

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	RELEASE BY SECURED PARTY		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Wells Fargo Business Credit, Inc.		05/29/2012	CORPORATION: MINNESOTA
RECEIVING PARTY DATA			
Name:	Emerald Lane II KVB, LLC		
Street Address:	5100 Schenley Place		
City:	Lawrenceburg		
State/Country:	INDIANA		
Postal Code:	47025		
Entity Type:	LIMITED LIABILITY COMPANY: DELAWARE		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	2167712	PERFECT PARTNERS	
Registration Number:	2219473	SIMPLE PLEASURES	
CORRESPONDENCE DATA			
Fax Number:	7168456474		
	<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>		
Phone:	716-845-6000		
Email:	keagen@kavinokycook.com		
Correspondent Name:	Kelly E. Eagen, Esq. (Kavinoky Cook LLP)		
Address Line 1:	726 Exchange Street, Suite 800		
Address Line 4:	Buffalo, NEW YORK 14210		
ATTORNEY DOCKET NUMBER:	04894.31533		
NAME OF SUBMITTER:	Kelly E. Eagen		
Signature:	/Kelly E. Eagen/		

CH \$65.00 2167712

Date:

06/07/2012

Total Attachments: 86

source=Sale Order#page1.tif
source=Sale Order#page2.tif
source=Sale Order#page3.tif
source=Sale Order#page4.tif
source=Sale Order#page5.tif
source=Sale Order#page6.tif
source=Sale Order#page7.tif
source=Sale Order#page8.tif
source=Sale Order#page9.tif
source=Sale Order#page10.tif
source=Sale Order#page11.tif
source=Sale Order#page12.tif
source=Sale Order#page13.tif
source=Sale Order#page14.tif
source=Sale Order#page15.tif
source=Sale Order#page16.tif
source=Sale Order#page17.tif
source=Sale Order#page18.tif
source=Sale Order#page19.tif
source=Sale Order#page20.tif
source=Sale Order#page21.tif
source=Sale Order#page22.tif
source=Sale Order#page23.tif
source=Sale Order#page24.tif
source=Sale Order#page25.tif
source=Sale Order#page26.tif
source=Sale Order#page27.tif
source=Sale Order#page28.tif
source=Sale Order#page29.tif
source=Sale Order#page30.tif
source=Sale Order#page31.tif
source=Sale Order#page32.tif
source=Sale Order#page33.tif
source=Sale Order#page34.tif
source=Sale Order#page35.tif
source=Sale Order#page36.tif
source=Sale Order#page37.tif
source=Sale Order#page38.tif
source=Sale Order#page39.tif
source=Sale Order#page40.tif
source=Sale Order#page41.tif
source=Sale Order#page42.tif
source=Sale Order#page43.tif
source=Sale Order#page44.tif
source=Sale Order#page45.tif
source=Sale Order#page46.tif
source=Sale Order#page47.tif
source=Sale Order#page48.tif
source=Sale Order#page49.tif
source=Sale Order#page50.tif
source=Sale Order#page51.tif
source=Sale Order#page52.tif

source=Sale Order#page53.tif
source=Sale Order#page54.tif
source=Sale Order#page55.tif
source=Sale Order#page56.tif
source=Sale Order#page57.tif
source=Sale Order#page58.tif
source=Sale Order#page59.tif
source=Sale Order#page60.tif
source=Sale Order#page61.tif
source=Sale Order#page62.tif
source=Sale Order#page63.tif
source=Sale Order#page64.tif
source=Sale Order#page65.tif
source=Sale Order#page66.tif
source=Sale Order#page67.tif
source=Sale Order#page68.tif
source=Sale Order#page69.tif
source=Sale Order#page70.tif
source=Sale Order#page71.tif
source=Sale Order#page72.tif
source=Sale Order#page73.tif
source=Sale Order#page74.tif
source=Sale Order#page75.tif
source=Sale Order#page76.tif
source=Sale Order#page77.tif
source=Sale Order#page78.tif
source=Sale Order#page79.tif
source=Sale Order#page80.tif
source=Sale Order#page81.tif
source=Sale Order#page82.tif
source=Sale Order#page83.tif
source=Sale Order#page84.tif
source=Sale Order#page85.tif
source=Sale Order#page86.tif

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

)		
In re)		
)		Case No. 12-70303-FJS
K. VAN BOURGONDIEEN OF)		Chapter 11
VIRGINIA, INC. <i>et al.</i> ,)		
)		Jointly Administered
Debtors.)		
)		

ORDER APPROVING MOTION OF DEBTORS FOR ORDER (A) APPROVING SALE OF SUBSTANTIALLY ALL ASSETS OF DEBTORS TO EMERALD LANE II KVB, LLC FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING AND AUTHORIZING ASSUMPTION AND ASSIGNMENT OF ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) GRANTING RELATED RELIEF

THIS MATTER having come before the Court upon the motion (the “Sale Motion”) of K. Van Bourgondien of Virginia, Inc. (“KVB”) and Simple Pleasures Flowerbulbs & Perennials, Inc. (“Simple Pleasures,” and together with KVB, the “Debtors”), the debtors and debtors-in-possession in these jointly administered cases, for entry of an order: (a) approving the proposed sale (the “Proposed Sale”) of substantially all of the Debtors’ assets (the “Purchased Assets”), all as more fully set forth below and in the *Asset Purchase Agreement* (the “Agreement”) with Emerald Lane II KVB, LLC (the “Buyer”) dated as of April 17, 2012, pursuant to which the Debtors have agreed to a sale of the Purchased Assets to the Buyer¹; (b) approving and authorizing the Debtors’ assumption and assignment to the Buyer of the Assumed Contracts; and (c) granting related relief; and notice of the Sale Motion and the Sale Hearing, and of the

¹ To the extent not otherwise defined herein or in the Sale Motion, capitalized terms shall have the meanings ascribed to them in the Agreement or in the Sale Motion. A copy of the Agreement is attached hereto as Exhibit A.

Paul K. Campsen, Esq. (VSB No. 18133)
Dennis T. Lewandowski, Esq. (VSB No. 22232)
Kaufman & Canoles, a professional corporation
150 West Main Street, Suite 2100
Norfolk, VA 23510
(757) 624-3000 – Telephone
(757) 624-3169 – Facsimile
Counsel for the Debtors and Debtors in Possession

objection deadline with respect to the Proposed Sale, the Cure Amounts, the Purchase Price Offset, and the Sale Motion, having been given in accordance with the applicable orders of this Court; and the Debtors having actively marketed the Purchased Assets prior to the filing of the Sale Motion to attempt to locate the highest and best offer for the Purchased Assets; and the Debtors having determined no other parties have expressed an interest in purchasing the Purchased Assets, and that the Proposed Sale to Buyer constitutes the only available opportunity for such a transaction; and the Debtors having determined that the Proposed Sale to Buyer constitutes the only, and therefore the highest and best offer for the Purchased Assets; and the Debtors, pursuant to the Sale Motion and §§ 105(a), 363 and 365 of Title 11 of the United States Code (the “Bankruptcy Code”), having sought the entry of an order: (i) authorizing and approving the Purchase Price Offset in connection with the Proposed Sale; (ii) authorizing and approving the sale of the Purchased Assets to the Buyer in accordance with the terms of the Agreement, free and clear of all Liens (as defined herein); (iii) authorizing the Debtors to assume and assign to the Buyer the Assumed Contracts, in accordance with the terms of the Agreement; and (iv) granting related relief; and the Court having held the Sale Hearing on May 24, 2012; and the appearances of all interested parties and all responses and objections to the Sale Motion, the Purchase Price Offset, and to the Cure Amount Notice having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, the Sale Motion and any responses and objections thereto; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:

A. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334.

B. Venue of these cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Determination of the Sale Motion is a core proceeding under 28 U.S.C. § 157(b).

D. The statutory predicates for the relief requested in the Sale Motion include Bankruptcy Code §§ 105, 363 and 365, Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 6004-2 of the Local Rules of Bankruptcy Procedure for the Eastern District of Virginia (the “Local Rules”).

E. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, which is made applicable to this matter pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

F. Good and sufficient notice of the Sale Motion, the Sale Hearing, and of the objection deadline with respect to the Proposed Sale, the Cure Amounts, the Purchase Price Offset, and the Sale Motion, has been given in accordance with Bankruptcy Code §§ 363 and 365, Bankruptcy Rules 2002, 6004 and 6006, and Local Rule 6004-2, as modified by orders of this Court where applicable, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the Sale Motion, the Purchase Price Offset, and the Sale Hearing, and any objections with respect to the Proposed Sale, the Cure Amounts, the Purchase Price Offset, and the Sale Motion, has been afforded to parties in interest, including the following: (i) the Office of the United States Trustee for the Eastern District of Virginia; (ii) counsel to Emerald Land; (iii) all taxing authorities required to be given notice under the Bankruptcy Rules and the Local Rules; (iv) counsel to De Ree Holland, B.V., (v) all persons or entities known to

the Debtors that have asserted an interest in the Purchased Assets; (vi) all parties to Assumed Contracts; and (vii) all other parties in interest that have requested notice of all pleadings and papers filed in the Debtors' cases. In addition, the Debtors have caused a copy of the Sale Notice to be mailed by first class mail, postage prepaid, or otherwise delivered to all creditors, and all other parties in interest that have requested notice of all pleadings and papers filed in the Debtors' cases, which notice included an Internet web site (www.jagersmith.com) where complete copies of all of the documents related to the Debtors' proposed sale of the Purchased Assets could be reviewed and downloaded, as well as information regarding obtaining hard copies of the same at no cost. The foregoing constitutes good and sufficient notice, and no other or further notice is required, nor is notice of the entry of this order required.

G. A reasonable opportunity has been afforded to the Debtors prior to the filing of the Sale Motion to solicit and obtain a higher or otherwise better offer to purchase the Purchased Assets, and to other parties in interest to assert an objection to or be heard regarding: (i) the relief requested in the Sale Motion, including but not limited to approval of the Agreement; (ii) the Purchase Price Offset; (iii) the Cure Amounts relating to the Assumed Contracts; and (iv) the procedures relating to the assumption and assignment of the Assumed Contracts.

