

12-29-2005

U.S. DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

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To the Director of the U.S. Patent and T.

ments or the new address(es) below.

**1. Name of conveying party(ies)**

BANK OF AMERICA, N.A.

**2. Name and address of receiving party(ies)**

Name: ALL SEASON TOYS, INC.

Internal Address: 22619 PACIFIC COAST HIGHWAY

SUITE 250

Street Address:

City: MALIBU

State: CALIFORNIA

Country: United States Zip: 90265

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

**3. Nature of conveyance/Execution Date(s):**

Execution Date(s) NOVEMBER 29, 2002

☐ Assignment

☐ Merger

☐ Security Agreement

☐ Change of Name

☐ Joint Research Agreement

☐ Government Interest Assignment

☐ Executive Order 9424, Confirmatory License

☒ Other CORRECTION OF REEL/FRA: 016814-0542

Additional name(s) & address(es) attached? ☐ Yes ☒ No

**4. Application or patent number(s):**

☐ This document is being filed together with a new application.

A. Patent Application No.(s)

B. Patent No.(s)

D380017 D408853 D434458 D430908

D419607 D416587 D429505

D382927 D429506 D429504

Additional numbers attached? ☐ Yes ☒ No

**5. Name and address to whom correspondence concerning document should be mailed:**

Name: LARRY B. MILLER

Internal Address: 750 LEXINGTON AVENUE

23RD FLOOR

Street Address:

City: NEW YORK

State: NEW YORK Zip: 10022

Phone Number: 212-888-8200

Fax Number: 212-752-4632

Email Address: LMILLER@FKIWSB.COM

**6. Total number of applications and patents involved:**

**7. Total fee (37 CFR 1.21(h) & 3.41) \$**

☐ Authorized to be charged by credit card

☒ Authorized to be charged to deposit account

☐ Enclosed

☐ None required (government interest not affecting title)

**8. Payment Information**

a. Credit Card Last 4 Numbers

Expiration Date

b. Deposit Account Number 501738

Authorized User Name Larry B. Miller

**9. Signature:**

Signature

DECEMBER 22, 2005

Date

LARRY B. MILLER

Name of Person Signing

Total number of pages including cover sheet, attachments, and documents:

60

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, V.A. 22313-1450

PATENT  
REEL: 017400 FRAME: 0472

08-02-2005

U.S. DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office



103052627

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City: NEW YORK

State: NEW YORK Zip: 10022

Phone Number: 212-888-8200

Fax Number: 212-752-4632

Email Address: lmiller@fkiwsb.com

**6. Total number of applications and patents involved: 10**

**7. Total fee (37 CFR 1.21(h) & 3.41) \$400.00**

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☒ Authorized to be charged to deposit account

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Authorized User Name LARRY B. MILLER

**9. Signature:**

08/01/2005 DRYME 00000117 501738 B380017

Signature

Date

01 FC:021

400.00 DA

LARRY B. MILLER

Name of Person Signing

Total number of pages including cover sheet, attachments, and documents:

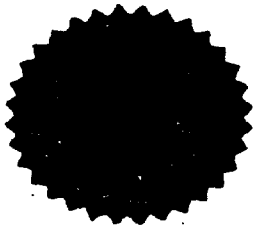
56

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## The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY, OF THE CERTIFICATE OF AMENDMENT OF "JP/TIII ACQUISITION CORP.", CHANGING ITS NAME FROM "JP/TIII ACQUISITION CORP." TO "ALL SEASON TOYS, INC.", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF JANUARY, A.D. 2003, AT 10 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3594787 8100

030055224

AUTHENTICATION: 2229342

DATE: 01-28-03

**CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION  
OF  
JP/THI ACQUISITION CORP.**

The undersigned, Stephen G. Berman, hereby certifies that:

A. The name of the Corporation is JP/THI ACQUISITION CORP. (hereinafter called the "Corporation").

B. The certificate of incorporation of the Corporation is hereby amended by striking out Article 1 thereof and by substituting in lieu of said Article 1 the following new Article:

**ARTICLE 1** The name of the Corporation is All Season Toys, Inc. (the "Corporation".)

C. The amendment to the Corporation's certificate of incorporation herein certified has been duly adopted and written consent has been given in accordance with the provisions of Section 228 and 242 of the Delaware General Corporation Law of the State of Delaware.

Signed on: January 21<sup>st</sup> 2003

JP/THI Acquisition Corp.

By:

  
Stephen G. Berman  
Secretary

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 10:00 AM 01/28/2003  
030055224 - 3594787

**SUPPLEMENTAL CONSENT, UNDERTAKING AND ACKNOWLEDGMENT  
(Trendmasters)**

In consideration for JP/TIII Acquisition Corp. (the "Buyer") entering into the transactions contemplated by that certain Asset Purchase Agreement (the "Asset Purchase Agreement"), dated as of November 29, 2002, between the Buyer and Bank of America, N.A. ("Seller") with respect to the Purchased Assets, Trendmasters, Inc., a Missouri corporation ("Trendmasters"), hereby enters into this Supplemental Consent, Undertaking and Acknowledgement, dated November 29, 2002 (the "Agreement"), and acknowledges, confirms, and agrees for the benefit of the Buyer and its respective successors, assigns and Affiliates to the following:

**1. Certain Definitions.**

1.1 "Affiliate" of a Person means another Person directly or indirectly controlling, controlled by, or under common control with, such Person; for this purpose, "control" of a Person means the power (whether or not exercised) to direct the policies, operations or activities of such Person by virtue of the ownership of, or right to vote or direct the manner of voting of, securities of such Person, or pursuant to agreement or Law or otherwise.

1.2 "Business" means the business operated by Trendmasters and the Subsidiaries, which consists of creating, designing and marketing toy, seasonal and novelty products.

1.3 "Consent" means any approval, authorization, consent or ratification by or on behalf of any Person that is not a party to this Agreement, or any waiver of, or exemption or variance from, any Material Contract, Permit or Order, that is required to be obtained in order to consummate the transactions contemplated by the Asset Purchase Agreement.

1.4 "Contract" means any contract, including, without limitation, any purchase, sales, supply or service order or agreement, equipment lease, or license of trade rights, that relates to the Business or the Purchased Assets or by which they or Trendmasters are bound.

1.5 "Financial Distress" means the condition of Trendmasters caused by or related to any action or claim asserted at any time by any Person following (a) Trendmasters' default under its lending agreements with Bank of America, N.A. and LaSalle Bank National Association, (b) the subsequent setoffs and resulting dishonor of checks issued by Trendmasters, and (c) the general curtailment of Trendmasters' business operations since November 7, 2002.

1.6 "GAAP" means generally accepted accounting principles in the United States as consistently and historically applied by Trendmasters.

1.7 "Governmental Authority" means any foreign or domestic court, regulatory or administrative agency or commission or other governmental authority or instrumentality.

1.8 "Knowledge" means with respect to the matter in question, the actual knowledge of James Russell Hornsby, Jr. or John Horgan (but only as to Trendmasters' operations in the United States).

1.9 "Laws" means all applicable federal, state, county or local statutes, laws, ordinances, rules and regulations within the United States.

1.10 "Lien" means any mortgage, pledge, security interest, claim, lien, charge or other encumbrance of any kind whether created by contract or by operation of law.

1.11 "Material Adverse Effect" means a material adverse effect on the Purchased Assets.

1.12 "Material Contract" means any material contract to which Trendmasters or a Subsidiary is a party. For the purposes hereof, a contract is "material" if (a) it is a License Agreement; (b) any contract that provides for any Person, other than Trendmasters or a Subsidiary, to use or exploit, or prohibits or limits such other Person's use of, a Trade Right of Trendmasters or a Subsidiary; (c) any Restrictive Agreement; (d) any contract that prohibits any Person, other than Trendmasters or a Subsidiary, from engaging, or curtails or restricts the nature or scope of such other Person's activities, in any line of business or geographic territory; or (e) any contract (i) that relates to (A) a transaction or series of related transactions involving the transfer of property with a fair market value in excess \$100,000, (B) any indebtedness in an amount in excess of \$100,000, (C) any Lien on any Assets with a fair market value in excess of \$25,000 or (D) a transaction not in the ordinary course of the Business, or (ii) as to which any breach or default thereunder would reasonably be expected to have a Material Adverse Effect. Schedule 1.12 sets forth a non-exhaustive list of Contracts. Notwithstanding the fact that a contract or agreement is identified as a Contract in Schedule 1.12, the fact that a breach thereunder is not disclosed on Schedule 2.11 will not be considered a breach of the warranty and representation described in Section 2.11 unless it results in a Material Adverse Effect.

1.13 "Order" means any judgment, order, writ, decree, award, directive, ruling or decision of any Governmental Authority.

1.14 "Permit" means any permit, license, certification, qualification, franchise or similar privilege issued or granted by any Governmental Authority.

1.15 "Permitted Lien" means any of the following: (i) statutory landlord's liens and liens for current taxes, assessments and governmental charges not yet due and payable (or being contested in good faith); (ii) zoning laws and ordinances and similar legal requirements; (iii) rights reserved to any Governmental Authority to regulate the affected property and restrictions of general applicability imposed by federal or state securities Laws; (iv) license transfer fees; (v) Liens to which Buyer has consented; (vi) Liens that

will be released or terminated at or prior to Closing; and (vii) other Liens set forth on Schedule 1.15.

1.16 "Person" means any natural person, corporation, joint stock company, limited liability company, partnership, joint venture, association, trust, Governmental Authority, or any group of the foregoing acting in concert.

1.17 "Proceeding" means any action, suit, arbitration, audit, investigation or other proceeding, at law or in equity, before or by any Governmental Authority.

1.18 "Restrictive Agreement" means an agreement to which Trendmasters or any Subsidiary is a party that prohibits or limits Trendmasters' or a Subsidiary's use of a Trade Right of another Person, which Trade Right is material to the operation of the Business, or prohibits Trendmasters or a Subsidiary from engaging, or curtails or restricts the nature or scope of Trendmasters' or a Subsidiary's activities, in any line of business or geographic territory.

1.19 "Subsidiary" as to any Person means (i) any corporation of which such Person owns, either directly or through its Subsidiaries, more than 50% of the total combined voting power of all classes of voting securities of such corporation or (ii) any partnership, association, joint venture or other form of business organization, whether or not it constitutes a legal entity, in which such Person directly or indirectly through its Subsidiaries owns more than 50% of the total equity interests.

1.20 "Tax" means tax of any kind, a levy or other like assessment, customs, duties, imposts, charges or fees (including income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, sales, use, transfer, registration, value added, alternative or add-on-minimum, estimated or other tax of any kind whatsoever) imposed by or payable to any U.S. federal, state, county or local government or subdivision or agency thereof, and in each instance such term shall include any interest, penalties or additions to tax attributable to any such Tax.

## **2. Representations and Warranties.**

2.1 *Corporate Existence.* Trendmasters is a corporation duly organized, validly existing and in good standing under the Laws of the State of Missouri and has the full corporate power and authority to own the Purchased Assets as and in the places where such Purchased Assets are now located. Complete and correct copies of Trendmasters' Certificate of Incorporation, including all amendments thereto as of the date hereof, and Trendmasters' Bylaws, including all amendments thereto as of the date hereof, have been delivered or made available to Buyer.

2.2 *Corporate Power and Authority.* Trendmasters has full corporate power and authority to execute and deliver this Agreement and each other transaction document executed as part of the transfer and sale of the Purchased Assets to which it is a party.

The execution and delivery of this Agreement and each other transaction document to which it is a party by Trendmasters have been duly authorized by all requisite corporate action on the part of Trendmasters. This Agreement and each other transaction document to which it is a party will be duly executed and delivered by Trendmasters, and this Agreement and each other transaction document to which it is a party, when so executed and delivered, will be, a legally valid and binding obligation of Trendmasters, enforceable against it in accordance with their respective terms. The execution and delivery of this Agreement and each other transaction document to which it is a party, and the transfer of the Purchased Assets to the Seller will not, violate any applicable Law or any provision of Trendmasters' Certificate of Incorporation or Bylaws, and do not and will not conflict with or result in any breach of any condition or provision of, or constitute a default under, or create or give rise to any adverse right of termination or cancellation by, or excuse the performance of, any other Person under, any Material Contract except as disclosed in Schedule 2.12, or result in the creation or imposition of any Lien upon any of the Purchased Assets, other than any violation, conflict, breach, default, right of termination or cancellation, excuse of performance or Lien that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect and except as set forth in Schedule 2.2.

**2.3 Approval by Directors and Stockholders.** Trendmasters' Board of Directors and stockholders have unanimously (a) determined that the Transfer and sale of the Purchased Assets are advisable and in the best interests of Trendmasters and its stockholders and (b) approved the Transfer and sale of the Purchased Assets and the Trendmasters Consent. James Russell Hornsby, Jr. is the sole director of Trendmasters.

**2.4 Consents.** Except for the approval by the Seller or as set forth on Schedule 2.4 or in Schedule 1.12, no Consent of, or Notice to, any Person is required as to Trendmasters in connection with the consummation of the Transfer and sale of the Purchased Assets and the execution and delivery of the Trendmasters Consent or any other Transaction Document to which it is a party.

**2.5 Order.** Except as set forth on Schedule 2.5 and except as a result of the Financial Distress, no Proceeding in which Trendmasters or a Subsidiary is a named party is pending or, to Trendmasters' Knowledge, threatened against or affecting the Purchased Assets in which an unfavorable Order would reasonably be expected to have a Material Adverse Effect, or would prohibit, invalidate or make unlawful, in whole or in part, the transfer and sale of the Purchased Assets or the Asset Purchase Agreement, or the transactions contemplated thereby. None of Trendmasters or any Subsidiary is in default in respect of any Order, which default would reasonably be expected to have a Material Adverse Effect, nor is there any Order enjoining Trendmasters in respect of, or the effect of which is to prohibit or restrict Trendmasters' execution and delivery of this Agreement or the consummation of the transfer and sale of the Purchased Assets.

