 
25 Name: Daniel J. Sullivan, Sr.
26 Title: President
27
28
29

30 "C&W PURCHASER"

31 CHATTAM & WELLS, INC.

32
33 By: 
34 Name: Daniel J. Sullivan, Sr.
35 Title: President
36
37
38
39

40 [Signatures Continued on Following Page]
41
42

[Signatures Continued from Previous Page]

"SELLERS"



Earl Kluff, an individual



Earl Kluff, as custodian for Michelle Kluff under the
California Uniform Transfers to Minors Act

Earl Kluff, as custodian for Julianne Kluff under the
California Uniform Transfers to Minors Act



Earl Kluff, as custodian for Alexander Kluff under the
California Uniform Transfers to Minors Act



David Binke, an individual

1218-2.023

1218-2.023

Spousal Consent

The undersigned, being the spouse of a shareholder of the Spring Air California Deluxe Bedding Co., Inc. and a member of Chattam & Wells Mattress Company, L.L.C. who has signed this Agreement, acknowledges that she has read and is familiar with its provisions and agrees to be bound by this Agreement and to join in this Agreement to the extent, if any, that her joinder may be necessary. The undersigned agrees that her spouse may join in any future amendment or modification of this Agreement without any further signature, acknowledgment, agreement, or consent on her part; and further agrees that any interest that she may have in the companies subject to this Agreement owned directly or beneficially by her spouse shall be subject to the provisions of this Agreement

Dated: 1999


Name: Pamela Kluff

Spousal Consent

1
2 The undersigned, being the spouse of a shareholder of the Spring Air California Deluxe
3 Bedding Co., Inc. and a member of Chatham & Wells Mattress Company, L.L.C. who has
4 signed this Agreement, acknowledges that she has read and is familiar with its provisions and
5 agrees to be bound by this Agreement and to join in this Agreement to the extent, if any, that
6 her joinder may be necessary. The undersigned agrees that her spouse may join in any future
7 amendment or modification of this Agreement without any further signature, acknowledgment,
8 agreement, or consent on her part; and further agrees that any interest that she may have in
9 the companies subject to this Agreement owned directly or beneficially by her spouse shall be
10 subject to the provisions of this Agreement.
11

12
13 Dated: August 6, 1999

Kathleen A. Birke
Name: Kathleen Birke

CHARGE

42