H. The Debtors have conducted a sale process in compliance with, and have complied with all of their obligations under, the Bankruptcy Code, the Bankruptcy Rules, and all applicable orders of this Court. The Purchase Price Offset in connection with the Proposed Sale was appropriate under the circumstances and in compliance with the Bankruptcy Code and all applicable orders of this Court, and is therefore authorized and approved by this Order in all respects.

I. The entry into the Agreement and the consummation of the transactions contemplated thereby constitute the exercise by the Debtors of sound business judgment and such acts, and the relief requested in the Sale Motion, are in the best interests of the Debtors, their estates, their creditors and other parties in interest.

J. The Agreement constitutes the highest and best offer for the Purchased Assets, and, taking into account the Estate Payment Consideration component of the Purchase Price, will provide a greater recover for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Agreement represents the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of their business judgment.

K. The Debtors have demonstrated both good, sufficient and sound business purpose and justification, and compelling circumstances for consummating the sale of the Purchased Assets pursuant to Bankruptcy Code § 363(b), in that, amongst other things: (i) prompt approval and consummation of the sale of the Purchased Assets will preserve the value of the Purchased Assets, protect against deterioration of that value and maximize the value of the Debtors' estates; (ii) the Buyer has made a substantial offer to acquire the Purchased Assets (comprised of the Purchase Price Offset and the Estate Payment Consideration); and (iii) the sale process conducted by the Debtors, including the Debtors' efforts prior to the filing of the Sale Motion to solicit and obtain a higher or otherwise better offer to purchase the Purchased Assets, permitted the Buyer's offer to be further tested against other offers and the market generally.

L. The United States Trustee has made no objection to the entry of this order, or, any such objection has otherwise been resolved, withdrawn, or overruled.

M. The Buyer is neither an "insider" nor an "affiliate" of the Debtors as those terms are defined in Bankruptcy Code § 101. The transactions contemplated by the Agreement

(including the Purchase Price Offset) were proposed, negotiated and entered into by the Debtors and the Buyer at arms' length, without collusion and in good faith within the meaning of Bankruptcy Code § 363(m). The Buyer is a good faith purchaser of the Purchased Assets under Bankruptcy Code § 363(m) and, as such, is entitled to the protection afforded thereby. The Buyer will be acting in good faith within the meaning of Bankruptcy Code § 363(m) in consummating such transactions immediately upon and at all times after the entry of this order.

N. The Debtors and the Buyer have not engaged in any conduct that would cause or permit the Agreement or the transactions contemplated thereby to be avoided under Bankruptcy Code § 363(n).

O. The Buyer would not have entered into the Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their estates and their creditors, if the sale of the Purchased Assets to the Buyer were not free and clear of all Liens, or if the Buyer would, or in the future could, be liable for any of the Liens.

P. The Debtors' receipt of the Estate Payment Consideration to be paid pursuant to the Agreement with the consent of the First Priority Secured Lender shall be free and clear of all Liens, and shall be available to pay allowed administrative expenses and allowed priority unsecured claims of the Debtors' estates, with the allocation and distribution of such proceeds to be determined by the Sellers pursuant to a further order of this Court.

Q. Except as expressly stated in the Agreement, consummation of the sale of the Purchased Assets does not subject the Buyer to any debts, liabilities or claims of any kind against the Debtors or their property, or against any affiliate of the Debtors or its property, whether known or unknown, contingent or otherwise, whether existing as of the date of this order or thereafter arising.

R. Each of the Assumed Contracts is an executory contract within the meaning of Bankruptcy Code § 365(a). Pursuant to Bankruptcy Code § 365(f), all restrictions on assignment in any of the Assumed Contracts are unenforceable against the Debtors, and all Assumed Contracts may be lawfully assigned to the Buyer.

S. The Assumed Contracts are an integral part of the Purchased Assets. Accordingly, the assumption and assignment of the Assumed Contracts to the Buyer is reasonable, enhances the value of the Debtors' estates and does not constitute unfair discrimination.

T. Those Cure Amounts that are undisputed, or that will either be determined by this Court at a hearing or resolved by agreement between the parties prior to such hearing, are the sole amounts necessary to cure all defaults (without giving effect to any acceleration clauses or any default provisions of the kind specified in Bankruptcy Code § 365(b)(2)) required to be cured under Bankruptcy Code § 365, and to pay all actual or pecuniary losses that have resulted from such defaults, under the Assumed Contracts. Upon payment of the Cure Amounts or the provision of adequate assurance that such defaults will be promptly cured, no defaults of the Debtors will exist under any of the Assumed Contracts.

U. Pursuant to other applicable orders of this Court, those entities not having filed a Cure Amount Objection shall have a Cure Amount as stated in the Cure Notice.

V. The Buyer has demonstrated adequate assurance of future performance with respect to the Assumed Contracts within the meaning of Bankruptcy Code §§ 365(b)(1)(C), 365(b)(3) and 365(f)(2)(B).

W. No defaults exist in the Debtors' performance under the Assumed Contracts as of the date of this order (without giving effect to any acceleration clauses or any default provisions

of the kind specified in Bankruptcy Code § 365(b)(2)) other than the failure to pay amounts equal to the Cure Amounts.

X. The Debtors may sell the Purchased Assets free and clear of all Liens, because in each case, one or more of the standards set forth in Bankruptcy Code § 363(f) has been satisfied. Those holders of claims or Liens who did not object, or who withdrew their objections, to the Proposed Sale or to the Sale Motion are deemed to have consented pursuant to Bankruptcy Code §§ 363(f)(2) and 365. Those holders of claims or Liens who did object fall within one or more of the other subsections of Bankruptcy Code §§ 363(f) and 365, and are adequately protected having their Liens, if any, attach to the proceeds of the Proposed Sale that are not comprised of the Estate Payment Consideration.

Y. The transfer of the Purchased Assets to the Buyer will not subject the Buyer to any liability whatsoever with respect to the operation of the Debtors' businesses prior to the date of the closing of the sale (the "Closing") to Purchase (the "Closing Date"), or by reason of such transfer under the laws of the United States, any state, territory or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including without limitation any theory of equitable subordination or successor or transferee liability.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Sale Motion is granted. All objections to the Sale Motion not timely filed and served are hereby waived in all respects. All other objections to the entry of this order that have not been withdrawn, waived, resolved or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits with prejudice.

2. All objections to the Purchase Price Offset, the First Lien Credit Facility, and the Estate Payment Consideration not timely filed and served are hereby waived in all respects. All other objections to the Purchase Price Offset, the First Lien Credit Facility, and the Estate Payment Consideration that have not been withdrawn, waived, resolved or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits with prejudice.

Approval of the Agreement

3. The Agreement, and all of the terms and conditions thereof, are hereby approved. Pursuant to Bankruptcy Code § 363, the Debtors are authorized to sell the Purchased Assets to the Buyer upon the terms and subject to the conditions set forth in the Agreement.

4. Pursuant to Bankruptcy Code §§ 363(b) and 365, the Debtors and the Buyer are hereby authorized on and after the Closing Date to perform under, consummate and implement the Agreement, together with any other additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement and the transactions contemplated thereby. In addition, the Debtors and the Buyer are hereby authorized to take all further actions, including the execution and delivery of any documents, as may reasonably be requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to the Buyer, or reducing to possession, any or all of the Purchased Assets, or as may be necessary or

appropriate to the performance of the Debtors' or the Buyer's obligations as contemplated by the Agreement. The Court hereby authorizes any officer of the Debtors to execute, acknowledge, and/or deliver any instruments and documents for and on behalf of the Debtors that may be reasonably necessary or desirable to implement the Agreement and the transactions contemplated thereby, including, without limitation, instruments evidencing ownership.

Transfer of the Purchased Assets

5. Pursuant to Bankruptcy Code §§ 105(a) and 363(f), on the Closing Date as set forth in the Agreement, the Purchased Assets shall be transferred to the Buyer free and clear of all liens, claims, encumbrances, and other interests of any kind or nature, including but not limited to the following (collectively, "Liens"):

- a. Encumbrances (as that term is defined in the Agreement);
- b. those arising out of prepetition or postpetition contracts, sales agreements, licenses, purchase orders, and leases other than the Assumed Contracts to which Debtors are or have been a party;
- c. those arising out of any pending or threatened litigation to which the Debtors are or may be a party;
- d. those granted or imposed by orders of this Court or any other court;
- e. those arising from the assessment of taxes with respect to the Debtors, their properties or employees;
- f. those arising from or related to past, present and future negligence, tort and product liability claims against the Debtors of any kind and nature whatsoever;
- g. those claims, demands, obligations and liabilities that are in any way related to or arising from the Debtors' employment practices, collective bargaining agreements, employees' wages, benefits and other employees' claims and rights, including without limitation any claims made under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 *et seq.*; and

h. those prepetition and postpetition liens, claims, defenses, encumbrances, security interests, restrictions, liabilities, obligations and demands arising from all present and future liability resulting from or associated with hazardous and/or toxic waste and contaminants including, without limitation, the cost of clean-up or remediation of same which have been or could be asserted against the Debtors.

6. This order is and shall be effective as a determination that, as of the Closing Date, all Liens existing on the Purchased Assets prior to such date have been unconditionally released from such Purchased Assets. All Liens shall attach to the proceeds of the Proposed Sale that are not comprised of the Estate Payment Consideration, if any, in the same order of priority as such Liens existed on the Petition Date. No Liens shall attach to the Estate Payment Consideration, and, as of the Closing Date, any deficiency owed the Buyer under the First Lien Credit Facility is waived as against the Debtors without waiver of any rights of the First Lien Secured Party against other persons or entities.

7. The transfer of the Purchased Assets and the assumption and assignment of the Assumed Contracts pursuant to the Agreement shall constitute legal, valid and effective transfers of property of the Debtors' estates to the Buyer, and shall vest in the Buyer the Debtors' right, title and interest in the Purchased Assets and the Assumed Contracts, free and clear of all Liens including, *inter alia*, those Liens that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal or termination of the Debtors' or the Buyer's interest in such Purchased Assets, or any similar rights, and relating to taxes arising under, out of, in connection with or in any way relating to the operation of the Debtors' businesses prior to the Closing Date.

8. The sale of the Purchased Assets to the Buyer under the Agreement will constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession and the District of Columbia.