**2.6 Stock.** The entire authorized capital stock of Trendmasters consists of 150,000 voting shares, \$.10 par value, of which 150,000 are issued (and 100,000 shares are held in treasury) and 50,000 are outstanding and 150,000 non-voting shares \$.10 par value, of which 150,000 are issued (and 100,000 shares are held in treasury) and 50,000 are



outstanding and all of which outstanding shares are owned by the Persons identified on Schedule 2.6. Except as set forth on Schedule 2.6, Trendmasters is not a party to any voting agreement or trust or other agreement, commitment or arrangement with respect to the voting of its capital stock, nor, to Trendmasters' Knowledge, is there any such trust, agreement, commitment or arrangement.

**2.7 Subsidiaries.** The entities set forth on Schedule 2.7 constitute all of the Subsidiaries of Trendmasters. No Subsidiary of Trendmasters is the legal or beneficial owner or lessee, as the case may be, of any of the Purchased Assets.

**2.8 Financial Statements.** Trendmasters' combined financial statements for the years ended December 31, 2001 and December 31, 2000 were prepared in accordance with GAAP applied on a consistent basis, and each such financial statement presented fairly, in all material respects, the combined financial position of Trendmasters and the Subsidiaries at the dates and the results of their operations and cash flows for each of the years indicated. Trendmasters' unaudited combined financial statements for the period ended October 31, 2002 are in accordance with GAAP and except as caused by the Financial Distress present fairly, in all material respects, the combined financial position of Trendmasters and the Subsidiaries at the date and the results of their operations and cash flows for the period then ended except for normal year end adjustments, certain financial statement format changes, reclassifications and the absence of required footnotes.

**2.9 Adverse Events.** Except as set forth on Schedule 2.9, to the Knowledge of Trendmasters, since December 31, 2001, none of Trendmasters or any Subsidiary has:

(a) incurred any material damage, destruction or similar loss, whether or not covered by insurance, materially affecting the Business or the Purchased Assets;

(b) other than in the ordinary course of business, sold, assigned or transferred a material portion of the Purchased Assets or any interest therein, other than the disposal of defective, obsolete or otherwise unusable assets;

(c) other than in the ordinary course of business, created, incurred, assumed, granted or suffered to exist any Lien on any Purchased Asset (other than any Permitted Lien); or

(d) effected any material transaction relating to the Business or the Purchased Assets other than in the ordinary course of business.

**2.10 No Liens.** Trendmasters or a Subsidiary, as the case may be, owns all of the Purchased Assets free and clear of all Liens, except for Permitted Liens and the Liens listed on Schedule 2.10.

**2.11 Breach of Material Contract.** Except as set forth on Schedule 2.11, there is no breach or default by Trendmasters or a Subsidiary or, to Trendmasters' Knowledge, by any other party under any Material Contract, each of which is in full force and effect, other than any breach or default that would not reasonably be expected to have a Material

Adverse Effect, and other than a breach or default arising by reason of any failure to obtain any required consent to the transfer of the Purchased Assets. Schedule 1.12 contains a non-exhaustive list of Contracts which Trendmasters has compiled for Buyer (which includes all Material Contracts). A breach of a Material Contract shall not result in a breach of the representation and warranty under this Section 2.11 unless and until it results in a Material Adverse Effect.

**2.12 Inventory.** Except as set forth on Schedule 2.12, inventory included in the Purchased Assets consists solely of merchandise usable or saleable in the ordinary course of business. There has been no material change in the inventory reflected in Trendmasters' unaudited consolidated balance sheet at October 31, 2002, except in the ordinary course of business.

**2.13 Permits.** Each of Trendmasters and each Subsidiary has all Permits and all Consents of Governmental Authorities required for it to own and use the Purchased Assets in its Business as presently conducted or which it is otherwise required to have under applicable Law, except such Permits or Consents which the failure to have would not reasonably be expected to have a Material Adverse Effect, and other than any Consents that may be required in order to transfer the Purchased Assets set forth on Schedule 2.13. All such Permits and Consents are in full force and effect and no cancellation or suspension of any thereof is pending or, to Trendmasters' Knowledge, threatened. Except as set forth on Schedule 2.13, and subject to obtaining any applicable Consents, the applicability and validity of each such Permit or Consent will not be adversely affected by the consummation of the Transfer and sale of the Purchased Assets. To Trendmasters' Knowledge, Trendmasters and each Subsidiary is in compliance with each Law applicable to it and the Business, except for such noncompliance which would not, in the aggregate, reasonably be expected to have a Material Adverse Effect on the Purchased Assets, and none of them has received any written Notice alleging or asserting any material violation of or noncompliance with any such Law.

**2.14 Intellectual Property Rights.** Schedule 2.14 includes a brief description (including, if applicable, date of application, filing or registration, as the case may be, and the registration and application number) of each patent or registered trademark, trade name, service mark or copyright or any currently pending application therefor, in which Trendmasters or a Subsidiary has any right or interest, and all of which are included in the Purchased Assets except for those Intellectual Property Rights that are Excluded Assets. Except as otherwise listed on Schedule 2.14, none of Trendmasters or any Subsidiary is a licensor or a licensee in respect of any such Intellectual Property asset. Except as otherwise set forth on Schedule 2.14, to Trendmasters' Knowledge, no Intellectual Property asset of Trendmasters or a Subsidiary relating to the Business conflicts with or infringes on, and there has been no misappropriation or unauthorized use by Trendmasters or a Subsidiary of, any Intellectual Property right of any other Person, and, to Trendmasters' Knowledge, no Intellectual Property asset of any other Person conflicts with or infringes on, and there has been no misappropriation or unauthorized use by any other Person of, any Intellectual Property right of Trendmasters or a Subsidiary.

**2.15 Tax Returns.** Except as disclosed on Schedule 2.15, Trendmasters has duly filed all Tax returns and reports required to have been filed by it to the date hereof, each of which is complete and correct in all material respects, and Trendmasters has paid all Taxes due to any Governmental Authority required to have been paid by it on or prior to the date hereof and has created sufficient reserves or made provision for all Taxes accrued but not yet due and payable by it. Trendmasters has paid to the proper Governmental Authorities all customs, duties and similar or related charges required to be paid by it on or prior to the date hereof with respect to the importation of goods into the United States. Except as is disclosed on Schedule 2.15, no Governmental Authority is now asserting or, to Trendmasters' Knowledge, threatening to assert, any deficiency or assessment for additional Taxes with respect to Trendmasters, nor, to Trendmasters' Knowledge, is there any basis for any such deficiency or assessment. Trendmasters has delivered or made available to Buyer complete and correct copies of the Tax returns of Trendmasters for each of its three most recently ended fiscal years for which Tax returns have been filed and any subsequent period for which a return was filed.

**2.16 Labor Contracts.** Except as set forth on Schedule 2.16, none of Trendmasters or any Subsidiary is a party to any collective bargaining, union representation or other labor contract.

**2.17 Affiliate Interests.** Except as set forth on Schedule 2.17, no Affiliate of Trendmasters or any Subsidiary or any relative, associate or agent thereof has any interest in any Purchased Assets, including without limitation any contract for the furnishing of services by, or rental of personal property from or to, or requiring payments to, any such Affiliate.

**2.18 Customers.** Schedule 2.18 is a complete and correct list of the names and addresses of the five largest customers of Trendmasters and the Subsidiaries during the nine month period ended September 30, 2002 and the total sales to or purchases from such customers or suppliers made by Trendmasters and the Subsidiaries during such fiscal year. To the extent any such customers listed on Schedule 2.18 have indicated an intent to terminate, discontinue or substantially reduce its business with Trendmasters or any Subsidiary it is noted on Schedule 2.18.

**2.19 Insurance.** Except as set forth on Schedule 2.19, all insurance maintained by Trendmasters or any Subsidiary is in full force and effect. To Trendmasters' Knowledge, no insurer intends to cancel or refuse to renew any such insurance based upon any claims history (as opposed to as a result of Financial Distress) and, to Trendmasters' Knowledge, there is no basis for any such cancellation or non-renewal. No insurer has disputed any claim made under any policy which would have a Material Adverse Effect and, to Trendmasters' Knowledge, no event has occurred and no circumstance exists which would excuse the performance by any insurer of any of its obligations under any such policy with respect to such claim.

**2.20 Brokers.** Except as set forth on Schedule 2.20, (a) none of Trendmasters or any Subsidiary, or any Affiliate thereof, has employed or engaged any Person to act as a broker, finder or other intermediary in connection with the transactions contemplated as

part of the Transfer and sale of the Purchased Assets, and (b) no Person is entitled to any fee, commission or other compensation relating to any such employment or engagement by Trendmasters or any Subsidiary.

**2.21 Ownership of Purchased Assets.** Trendmasters is the legal and beneficial owner or lessee, as the case may be, of the Purchased Assets and except as set forth on Schedule 2.21, all of the Purchased Assets are in its possession and located at its principal executive offices. Except with respect to the Excluded Assets, the Purchased Assets constitute, in the aggregate, all the assets and property necessary for the conduct of the Business as currently conducted and as conducted during the past eighteen (18) months in all material respects.

**2.22 Security Agreement.** NationsBank, N.A.'s Amended and Restated Security Agreement, dated November 30, 1997, a true and correct copy of which is attached hereto as Schedule 2.22 (including schedule \_\_ thereto which sets forth a true, correct and complete description of the subject collateral), is in full force and effect, was duly and validly executed by Trendmasters and is enforceable against Trendmasters and its affiliates in accordance with its terms and has not been amended or otherwise modified since November 30, 1997 (including by virtue of the "in lieu" financing statement filed by Seller in Missouri in August, 2001).

**2.23 No Omissions.** To the Knowledge of Trendmasters, no representation or warranty described herein contains or will as at the Closing contain any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein, in the light of the circumstances under which they are made, not misleading.

### **3. Covenants and Agreements.**

**3.1 Use of Buyer's Computer Equipment.** For a period of ninety (90) days following the Closing, Buyer shall provide Trendmasters with access in St. Louis, Missouri to the computer equipment, reasonable furniture and equipment and local network access acquired by Buyer as part of the Asset Purchase Agreement for purposes of reviewing electronically any books, records and files relating to the Purchased Assets, to the extent they pertain to the Purchased Assets prior to the Closing Date, and to the extent necessary for Trendmasters to wind down its business operations.

**3.2 Non-Disclosure of Confidential Information.** In executing the Trendmasters Consent, Trendmasters, on behalf of itself and all of its Affiliates, covenants and agrees that:

(a) Trendmasters shall not at any time following the Closing, directly or indirectly, disclose to any Person other than the parties to the Asset Purchase Agreement or use (other than as is required by law, in which case Trendmasters shall give Buyer prior written notice of such required disclosure or use, or with Buyer's prior written consent) in any way, any Confidential Information existing as of the Closing Date and relating to Buyer or the Purchased Assets. For purposes of this Section 3.2,

"Confidential Information" shall include, but is not limited to non-public, trade secrets, trademarks, copyrights, privileges, research and developmental data, non-public know-how, patents, patent applications, inventions upon which patent applications have not yet been filed, discoveries, improvements, processes, methods, equipment, designs, formulas (secret or otherwise), engineering, technical and shop diagrams and drawings, product and process specifications, test procedures and specifications, proprietary technology, market studies and forecasts, competitive analyses, pricing policies, the substance of agreements with customers, suppliers and others, marketing arrangements and any other documents, in whatever form, embodying such Confidential Information.

3.3 After the Closing, all documents, applications, records, reports, writings and other similar documents containing Confidential Information, including all copies thereof and related correspondence, then in the possession or control of Trendmasters or its Affiliates and relating to the Purchased Assets, shall be delivered promptly by Trendmasters to, and shall become the exclusive property of, Buyer, subject to the provisions of Section 3.1 above.

3.4 Non-Compete. Effective as of the date hereof and for a period of five (5) years thereafter, Trendmasters shall not, and shall cause its Affiliates not to, compete against Buyer or its Affiliates with respect to the Business and, accordingly, Trendmasters covenants not to use any of the Licensed IP or registered copyrights to compete against Buyer or its Affiliates.

4. Subsequent Tax Liability. If, subsequent to the Closing Date, any liability for Taxes relating to the Purchased Assets is asserted against Buyer or any of its Affiliates with respect to any period prior to, through and including the Closing Date, Trendmasters by executing the Trendmasters Consent shall indemnify and hold Buyer and its Affiliates harmless from and against, and shall pay the full amount of such Tax liability, (as well as reasonable attorney's or other fees and disbursements of Buyer incurred in determination thereof or in connection therewith). Trendmasters by executing the Trendmasters Consent shall agree that Trendmasters shall, at its sole expense and in its reasonable discretion, either settle any Tax claim that may be the subject of indemnification under this Article 4 at such time and on such terms as it shall deem appropriate or assume the entire defense thereof; provided, however, that Trendmasters shall in no event take any position in such settlement or defense that subjects Buyer to any civil fraud or any civil or criminal penalty. Notwithstanding the foregoing, Trendmasters by executing the Trendmasters Consent shall agree that Trendmasters shall not consent, without the prior written consent of Buyer, which prior written consent shall not be unreasonably withheld, to any change in the treatment of any item which would, in any manner whatsoever, affect the Tax liability of Buyer for a period subsequent to the Closing Date.