9. In the event that the Debtors and the Buyer consummate the transactions contemplated by the Agreement, the Debtors and the Buyer shall be entitled to the protection provided under Bankruptcy Code § 363(m).

10. The consideration provided by the Buyer for the Purchased Assets under the Agreement is fair and reasonable, and may not be avoided under Bankruptcy Code § 363(n).

11. Except as expressly set forth in the Agreement, all persons and entities holding Liens against the Purchased Assets, of any kind and nature whatsoever, hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Liens against the Buyer, its successors or assigns, their properties, or the Purchased Assets with respect to any Lien of any kind or nature whatsoever that such person or entity has, had or may have against or in the Purchased Assets. Following the Closing, no holder of a Lien or claim against the Debtors or their estates shall interfere with the Buyer's title to or use and enjoyment of the Purchased Assets based on or related to such Lien or claim, or any actions that the Debtors may take in these cases.

12. Except as otherwise provided in the Agreement, the Buyer is not assuming nor shall it in any way whatsoever be liable or responsible, as a successor or otherwise, for any debts, liabilities, obligations, commitments or responsibilities of the Debtors or any of their predecessors or affiliates, or for any debts, liabilities, obligations, commitments, responsibilities or Liens in any way whatsoever relating to or arising from the Purchased Assets or the Assumed Contracts, or the Debtors' operation, use or ownership of the Purchased Assets or the Assumed Contracts, arising prior to consummation of the transactions contemplated by the Agreement. Except as otherwise provided in the Agreement, the Buyer shall not have any successor or vicarious liabilities of any kind or character, whether known or unknown, as of the Closing Date,

now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including but not limited to liabilities on account of any taxes arising, accruing or payable under, out of, in connection with or in any way relating to the operation of the Debtors' businesses prior to the Closing Date.

13. This order is and shall be effective as a determination that the conveyance of Purchased Assets described herein has been effected upon the Closing, and shall be binding upon and govern the acts of all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who or which may be required by operation of law, the duties of their office or contract to accept, file, register or otherwise record or release any documents or instruments, or may be required to report or insure any title or state of title in or to any of the Purchased Assets. On or before the Closing Date, each person or entity holding a Lien against the Purchased Assets is authorized and directed to execute such documents, and take all other actions as may be necessary or appropriate, to release such Lien against the Purchased Assets, as such Lien may have been recorded or may otherwise exist.

14. If any person or entity having filed financing statements or other documents or agreements evidencing any Liens in the Purchased Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, reassignments or releases of all Liens that the person or entity has with respect to the Purchased Assets, then the Debtors (and the Buyer after the Closing) are hereby authorized to execute and file such statements, instruments, releases and

other documents on behalf of the person or entity with respect to the Purchased Assets, and the Buyer is hereby authorized to file, register or otherwise record a certified copy of this order which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Liens of any kind or nature whatsoever in the Purchased Assets.

15. All persons or entities who or which are presently or on the Closing Date may be in possession of some or all of the Purchased Assets are hereby directed to surrender possession of said Purchased Assets to the Buyer on the Closing Date.

Assumption and Assignment of the Assumed Contracts

16. Pursuant to Bankruptcy Code §§ 365(a), 365(b) and 365(f), the assumption and assignment by the Debtors to the Buyer of the Assumed Contracts free and clear of all Liens shall be effected by this Order; *provided, however*, that if the Closing shall fail to occur, none of the Assumed Contracts shall be deemed to be assumed or assigned, and such Assumed Contracts shall continue to be administered pursuant to the Bankruptcy Code. The Debtors are hereby authorized to execute and deliver to the Buyer such documents or other instruments as may be reasonably necessary to give full effect to the assignment and transfer of the Assumed Contracts to the Buyer, all as of the Closing Date.

17. Upon assignment to the Buyer, any and all defaults under the Assumed Contracts have been cured in all respects and that the Assumed Contracts are deemed to be valid and binding, in full force and effect, and enforceable in accordance with their terms notwithstanding any provision in any such Assumed Contracts that prohibits, restricts or conditions such assignment or transfer.

18. Pursuant to Bankruptcy Code § 365(k), the Debtors are relieved from any liability for any breach of such Assumed Contracts occurring after such assignment.

19. Parties to Assumed Contracts that failed to file a Cure Amount Objection are forever barred from asserting an objection as to the Cure Amount or to the assumption and assignment of the applicable Assumed Contract.

20. No consent from any third party is required under any Assumed Contract in order to effectuate the assumption and assignment of such Assumed Contract.

21. The Buyer has provided adequate assurance of its future performance under the Assumed Contracts, and the proposed assumption and assignment of the Assumed Contracts satisfies the requirements of the Bankruptcy Code including, *inter alia*, Bankruptcy Code §§ 365(b) and 365(f), to the extent applicable.

22. There shall be no accelerations, assignment fees, increases or any other fees charged to the Buyer as a result of the assumption and assignment of the Assumed Contracts, and the validity of the assumption and assignment of the Assumed Contracts to the Buyer shall not be affected by any dispute regarding the Cure Amount.

23. All parties to the Assumed Contracts are forever barred and enjoined from raising or asserting against the Buyer, or its successors or assigns, any violation under an acceleration clause, any assignment fee or any default, claim, pecuniary loss or condition to assignment arising under or related to the Assumed Contracts existing as of the Closing Date or arising by reason of the Closing, or any claim asserted or capable of being asserted against the Debtors.

24. Pursuant to the terms of the Agreement and consistent with the requirements of Bankruptcy Code §§ 365(b) and 365(f), the Buyer is hereby authorized and directed to pay, at or before the Closing, the Cure Amounts set forth in the Cure Amount Notice with respect to each Assumed Contract. Upon such payment, all defaults or other obligations of the Debtors under the Assumed Contracts arising or accruing prior to the Closing (without giving effect to any

acceleration clauses or any default provisions of the kind specified in Bankruptcy Code § 365(b)(2)) shall be deemed in all respects cured, and neither the Debtors nor the Buyer shall have any liability or obligation arising or accruing prior to the Closing Date.

Additional Provisions

25. Nothing contained in any subsequent order of this Court, any Chapter 11 plan confirmed in these cases or the order of confirmation confirming any such Chapter 11 plan, or any other order entered in these cases shall conflict with or derogate from the Agreement or this order.

26. All objections and responses concerning the Sale Motion, including but not limited to objections to the Purchase Price Offset and Cure Amounts, are resolved in accordance with the terms of this order and as set forth in the record of the Sale Hearing, and to the extent any such objection or response was not otherwise withdrawn, waived or settled, they and all reservations and rights therein are overruled and denied.

27. This order shall be effective and enforceable immediately upon entry, and shall not be subject to any stay of enforcement, including any stay provided by Bankruptcy Rules 6004 and 6006. The provisions of this order shall be self-executing.

28. The Agreement, along with any related agreements, documents or instruments, may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that such modifications, amendments or supplements, if any, are not material and adverse to the Debtors or their estates.

29. Subject to the provisions of, and except as provided in, the Agreement, this Court shall retain exclusive jurisdiction to:

- a. interpret and enforce the provisions of this order and the Agreement, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith in all respects;
- b. compel delivery of the Purchased Assets to the Buyer;
- c. protect the Buyer against any Liens in the Purchased Assets;
- d. compel delivery of the Purchase Price and all adjustments to the Purchase Price under the Agreement;
- e. interpret, implement and enforce the provisions of this order; and
- f. hear and determine any and all disputes between the Debtors and the Buyer arising out of or relating to this order and the Agreement, and any and all disputes between or amongst the Debtors, the Buyer and any party arising out of or relating to any Assumed Contracts concerning the assumption and assignment thereof to the Buyer under the Agreement.

Notwithstanding the foregoing, in the event that this Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Agreement or this order, such abstention, refusal or lack of jurisdiction shall have no effect upon, and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

30. The Buyer shall not be required to seek or obtain relief from the automatic stay under Bankruptcy Code § 362 to enforce any of its remedies under the Agreement or any other document related thereto. The automatic stay imposed by Bankruptcy Code § 362 is modified to the extent necessary to implement the provisions of the Agreement and this order.

31. The provisions of this order are non-severable and mutually dependent.

32. The terms and provisions of the Agreement and this order shall be binding on and shall inure to the benefit of the Buyer, the Debtors, their estates and creditors, and their respective affiliates, successors and assigns, including but not limited to any Chapter 7 trustee that may be appointed in the Debtors' bankruptcy cases, and shall be binding upon any trustee,

any third party (including but not limited to all parties to the Assumed Contracts), all persons or entities asserting a Lien or claim against the Debtors' estates or any of the Purchased Assets, and any entity or fiduciary that may be appointed in connection with these cases or any other or further case involving the Debtors, whether under Chapter 7 or Chapter 11 of the Bankruptcy Code. The Agreement and the transactions contemplated thereby shall be specifically performable and enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors or any Chapter 7 trustee of the Debtors and their estates.

33. The failure specifically to include any particular provision of the Agreement in this order shall not diminish or impair the efficacy of such provision, it being the intent of the Court that the Agreement be approved in its entirety.

34. This order constitutes an itemized statement of the property sold, the name of each purchaser and the price received for the property as a whole, as required pursuant to Bankruptcy Rule 6004(f)(1).

35. Upon the Closing of the sale of the Purchased Assets to the Buyer, the Debtors shall not be obligated to continue any insurance presently covering the Purchased Assets, and the Buyer alone shall be responsible for insuring the Purchased Assets.

Dated: Norfolk, Virginia
May __, 2012
May 29 2012

/s/ Frank J. Santoro

UNITED STATES BANKRUPTCY JUDGE

Entered on Docket:5/29/2012

WE ASK FOR THIS:

/s/ Dennis T. Lewandowski
Paul K. Campsen, Esq. (VSB No. 18133)
Dennis T. Lewandowski, Esq. (VSB No. 22232)
Kaufman & Canoles, a professional corporation
150 W. Main Street, Suite 2100
Norfolk, VA 23510
(757) 624-3000 – Telephone
(757) 624-3169 – Facsimile

Counsel for Debtors and Debtors in Possession

SEEN AND AGREED:

/s/ Douglass M. Foley
Douglass M. Foley, Esq. (VSB No. 34364)
Daniel F. Blanks, Esq. (VSB No. 48104)
Sarah B. Boehm, Esq. (VSB No. 45201)
McGUIREWOODS LLP
900 World Trade Center
101 West Main Street
Norfolk, VA 23510
(757) 640-3700 – Telephone
(757) 640-3701 – Facsimile

Bruce F. Smith, Esq.
Michael J. Fencer, Esq.
Brendan C. Recupero, Esq.
Jager Smith P.C.
One Financial Center
Boston, MA 02111
(617) 951-0500 – Telephone
(617) 951-2414 – Facsimile

David LoTempio, Esq.
Kavinoky Cook, LLP
726 Exchange Street, Suite 800
Buffalo, NY 14210
(716) 845-6000 – Telephone
(716) 845-6474 – Facsimile

Counsel for Gardens Alive, Inc. and Emerald Lane II KVB, LLC

SEEN:

/s/ Debera F. Conlon
Debera F. Conlon
Cecelia A. Weschler
Office of the United States Trustee
200 Granby Street, 625 Federal Building
Norfolk, VA 23510
(757) 441-6012 – Telephone
(757) 441-3266 – Facsimile

United States Trustee

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by/served upon all necessary parties.

/s/ Dennis T. Lewandowski
Dennis T. Lewandowski

ASSET PURCHASE AGREEMENT

DATED AS OF APRIL 17, 2012

BY AND AMONG

K. VAN BOURGONDIEN OF VIRGINIA, INC.,

SIMPLE PLEASURES FLOWERBULBS & PERENNIALS, INC.

AND

EMERALD LANE II KVB, LLC, A DELAWARE LIMITED LIABILITY COMPANY



TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS 1

1.1 Definitions..... 1

1.2 Other Definitions and Interpretive Matters 9

ARTICLE 2 PURCHASE AND SALE; CLOSING..... 10

2.1 Purchase and Sale..... 10

2.2 Excluded Assets..... 11

2.3 Assumed Liabilities..... 12

2.4 Excluded Liabilities..... 13

2.5 Assignments; Cure Costs..... 13

2.6 Further Assurances..... 14

ARTICLE 3 PURCHASE PRICE 15

3.1 Purchase Price..... 15

3.2 Deposit..... 15

3.3 Allocation of Purchase Price..... 15

ARTICLE 4 CLOSING 15

4.1 Closing Date..... 15

4.2 Payment on the Closing Date..... 16

4.3 Buyer’s Additional Deliveries..... 16

4.4 Sellers’ Deliveries..... 16

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF SELLERS..... 17

5.1 Organization and Good Standing..... 17

5.2 Authority; Validity; Bankruptcy Court Approval..... 18

5.3 No Conflict..... 18

ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF BUYER 18

6.1 Organization and Good Standing..... 18

6.2 Authority; Validity; Consents..... 19

6.3 No Conflict..... 19

6.4 Brokers or Finders..... 19

6.5 Buyer’s Acknowledgment..... 19

6.6 Purchased Assets “AS IS”; Buyer’s Acknowledgment Regarding Same..... 19

6.7 Financing/Availability of Funds..... 20

6.8 No Other Representations or Warranties of Sellers..... 20

ARTICLE 7 ACTION PRIOR TO THE CLOSING DATE 21

7.1 Investigation of the Business By Buyer..... 21

7.2 Third Party Consents..... 21

7.3 Governmental Approvals 22
 7.4 Intentionally Omitted 22
 7.5 Intentionally Omitted 22
 7.6 Bankruptcy Court Approval 22
 7.7 Bankruptcy Filings 23
 7.8 Solicitation of Competing Offers 23
 7.9 Sale Order..... 24

ARTICLE 8 ADDITIONAL AGREEMENTS 24

8.1 Taxes 24
 8.2 Collection of Receivables..... 25
 8.3 Name Change..... 25
 8.4 Employee Matters 25
 8.5 Post-Closing Cooperation and Access to Books and Records 25
 8.6 Exclusive Remedy 26
 8.7 Insurance Contracts 26
 8.8 Good Faith Efforts to Close by Date Certain; Disclosure 26

ARTICLE 9 CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE 27

9.1 Accuracy of Representations..... 27
 9.2 Sellers’ Performance 27
 9.3 No Order..... 27
 9.4 Governmental Authorizations 27
 9.5 Sellers’ Deliveries 27
 9.6 Sale Order..... 27
 9.7 No Dismissal or Conversion 28
 9.8 Other..... 28

ARTICLE 10 CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE 28

10.1 Accuracy of Representations..... 28
 10.2 Buyer’s Performance..... 28
 10.3 No Order..... 28
 10.4 Governmental Authorizations 28
 10.5 Buyer’s Deliveries..... 28
 10.6 Sale Order..... 29
 10.7 Payment of Purchase Price..... 29

ARTICLE 11 TERMINATION 29

11.1 Termination Events 29
 11.2 Effect of Termination 30

ARTICLE 12 GENERAL PROVISIONS 31

12.1 Non-Survival of Representations and Warranties; Survival of Contracts 31
 12.2 Confidential Nature of Obligations 31
 12.3 Public Announcements..... 31
 12.4 Notices..... 32

12.5	<u>Waiver</u>	33
12.6	<u>Entire Agreement; Amendment</u>	33
12.7	<u>Assignment</u>	34
12.8	<u>Severability</u>	34
12.9	<u>Section Headings, Construction</u>	34
12.10	<u>Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver</u>	34
12.11	<u>Counterparts</u>	35
12.12	<u>Time of Essence</u>	35
12.13	<u>No Third Party Beneficiaries</u>	35
12.14	<u>Sellers' Disclosure Schedule</u>	35
12.15	<u>Expenses</u>	36
12.16	<u>Non-Recourse</u>	36

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is made as of April 17, 2012 (the "Effective Date") by and among K. VAN BOURGONDIEN OF VIRGINIA, INC., a Delaware corporation ("KVB"), SIMPLE PLEASURES FLOWERBULBS & PERENNIALS, INC., a New York corporation ("SPF"), and collectively with KVB, "Sellers" or "Debtors"), and EMERALD LANE II KVB, LLC, a Delaware limited liability company or its permitted assignee ("Buyer"). Sellers and Buyer are collectively the "Parties" and individually a "Party." Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Article 1.

RECITALS

WHEREAS, Sellers operate a national flower bulb and perennial plant distribution business through multiple channels of distribution, including both wholesale and direct-to-consumer distribution channels, currently being conducted by the Fulfillment Agent pursuant to the Fulfillment Agreement (the "Business");

WHEREAS, on January 26, 2012, Sellers commenced the Bankruptcy Case in the Bankruptcy Court;

WHEREAS, Sellers desire to sell to Buyer all of the Purchased Assets, and Buyer desires to purchase from Sellers the Purchased Assets and assume the Assumed Liabilities, upon the terms and conditions hereinafter set forth;

WHEREAS, the Parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Purchased Assets pursuant to Sections 363 and 365 of the Bankruptcy Code; and

WHEREAS, the execution and delivery of this Agreement and Sellers' ability to consummate the transactions set forth in this Agreement are subject, among other things, to the entry of an Order of the Bankruptcy Court, in form and substance acceptable to Sellers, under, *inter alia*, Sections 105, 363 and 365 of the Bankruptcy Code, approving Sellers' entry into this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and intending to be legally bound, the Parties agree as follows.

ARTICLE 1 DEFINITIONS

1.1 Definitions.

For purposes of this Agreement, the following terms have the meanings specified or referenced below.

"Accounts Receivable" means all amounts due from customers who purchased goods and services from the Sellers that are not collected as of the Closing Date, including, but not limited to the accounts receivable listed on Schedule 2.1(a) attached hereto and made a part hereof.

"Action" means any and all civil, criminal or administrative actions, lawsuits, arbitrations, investigations, proceedings, hearings, charges, complaints, citations, demands, assessments, audits,

judgments and claims (including employment-related claims or audits by any taxing authority), regardless of whether a proceeding or lawsuit has been initiated, relating to or asserted by a Person.

“Affiliate” mean an individual, corporation, limited liability company, partnership, firm or other entity (i) who directly or indirectly controls, is controlled by, or is under common control with a Party; (ii) who owns or controls more than fifty percent (50%) or more of a Party’s outstanding voting securities or percentage interest; (iii) in whom such Party owns or controls more than fifty percent (50%) or more of the outstanding voting securities or percentage interests; (iv) who is a partner, manager, or trustee of a Party; or (v) in whom a Party is a partner, manager, or trustee. For purposes of this definition, “control” shall mean the direct or indirect right or ability to direct the management and policies of a corporation, limited liability company, partnership, firm or other entity, whether through the ownership of voting equity interests, by contract, or otherwise.

“Agreement” has the meaning set forth in the introductory paragraph.

“Allocation Schedule(s)” has the meaning set forth in Article 3.3.

“Assignment and Assumption Agreement” has the meaning set forth in Article 2.3.

“Assigned Agreements” means the Contracts listed or described in Schedule 2.1(b) (Assigned Agreements) hereto, as the same may be supplemented and/or modified pursuant to Article 2.2(i) (regarding Excluded Assets) and/or Article 2.5 (regarding Consent Pending Contracts).

“Assignment of Copyrights” has the meaning set forth in Article 4.4(f).

“Assignment of Domain Names” has the meaning set forth in Article 4.4(f).

“Assignment of Patents” has the meaning set forth in Article 4.4(f).

“Assignment of Trademarks” has the meaning set forth in Article 4.4(f).

“Assumed Liabilities” has the meaning set forth in Article 2.3.

“Avoidance Actions” means any and all claims for relief of Sellers or others entitled to bring said claims under Chapter 5 of the Bankruptcy Code.

“Bankruptcy Case” means the voluntary cases commenced by Sellers under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court, case numbers 12-70303 and 12-70305, inclusive, for the purpose, in part, of consummating the sale transaction contemplated by this Agreement.

“Bankruptcy Code” means Title 11 of the United States Code, Sections 101 et seq.

“Bankruptcy Court” means the United States Bankruptcy Court for the Eastern District of Virginia (Norfolk Division).

“Base Purchase Price” means Eight Hundred Thousand Dollars (\$800,000), payable in accordance with Article 4.2.

“Benefit Plan” has the meaning set forth in Article 2.4(c).