5. Survival; Indemnification. Trendmasters agrees to the following:

5.1 The several representations and warranties contained in Article 2 (or in any document delivered in connection herewith) shall be deemed to have been made on the date of this Agreement, shall be deemed to be material and to have been relied upon by Buyer, Buyer's Affiliates or Seller as the case may be, notwithstanding any investigation

made by Buyer, Buyer's Affiliates or Seller, shall survive the Closing Date and, except as otherwise specifically provided in this offer, shall remain operative and in full force and effect for a period of three years following the Closing Date, except as to any matters with respect to which a bona fide written claim has been made or an action at law or in equity shall have commenced before such date, in which event survival shall continue (but only with respect to, and to the extent of such claim) until the final resolution of such claim or action, including all applicable periods for appeal; provided, however, that (i) the representations and warranties contained in Section 2.21 shall continue without any time limitation; and (ii) the representations and warranties relating to Taxes set forth in Section 2.15 thereof shall survive until the later of (A) six months after the expiration date of the applicable statute of limitations with respect thereto (giving effect to any extension thereof by waiver or otherwise), or (B) the date which is six (6) months following the ultimate disposition of any claim relating to Taxes with respect to which Trendmasters's indemnification obligations hereunder apply.

**5.2** Trendmasters shall indemnify and hold Buyer and Buyer's Affiliates harmless from and against (i) any and all loss, cost, liability, damage and expenses (including legal and other expenses incident thereto) (each a "Loss" and collectively, "Losses") arising out of or resulting from any inaccuracy, misrepresentation or breach of any representation, warrant, covenant or agreement of Trendmasters under Article 2, (ii) any and all liabilities of Trendmasters (including any accounts payable that arise after the Closing Date but relate to periods prior to Closing) (other than the Assumed Obligations), and (iii) any and all Losses arising out of or in connection with the ownership or operation of the Purchased Assets on or before the Closing Date.

**5.3** The indemnity agreements in this Article 5 shall be in addition to any other indemnity obligations any party may have to another party as a matter of law and shall not foreclose any other rights or remedies any party may have to enforce the provisions of this Consent and Undertaking.

**5.4** *Indemnification Procedure.*

(a) If at any time a party entitled to indemnity hereunder (the "Indemnitee") shall receive notice of any state of facts that may result in a Loss or Losses of the type described in Article 4 or Section 5.2, the Indemnitee shall promptly give written notice (a "Notice of Claim") to the party obligated to provide indemnity hereunder (the "Indemnitor").

(b) A Notice of Claim shall set forth (a) a brief description of the nature of the potential or actual Loss and (b) the total amount of Loss anticipated to the extent that feasible (including any costs or expenses which have been or may be reasonably incurred in connection therewith). Payment of the amount of Loss due the Indemnitee as set forth in a Notice of Claim shall be made by the Indemnitor no later than the thirtieth (30<sup>th</sup>) day after the date of the Notice of Claim (or such later date as the Indemnitor receives written notice that an actual Loss has occurred) unless the provisions of Section 5.4(b) or Section 5.4 (c) are applicable thereto. The Indemnitee's failure to give prompt notice or to provide copies of documents or to furnish relevant data shall not

constitute a defense (in whole or in part) to any claim by the Indemnitee against the Indemnitor for indemnification, except and only to the extent that such failure shall have caused or increased such liability or materially affected the ability of the Indemnitor to defend against or reduce its liability.

(c) If the Indemnitor shall reject any Loss as to which a Notice of Claim is sent by the Indemnitee, the Indemnitor shall give written notice of such rejection to the Indemnitee within thirty (30) days after the date of receipt of the Notice of Claim. Upon such rejection, the parties shall attempt in good faith to resolve any disagreement, and payment of the amount of Loss shall be made by the Indemnitor within five days of mutual resolution of any disagreement. If any such disagreement remains unresolved as of the forty-fifth (45<sup>th</sup>) day after receipt of the Notice of Claim, the dispute shall be resolved by binding arbitration conducted under and governed by the Commercial Rules of the American Arbitration Association, as in effect from time to time. All arbitration hearings with respect to the dispute shall be conducted in New York, New York and there shall be only one arbitrator who shall be a licensed attorney. If the Notice of Claim is determined by such third party to be proper, payment of the amount of Loss due the Indemnitee as set forth in a Notice of Claim shall be made by the Indemnitor no later than the fifth day after such determination is rendered.

(d) If any Notice of Claim relates to any claim made against an Indemnitee by a third person, the Notice of Claim shall state the nature, basis and amount of such claim. The Indemnitor shall have the right, at its election, by written notice given to the Indemnitee to assume the defense of the claim as to which such notice has been given. Except as provided in the next sentence, if the Indemnitor so elects to assume such defense, it shall diligently and in good faith defend such claim and shall keep the Indemnitee reasonably informed of the status of such defense, and the Indemnitee shall cooperate fully with the Indemnitor in the defense of such claim, provided that in the case of any settlement providing for remedies other than monetary damages for which indemnification is provided, the Indemnitee shall have the right to approve the settlement, which approval shall not be unreasonably withheld or delayed. If the Indemnitor does not so elect to defend any claim as aforesaid or shall fail to defend any claim diligently and in good faith (after having so elected), the Indemnitee may assume, at the sole cost and expense of the Indemnitor, the defense of such claim and take such other action as it may elect to defend or settle such claim as it may determine in its reasonable discretion, provided that the Indemnitor shall have the right to approve any settlement, which approval will not be unreasonably withheld or delayed.

5.5 Notwithstanding anything herein to the contrary, no claim for indemnity may be maintained by an Indemnitee hereunder until all Losses which may be asserted by such Indemnitee against and Indemnitor equal or exceed \$250,000.

## **6. Miscellaneous**

6.1 *Defined Terms.* Capitalized terms used herein, but not otherwise defined herein, shall have the meanings assigned to them in the Asset Purchase Agreement.

**6.2 Incorporation By Reference.** The terms and provisions of Article 9 of the Asset Purchase Agreement shall be incorporated by reference into, and shall be deemed part of, this Agreement.

**6.3 Acknowledgement.** Trendmasters hereby further acknowledges that the execution and delivery of this Supplemental Consent, Undertaking and Acknowledgment by the corporate officer whose signature appears below has been authorized by all appropriate corporate action.

**6.4 Disclosures.** Any disclosures made by Trendmasters in any Schedules hereto shall be deemed disclosed for all purposes of this Agreement and the failure of an item to be disclosed in one Schedule when disclosed in another shall not be the basis for any claim by Buyer of any breach of a Representation or Warranty hereunder.



IN WITNESS WHEREOF, the undersigned has executed the foregoing Supplemental Consent, Undertaking and Acknowledgment (Trendmasters) as of the day and year first written above.

TRENDMASTERS, INC.  
a Missouri corporation

By: 

Name:

Title:

## **Schedule 2.14 of the Trendmasters Consent, Undertaking and Acknowledgment**

**See Schedule 2.01(b)(ii) of the Asset Purchase Agreement**

**Trendmasters expects to be unable to continue to pay the costs of defending litigation described in Schedule 2.5 hereof and therefore believes it is highly likely that default judgments will be entered against Trendmasters in the pending lawsuits. It is also likely that default judgments will be entered against Trendmasters in any litigation that is commenced in the future. This may result in a judgement or Order stating that one or more of the Purchased Assets infringes upon or results in an unauthorized use of other parties' intellectual property rights.**

**CONSENT, UNDERTAKING AND ACKNOWLEDGMENT**  
**(Trendmasters)**

Trendmasters, Inc., a Missouri corporation, hereby acknowledges, confirms, and agrees for the benefit of each of the parties to the Agreement (as such term is defined herein) (and their respective successors and assigns) that: (i) it has been provided with a copy of that certain Asset Purchase Agreement (the "Agreement"), dated as of November 29, 2002, between JP/TIII Acquisition Corp. ("Buyer") and Bank of America, N.A. ("Seller"); (ii) it has had its counsel review the Agreement and advise it as to its contents and other matters relating thereto; (iii) a "default" presently exists under the Loan Documents and Seller, as a secured creditor, is entitled to exercise any and all of its foreclosure and other remedies under the Loan Documents and applicable law (including, without limitation, the UCC); (iv) the amount that it owes under the Loan Documents as of the date hereof, but prior to the application against that indebtedness of the Purchase Price, exceeds \$38,293,444 in the aggregate; (v) the notice of the intended disposition of Purchased Assets set forth in the Agreement or otherwise contemplated thereby that it has received is adequate and it hereby waives post-default any right it may have had to any other type of notice; (vi) it has had the primary contacts with not only Buyer, but also with other prospective purchasers of the Purchased Assets and it has requested that Seller enter into the transactions contemplated by the Agreement and, accordingly, it consents to the provisions of the Agreement so far as they relate to the consent by Trendmasters to the transfer of the Purchased Assets (including, without limitation, the transactions provided for in the Agreement but only as such transactions relate to the transfer of the Purchased Assets and contemplated thereby); (vii) every aspect of the disposition of Purchased Assets provided for in the Agreement is commercially reasonable; (viii) it will undertake to facilitate said transactions; and (ix) it hereby reaffirms all of its remaining obligations under the Loan Documents. Trendmasters hereby further acknowledges that this Consent and Acknowledgments shall be governed by the internal laws of the State of Missouri, that **THE WAIVER OF ANY RIGHT TO A JURY TRIAL** set forth in Section 24 of the Loan Agreement is applicable to this Consent and Acknowledgment and to the transactions contemplated by the Agreement pursuant to the provisions of such Section 24, and that the execution and delivery thereof by the corporate officer whose signature appears below has been authorized by all appropriate corporate action. Capitalized terms used herein, but not otherwise defined herein, shall have the meanings assigned to them in the Agreement.

Specifically, but without limiting the generality of clause (viii) in the preceding paragraph, following the Closing, Trendmasters shall execute, acknowledge and deliver such additional documents, instruments or conveyances, transfer and assignment or assurances and take such other action as Buyer reasonably requests in order to facilitate Buyer's obtaining possession and use of the Purchased Assets, and Trendmasters shall take no action, nor shall it permit its officers, directors and employees to take any action, which has the intent or effect of interfering with the Buyer's access to the Purchased Assets or the use and benefit thereof.

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IN WITNESS WHEREOF, the undersigned has executed the foregoing Consent and Acknowledgment (Trendmasters) as of the day and year first written above in the preamble to the foregoing Agreement.

TRENDMASTERS, INC.  
a Missouri corporation

By: 

Name:

Title:

**ASSET PURCHASE AGREEMENT**

**by and between**

**JP/TIII ACQUISITION CORP.**

**and**

**BANK OF AMERICA, N.A.**

**Dated as of November 29, 2002**

**and Consented to by**

**LA SALLE BANK, N.A.**

**and**

**TRENDMASTERS, INC.**

**and**

**JAMES RUSSELL HORNSBY, JR.,**

**JAMES RUSSELL HORNSBY, JR.,  
TRUSTEE OF JAMES RUSSELL HORNSBY, JR.  
REVOCABLE TRUST DATED APRIL 23, 1998**

**and**

**DREAM GARDEN INVESTMENT  
PARTNERSHIP, L.P.**

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**PATENT**  
**REEL: 017400 FRAME: 0495**



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## ASSET PURCHASE AGREEMENT

THIS AGREEMENT (as it may be amended, supplemented or modified from time to time, this "Agreement") is made as of the 29th day of November, 2002 between JP/TIII Acquisition Corp., a Delaware corporation ("JPT" or "Buyer"), and BANK OF AMERICA, N.A. (the "Seller").

### RECITALS

A. Seller has made certain loans to Trendmasters Inc. ("Trendmasters") under an Amended and Restated Loan Agreement dated as of November 30, 1997 between Lender and Trendmasters, as amended (as so amended, the "Credit Agreement");

B. Seller has made certain extensions of credit to Trendmasters under the Trade Finance Agreement dated January 16, 1998 and the General Customer Agreement dated January 22, 1998 between Lender (successor to NationsBank National Association) and Trendmasters (the "Trade Finance Agreement"; the Trade Finance Agreement and the Credit Agreement, together with all notes, security documents, guaranties, letter of credit applications, reimbursement agreements and all other agreements, certificates, documents, instruments and other writings executed in connection therewith, being called the "Loan Documents").

C. James Russell Hornsby Jr. ("Hornsby"), Hornsby's Trust and Dream Garden Investment Partnership L.P. ("Dream Garden"; together with Hornsby and Hornsby's Trust, the "Guarantors") have guaranteed certain obligations of Trendmasters under the Credit Agreement, as amended (as so amended, the "Guaranty") dated May 18, 2000.

D. Dream Garden has pledged certain cash collateral including the earnings thereon (the "Guarantor Cash Collateral") pursuant to a Security Agreement dated as of May 18, 2000.

E. Dream Garden redeemed all of Hornsby's Trust's limited partnership interest in Dream Garden in exchange for Dream Garden's transfer of all of its rights, title and interest in the Guarantor Cash Collateral to the Trust subject to the security interest held by Seller by virtue of that certain Redemption Agreement entered into on or about September 23, 2002. Prior to the date hereof, Seller has not consented to such transfer.

F. LaSalle Bank National Association ("LaSalle") and the Lender have entered into a Participation Agreement dated as of June 28, 1999, as amended (as so amended, the "Participation Agreement") pursuant to which LaSalle has purchased from the Lender a participation (the "LaSalle Loan Participation") in the rights and duties of Lender under the Credit Agreement.

G. Trendmasters is in default under the various terms and conditions of the Loan Documents.

H. Seller has undertaken to effect the sale pursuant to Section 9-610 of the Uniform Commercial Code (the "UCC") as enacted in the State of Missouri of certain of the assets of Trendmasters expeditiously in order to avoid or minimize the loss of value to which such assets may be subject due to the passage of time.

I. Buyer desires to purchase, Seller desires to sell pursuant to Section 9-610 of the UCC, and LaSalle, as Seller's loan participant, Trendmasters and the Guarantors, as evidenced by their execution and delivery of the Acknowledgement and Consent or the Consents, Undertakings and Acknowledgments (as the case may be) attached at the foot of this Agreement, have consented to the sale to Buyer pursuant to Article 9-610 of the UCC as amended of, certain of the assets of Trendmasters on the terms and conditions set forth in this Agreement.

J. Neither Buyer nor Seller intends, in entering into this Agreement and carrying out the transactions contemplated by this Agreement, to assume or become liable for any obligation, liability or indebtedness of Trendmasters and/or the Guarantors or of one another.

NOW, THEREFORE, in consideration of the foregoing, the representations, warranties and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, the parties hereby agree as follows:

#### ARTICLE 1 DEFINITIONS

For all purposes of this Agreement, the terms set forth below shall be defined as follows:

"Agreement" has the meaning given that term in the Preamble.

"Artwork" has the meaning given to that term in Section 2.01 hereof.

"Buyer" has the meaning given that term in the Preamble.

"Buyer Indemnifiable Claim or Claims" shall have the meaning set forth in Section 7.02 hereof.

"Buyer's Affiliates" shall have the meaning set forth in Section 7.02 hereof.

"Closing" means the closing of the transactions contemplated by this Agreement.

"Closing Date" has the meaning given that term in Section 5.01.

"Code" means the Internal Revenue Code of 1986, as amended.

"Effective Time" has the meaning given to such term in Section 5.01.

**"Equipment and Tooling"** has the meaning given that term in Section 2.01.

**"Excluded Assets"** has the meaning given that term in Section 2.01.

**"Excluded Equipment"** has the meaning given that term in Section 2.01(a) hereof.

**"Governmental Entity"** means any court, governmental authority or other regulatory or administrative agency or commission, domestic or foreign.

**"Guarantors"** has the meaning given to that term in the Recitals and shall refer to those persons and entities solely in their capacities as Guarantors under the Guarantees.

**"Guaranty"** has the meaning given to that term in the Recitals.

**"Guarantor Cash Collateral"** has the meaning given to that term in the Recitals.

**"Hauser Causes of Action"** has the meaning given to that term in Section 2.01 hereof.

**"Hornsby"** has the meaning given to that term in the Recitals.

**"Hornsby's Trust"** means James Russell Hornsby, Jr., Trustee of the James Russell Hornsby, Jr. Revocable Trust dated April 23, 1998.

**"Indemnifiable Claim"** shall mean a Buyer Indemnifiable Claim or a Seller Indemnifiable Claim, as the case may be.

**"Indemnity Action"** shall have the meaning set forth in Section 7.04 hereof.

**"Intellectual Property"** means: (i) all inventions (whether patentable or not patentable and whether or not reduced to practice) and all improvements thereto, (ii) all patents, patent applications, and patent disclosures, together with all reissuances, divisions, continuations, continuations-in-part, revisions, renewals, extensions and reexaminations thereof, (iii) all registered and unregistered trademarks, service marks, trade dress, logos, trade names, slogans and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (iv) all works of authorship, including, without limitation, all copyrightable works, all copyrights, all mask works and all applications, registrations and renewals in connection with any of the foregoing, and all moral rights, (v) all databases, data compilations and data collections, (vi) all trade secrets and confidential information (including without limitation, ideas, research and development, know-how, processes, methods, techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business, technical and marketing plans and proposals), (vii) all domain names, web addresses, websites (and the content and information contained on all such websites), telephone numbers and fax numbers, (viii) all Software, (ix) all artwork, negatives, films, printing plates and other similar items, (x) all other intellectual property and proprietary rights, (xi) all symbols, and (xii) all copies

and tangible embodiments of all of the foregoing items (i) through (xi) in any form or medium.

“LaSalle” has the meaning given to that term in the Recitals.

“LaSalle Loan Participation” has the meaning given to that term in the Recitals.

“Law” means any law, statute, ordinance, rule, regulation, code, order, judgment or decree or other restriction of any Governmental Entity.

“Licensed IP” has the meaning given that term in Section 2.01(b) hereof.

“Lien” means any mortgage, pledge, charge, security interest, claim or other encumbrance of any nature upon, or conditional assignment of, any property or assets.

“Loan Documents” has the meaning given that term in the Recitals.

“Loss” or “Losses” shall mean any and all liabilities, losses, costs, claims, damages, penalties and reasonable fees, expenses, and costs (including reasonable attorneys’ fees and expenses and costs of investigation and litigation, including, without limitation, court costs and costs of appeal and any fees or other costs incurred in connection with any possible expert witnesses). If any of the foregoing are Indemnifiable Claims hereunder, the terms “Loss” and “Losses” shall also include any and all reasonable attorneys’ fees and expenses and costs of investigation and litigation incurred by any indemnified Person in enforcing the indemnities set forth in Article 7 hereof.

“Non-Pledged Causes of Action” has the meaning given to that term in Section 2.01 hereof.

“Person” shall mean any individual, corporation, proprietorship, firm, partnership, limited partnership, limited liability partnership, limited liability company, trust, association, joint venture or other business entity or governmental agency, commission or instrumentality.

“Purchase Price” has the meaning given that term in Section 2.02.

“Purchased Assets” has the meaning given that term in Section 2.01.

“Real Property Leases” means the leased real property described on Schedule 2.01.

“Seller” has the meaning given that term in the Preamble.

“Seller Indemnifiable Claim or Claims” shall have the meaning set forth in Section 7.03 hereof.

“Seller’s Affiliates” shall have the meaning set forth in Section 7.03 hereof.

**"Software"** means computer software, source code and object code, whether embodied in software, firmware or otherwise (including, without limitation, algorithms, methodologies, related data and documentation).

**"Storm Factories"** has the meaning given to that term in Section 5.05(a) hereof.

**"Storm Factories Agreement"** has the meaning given to that term in Section 5.05(a) hereof.

**"Storm Line"** has the meaning given to that term in Section 2.01(d) hereof.

**"Supplemental Agreement"** has the meaning given that term in Section 5.05(d) hereof.

**"2002 Catalog"** has the meaning given to that term in Section 2.01(d) hereof.

**"Tax"** means any foreign, federal, state or local income, gross receipts, license, severance, occupation, premium, environmental (including taxes under Section 59A of the Code), customs, duties, profits, disability, registration, alternative or add-on minimum, estimated, withholding, payroll, employment, unemployment insurance, social security (or similar), excise, sales, use, value-added, occupancy, franchise, real property, personal property, business and occupation, mercantile, windfall profits, capital stock, stamp, transfer, workman's compensation or other tax, fee or imposition of any kind whatsoever, including any interest, penalties, additions, assessments or deferred liability with respect thereto, whether disputed or not.

**"Tax Return"** means any return, report, deduction, claim for refund, estimate, election or information statement or bill relating to any Tax, including any schedule or attachment thereto and any amendment thereof.

**"Trade Finance Agreement"** has the meaning given to that term in the Recitals.

**"Trendmasters"** has the meaning given to that term in the Recitals.

**"Trendmasters Products"** has the meaning given to that term in Section 2.01(d) hereof.

**"UCC"** has the meaning given that term in the Recitals.

**"Warranty"** means all claims and rights against third parties, if and to the extent the same relate to or arise under the Purchased Assets, including, without limitation, all rights under manufacturer and vendor warranties, service life policies, customer support arrangements and similar items, and all rights of recovery, setoffs and credits.

## ARTICLE 2 PURCHASE AND SALE OF ASSETS

2.01 Purchase and Sale of the Purchased Assets; Excluded Assets. Subject to the terms and conditions of this Agreement, at the Closing (which is being held concurrently with the execution of this Agreement by the parties, as provided in Article 5), Seller shall sell, assign, convey and transfer to Buyer, and Buyer shall purchase from Seller, all of the right, title and interest of Trendmasters in the following assets, properties and rights pursuant to Section 9-610 of the UCC as in effect in the applicable jurisdictions (the "Purchased Assets"):

(a) all of Trendmasters' computers, furniture, furnishings, fixtures, other fixed assets, supplies and other tangible personal property (including inventories of raw materials, works-in-progress and finished goods) as of the Closing Date, and any and all machinery, equipment, tooling (including molds), accompanying specifications, tools and spare parts (collectively, the "Equipment and Tooling"), except for the Equipment set forth on Schedule 2.01(a) ("Excluded Equipment");

(b) all of the Trendmasters' Intellectual Property as of the Closing Date, including, without limitation, the Intellectual Property described in Schedule 2.01(b)(i) (other than the rights of Trendmasters in any patents, trademarks, and copyrights to the extent that Trendmasters' rights therein arise out of any licensing agreement or such patents, copyrights or trademarks are otherwise not owned by Trendmasters (the "Licensed IP") which are listed in the attached Schedule 2.01(b)(ii), and other than interests in registered copyrights;

(c) all of the rights of Trendmasters as of the Closing Date in, to and under any federal, state, local and other governmental licenses, permits, approvals and authorizations that relate to or are necessary to conduct Trendmasters' businesses or to own and operate the Purchased Assets; in each case to the extent assignable (collectively, the "Permits");

(d) subject to the right of access Buyer agrees to afford Trendmasters and Guarantors in Section 8.02 hereof, all customer service lists, customer communications, customer forecasts and all other customer information, all sales and product literature, all warranty and other claims information, all documents, books, drawings, designs, logs, manuals and records relating to the other Purchased Assets, and all other information and records used in the operation of Trendmasters' businesses, all as of the Closing Date, including, without limitation, with respect to all of the products described in the 2002 Catalog of Trendmasters (the "2002 Catalog"), all of Trendmasters' seasonal and novelty products, and all improvements, enhancements and derivatives thereof and any other products, product ideas or concepts now conceived or under development, and all work in process of any kind, and such products to include, but not be limited to, the Storm product line described on pp. 14-25 of the 2002 Catalog and the "pool line" under development tentatively referred to by Trendmasters as "Storm Tropics" (collectively the Storm product line and Storm Tropics referred to as the "Storm Line"), and all products, product ideas and concepts conceived, developed, sold or marketed prior to the date

hereof (collectively, all of the foregoing referred to as the "Trendmasters Products"), but excluding financial statements, tax returns and minutes and other similar official corporate records (copies of all of which shall be made available to Buyer before and after the Closing upon reasonable request);

(e) all Warranties as of the Closing Date with respect to the other Purchased Assets, if any, to the extent assignable (or to the extent not assignable, subrogation rights with respect to such Warranties); and

(f) all causes of action of Trendmasters other than those causes, if any against Seller, LaSalle, and/or officers, directors and shareholders of Trendmasters, the Hauser Causes of Action, and the Non-Pledged Causes of Action (as such terms are defined herein).

Notwithstanding the foregoing, the Purchased Assets shall not include any of the following (collectively, the "Excluded Assets"): (i) any of Trendmasters' accounts or notes receivable, and any documents, bills of exchange, checks and negotiable instruments, shipping and transport documents, bills of lading, warrants, delivery orders, wharfingers' or godown or warehouse keepers' certificates or receipts and other documents of title, drafts, acceptances, letters of credit, and other forms of obligations respecting rights of Trendmasters to the payment of money from others and all other rights to the payment of money relating to any and all goods shipped prior to the date hereof and not with respect to any goods shipped on or after the date hereof and consistent therewith all such goods, (ii) any of Trendmasters' cash on hand or in bank accounts, (iii) any interest of Trendmasters in any of Trendmasters' tax refunds, (iv) any interest of Trendmasters in any life insurance policy, (v) any interest in any treasury stock of Trendmasters (vi) the Real Property Leases, (vii) the Excluded Equipment, (viii) the Licensed IP and registered copyrights, (ix) any and all prepaid items and deposits, including under Real Property Leases, other than prepayments and deposits under licenses and other contract rights assigned to Buyer as part of the Purchased Assets; (x) all causes of action if any, against (a) Seller, (b) LaSalle, (c) officers, directors and shareholders of Trendmasters, and/or (d) Leo Hauser for events occurring prior to the closing date relating to the claims asserted in the complaint by Trendmasters against Leo Hauser which has been filed in the U.S. District Court for the Eastern District of Missouri (the "Hauser Causes of Action"); (xi) any and all causes of action of Trendmasters in which Seller has not or could not have been granted a security interest or other Lien (the "Non-Pledged Causes of Action"); (xii) all artwork and sculptures belonging to Trendmasters (the "Artwork"), including, without limitation, all artwork that is or was located at Trendmasters' offices in St. Louis, Missouri; and (xiii) any agreements between Trendmasters and Zolfo Cooper, LLC including the letter dated October 9, 2002 signed by Trendmasters.

**2.02 Purchase Price.** The purchase price (the "Purchase Price") for the purchase and sale of the Purchased Assets shall be \$19,000,000 (subject to no adjustments and/or prorations of any nature or amount whatsoever). The Purchase Price shall be paid by Buyer at the Closing by wire transfer of immediately available funds to the account or accounts specified by Seller in a written notice given to Buyer prior to the Closing.



**2.03 No Assumption of Obligations.** AS PART OF THIS AGREEMENT, NEITHER SELLER NOR BUYER IS ASSUMING AND NEITHER SHALL BE LIABLE FOR ANY DEBT, OBLIGATION, RESPONSIBILITY OR LIABILITY OF TRENDMASTERS AND/OR THE GUARANTORS OR OF ONE ANOTHER, WHETHER KNOWN OR UNKNOWN, CONTINGENT OR ABSOLUTE OR OTHERWISE AND WHETHER RELATING TO THE PURCHASED ASSETS OR THE EXCLUDED ASSETS OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY DEBT, OBLIGATION, RESPONSIBILITY OR LIABILITY WITH RESPECT TO EQUIPMENT LEASES, LICENSE AGREEMENTS OR CONTRACTS. IN FURTHERANCE AND NOT IN LIMITATION OF THE FOREGOING, NEITHER BUYER NOR BUYER'S AFFILIATES SHALL ASSUME ANY LIABILITY UNDER ANY EQUIPMENT LEASE, LICENSE AGREEMENT OR OTHER CONTRACT, UNLESS BUYER OR BUYER'S AFFILIATES (AS THE CASE MAY BE) AFFIRMATIVELY ASSUMES ANY LIABILITY UNDER SUCH EQUIPMENT LEASE, LICENSE AGREEMENT OR CONTRACT IN WRITING, WHICH MAY OCCUR AT OR FOLLOWING THE CLOSING IN THE SOLE DISCRETION OF BUYER OR BUYER'S AFFILIATES.