“Bill of Sale” means the Bill of Sale substantially in the form attached hereto as Exhibit A and made a part hereof.

“Business” has the meaning set forth in the recitals.

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

“Business Records” means all books and records of Sellers, including, but not limited to, accounting records, general ledger, accounts receivable ledger, accounts payable ledger, minute books, customer data, purchase data, payable data.

“Buyer” has the meaning set forth in the introductory paragraph.

“Buyer Material Adverse Effect” means any fact, condition, change, violation, inaccuracy, circumstance, effect or event (“Effect”), individually or in the aggregate, that has, or is reasonably likely to have, a material adverse effect on Buyer and Guarantor, taken as a whole; *provided, however*, that Buyer Material Adverse Effect shall not include the following, nor shall any of the following be taken into account in determining whether there has been a Buyer Material Adverse Effect: (a) general business or economic conditions; (b) changes in GAAP; (c) acts or omissions of Buyer or Guarantor carried out (or omitted to be carried out) in accordance with this Agreement; (d) any Effect caused by events, changes or developments relating to the transactions contemplated by this Agreement or the announcement thereof; (e) compliance with the terms of, or the taking of any action required or contemplated by, this Agreement or any ancillary agreement, or the failure to take any action prohibited by this Agreement or any ancillary agreement; or (f) any actions taken, or failure to take action, in each case, to which Sellers have in writing expressly approved, consented to or requested.

“Buyer’s Disclosure Schedule” means the Disclosure Schedule attached hereto as **Exhibit B** and made a part hereof, dated as of the date hereof, delivered by Buyer to Sellers in connection with this Agreement.

“Buyer Termination Notice” has the meaning set forth in Article 11.1(b)(i).

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

“Closing Date” means the date and time as of which the Closing occurs as set forth in Article 4.1.

“Confidentiality Agreement” means the confidentiality agreement, dated as of February 24, 2012, between Guarantor, an affiliate of Buyer, and Sellers.

“Consent” means any consent, waiver, approval, order or authorization of, or registration, declaration or filing with or notice to, any Governmental Authority or other Person.

“Consent Pending Contract” has the meaning set forth in Article 2.5(b).

“Contract” means any agreement, contract, obligation, understanding, or undertaking (whether written or oral) that is legally binding, including, but not limited to, Intellectual Property and licenses.

“Contract Retention Period” has the meaning set forth in Article 2.5(c).

“Copyrights” means all United States and foreign copyrights and copyrightable subject matter, whether registered or unregistered, including all United States copyright registrations and applications for registration and foreign equivalents, all moral rights, all common-law copyright rights, and all rights to

register and obtain renewals and extensions of copyright registrations, together with all other copyright rights accruing by reason of any international copyright convention and all associated Goodwill.

“Cure Costs” has the meaning set forth in Article 2.5(a).

“Deposit” means a deposit in the amount of Eighty Thousand Dollars (\$80,000) in good and immediately available funds paid by Buyer to Sellers to an account with the Escrow Agent on the first (1st) Business Day following the date of filing of the Sale Motion with the Bankruptcy Court.

“Domain Names” means any alphanumeric designation registered with or assigned by a domain name registrar, registry or domain name registration authority as part of an electronic address on the Internet. A Domain Name may or may not also be a Trademark.

“Effective Date” means the date as of which this Agreement was executed as set forth in the first sentence of this Agreement.

“Encumbrance” means any charge, lien, claim, mortgage, lease, hypothecation, deed of trust, pledge, security interest, option, right of use, first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance, or other similar restriction of any kind.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Escrow Agent” means Kaufman & Canoles, P.C., 150 West Main Street, Suite 2100, Norfolk, Virginia 23510, in its capacity as escrow agent for Seller and the First Priority Secured Lender.

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

“Excluded Liabilities” has the meaning set forth in Article 2.4.

“Estate Payment Consideration” shall mean the amount of Two Hundred Thousand Dollars (\$200,000) which the Buyer shall pay to the Seller in cash to be used, with the consent of the First Priority Secured Lender, to pay allowed administrative expenses and allowed priority unsecured claims of the Bankruptcy Estates, with the allocation and distribution of such amount to be determined by the Sellers with the approval of the Bankruptcy Court and the U.S. Trustee.

“Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, the implementation, operation or effect of which has not been stayed and as to which order (or any revision, modification or amendment thereof) the time to appeal or seek review, rehearing or writ of certiorari has expired and as to which no appeal or petition for review, reconsideration, rehearing or certiorari has been taken and is pending.

“First Priority Secured Debt” means the secured debt held by the First Priority Secured Lender, in the amount of not less than One Million One Hundred Twenty Eight Thousand Five Hundred Twenty Seven and 27/100 Dollars (\$1,128,527.27) as of January 12, 2012, plus interest and costs. The First Priority Secured Debt arose from a certain \$10,000,000 revolving commercial loan facility that is evidenced by, *inter alia*, a promissory Revolving Note dated as of May 11, 2004, as amended, a Credit and Security Agreement dated as of May 11, 2004, as amended and several guaranty and security agreements executed in favor of Wells Fargo Bank, National Association and affiliates, as lender (“Wells-Fargo”) by (i) the Debtors, (ii) K. Van Bourgondien & Sons, Inc., a New York corporation, (iii) Elavan Realty Corporation, a New York corporation, and (iv) Onderwater (Canada) Ltd., a Canadian entity. The First Priority Secured Debt was transferred by Wells Fargo to Fredric Rose on January 13, 2012 pursuant

to various written agreements and was transferred by Fredric Rose to First Priority Secured Lender on March 14, 2012 pursuant to various written agreements. The First Priority Secured Debt is currently in default, and interest is accruing from January 12, 2012 at the default interest rate of nine percent (9.0%) per annum.

“First Priority Secured Lender” means the Buyer.

“Fulfillment Agent” means Emerald Lane KVB, LLC, a Delaware limited liability company, that is an affiliate of Buyer.

“Fulfillment Agreement” means that agreement for certain services specified therein by and among the Fulfillment Agent and Sellers dated as of March 6, 2012, as the same may be modified or amended by Sellers and the Fulfillment Agent, as modified, amended and approved by order of the Bankruptcy Court entered March 20, 2012 after hearing held March 14, 2012, as the same shall be further amended and restated in the form attached hereto as Exhibit K and made a part hereof, which amendment shall be subject to the approval of the Bankruptcy Court..

“Fulfillment Receivable” means the amount paid or payable to Sellers under Section 5(b)(V) of the Fulfillment Agreement.

“Furniture, Fixtures and Equipment” means all furniture, fixtures and equipment of both Debtors wherever located, including the items described on Schedule 2.1(e) attached hereto and made a part hereof.

“GAAP” means United States generally accepted accounting principles as consistently and historically applied by Sellers.

“Goodwill” means any and all goodwill of any or all of Sellers attributable to any of the Purchased Assets or the Business.

“Governmental Authority” means any United States federal, state or local, Canadian federal, provincial or local, or any foreign government, governmental authority, regulatory or administrative authority or any court, tribunal or judicial body having jurisdiction, or any quasi-governmental or private body exercising any regulatory, governmental or quasi-governmental authority, or any Self-Regulatory Organization.

“Governmental Authorization” means any approval, consent, license, permit, waiver, or other authorization issued, granted or otherwise made available by or under the authority of any Governmental Authority.

“Guaranty” means the Guaranty substantially in the form attached hereto as Exhibit C and made a part hereof.

“Guarantor” means Gardens Alive, Inc., a Delaware corporation owned by K. Niles Kinerk.

“Inventory” means all inventory or products wherever located.

“Intellectual Property” means all intellectual property rights of any kind owned, used or licensed (as licensor or licensee) by Sellers, including all Software, Copyrights, Patents, Trademarks, Trade Secrets, Domain Names, all rights to privacy and proprietary rights to personal information, and all rights and remedies related thereto (including the right to sue for and recover damages, profits and any other

remedy in connection therewith) for past, present or future infringement, misappropriation or other violation relating to any of the foregoing and all associated Goodwill.

“IRC” means the Internal Revenue Code of 1986, as amended, and regulations issued by the IRS pursuant to the Internal Revenue Code.

“IRS” means the Internal Revenue Service of the United States.

“Legal Requirement” means any federal, state, provincial, local, municipal, foreign, international, multinational, or other administrative Order, constitution, law, ordinance, principle of common law, regulation, statute or treaty.

“Liability” means all liabilities and obligations (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due).

“Order” means any award, writ, injunction, judgment, order, ruling, directive, stipulation, determination or decree entered, issued, made, or rendered by or with any Governmental Authority.

“Party” or “Parties” means, individually or collectively, Buyer and Sellers.

“Patents” means United States and foreign patents (including certificates of invention and other patent equivalents), patent applications, provisional applications and patents issuing therefrom, as well as any continuations, continuations-in-part, divisions, extensions, reexaminations, reissues, renewals, patent disclosures, inventions (whether or not patentable or reduced to practice) or improvements thereto.

“Payment on the Closing Date” has the meaning set forth in Article 4.2.

“Permits” means all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals, clearances and orders of any Governmental Authority which are necessary for Sellers to own, lease and operate their properties and assets or to carry on the Business in substantially the manner in which it is now being conducted.

“Permitted Encumbrances” means only the Encumbrances, if any, listed in the Sellers’ Disclosure Schedule and approved by Buyer in Buyer’s sole discretion.

“Person” means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or Governmental Authority.

“Petition Date” means the date on which Sellers commenced the Bankruptcy Case.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority.

“Purchased Assets” and “Purchased Assets” have the meanings set forth in Article 2.1.

“Purchased Customer Deposits” means all cash deposits from customers of Sellers on hand on the Closing Date.

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

“Representative” means with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, financial advisors and restructuring advisors.

“Requested Party” has the meaning set forth in Article 8.5(b).

“Sale Order” means an order of the Bankruptcy Court pursuant to Sections 105, 363(b), 363(f) and 365(b) of the Bankruptcy Code, which order has not been stayed by a court of competent jurisdiction, authorizing and approving, *inter alia*, this Agreement and the transactions contemplated hereby, the sale of the Purchased Assets to the Buyer on the terms and conditions set forth herein free and clear of all Encumbrances to the extent provided under the Bankruptcy Code (within the meaning of Section 363(f) of the Bankruptcy Code), such that Buyer will not incur any liability as a successor to the Business or the Purchased Assets, the assumption and assignment of the Assigned Agreements to Buyer, and containing a finding that the transactions contemplated by the Agreement were undertaken by the Sellers and the Buyer at arms length, without collusion, and in “good faith” within the meaning of Section 363(m) of the Bankruptcy Code and releasing all Actions that Sellers hold against Buyer, including causes of action that arise in favor of Sellers under the Bankruptcy Code, that accrue prior to the Closing, including those causes of action arising under Sections 544, 547, 548, 549, 550 and 553 of the Bankruptcy Code, substantially in the form attached hereto as Exhibit D and made a part hereof or otherwise in form and substance acceptable to the Buyer and Sellers.

“Second Priority Secured Lender” means De Ree Holland B.V. to the extent of its secured claim against certain accounts receivable of the Sellers as of the Petition Date.

“Secured Lenders” means the First Priority Secured Lender and the Second Priority Secured Lender.

“Self-Regulatory Organization” means any securities exchange, futures exchange, contract market, any other exchange or corporation or similar self-regulatory body or organization applicable to a Party.

“Seller Material Adverse Effect” means any fact, condition, change, violation, inaccuracy, circumstance, effect or event (“Effect”), individually or in the aggregate, that has, or is reasonably likely to have, a material adverse effect on the Purchased Assets or the Business (excluding the Excluded Assets and the Excluded Liabilities), taken as a whole; *provided, however*, that Seller Material Adverse Effect shall not include the following, nor shall any of the following be taken into account in determining whether there has been a Seller Material Adverse Effect: (a) general business or economic conditions; (b) changes in GAAP; (c) acts or omissions of any Seller carried out (or omitted to be carried out) in accordance with this Agreement; (d) any Effect caused by events, changes or developments relating to the transactions contemplated by this Agreement or the announcement thereof; (e) any condition arising by reason of commencement of the Bankruptcy Case or Sellers operating as debtors in possession thereunder if in accordance with applicable law and consistent with performance of Sellers’ obligations under this Agreement; (f) compliance with the terms of, or the taking of any action required or contemplated by, this Agreement or any ancillary agreement, or the failure to take any action prohibited by this Agreement or any ancillary agreement; or (g) any actions taken, or failure to take action, in each case, to which the Buyer has in writing expressly approved, consented to or requested.

“Sellers” has the meaning set forth in the introductory paragraph.

“Sellers’ Disclosure Schedule” means the Sellers’ Disclosure Schedule attached hereto as Exhibit E and made a part hereof.

“Sellers’ Knowledge” means the actual knowledge of John Van Bourgondien, Sr., and John Van Bourgondien, Jr.

“Sellers’ Termination Notice” has the meaning set forth in Article 11.1(c)(i).

“Software” means all computer software programs (whether in source code, object code or other form) and software systems owned, licensed, or used by Sellers, including all databases, compilations, tool sets, compilers, “proprietary” languages, related documentation, technical manuals and materials, and any license to use or other rights related to the foregoing.

“Subsidiaries” means any entity with respect to which a specified Person (or a Subsidiary thereof) has the power, through the ownership of securities or otherwise, to elect a majority of the directors, or similar managing body.

“Tax” or “Taxes” (and with correlative meaning, “Taxable” and “Taxing”) means (i) any federal, state, provincial, local, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the IRC), natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar taxes, duty, levy or other governmental charge or assessment or deficiencies thereof (including all interest and penalties thereon and additions thereto whether disputed or not) and (ii) any transferee liability in respect of any items described in clause (i) above.

“Tax Return” means any return, declaration, report, claim for refund, information return, or other document (including any related or supporting estimates, elections, schedules, statements, or information) filed or required to be filed in connection with the determination, assessment, or collection of any Tax or the administration of any laws, regulations, or administrative requirements relating to any Tax.

“Termination Fee” shall mean the amount of One Hundred Thousand Dollars (\$100,000) which the Sellers shall pay to the Buyer in cash upon the occurrence of a termination of this Agreement pursuant to Article 11.2(d) to compensate Buyer for costs and expenses incurred in connection with this Agreement.

“Third Party Consents” means the consents, approvals and waivers set forth in Article 7.2 of the Sellers’ Disclosure Schedule.

“Trademarks” means United States, state and foreign trademarks, service marks, logos, slogans, trade dress and trade names (including all assumed or fictitious names under which the Business is conducted), and any other indicia of source of goods and services, designs and logotypes related to the above, in any and all forms, whether registered or unregistered, and registrations and pending applications to register the foregoing (including intent to use applications), and all Goodwill related to or symbolized by the foregoing.

“Trade Payables” means all Liabilities of Sellers consisting of trade obligations of Sellers arising in the ordinary course of the Business incurred on or after the Petition Date and existing as of immediately prior to the Closing, as well as all obligations to customers of Sellers incurred on or after the Petition Date for refunds, rebates, returns, discounts and the like existing as of the Closing Date.

“Trade Secrets” means confidential information and trade secrets.

“Transaction Documents” means this Agreement and any other agreements, instruments, or documents entered into pursuant to this Agreement.

“Transfer” has the meaning set forth in Article 2.5(b).

“Transfer Taxes” has the meaning set forth in Article 8.1(b).

1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement. If any Schedule or Exhibit is incomplete on the date hereof, Buyer and Sellers shall use their respective best efforts to complete such incomplete Schedule or Exhibit not less than one day prior to the Closing Date, it being understood that the content of all Schedules and Exhibits shall be approved by Sellers and Buyer, and provided further, that the list of Assigned Agreements may be amended until the Closing Date, upon mutual agreement of Sellers and Buyer.

Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any “Schedule,” “Section” or “Article” are to the corresponding Schedule, Section or Article, respectively, of this Agreement unless otherwise specified.

Herein. The words such as “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) No Strict Construction. The Parties participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE 2
PURCHASE AND SALE; CLOSING

2.1 Purchase and Sale.

Upon the terms and subject to the conditions of this Agreement, at Closing, Sellers shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase and acquire, free and clear of all Encumbrances (other than Permitted Encumbrances) all right, title and interest of Sellers in, to or under all of the properties and assets of Sellers (other than the Excluded Assets) of every kind and description, wherever located, real, personal or mixed, tangible or intangible, owned, leased, licensed, used or held for use in or relating to the Business, including but not limited to, all right, title and interest of Sellers in, to or under all:

- (a) Accounts Receivable as described in Schedule 2.1(a);
- (b) Assigned Agreements as described in Schedule 2.1(b);
- (c) Business Records as described in Schedule 2.1(c);
- (d) Fulfillment Receivable;
- (e) Furniture, Fixtures and Equipment as described in Schedule 2.1(e);
- (f) Goodwill;
- (g) Inventory as described in Schedule 2.1(g)
- (h) Intellectual Property as described in Schedules 2.1(h):
 - (i) Copyrights
 - (ii) Domain Names
 - (iii) Patents
 - (iv) Software
 - (v) Trademarks
 - (vi) Trade Secrets
- (i) Permits as described in Schedule 2.1(i);
- (j) PO/lockboxes maintained by or with the Fulfillment Agent as described in Schedule 2.1(j);
- (k) Purchased Customer Deposits as described in Schedule 2.1(k) and all other cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits;

(l) Bank Accounts of Sellers as described in Schedule 2.1(l) (including all cash and the Purchased Customer Deposits);

(m) Rights to enforce all confidentiality or non-disclosure agreements in favor of Sellers, the Business as a going concern, except for the confidentiality and nondisclosure agreements set forth herein or in the Fulfillment Agreement or in any other agreement or document between Sellers and any Affiliate of Buyer; and

(n) Copies of Excluded Assets described in Article 2.2(c) and (h), but in all cases, only to the extent the same are transferable or assignable by Sellers and subject to Article 2.2 in all events

(items 2.1 (a) through (n) inclusive are herein individually referred to as "Purchased Asset" and collectively referred to as the "Purchased Assets").

2.2 Excluded Assets.

Notwithstanding anything in Article 2.1 to the contrary, nothing herein shall be deemed to sell, transfer, assign or convey (or require Sellers to do any of the foregoing as to) the following assets to Buyer, and Sellers shall retain all of their respective rights, title and interests in, to and under, and Buyer shall have no rights with respect to, any of the following (collectively, the "Excluded Assets"):

(a) those bank accounts of Sellers except those described in Schedule 2.1(l).;

(b) subject to Article 8.8, all insurance policies that are not Assigned Agreements or rights to proceeds thereof, including any tail insurance policies that are not Assigned Agreements that provide coverage to Sellers or their respective Affiliates or Representatives after the Closing, or which relate to or cover Liabilities that are not among the Assumed Liabilities (as defined below);

(c) all rights, claims or causes of action of Sellers or others entitled to bring such claims against third parties arising out of events occurring prior to the Closing Date, including and, for the avoidance of doubt, arising out of events occurring prior to the Petition Date (such as causes of action arising under Sections 544, 547, 548, 549, 550 and 553 of the Bankruptcy Code), and including any rights under or pursuant to any and all warranties, representations and guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Sellers and all rights, claims and causes of action of Sellers or others entitled to bring such claims against former officers, directors, employees, members, principals, agents, and representatives of any Seller, but excluding such rights, claims and causes of action arising out of the following: (i) Purchased Assets, (ii) Assigned Agreements and (iii) the First Priority Secured Debt;

(d) all Tax refunds and rebates, credits and similar items relating to or arising out of the operation of the Business and to any period, or portion of any period, on or prior to the Closing Date, but excluding refunds and rebates, credits and similar items relating to or arising out of the Purchased Assets and Assumed Liabilities;

(e) the Purchase Price delivered (or required to be delivered) to Sellers pursuant to this Agreement, subject to the adjustments set forth in Article 3.1 hereof;

(f) any shares of capital stock or other equity interests of any of the Sellers or any of the Sellers' Subsidiaries or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of any of the Sellers or any of the Sellers' Subsidiaries;

(g) originals of all minute books, stock ledgers, corporate seals and stock certificates of Sellers or any of the Sellers' Subsidiaries;

(h) any Contract that is not an Assigned Agreement, and all rights under any such Contract that is not an Assigned Agreement, *provided, however*, that at any time that is at least one (1) Business Day prior to the Closing, Buyer, in its discretion, by written notice to Sellers, may include or exclude as an Assigned Agreement any Contract or Contracts (other than the Fulfillment Agreement which shall always be an Assigned Agreement), and, in such circumstances, any included Contract or Contracts shall not constitute Excluded Assets (and shall constitute Purchased Assets), and Buyer shall acquire rights and assume any Liabilities with respect thereto pursuant to Article 2.3 and Article 2.5 hereof, *provided further*, that if Sellers have moved for the assumption of any such excluded Contracts at the request of the Buyer and an order relating to the assumption has been granted by the Bankruptcy Court, Buyer shall have the obligations under Article 2.3 and Article 2.5 hereof as if such Contracts were Assigned Agreements and be liable for all Cure Costs that may be due. Upon Buyer's reasonable request, Sellers shall provide additional information as to the Liabilities under the Contracts sufficient for Buyer to make an informed assessment whether to accept an assignment and assumption of such Contracts;

(i) any rights, claims or causes of action of Sellers under this Agreement or any other Transaction Documents;

(j) any property or asset of any kind (whether tangible, intangible or otherwise) held or used by any Seller pursuant to any Contract which is not among the Assigned Agreements transferred to Buyer and which property or asset does not constitute a Purchased Asset; and

(k) any right, property or asset that is listed or described in Exhibit E of the Sellers' Disclosure Schedule.