**2.04 Application of Guarantor Cash Collateral.** Prior to or contemporaneously with the Closing, Seller shall consent to the transfer of the ownership of the Guarantor Cash Collateral (subject in all instances to Seller's continuing security interest therein) pursuant to a written Consent and Settlement Agreement substantially in the form of Exhibit A hereto, and Seller shall apply the Guarantor Cash Collateral against the obligations owing under the Guarantees. Without limiting the generality of Section 2.02 hereof, such an application of the Guarantor Cash Collateral shall in no manner reduce, partially satisfy or otherwise count against the Purchase Price, but shall be in addition to the Purchase Price. Seller acknowledges that, upon such application, the Guarantors shall have fulfilled their obligations to Seller under the Guarantees except solely for the contingent obligations set forth in Section 7 thereof.

**2.05 [Intentionally Omitted].**

**2.06 No Waiver of Remaining Trendmasters or Guarantors Liability or of Security Interests.** Notwithstanding any other provision of this Agreement to the contrary, Seller, in no manner whatsoever, waives any (but instead expressly reserves any and all) of its claims, rights, powers and/or remedies against Trendmasters, the Guarantors (subject to the acknowledgement set forth in Section 2.04 hereof), any person or entity in any other capacity, or any of their respective property (including, without limitation, any of the Excluded Assets (other than the Licensed IP and the Non-Pledged Causes of Action)), except solely that, in the event that the transactions contemplated hereby are consummated, (1) Seller shall credit an amount equal to the Purchase Price against the amounts owing under the Loan Documents in any manner Seller so determines within the provisions of the Loan Documents and (2) the transfer of the Purchased Assets to Buyer pursuant to the provisions of this Agreement will result in the Purchased Assets being free of any security interest or other Lien asserted by the Seller therein. Specifically, but without limiting the generality of the foregoing, Seller's

security interests and Liens in, to, and on any and all of the Excluded Assets (other than the Licensed IP and the Non-Pledged Causes of Action) shall remain unaffected upon and by the consummation of the transactions contemplated hereby.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as of the date of this Agreement as follows:

**3.01 Purchased Assets.** Seller sent notice of the private foreclosure sale in the form of Exhibit B hereto to the persons and entities set forth on Schedule 3.01-A hereto, by depositing the same in the U.S. Mail, First Class postage prepaid, or by hand delivery, or by facsimile, on or before December 2, 2002. Seller has not intentionally released or subordinated or otherwise transferred to any other person or entity any of its security interests or Liens in and to the Purchased Assets existing as of the Closing Date (including, without limitation, any of the UCC financing statements listed on Schedule 3.01-B hereto) except to the extent that the LaSalle Loan Participation can be said to constitute any such transfer. Except as expressly and explicitly provided in this Article 3, Seller makes no representation or warranty in favor of Buyer or any of its successors and assigns (and specifically, but without limiting the generality of the foregoing, does not undertake or otherwise assume any liability whatsoever with respect to any representations or warranties made by Trendmasters or any of its officers, directors, shareholders, agents, attorneys or employees in favor of Buyer). Consistent with, but not in limitation of, the foregoing, Seller makes no representation or warranty (and specifically, but without limiting the generality of the foregoing, does not undertake or otherwise assume any liability whatsoever with respect to any representations or warranties made by Trendmasters or any of its officers, directors, shareholders, agents, attorneys or employees in favor of Buyer) as to (a) the efficacy of the foreclosure sale contemplated by this Agreement (except as explicitly provided in the last sentence of this Section 3.01), (b) title in and/or to or the merchantability, completeness or existence of the Purchased Assets (specifically and without limiting the generality of the foregoing, there is no warranty relating to title, possession, quiet enjoyment or the like in this disposition), or (c) the perfection or priority of any of its security interests or other Liens on, in and to the Purchased Assets. Seller does represent and warrant to Buyer that the transfer of the Purchased Assets to Buyer pursuant to this Agreement will result in the Purchased Assets being free of any and all security interests or other Liens asserted by Seller in those assets and that Seller has no actual knowledge of any security interests of others except as listed in the lien searches attached as Schedule 3.01-C.

**3.02 Authority; Authorization; Enforceability.** Seller has the requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, have been duly authorized and approved by all necessary corporate action on the part of Seller. This Agreement has been duly executed and delivered by, and constitutes a valid and binding obligation of

Seller, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws and general and equitable principles.

**3.03 Certain Fees and Obligations.** Seller is not obligated to pay any fee or commission to any broker, finder or intermediary in connection with the transactions contemplated by this Agreement.

**3.04 Limited Additional Representations.** Seller's execution, delivery and performance of this Agreement and the Supplemental Agreement and the consummation of the contemplated transactions will not (i) conflict with or violate any contract or instrument to which Seller is a party, or (ii) conflict with or violate any law, rule, order or judgment to which Seller is subject; provided that nothing in this Section 3.04 shall expand the Seller's obligations or the limitations set forth in Section 3.01. Seller represents and warrants that its books and records reflect that Trendmasters, as of the date hereof, but prior to the application of the Purchase Price to such indebtedness pursuant to Section 2.06 hereof, owes in excess of \$38,293,444 under the Loan Documents. Seller represents and warrants that attached as Schedule 3.04 are true, correct and complete copies of the Seller's security agreements and all written amendments thereto. The security agreement and any amendments signed by the Seller were validly executed by the Seller.

#### **ARTICLE 4** **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as of the date of this Agreement as follows:

**4.01 Corporate Organization.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and Buyer has the requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted.

**4.02 Authority; Authorization; Enforceability.** Buyer has the requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all necessary corporate action on the part of Buyer. This Agreement has been duly executed and delivered by, and constitutes a valid and binding obligation of, Buyer, enforceable against Buyer in accordance with its terms subject to applicable bankruptcy, insolvency and similar laws and general equitable principles.

**4.03 Certain Fees and Obligations.** Buyer is not obligated to pay any fee or commission to any broker, finder or intermediary in connection with the transactions contemplated by this Agreement.

**ARTICLE 5**  
**CLOSING**

**5.01 The Closing.** The Closing shall take place at the offices of Lewis, Rice & Fingersh, L.C., Suite 2000, 500 North Broadway, St. Louis, MO 63102 concurrently with the execution of this Agreement by Buyer and Seller (the date of the Closing being referred to herein as the "Closing Date"). In lieu of an in-person Closing, the parties may elect to close by facsimile transaction of executed documents, wire transfer of the Purchase Price, and overnight delivery scheduled for the following day of executed original documents. At the Closing, the actions described in this Article 5 shall be taken. All actions shall be deemed to have occurred simultaneously and as of the closing of business on the Closing Date (the "Effective Time"), and the effectiveness of any action taken at the Closing shall, unless otherwise agreed to by Buyer and Seller, be conditioned upon the taking of all other action required by this Article 5.

**5.02 Deliveries by Seller.** At the Closing, Seller shall deliver the following to Buyer:

(a) A general bill of sale and assignment in the form attached hereto as Exhibit C executed by Seller.

(b) Assignments in the forms attached hereto as Exhibits D-1 and D-2 executed by Seller assigning to Buyer the Intellectual Property, if any, including patents, trademarks and associated goodwill.

(c) Such other certificates, documents and instruments as Buyer reasonably may request in connection with the transaction contemplated by this Agreement.

**5.03 Deliveries by Buyer.** At the Closing, Buyer shall deliver (or cause to be delivered) the following to Seller:

(a) The Purchase Price, payable as provided in Section 2.02 hereto.

(b) A certificate signed by a duly authorized officer of Buyer and dated the Closing Date stating that the representations and warranties of Buyer set forth in Article 4 are accurate and correct in all material aspects.

(c) Such other certificates, documents and instruments as Seller reasonably may require in connection with the transactions contemplated by this Agreement.

**5.04 Mutual Deliveries.** At the Closing, Buyer and Seller shall deliver the following:

(a) Originals of this Agreement executed by Buyer and Seller.

(b) An Accounts Receivable Assistance Agreement in the form attached hereto as Exhibit E executed by Buyer and Seller.

**5.05 Other Deliveries (in Favor of Buyer).** At Closing, the following shall occur to the satisfaction of Buyer and its counsel:

(a) Wing Shing, Tat Chi, Foamtech and Pacific Industrial and their affiliated entities, represented by Trendmasters as being all of the factories producing the Storm Line products (the "Storm Factories") shall agree to accept not more than US\$2,750,000 for all amounts due to such factories from Trendmasters, pursuant to an agreement (the "Storm Factories Agreement") in form and substance acceptable to Buyer and its counsel;

(b) The Supplemental Consent, Undertaking and Acknowledgment (Trendmasters), substantially in the form attached at the foot of this Agreement, shall have been executed and delivered by Trendmasters;

(c) Hornsby shall enter into a consulting and restrictive covenant agreement with Buyer substantially in the form of Exhibit F hereto;

(d) Buyer shall have received from Seller a supplemental agreement (the "Supplemental Agreement") in form and substance acceptable to Buyer; and

(e) Trendmasters shall have delivered a certificate in form satisfactory to Buyer signed by a duly authorized officer of Trendmasters and dated the Closing Date (i) that attached thereto are true, correct and complete copies of (A) the Articles of Incorporation, (B) By-Laws of Trendmasters, (C) the resolutions of Trendmasters' Board of Directors authorizing the execution, delivery and performance of all documents delivered by Trendmasters in connection with this Agreement, and (D) a consent of Hornsby's Trust in form satisfactory to Buyer as sole owner of voting shares of Trendmasters as to the execution, delivery and performance by Trendmasters of this Agreement and all documents by Trendmasters delivered in connection therewith; and (ii) as to the incumbency and proper signatures of the officers of Trendmasters authorized to execute all documents in connection with this Agreement; and

(f) Trendmasters shall cause its counsel, Husch & Eppenberger, LLC, to deliver a legal opinion addressed to Seller and Buyer, in form reasonably satisfactory to Buyer as to the due authorization, validity and enforceability (subject to the usual and customary qualifications generally found in such opinions) as to Trendmasters' execution, delivery, and performance of all documents delivered by Trendmasters in connection with this Agreement, it being understood that notwithstanding the introductory clause of this Section 5.05, Trendmasters shall have seven days from the date of Closing to cause such legal opinion to be delivered.

**5.06 Other Deliveries (in Favor of Seller).** At Closing, the following shall occur to the satisfaction of Seller:

(a) Each of the Acknowledgement and Consent (LaSalle Bank National Association), Consent, Undertaking and Acknowledgment (Trendmasters), and Consent, Undertaking and Acknowledgement (the Guarantors), each substantially in the form

attached at the foot of this Agreement, shall have been executed and delivered by the signatories thereto.

(b) Trendmasters shall have delivered a certificate in form satisfactory to Seller signed by a duly authorized officer of Trendmasters and dated the Closing Date (i) that attached thereto are true, correct and complete copies of (A) the Articles of Incorporation, (B) By-Laws of Trendmasters, (C) the resolutions of Trendmasters' Board of Directors authorizing the execution, delivery and performance of all documents delivered by Trendmasters in connection with this Agreement, and (D) a consent of Hornsby's Trust in form satisfactory to Seller as sole owner of voting shares of Trendmasters as to the execution, delivery and performance by Trendmasters of this Agreement and all documents by Trendmasters delivered in connection therewith; and (ii) as to the incumbency and proper signatures of the officers of Trendmasters authorized to execute all documents in connection with this Agreement;

(c) Trendmasters shall cause its counsel, Husch & Eppenberger, LLC, to deliver a legal opinion addressed to Seller and Buyer, in form reasonably satisfactory to Seller as to the due authorization, validity and enforceability (subject to the usual and customary qualifications generally found in such opinions) as to Trendmasters' execution, delivery, and performance of all documents delivered by Trendmasters in connection with this Agreement, it being understood that notwithstanding the introductory clause of this Section 5.06, Trendmasters shall have seven days from the date of Closing to cause such legal opinion to be delivered; and

(d) Joseph D. Lehrer, as Trustee of the Julie Hornsby Qualified Subchapter S Trust No. 1 for the benefit of Ashley Hornsby, as Trustee of the Julie Hornsby Qualified Subchapter S Trust No. 1 for the benefit of Megan Hornsby and as Trustee of the Julie Hornsby Qualified Subchapter S Trust No. 1 for the benefit of Natalie Hornsby shall have delivered a letter to the Seller in form satisfactory to the Seller.

## ARTICLE 6 ADDITIONAL COVENANTS

6.01 UCC Terminations. Within 10 days of Closing, Seller shall provide Buyer either with copies of all filed UCC-3 partial release or termination statements which reflect the release by Seller of its security interest in the Purchased Assets suitable for filing in each filing office in which financing statements are on file covering any of the Purchased Assets and naming Seller as Secured Party and Trendmasters as debtor or with an agreement authorizing Buyer to prepare and so file such termination statements.

6.02 Further Assurances. From time to time following the Closing, and for a period of one year after the Closing Date, Seller, without in any manner being required to expand to any extent or otherwise alter to its detriment its obligations hereunder, shall execute, acknowledge and deliver such additional documents, instruments or conveyance, transfer and assignment or assurances and take such other action as Buyer reasonably may request in order to more effectively assign, convey and transfer to Buyer and fully

vest (to the extent possible) title to the Purchased Assets in Buyer in accordance with this Agreement.

**6.03 Publicity.** The parties shall consult with each other and shall mutually agree (the agreement of each party not to be unreasonably withheld or delayed) upon the consent and timing of any press release or other public statements with respect to the transactions contemplated by this Agreement and shall not issue any such press release or make any such public statement prior to such consultation and agreement, except as may be required by applicable law or by the rules of any stock market; provided, however, that each party shall give prior notice to the other parties of the content and timing of any such press release or other public statement required by applicable law or by the rules of any stock market.