2.3 Assumed Liabilities.

Upon the terms and subject to the conditions of this Agreement, at Closing, Buyer and Sellers shall execute and deliver an Assignment and Assumption Agreement in the form attached hereto as Exhibit F and made a part hereof (the "Assignment and Assumption Agreement") pursuant to which Sellers shall assign the Assigned Agreements, and Buyer shall assume and agree to discharge, when due (in accordance with their respective terms and subject to the respective conditions thereof), the following Liabilities (collectively the "Assumed Liabilities") and no others:

(a) Purchased Assets. All Liabilities arising after the Closing Date with respect to the Purchased Assets or the operation of the Business following the Closing.

(b) The obligation to fulfill all orders of customers of Sellers placed on or before the Closing Date which remain unfulfilled on the Closing Date.

(c) Assigned Agreements. All Liabilities of Sellers under the Assigned Agreements.

(d) Cure Costs. All Cure Costs.

(e) All Transfer Taxes. All Transfer Taxes.

2.4 Excluded Liabilities.

Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge any Liability of Sellers, and Sellers shall be responsible for the payment, satisfaction or discharge in any manner of all Liabilities of Sellers, other than the Assumed Liabilities (collectively the "Excluded Liabilities"). For the avoidance of doubt, the Excluded Liabilities include, but are not limited to, the following:

(a) other than as specifically set forth herein, any Liability of Sellers or their directors, officers, stockholders or agents (acting in such capacities), and Affiliates of any Sellers arising out of, or relating to, this Agreement, the First Priority Secured Debt, the Second Priority Secured Debt, or the transactions contemplated by this Agreement, whether incurred prior to, at or subsequent to the Closing Date, including (except as otherwise specifically set forth herein) all finder's or broker's fees and expenses and any and all fees and expenses of any Representatives of Sellers, and any Liability of any kind to the First Priority Secured Lender and the Second Priority Secured Lender and or any person, firm or entity related directly or indirectly to the First Priority Secured Lender, the Second Priority Secured Lender and any affiliate thereof;

(b) other than as specifically set forth herein, any Liability relating to events or conditions occurring or existing in connection with, or arising out of, the Business as operated prior to the Closing Date, or the ownership, possession, use, operation or sale or other disposition prior to the Closing Date of any Purchased Assets (or any other assets, properties, rights or interests associated, at any time prior to the Closing Date, with the Business);

(c) other than as specifically set forth herein, any Liability to any Person at any time employed by Sellers at any time or to any such Person's spouse, children, other dependents or beneficiaries, with respect to incidents, events, exposures or circumstances occurring at any time during the period or periods of any such Person's employment by Sellers, whenever such claims mature or are asserted, including (except as otherwise specifically set forth herein), all Liabilities arising (i) under any employee benefit plans of Sellers (the "Benefit Plan"), (ii) under any employment, wage and hour restriction, equal opportunity, discrimination, plant closing or immigration and naturalization laws, (iii) under any collective bargaining laws, agreements or arrangements or (iv) in connection with any workers' compensation or any other employee health, accident, disability or safety claims;

(d) any pension or retirement Liability of Sellers to its current or former employees which are accrued as of the Closing Date, whether or not under any Benefit Plan;

(e) other than as specifically set forth herein, any Liability for Taxes attributable to periods prior to the Closing Date;

(f) any Liability incurred by Sellers or its respective directors, officers, stockholders, agents or employees (acting in such capacities) after the Closing Date; and

(g) any Liability relating to or arising out of the ownership or operation of an Excluded Asset.

2.5 Assignments; Cure Costs.

(a) Sellers shall assume and assign all Assigned Agreements to Buyer as of the Closing Date pursuant to Section 365 and/or Section 363 of the Bankruptcy Code and the Sale Order. In connection with such assumption and assignment or any assignment and assumption pursuant to Article

2.5(c), Buyer shall cure all monetary defaults under such Assigned Agreements to the extent required by Section 365(b) of the Bankruptcy Code (such amounts, the "Cure Costs").

(b) To the extent that any Contract to be sold, transferred, conveyed or assigned (any sale, transfer, conveyance or assignment, a "Transfer") to Buyer pursuant to the terms of Article 2.1 and Article 2.2(i) is not capable of being Transferred to Buyer (after giving effect to the Sale Order) without the Consent of a third Person (each such Contract, a "Consent Pending Contract"), or if such Transfer or attempted Transfer would, or if the subsequent Transfer or attempted Transfer of the equity interests of Buyer would, constitute a breach thereof or a violation of any Legal Requirement, nothing in this Agreement or in any document, agreement or instrument delivered pursuant to this Agreement will constitute a Transfer or an attempted Transfer thereof prior to the time at which all Consents necessary for such Transfer will have been obtained unless an Order of the Bankruptcy Court effects such Transfer without Consent.

(c) Sellers shall hold and not reject pursuant to Section 365 of the Bankruptcy Code any Consent Pending Contracts for a period of thirty (30) days following the Closing Date (the "Contract Retention Period") and otherwise after receiving further written notice(s) (each, an "Assumption Notice") from Buyer during the Contract Retention Period requesting assumption and assignment of any Consent Pending Contract, Sellers shall, subject to Buyer's demonstrating adequate assurance of future performance thereunder (if applicable), take all actions reasonably necessary to seek to assume and assign to Buyer pursuant to Section 365 of the Bankruptcy Code any Contract(s) set forth in an Assumption Notice, and any applicable Cure Cost shall be satisfied in accordance with Article 2.5(a) hereof. Sellers agree and acknowledge that the covenant set forth in this Article 2.5(c) shall survive the Closing; provided, that, with respect to any Consent Pending Contract, Buyer shall compensate Sellers for reasonable third party Liabilities for the continuation of such Consent Pending Contracts during the Contract Retention Period up to and including the date which is ten (10) days following Sellers' receipt of written notice from Buyer authorizing rejection of the same, it being understood and agreed that Sellers' obligation to assume and assign any Consent Pending Contract shall be conditioned upon Buyer's payment of such amounts and that Buyer's covenant to pay such amounts shall survive the Closing until the later of (x) the termination of the Contract Retention Period and (y) payment in full by Buyer to Sellers of such amounts required to be paid prior to such termination. Notwithstanding anything in this Agreement to the contrary, on the date any Contract is assumed and assigned to Buyer pursuant to this Article 2.5(c), such Contract shall be deemed an Assigned Agreement. Sellers shall have the right at any time following the expiration of the Contract Retention Period to reject any Consent Pending Contracts pursuant to section 365 of the Bankruptcy Code.

2.6 Further Assurances.

At the Closing, and at all times thereafter as may be necessary, Sellers shall for no additional consideration execute and deliver to Buyer such other instruments of transfer as shall be, in Buyer's sole opinion and discretion, reasonably necessary, appropriate or desirable to vest in Buyer good and indefeasible title, to the extent transferable or assignable, to the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances) to the extent provided in the Sale Order and to comply with the purposes and intent of this Agreement and such other instruments as shall be reasonably necessary or appropriate to evidence the assignment by Sellers and assumption by Buyer of the Assigned Agreements, and each of the parties hereto shall use its reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Law, and execute and deliver such documents and other papers, as may be required to consummate the transactions contemplated by this Agreement. For the avoidance of doubt, nothing herein shall be deemed to obligate Buyer or Sellers to execute any documents or papers which would require such party to make or incur any monetary obligation not imposed on such party pursuant to the other provisions of

this Agreement or otherwise expand in any material respect such party's obligations beyond those imposed upon it/them pursuant to the other provisions hereof.

ARTICLE 3 **PURCHASE PRICE**

3.1 Purchase Price.

The purchase price for the purchase, sale, assignment and conveyance of Sellers' right, title and interest in, to and under the Purchased Assets shall be an amount equal to the sum of the following amounts (i) the Base Purchase Price; plus (ii) the Estate Payment Consideration, plus (iii) the assumption of the Assumed Liabilities, together with assurance of payment of the Assumed Liabilities, in a manner and in form and content reasonably satisfactory to Sellers (the "Purchase Price").

3.2 Deposit.

The Escrow Agent shall hold the Deposit in a segregated, interest-bearing account with interest to accrue thereon for the benefit of Buyer, or for the benefit of Sellers in the event of the termination of this Agreement by Sellers pursuant to Article 11.1(c)(i). Sellers will be entitled to retain the Deposit and interest accrued thereon upon Closing or in the event of the termination of this Agreement by Sellers pursuant to Article 11.1(c)(i) only and for no other reason. Subject to the preceding sentence, Buyer shall be entitled to an immediate return of the Deposit and all interest accrued thereon in any other circumstance.