**6.04 Receipt of Payments.** If at any time after the Effective Time Buyer receives any payment with respect to any accounts receivable included in the Excluded Assets, Buyer promptly shall deliver such payment to Seller in accordance with the Accounts Receivable Assistance Agreement attached and marked Exhibit D. If at any time after the Closing, Seller, Trendmasters or the Guarantors receives any payment with respect to any of the Purchased Assets of Buyer which arise after the Closing Date, Seller shall promptly deliver such payment to Buyer.

**6.05 Non-Compete.** Seller disclaims any property interest in the Licensed IP and accordingly, covenants not to use any of the Licensed IP to compete against Buyer or any of Buyer's affiliates.

**6.06 Notice.** To the extent that Seller is joined as a party in any proceeding relating to any of the Purchased Assets, it will promptly give Buyer written notice thereof.

## **ARTICLE 7 INDEMNIFICATION**

**7.01 Survival.** The representations, warranties, covenants and agreements of the parties set forth in this Agreement and in any agreement or certificate delivered pursuant hereto shall survive the Closing and any investigation made by any party to this Agreement.

**7.02 Indemnification by Seller.** From and after the Effective Time, Seller shall indemnify, defend and hold Buyer and each of its officers, employees, agents (including accountants and attorneys), directors, shareholders, subsidiaries or other affiliates (collectively, "Buyer's Affiliates"), harmless from and against all Losses of any character whatsoever (including, without limitation, reasonable attorneys' fees) imposed upon or incurred by any of them which arise out of: (i) any misrepresentation or inaccuracy of a representation or warranty made by Seller in Article 3 of this Agreement, (ii) any nonfulfillment of a covenant or any other agreement on the part of Seller set forth in this Agreement, and (iii) all actions, suits, proceedings and judgments incident to any of the foregoing. All of the foregoing actions described in clauses (i)-(iii) of this Section 7.02

are each referred to herein as a "Buyer Indemnifiable Claim" and collectively, as the "Buyer Indemnifiable Claims"

**7.03 Indemnification by Buyer.** From and after the Effective Time, Buyer shall indemnify, defend and hold Seller and each of its officers, employees, agents (including accountants and attorneys), directors, shareholders, subsidiaries or other affiliates, (collectively, "Seller's Affiliates") harmless from and against all Losses of any character whatsoever (including, without limitation, reasonable attorneys' fees) imposed upon or incurred by any of them which arise out of: (i) any misrepresentation or inaccuracy of a representation or warranty made by Buyer in Article 4 of this Agreement, (ii) any nonfulfillment of a covenant or any other agreement on the part of Buyer set forth in this Agreement, and (iii) all actions, suits, proceedings and judgments incident to any of the foregoing. All of the foregoing actions described in claims (i)-(iii) of this Section 7.03 are each referred to herein as a "Seller Indemnifiable Claim" and collectively, as the "Seller Indemnifiable Claims"

**7.04 Termination of Indemnity.** The obligations of Seller under Section 7.02 hereof and of Buyer under Section 7.03 hereof automatically shall terminate on the date that follows the expiration of the applicable statute of limitations where, during such period, no action (an "Indemnity Action") seeking to impose Losses upon Buyer or Buyer's Affiliates, or upon Seller or Seller's Affiliates (as the case may be), relating to an Indemnifiable Claim has been commenced or, if any Indemnity Action had been so commenced, such Indemnity Action subsequently was dismissed with prejudice or without prejudice and not reinstituted during such period (unless any statute of limitations was tolled in connection with any such dismissal). Except solely as provided in the preceding sentence, the obligations of Seller under Section 7.02 hereof and of Buyer under Section 7.03 hereof this shall not terminate under any circumstances.

**7.05 Notice of Indemnifiable Claims.** As soon as reasonably practicable after becoming aware of an Indemnifiable Claim or the commencement of any Indemnity Action, Buyer, on behalf of itself or Buyer's Affiliates, or Seller, on behalf of itself or Seller's Affiliates (as the case may be), seeking such indemnification, shall deliver written notice (the "Notice") to Seller or Buyer (as the case may be), describing in reasonable detail the basis of such Indemnifiable Claim; provided, however, that the failure to give such Notice or to provide copies of documents or to furnish relevant data shall not constitute a defense (in whole or part) to any claim by Buyer or Buyer's Affiliates against Seller or to any claims by Seller or Seller's Affiliates against Buyer (as the case may be) for indemnification hereunder, except and only to the extent that such failure shall have caused or increased such liability or materially adversely affected Seller's or Buyer's (as the case may be) ability to defend against or reduce its liability.

**7.06 Notice of Third Party Claims; Assumption of Defense.** Upon receipt of an initial Notice, Seller or Buyer (as the case may be) may, at its own expense, (i) participate in the defense of any such claim, suit, action or other proceeding and (ii) upon written notice to Buyer or Seller (as the case may be) and the delivery to Buyer or Seller (as the case may be) of a written agreement acknowledging that Buyer or Seller (as the case may be) is entitled to indemnification pursuant to this Agreement for Losses arising out of



such claim, suit, action or proceeding, at any time during the course of any such claim, suit, action or proceeding, assume the defense thereof; provided that Buyer or Seller (as the case may be) shall have the right (but not the duty) to participate in the defense thereof and to employ separate counsel from the counsel employed by Seller or Buyer (as the case may be) at Buyer's or Seller's (as the case may be) own expense. Whether or not Seller or Buyer (as the case may be) should choose to defend or prosecute any such claim, suit, action or proceeding, all of the parties hereto shall cooperate in the defense or prosecution thereof; provided, however, that where Seller or Buyer (as the case may be) has not assumed defense of any Indemnity Action pursuant to the provisions hereof, Buyer or Seller (as the case may be), after good faith consultation with Seller or Buyer (as the case may be) that is appropriate under the circumstances, shall have ultimate control over the prosecution or defense thereof.

**7.07 Settlement or Compromise.** Any settlement or compromise made or caused to be made pursuant to the provisions of Section 7.06 hereof by Buyer or Seller, as the case may be, of any Indemnity Action being defended by Buyer or Seller, as the case may be, shall be binding upon the other individual or entity, in the same manner as if a final judgment or decree had been entered by a court of competent jurisdiction in the amount of such settlement or compromise. Notwithstanding the foregoing, (i) no obligation, restriction or expense shall be imposed on any Buyer or Buyer's Affiliate in the case of any Buyer Indemnifiable Claim or on Seller or Seller's Affiliate in the case of any Seller Indemnifiable Claim as a result of such settlement without its prior written consent, and (ii) Buyer and Seller will give each other 30 days' notice of any proposed settlement or compromise of any claim, suit, action or proceeding it is defending, during which time the other may reject such proposed settlement or compromise; provided, however, that from and after the date of such rejection, the other shall be obligated to assume all aspects of the defense of such Indemnity Action and any and all Losses relating to an Indemnifiable Claim in connection therewith.

**7.08 Obligations of Buyer and Seller.** Buyer and Seller shall fully cooperate with one another, including, as may be reasonably requested by the other party, making available all relevant records, documents and files with respect to any such claim, suit, action or proceeding, providing access to counsel and any applicable employees, if applicable, whether as witnesses or for information purposes.

**7.09 Continuing Indemnity.** Consistent with, but not in limitation of, the foregoing, the obligations of Seller under Section 7.02 hereof and of Buyer under Section 7.03 hereof are continuing (except solely as provided in Section 7.04 hereof), irrevocable, absolute and unconditional and will remain in full force and effect.

## ARTICLE 8 TAX MATTERS

**8.01 Purchase Price Allocation.** Buyer shall, within 120 days after the Closing Date, prepare a schedule allocating the Purchase Price among the Purchased Assets in accordance with Treasury Regulation 1.1060-1T (or any comparable provisions of state or local tax law) or any successor provision. Buyer shall report and file all tax returns

(including amended Tax Returns and claims for refunds) consistent with the allocation set forth on such schedule, and shall take no position contrary thereto or inconsistent therewith (including, without limitation, in any audits or examinations by any taxing authority or any other proceedings). Buyer shall cooperate in the filing of any forms (including Form 8594) with respect to such allocation.

**8.02 Filing Tax Returns; Cooperation.** Seller and Buyer (and Buyer in respect to Trendmasters and Guarantors) reasonably shall cooperate, and shall cause their respective affiliates, officers, employees, agents, auditors and representatives reasonably to cooperate, in preparing and filing Tax Returns (including amended Tax Returns and claims for refund) including, without limitation, the issuance of a power of attorney, if necessary and maintaining and making available to each other all records relating to the Purchased Assets necessary in connection with Taxes and in resolving all disputes and audits with respect to all taxable periods relating to Taxes. Consistent with, but not in limitation of, the foregoing, Buyer and Seller shall retain all financial records and other information relating to the Purchased Assets for a period of four years after the Closing Date and shall afford each other (at its option) and Trendmasters and Guarantors upon reasonable advance notice access to (and permit any copying of) such records and similar information so that they can prepare any required tax refunds or respond to any questions relating to any tax returns or address any other matters relating to any tax returns or similar financial or tax matters.

## **ARTICLE 9 MISCELLANEOUS**

**9.01 Waiver.** Either Buyer on the one hand, or Seller on the other (but only with the consent of LaSalle), may, by written notice to the other: (a) extend the time for performance of any of the obligations or other actions of such other party under this Agreement, (b) waive any inaccuracies in the representations or warranties of such other party contained in this Agreement or in any document delivered pursuant to this Agreement, (c) waive compliance with any of the conditions or covenants of such other party contained in this Agreement, or (d) waive or modify performance of any of the obligations of such other party under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of either party shall be deemed to constitute a waiver by the party taking such action of compliance with any of the representations, warranties, covenants, conditions, or agreements contained in this Agreement. The waiver by any party hereto of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

**9.02 Entire Agreement; Amendment.** This Agreement, including the exhibits and schedules and the documents (including the Supplemental Agreement) referred to herein (which exhibits, schedules and documents are incorporated herein by this reference), shall constitute the complete and entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous oral and written negotiations and commitments and any other writings with respect to such subject matter. This

Agreement can be modified or amended only by a writing duly executed by Buyer and Seller (but only with the consent of LaSalle).

9.03 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri, as applicable to agreements executed and entirely performed in such state, without regard to conflicts of law principles.

9.04 Interpretation. The headings contained in this Agreement are for convenience of reference only and shall in no way affect the meaning or interpretation of this Agreement. Unless the context of this Agreement expressly otherwise indicates, any singular term in this Agreement will include the plural, and any plural term will include the singular. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against either party.

9.05 Notices. All notices, requests, demands and other communications pursuant to this Agreement shall be in writing, shall be deemed to have been effectively given: (i) when delivered personally, (ii) when transmitted by facsimile transmission, if the sending facsimile machine receives and prints a confirmation of receipt by the receiving facsimile machine, (iii) three business days after deposit in the United States mail, registered or certified and with proper postage prepaid, or (iv) the next business day, if sent by a recognized commercial carrier (unless the records of the delivery service indicates otherwise), addressed as follows:

If to Buyer:

JP/TIII Acquisition Corp.  
22619 Pacific Coast Highway, Suite 250  
Malibu, California 90265  
Attn: President  
Fax: (310) 455-6302

With a required copy to:

c/o Feder, Kaszovitz, Isaacson, Weber  
Skala, Bass, & Rhine LLP  
750 Lexington Avenue  
New York, New York 10022-1200  
Attn: Geoffrey A. Bass  
Fax: (212) 888-7776

If to Seller:

Bank of America, N.A.  
231 South LaSalle Street, Eighth Floor  
Chicago, Illinois 60697  
Attn: Ronald Prince

Thomas E. Czerwinski  
Fax: (312) 987-0234

With a required copy to:

Joseph J. Trad, Esq.  
Lewis, Rice & Fingersh, L.C.  
Suite 2000  
500 North Broadway  
St. Louis, Missouri 63102  
Fax: (314) 241-6056

and

Thomas S. Kiriakos, Esq.  
Mayer, Brown, Rowe & Maw  
190 South LaSalle Street  
Chicago, Illinois 60603  
Fax: (312) 701-7711

If to Trendmasters or Guarantors:

No. 2 Balantrae Court  
St. Louis, Missouri 63131

With a required copy to:

David A. Warfield, Esq.  
Husch & Eppemburger, LLC  
190 Carondelet Plaza  
Suite 600  
St. Louis, Missouri 63105-3441  
(Counsel for Trendmasters)

and

Steven Goldstein, Esq.  
Goldstein & Pressman, P.C.  
121 Hunter Ave. Suite 101  
St. Louis, Missouri 63124  
Fax: (314) 727-1447  
(Counsel for the Guarantors)

Any party or other recipient may from time to time change its address and facsimile number for purposes of this Agreement by giving notice of such change as provided herein.

**9.06 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original but all of which together will constitute but one agreement.

**9.07 Parties in Interest; Assignment.** This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns, but shall not be assignable or delegable by any party without the prior written consent of the other party; provided, however, that upon notice to Seller, Buyer may assign or delegate any or all of its rights or obligations under this Agreement to any affiliate of Buyer but such assignment or delegation shall not relieve Buyer of any obligation hereunder.

**9.08 No Third Party Beneficiaries.** Except solely for the access and cooperation to be extended by Buyer to Trendmasters and Guarantors as set forth in Section 8.02 hereof, this Agreement is for the sole benefit of the parties hereto and their permitted assigns, and nothing herein expressed or implied shall give or be construed to give to any person, other than the parties hereto and their successors and permitted assigns, any legal or equitable rights hereunder.

**9.09 Severability.** If any provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms and provisions of this Agreement will nevertheless remain in full force and effect so long as, and only so long as, the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon any determination that any provision is invalid, illegal or incapable of being enforced and does not adversely affect the substance of these transactions in a material way, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in any acceptable manner to the end that the transactions contemplated by this Agreement are consummated to the fullest extent possible.

**9.10 Interpretation.** The use of the masculine, feminine or neuter gender or the singular or plural form of words herein shall not limit any provision of this Agreement. The use of the terms "including" or "include" shall in all cases herein mean "including, without limitation" or "include, without limitation," respectively. Reference to any person or entity includes such person's or entity's successors and assigns to the extent such successors and assigns are permitted by the terms of this Agreement, and reference to a person or entity in a particular capacity excludes such person or entity in any other capacity or individually. Reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof. Reference to any law means such law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect on the date hereof, including rules, regulations, enforcement procedures and any interpretations promulgated thereunder. Underscored references to Sections, clauses, Exhibits or Schedules shall refer to those portions of this Agreement, and any underscored references to a clause shall, unless otherwise identified, refer to the appropriate clause within the

same Section in which such reference occurs. The use of the terms "hereunder", "hereof", "hereto" and words of similar import shall refer to this Agreement as a whole and not to any particular Section or clause of or Exhibit or Schedule to this Agreement. The Schedules and Exhibits attached hereto are a part of this Agreement and, as such, are subject to the terms and conditions thereto, including, without limitation, the disclaimer of any representation or warranty set forth in Section 3.01 hereof, except solely in the case of the Supplemental Agreement and even in that sole instance, only to the extent set forth in the Supplemental Agreement. All terms defined in this Agreement shall have the above-defined meanings when used in any certificate, report or other document made or delivered pursuant to this Agreement, unless the context therein shall clearly otherwise require. In the computation of periods of time in this Agreement from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to and through". This Agreement and the other documents relating to this Agreement are the result of negotiations among and have been reviewed by counsel to the Buyer and the Seller, and are the products of all parties. Accordingly, they shall not be construed against any party merely because of such party's involvement in their preparation.

**9.11 Costs and Expenses.** Each of the Buyer and Seller shall pay its own costs in connection with the negotiation, preparation, execution and delivery of this Agreement and the related documentation.

**9.12 Confidentiality.** Each of the Buyer and Seller and by its execution of its consent, LaSalle, Trendmasters and each Guarantor agrees to maintain the confidentiality of all the provisions of this Agreement and the documents delivered with respect thereto, provided, however, that each of the Buyer, Seller, Trendmasters, LaSalle and each Guarantor may disclose such information (A) at the request or pursuant to any requirement of any governmental authority to which it is subject or in connection with an examination of it by such authority; (B) pursuant to subpoena or other court process; and (C) to its independent auditors and other professional advisors. In addition to the disclosures permitted in the prior sentence, each of the Buyer, Seller, Trendmasters, LaSalle and each Guarantor may disclose the general terms of this Asset Purchase Agreement (but not any of the related documents), to the extent agreed to by the Buyer and Seller.

**9.13 Waiver of Jury Trial.** BUYER AND SELLER HEREBY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Seller and Buyer warrant and represent that each has reviewed this waiver with its legal counsel, and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND TO THE MAXIMUM

**EXTENT PERMITTED BY APPLICABLE LAW, THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.**

**[Signature Pages Follows]**

IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the day and year first written above.

"Buyer"  
JP/TII ACQUISITION CORP.

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

"Seller"  
BANK OF AMERICA, N.A.

By:   
Name:  
Title:



IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the day and year first written above.

"Buyer"  
JP/III ACQUISITION CORP.

By: 

"Seller"  
BANK OF AMERICA, N.A.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SCHEDULE 2.01 (b)(i)  
Patents

Country	Title	Case Type	Application No.	Filing Date	Patent No.	Issue Date	Status
<b>Issued U.S. Applications</b>							
United States	Telescoping Containers	Utility	07/980,256	11/23/92	5,234,121	08/10/93	3 <sup>rd</sup> maintenance fee due 2/10/2005
United States	Interactive Toy {"Supreme Commander"}	Utility	08/691,386	08/02/96	5,989,092	11/23/99	1 <sup>st</sup> maintenance fee due 5/23/2003
United States	Disc	Design	29/052,887	04/10/96	Des. 380,017	06/17/97	Issued. Expires June 17, 2011
United States	Football	Design	29/052,838	04/10/96	Des. 382,927	08/26/97	Issued. Expires August 26, 2011
United States	Safety Device For A Spring Loaded Flying Toy	Utility	09/248,799	02/12/99	6,179,680	01/30/01	1 <sup>st</sup> maintenance fee due 7/30/2004
United States	Eye Assembly For A Stuffed Toy Or The Like {"Dogz Eyes" assembly}	Utility	08/720,350	09/27/96	5,782,669	07/21/98	2 <sup>nd</sup> maintenance fee due 1/21/2006
United States	Skipping Toy With Marker {"Chalk Spiral Dancer"}	Utility	09/197,280	11/20/98	6,113,452	09/05/00	1 <sup>st</sup> maintenance fee due 3/5/2004
United States	Shell For A Skipping Toy {"Chalk Spiral Dancer"}	Design	29/096,845	11/20/98	Des. 439,284	03/20/01	Issued. Expires March 20, 2015
United States	Wrist Watch Like Amusement Device {"C-Watch"}	Design	29/088,590	05/28/98	Des. 418,174	12/28/99	Issued. Expires December 28, 2013
United States	Front, Top, Left, And Right Sides Of An Amusement Device {"Halloween Talking Book"}	Design	29/086,532	04/15/98	Des. 417,704	12/14/99	Issued. Expires December 14, 2013
United States	Combined Writing Instrument And Amusement Device {"C-Pen"}	Design	29/090,444	07/09/98	Des. 408,853	04/27/99	Issued. Expires April 27, 2013
United States	Watch-Like Amusement Device{Variations on "C-Watch"}	Design	29/090,449	07/09/98	Des. 418,879	01/11/00	Issued. Expires January 11, 2014
United States	Pendant Amusement Device{C-Watch Pendant - "Madame Leona"}	Design	29/090,445	07/09/98	Des. 411,132	06/22/99	Issued. Expires June 22, 2013
United States	Pendant Amusement Device{C-Watch Pendant - "Mr. Mood"}	Design	29/090,502	07/09/98	Des. 417,470	12/07/99	Issued. Expires December 7, 2013
United States	Locket Amusement Device{C-Watch Locket - "C-Fortune"}	Design	29/090,499	07/09/98	Des. 415,212	10/12/99	Issued. Expires October 12, 2013
United States	Pendant Amusement Device{"C-Dancer"}	Design	29/097,801	12/14/98	Des. 419,607	01/25/00	Issued. Expires January 25, 2014
United States	Pendant Amusement Device{"C-Singer"}	Design	29/097,774	12/14/98	Des. 416,587	11/16/99	Issued. Expires November 16, 2013
United States	Three Dimensional Packaging{"C-Watch"}	Utility	09/466,142	12/17/99	6,409,019	06/25/02	1 <sup>st</sup> maintenance fee due 12/25/2005
United States	Water Gun Amusement Device{"Storm Gun"}	Design	29/111,604	09/30/99	Des. 429,506	08/15/00	Issued. Expires August 15, 2014
United States	Water Gun Amusement Device{"Storm Gun"}	Design	29/111,476	09/30/99	Des. 434,458	11/28/00	Issued. Expires November 28, 2014
United States	Water Gun Amusement Device{"Storm Gun"}	Design	29/111,568	09/30/99	Des. 429,505	08/15/00	Issued. Expires August 15, 2014

SCHEDULE 2.01 (b)(i)  
Patents

Country	Title	Case Type	Application No.	Filing Date	Patent No.	Issue Date	Status
✓ United States	Water Gun Amusement Device{"Storm Gun"}	Design	29/111,549	09/30/99	Des. 429,504	08/15/00	Issued. Expires August 15, 2014
✓ United States	Water Gun Amusement Device{"Storm Gun"}	Design	29/111,548	09/30/99	Des. 430,908	09/12/00	Issued. Expires September 12, 2014
United States	Water Gun Amusement Device{"Lighted Coherent Flow Storm Gun"}	Utility	09/677,834	09/29/00	6,474,507	11/05/02	1 <sup>st</sup> maintenance fee due 5/5/2006
United States	Amusement Device{"Luvwuv"}	Design	29/113,938	11/15/99	Des. 448,434	09/25/01	Issued. Expires September 25, 2015
United States	Bubble Making Amusement Device{"Storm Lightening Bubbles"}	Design	29/128,931	08/31/00	Des. 453,197	01/29/02	Issued. Expires January 29, 2016
United States	Toy Gun{Light Storm - 5.99}	Design	29/133,430	11/30/00	Des. 449,354	10/16/01	Issued. Expires October 16, 2015
United States	Toy Gun{Light Storm - 9.99}	Design	29/133,431	11/30/00	Des. 449,659	10/23/01	Issued. Expires October 23, 2015
United States	Toy Gun{Light Storm - 14.99}	Design	29/133,429	11/30/00	Des. 445,846	07/31/01	Issued. Expires July 31, 2015
United States	Toy{Robot Man - "Bolt Man"}	Design	29/130,225	09/28/00	Des. 464,382	10/15/02	Issued. Expires October 15, 2016
United States	Toy{Robot Man - "Lug Nut"}	Design	29/130,183	09/28/00	Des. 464,090	10/08/02	Issued. Expires October 8, 2016
United States	Toy{Robot Man - "Me-Fisto"}	Design	29/130,209	09/28/00	Des. 463,834	10/01/02	Issued. Expires October 1, 2016
United States	Toy{Robot Man - "Bitor"}	Design	29/130,184	09/28/00	Des. 461,511	08/13/02	Issued. Expires August 13, 2016
United States	Amusement Device{C-Pets - "Flea"}	Design	29/130,424	10/02/00	Des. 461,209	08/06/02	Issued. Expires August 6, 2016
United States	Amusement Device{C-Pets - "Muy Loco"}	Design	29/130,413	10/02/00	Des. 461,857	08/20/02	Issued. Expires August 20, 2016
United States	Amusement Device{C-Pets - "Lil Scratch"}	Design	29/130,414	10/02/00	Des. 457,205	05/14/02	Issued. Expires May 14, 2016
United States	Amusement Device{C-Pets - "Big Scratch"}	Design	29/130,428	10/02/00	Des. 454,378	03/12/02	Issued. Expires March 12, 2016
United States	Amusement Device{C-Pets - "Triceratops"}	Design	29/130,427	10/02/00	Des. 461,858	08/20/02	Issued. Expires August 20, 2016
United States	Amusement Device{C-Pets - "Fly"}	Design	29/130,423	10/02/00	Des. 454,928	03/26/02	Issued. Expires March 26, 2016
United States	Amusement Device{"Vendobot"}	Design	29/136,608	02/02/01	Des. 457,572	05/21/02	Issued. Expires May 21, 2016
United States	Construction System{"Zoob"}	Utility	08/763,459	12/11/96	5,897,417	04/27/99	2 <sup>nd</sup> maintenance fee due 10/27/2006
United States	Toy Gun{"Light Storm - 31997"}	Design	29/145,055	07/13/01	Des. 454,166	03/05/02	Issued. Expires March 5, 2016
United States	Toy Gun{"Light Storm - 31998"}	Design	29/145,017	07/13/01	Des. 454,926	03/26/02	Issued. Expires March 26, 2016
United States	Toy Gun{"Light Storm - 31999"}	Design	29/145,004	07/13/01	Des. 458,975	06/18/02	Issued. Expires June 18, 2016
United States	Water Gun Amusement Device{"Storm Gun"}	Design	29/125,560	06/23/00	Des. 439,286	03/20/01	Issued. Expires March 20, 2015

SCHEDULE 2.01 (b)(i)  
Patents

<u>Country</u>	<u>Title</u>	<u>Case Type</u>	<u>Application No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>	<u>Status</u>
<b>Pending U.S. Applications</b>							
United States	Interactive Digital Amusement Device{"C-Watch"}	Utility (Nat'l Stage)	09/463,709	01/11/00			Awaiting Issue Notification 11/8/2002
United States	Amusement Device{"Wuvvies"}	Design	09/711,484	11/13/00			Response to Office Action due 12/10/2002
United States	Amusement Device{"Vendobot"}	Utility	09/777,143	02/05/01			Response to Office Action due 11/27/2002
United States	Amusement Device{"C-Dog"}	Utility	09/777,016	02/05/01			Awaiting Office Action re Status Check 11/14/2002
United States	Amusement Device{"C-Chameleon"}	Utility	09/777,144	02/05/01			Awaiting Issue Notification 1/23/2003
United States	Digital Book Amusement Device{"E-Book Cartridge"}	Design	29/128,200	08/18/00			Awaiting Letters Patent 2/12/2003
United States	Digital Book Educational Amusement Device	Utility	09/932,386	08/17/01			Response to Office Action due 12/1/2002
United States	Race Car and Track{"Maximum Speed Cars/Criss Cross Battle Trax"}	Utility	09/942,156	08/29/01			Awaiting Notice of Publication 2/28/2003
United States	Bubble Making Amusement Device{"Bubble Blaster"}	Utility	09/941,473	08/29/01			Status Check 11/29/2002
United States	Toy Gun And Glow In The Dark Projectile{Lightstorm - \$19.99}	Utility	09/952,361	09/11/01			Response to Office Action due 1/22/2003
United States	Card Interactive Amusement Device{"Robot Man Card Game"}	Utility	09/931,570	08/16/01			Response to Office Action due 1/30/2003
United States	Card Interactive Amusement Device{"Robot Man Card Game"}	Utility	09/966,680	09/28/01			Response to Office Action due 12/9/2002
United States	Expandable Decoration{"Chinese Lantern"}	Utility	09/952,561	09/12/01			Status Check 12/12/2002
United States	Toy{Robot Man - "Generic"}	Design	29/166,252	08/23/02			Status Check 5/23/2003
United States	Toy{Robot Man - "Clamster"}	Design	29/130,212	09/28/00			Response to Final Office Action due 1/10/2003
United States	Toy{Robot Man - "Lobjaw"}	Design	29/130,194	09/28/00			Awaiting Issue Notification 1/15/2003
United States	Amusement Device Including A Thematic Play Set{"Star Castle"}	Utility	09/968,597	10/01/01			Awaiting Office Action re Amendment 4/16/2003

SCHEDULE 2.01 (b)(i)  
Patents

Country	Title	Case Type	Application No.	Filing Date	Patent No.	Issue Date	Status
United States	Water Amusement Device{"Storm IR Tag Game"}	Utility	10/066,818	02/04/02			Status Check 5/4/2003
United States	Squirt Gun Amusement Device{"Storm Shockwave Watergun"}	Design	29/153,348	10/25/01			Awaiting Issue Notification 11/8/2002
United States	Card Interactive Amusement Device{" Robot Man Card Game"}	CIP	10/071,545	02/08/02			Response to Office Action due 12/7/2002
United States	Water Gun Amusement Device{"Lighted Coherent Flow Storm Gun"}	Utility	09/871,137	05/31/01			Response to Office Action due 12/2/2002
<b>Issued Foreign Patents</b>							
Australia	Watch-Like Amusement Device{variations on "C-Watch"}	Design	91/1999	01/08/99	Des. 141,183	07/19/00	Granted. 2 <sup>nd</sup> renewal due 1/8/2005
Canada	Interactive Digital Amusement Device{variations on "C-Watch"}	Design	1999-0027	01/06/99	90553	10/20/00	Granted. 1 <sup>st</sup> renewal due 10/20/2005
Denmark	Interactive Digital Amusement Device{variations on "C-Watch"}	Design	MA 1999 00015	01/08/99	MR 1999 01223	12/15/99	Granted. 1 <sup>st</sup> renewal due 1/8/2004
Finland	Interactive Digital Amusement Device{variations on "C-Watch"}	Design	M19990005	01/07/99	20.906	02/29/00	Granted. Annuity fee due 1/7/2004
France	Amusement Device{variations on "C-Watch"}	Design	99 0101	01/11/99	99 0101	06/11/99	Granted. Renewal due 1/11/2024
Germany	Wrist-Worn Devices With Clock Functions{variations on "C-Watch"}	Design	499 00 283.0	01/08/99	499 00 283.0	07/21/99	Granted. Annuity fee due 1/8/2004
Japan	Game Device with Watch Function{variations on "C-Watch"}	Design	474/1999	01/11/99	1123281	08/17/01	Granted. Annuity fee due 8/17/2004
Spain	Watch-Like Amusement Device{variations on "C-Watch"}	Design	144496	01/08/99	144496	04/12/00	Granted. Renewal fee due 4/12/2005
Great Britain	Electronic Amusement Device{variations on "C-Watch"}	Design	2080236	01/08/99	2080236	08/25/99	Granted. 1 <sup>st</sup> renewal due 7/9/2003
Australia	Interactive Digital Amusement Device{variations on "C-Watch"}	Design	1866/2000	06/19/00	142915	02/09/01	Granted. Annuity fee due 1/8/2005
Canada	Interactive Digital Amusement Device{variations on "C-Watch"}	Design	2000-2447	01/06/99	90554	10/20/00	Granted. 1 <sup>st</sup> renewal due 10/20/2005
Canada	Interactive Digital Amusement Device{variations on "C-Watch"}	Design	2000-2448	01/06/99	90555	10/20/00	Granted. 1 <sup>st</sup> renewal due 10/20/2005

SCHEDULE 2.01 (b)(i)  
Patents

Country	Title	Case Type	Application No.	Filing Date	Patent No.	Issue Date	Status
Great Britain	Water Gun Amusement Device{"Storm Gun"}	Design	2091778	03/20/00	2091778	01/16/01	Granted. 1 <sup>st</sup> renewal due 9/30/2004
Great Britain	Water Gun Amusement Device{"Storm Gun"}	Design	2091777	03/30/00	2091777	01/16/01	Granted. 1 <sup>st</sup> renewal due 9/30/2004
Great Britain	Water Gun Amusement Device{"Storm Gun"}	Design	2091779	03/30/00	2091779	01/16/01	Granted. 1 <sup>st</sup> renewal due 9/30/2004
Great Britain	Water Gun Amusement Device{"Storm Gun"}	Design	2091776	03/30/00	2091776	01/16/01	Granted. 1 <sup>st</sup> renewal due 9/30/2004
Australia	Construction System{"Zoob"}	PCT	18204/97	12/11/96	708568	11/18/99	Granted. Renewal due 12/11/2003
Israel	Construction System{"Zoob"}	PCT	124822	12/11/96 (06/9/98)	124822	03/07/01	Granted. Annuity fee due 12/11/2006
Korea	Construction System{"Zoob"}	PCT	98-704375	12/12/96 (06/11/98)	289991	02/26/01	Granted. Annuity fee due 2/26/2004
New Zealand	Construction System{"Zoob"}	PCT	330653	12/11/96 (06/10/98)	330653	04/26/99	Granted. 2 <sup>nd</sup> renewal due 12/11/2003
Singapore	Construction System{"Zoob"}	PCT	9803309-5	12/11/96 (06/10/98)	P-No. 53941 [WO 97/21475]	10/19/99	Granted. 2 <sup>nd</sup> renewal due 12/11/2003
<b>Pending Foreign Applications</b>							
Sweden	Interactive Digital Amusement Device{variations on "C-Watch"}	Design	99-0022	01/08/99			Annuity fee due 1/8/2004
Japan	Game Device with Watch Function{variations on "C-Watch"}	Design	475/1999	01/11/99			Awaiting Office Action re Amendment 12/11/2002
Great Britain	Interactive Digital Amusement Device{"C-Watch"}	Utility	9924635.7	08/25/99			Awaiting Office Action re Amendment 12/12/2001
EP	Amusement Device{"Wuvvies"}	Design	00 124 830.1	11/14/00			Annuity fee due 11/14/2003
Japan	Amusement Device{"Wuvvies"}	Design	2000-348698	11/15/00			Request for Examination due 11/15/2007
Mexico	Amusement Device{"Wuvvies"}	Design	11234	11/15/00			Awaiting 1 <sup>st</sup> Office Action 11/15/2002
Korea	Amusement Device [Drive]{"Wuvvies"}	Design	2000-0067587	11/15/00			Request for Examination due 11/15/2005
Norway	Amusement Device{"Wuvvies"}	Design	2000-5774	11/15/00			Annuity fee due 11/15/2003

SCHEDULE 2.01 (b)(i)  
Patents

Country	Title	Case Type	Application No.	Filing Date	Patent No.	Issue Date	Status
Norway	Race Car And Track{"Maximum Speed Cars/Criss Cross Battle Trax"}	Utility	20014226	08/31/01			Annuity fee due 8/31/2004
PCT	Card Game And Card Interactive Amusement Device{"Robot Man Card Game"}	PCT	PCT/US01/30397	09/28/01			Response to Written Opinion due 12/28/2002
Canada	Construction System{"Zoob"}	PCT	2,240,025	12/11/96 (June 8, 1998)			Response due 2/26/2003
EPO	Construction System{"Zoob"}	PCT	96945782.9	12/11/96			Response due 12/3/2002
China	Construction System{"Zoob"}	PCT	96199624.2	12/11/96 (07/10/98)			Awaiting Office Action re Amendment 12/6/2002
Hong Kong	Construction System{"Zoob"}	PCT	99103424.2	12/11/96 (08/09/99)			Annuity fee due 12/11/2005
Japan	Construction System{"Zoob"}	PCT	522182/97	12/11/96 (06/10/98)			Awaiting Office Action re Amendment 2/8/2003
Mexico	Construction System{"Zoob"}	PCT	984605	12/11/96 (06/09/98)			Awaiting Letters Patent 3/24/2003
<b>Abandoned Applications</b>							
	Filtered Light Signal Control Suitable For Toys	Utility	08/691,378	08/02/96	5,847,854	8-Dec-98	Abandoned
	Amusement Device and Method {"Halloween Talking Book"}	Utility	08/666,605	06/19/96			Abandoned
	Safety Device For A Spring Loaded Flying Toy	Utility	08/694,616	08/13/96			Abandoned.
	Safety Device For A Spring Loaded Flying Toy	Utility	08/694,616	08/13/96			Abandoned CIP filed (see docket 4363.02)
EP	Interactive Digital Amusement Device {"C-Watch"}	Utility	999 439 11.0	08/25/99			Abandoned
	Wrist Watch Like Amusement Device {"C-Watch"}	Divisional	29/112,247	10/12/99			Abandoned
	Wrist Watch Like Amusement Device {"C-Watch"}	Divisional	29/112,298	10/13/99			Abandoned
	Wrist Watch Like Amusement Device {"C-Watch"}	Divisional	29/112,280	10/12/99			Abandoned
	Wrist Watch Like Amusement Device {"C-Watch"}	Divisional	29/112,297	10/13/99			Abandoned
	Water Gun Amusement Device {All countries except U.S.} {"Lighted Coherent Flow Storm Gun"}	PCT	PCT/00/41036	09/29/00			Abandoned
Canada	Digital Book Amusement Device	Design	2001-0389	02/16/01			Abandoned
Great Britain	Digital Book Amusement Device	Design	2099657	02/19/01	2099657	18-Aug-01	Abandoned

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<u>Country</u>	<u>Title</u>	<u>Case Type</u>	<u>Application No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>	<u>Status</u>
France	Digital Book Amusement Device	Utility	1017	02/19/01	01 1017	6-Jul-01	Abandoned
Germany	Digital Book Amusement Device	Design	40101866	02/19/01	401 01 866.0	22-Jun-01	Abandoned
Great Britain	Digital Book Amusement Device	Design	2101585	05/02/01	2101585	18-Aug-01	Abandoned
	Digital Book	Provisional	60/226,492	08/18/00			Abandoned in favor of Dkt 6814
PCT	Digital Book Educational Amusement Device	Utility	PCT/US01/25921	08/17/01			Abandoned
Canada	Race Car And Track {"Maximum Speed Cars/Criss Cross Battle Trax"}	Utility	2356784	08/30/01			Abandoned
EPO	Race Car And Track {"Maximum Speed Cars/Criss Cross Battle Trax"}	Utility	11208808	08/30/01			Abandoned
	Expandable Decoration	Provisional	60/228,791	08/29/00			Abandoned {Please see Dkt. 6884}
	Toy Gun {Light Storm - 29.99}	Design	29/133,445	11/30/00			Abandoned {Notice of Recordation of Assignment received}
	Amusement Device {Robot Man - "Generic"}	Design	29/130,206	09/28/00			Abandoned Continuation filed (see docket 6902.01)
	Flying Amusement Device	Provisional	60/306,943	07/20/01			Abandoned
	Air Bladder Launching Device	Provisional	60/315,461	08/28/01			Abandoned
Brazil	Construction System {"Zoob"}	PCT	PI 9611993-4	12/11/96 (June 9, 1998)			Abandoned
Russia	Construction System {"Zoob"}	PCT	98113067	12/11/96			Abandoned
			30-Aug-01				
<b>Expired/Converted Applications</b>							
	Illuminating Package {"Jeannie Light Up Box"}	Provisional	60/037,318	02/05/97			Expired
	Skipping Toy With Marker {"Chalk Spiral Dancer"}	Provisional	60/066,333	11/21/97			Expired/Advanced
	Interactive Digital Amusement Device {"C-Watch"}	Provisional	60/097,871	08/26/98			Expired/Advanced
	Water Gun Amusement Device {"Storm Gun"}	Provisional	60/157,153	09/30/99			Expired/Advanced
	Amusement Device {"Wuvvies"}	Provisional	60/165,572	11/15/99			Expired/Advanced
	Amusement Device {"Vend-o-bot"}	Provisional	60/180,360	02/04/00			Expired/Advanced
	Amusement Device {"C-Dog"}	Provisional	60/180,359	02/04/00			Expired/Advanced
	Amusement Device {"C-Chameleon"}	Provisional	60/180,307	02/04/00			Expired/Advanced
	Water Gun Amusement Device	Provisional	60/208,242	05/31/00			Expired



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	Digital Book Amusement Device	Provisional	60/226,434	08/18/00			Expired/Advanced
	Race Car And Track{"Maximum Speed Cars/Criss Cross Battle Trax"}	Provisional	60/229,654	08/31/00			Expired/Advanced
	Bubble Making Amusement Device{"Bubble Blaster"}	Provisional	60/229,586	08/31/00			Expired/Advanced
	Toy Gun And Glow In The Dark Projectile{"Lightstorm - \$19.99"}	Provisional	60/232,285	09/13/00			Expired/Advanced
	Card Game And Card Interactive Amusement Device{"Robot Man Card Game"}	Provisional	60/236,231	09/28/00			Expired/Advanced
	Expandable Decoration{"Chinese Lantern"}	Provisional	60/232,286	09/13/00			Expired/Advanced
	Amusement Device{C-Pets}	Provisional	60/237,028	09/29/00			Expired
	Amusement Device{"Star Castle"}	Provisional	60/237,478	10/02/00			Expired/Advanced
	Water Amusement Device{"Storm IR Tag Game"}	Provisional	60/266,336	02/02/01			Expired/Advanced
	Lighted Water Amusement Device{"Shout and Shoot"}	Provisional	60/266,196	02/02/01			Expired
	Zip Track{"Max Speed"}	Provisional	60/302,525	07/02/01			Expired
	Beach Drag Set{"Max Speed Muscle Beach Drag Set"}	Provisional	60/302,519	07/02/01			Expired
	Zip Track{"Max Speed"}	Provisional	60/315,282	08/27/01			Expired
	Construction System{"Zoob"}	PCT	PCT/US96/19716	12/11/96			Advanced/Abandoned
	Interactive Digital Amusement Device{"C-Watch"}	PCT	PCT/US99/19397	08/25/99			Advanced