3.3 Allocation of Purchase Price.

Sellers and Buyer agree to allocate the Purchase Price, including the Assumed Liabilities that are liabilities for federal income Tax purposes, among the Purchased Assets in accordance with the schedules prepared by Buyer and attached hereto as Schedule 3.3 (the "Allocation Schedule(s)"). The Allocation Schedules shall allocate the Purchase Price, including the Assumed Liabilities that are liabilities for federal income Tax purposes, among the Purchased Assets, *provided* that such allocation shall not be used to determine the allocation or distribution of proceeds to, or be binding upon, the Secured Lenders. The Allocation Schedule(s) shall be reasonable and shall be prepared in accordance with Section 1060 of the IRC and the regulations thereunder. Sellers and Buyer shall execute and deliver to the other Party or Parties a signed copy of such agreed upon Allocation Schedule(s). Buyer and Sellers will each file IRS Form 8594, and all Tax Returns, in accordance with the Allocation Schedule(s) that are agreed upon by the Parties pursuant to the terms of this Article 3.3. Buyer, on the one hand, and Sellers, on the other hand, each agrees to provide the other promptly with any other information required to complete Form 8594.

ARTICLE 4 **CLOSING**

4.1 Closing Date.

The consummation of the transactions contemplated by this Agreement, including the sale of the Purchased Assets and the assumption of the Assumed Liabilities contemplated hereby (the "Closing") shall take place by electronic exchange of document via facsimile and e-mail followed by overnight delivery of original document no later than the tenth (10th) Business Day following the date on which the conditions set forth in Article 9 and Article 10 have been satisfied or waived (other than those conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction of such conditions

(or the waiver thereof by the Party entitled to waive such conditions)), or at such other place or time as Buyer and Sellers may mutually agree in writing. The date and time at which the Closing actually occurs is hereinafter referred to as the "Closing Date." The Closing shall be effective as of 12:01 a.m. on the Closing Date.

4.2 Payment on the Closing Date.

Subject to satisfaction or waiver (if permissible) of the conditions set forth in Article 9 and Article 10, at the Closing, Buyer shall pay the Purchase Price as follows:

(a) The Base Purchase Price shall be paid (A) first, by offset against the First Priority Secured Debt, up to the full amount of the First Priority Secured Debt, and (B) second, the remaining portion of the Base Purchase Price, if any, shall be paid to Sellers by wire transfer from Buyer of immediately available funds to an account designated by Sellers in writing to Buyer not less than one (1) Business Day prior to the Closing Date, and such amount shall be allocated and distributed as determined by the Sellers with the approval of the Bankruptcy Court and the U.S. Trustee; and

(b) The Estate Payment Consideration shall be paid, with the consent of the First Priority Secured Lender (A) first by the release by the Escrow Agent to the Sellers of the Deposit, which the Sellers shall apply in payment of the Estate Payment Consideration, and (B) second, the balance by wire transfer by Buyer to Sellers of immediately available funds to an account designated by Sellers in writing to Buyer and Escrow Agent not less than one (1) Business Day prior to the Closing Date.

4.3 Buyer's Additional Deliveries.

At or prior to the Closing, as conditions precedent to Sellers' obligation to close, Buyer shall deliver, or cause to be delivered, to Sellers:

(a) a certificate of an authorized manager, member or officer of Buyer, dated the Closing Date, in form and substance reasonably satisfactory to Sellers, as to (i) a copy of the resolutions of the board of managers or members of Buyer authorizing and approving Buyer's execution and delivery of this Agreement and the other Transaction Documents to which it is a party and the performance by Buyer of its obligations hereunder and thereunder; and (ii) incumbency and signatures of the manager or officer of Buyer executing the Transaction Documents;

(b) the Assignment and Assumption Agreement and each other Transaction Document to which Buyer is a party, duly executed by Buyer;

(c) Guaranty of Guarantor, fully executed as of the Closing Date.

(d) the certificates required to be delivered pursuant to Articles 10.1 and 10.2; and

(e) such other assignments, endorsements and other good and sufficient instruments of conveyance, assumption and transfer, in form reasonably satisfactory to Sellers, as Sellers may reasonably request in order to consummate the transactions contemplated hereby.

4.4 Sellers' Deliveries.

At or prior to the Closing, as conditions precedent to Buyer's obligation to close, Sellers shall deliver, or cause to be delivered, to Buyer:

(a) a certificate of an authorized officer of each Seller, dated the Closing Date, in form and substance reasonably satisfactory to Buyer, as to (i) a copy of the resolutions of the board of directors of such Seller authorizing and approving such Seller's execution and delivery of this Agreement and the other Transaction Documents to which it is a party and the performance by such Seller of its obligations hereunder and thereunder; and (ii) incumbency and signatures of the officer of such Seller executing the Transaction Documents;

(b) the Bill of Sale;

(c) the Assignment and Assumption Agreement;

(d) instruments of assignment of the Patents (the "Assignment of Patents"), Trademarks (the "Assignment of Trademarks"), Copyrights (the "Assignment of Copyrights") and Domain Names (the "Assignment of Domain Names") that are owned by the relevant Sellers, transferable and assignable by Sellers, and included in the Purchased Assets, if any, duly executed by Sellers, in form for recordation with the appropriate Governmental Authorities, substantially in the form of Exhibits G, H, I and J, respectively, attached hereto and made a part hereof, and any other assignments or instruments with respect to any Intellectual Property included in the Purchased Assets for which an assignment or instrument is required to assign, transfer and convey any and all interest of Sellers in such assets to Buyer, to the extent the same are transferable and assignable;

(e) a copy of the entered Sale Order;

(f) articles of amendment of the certificates of incorporation of each Seller changing the name of each such Seller to ones that are not similar to, or confusing with, their current names (the "Articles of Amendment");

(g) the certificates required to be delivered pursuant to Articles 9.1 and 9.2; and

(h) such other bills of sale, assignments, endorsements, and other good and sufficient instruments of conveyance, assumption and transfer, and each other Transaction Document to which either Seller is a party, duly executed by each Seller a party thereto in form reasonably satisfactory to Buyer, as Buyer may reasonably request in order to consummate the transactions contemplated hereby.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the corresponding sections or subsections of the Sellers' Disclosure Schedule or in any update thereto pursuant to Article 7.6 (whether or not the representations and warranties in Article 5 expressly refer to such schedule), the Sellers hereby represent and warrant to Buyer as of the date hereof and as of the Closing Date (except for representations and warranties that are made as of a specific date, which are made only as of such date) as follows:

5.1 Organization and Good Standing.

Sellers have the full power and authority to own their property and carry on the nature of the Business. Each Seller is a corporation duly organized, validly existing and, except as a result of the commencement or continuance of the Bankruptcy Case, in good standing under the laws of its respective state of organization (Delaware for KVB; New York for SPF). Sellers are duly qualified or licensed to do business and are in good standing in each jurisdiction where the character of their Business or the nature

of their properties makes such qualification or licensing necessary, except where the failure to so qualify or be licensed or in good standing would not have a Seller Material Adverse Effect.

5.2 Authority; Validity; Bankruptcy Court Approval.

Sellers have, subject to requisite Bankruptcy Court approval, the requisite corporate power and authority necessary to enter into and perform their obligations under this Agreement and the other Transaction Documents to which they are party and to consummate the transactions contemplated hereby and thereby. Subject to requisite Bankruptcy Court approval, the execution, delivery and performance by Sellers of this Agreement and the other Transaction Documents to which they are party and the consummation of the transactions contemplated herein and therein have been duly and validly authorized by all requisite corporate actions in respect thereof. Subject to requisite Bankruptcy Court approval, this Agreement and the other Transaction Documents to which the Sellers are party constitute the legal, valid and binding obligations of Sellers enforceable against them in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to requisite Bankruptcy Court approval, except as set forth in Article 5.2 of the Sellers' Disclosure Schedule, Sellers are not required to give any notice to, make any filing with or obtain any consent, approval or authorization from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents or the consummation or performance of any of the transactions contemplated hereby or thereby.

5.3 No Conflict.

When the Bankruptcy Court approval, consents and other actions described in Article 5.2 of the Sellers' Disclosure Schedule have been obtained and taken, the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Sellers under (a) any agreement, indenture, or other instrument to which any Seller is bound, (b) the articles of incorporation and bylaws of Sellers, (c) any Order, or (d) any Permit or Legal Requirement; in the case of the preceding clauses (a), (c) and (d), except for such breaches, defaults, conflicts or accelerations that would not have a Material Adverse Effect.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers as of the date hereof and as of the Closing Date (except for representations and warranties that are made as of a specific date, which are made only as of such date) as follows:

6.1 Organization and Good Standing.

Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has the full power and authority to own its property, carry on its business as now being conducted and as proposed to be conducted following the Closing, and to carry out the transactions contemplated hereby.

6.2 Authority; Validity; Consents.

Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which Buyer is party and the consummation of the transactions contemplated herein and therein have been duly and validly authorized by all necessary limited liability company actions in respect thereof. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer, enforceable against it in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Buyer is not required to give any notice to, make any filing with or obtain any consent, approval or authorization from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents or the consummation or performance of any of the transactions contemplated hereby or thereby.

6.3 No Conflict.

The execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Buyer under (a) any agreement, indenture, or other instrument to which it is bound, (b) the limited liability company agreement of Buyer, (c) any Order, or (d) any Permit or Legal Requirement; in the case of the preceding clauses (a), (c) and (d), except for such breaches, defaults, conflicts or accelerations that do not, and are not reasonably likely to, individually or in the aggregate, materially and adversely affect the ability of Buyer to carry out its obligations under this Agreement and the other Transaction Documents to which it is a party, and to consummate the transactions contemplated hereby.

6.4 Brokers or Finders.

Neither Buyer nor any Person acting on its behalf has paid or become obligated to pay any fee, commission or similar payment to any broker, finder, investment banker, agent or intermediary in connection with this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby for which any Seller is or will become liable or which may encumber any Seller's assets or property, and Buyer shall indemnify and hold harmless Sellers from any claims with respect to any such fees, commissions or similar payments.

6.5 Buyer's Acknowledgment.

Buyer is not aware of any facts or circumstance, which (with or without notice or lapse of time or both) would cause any representations or warranties of any Seller to be untrue or incorrect in any respect.

6.6 Purchased Assets "AS IS"; Buyer's Acknowledgment Regarding Same.

Buyer agrees, warrants, and represents that, except as set forth in this Agreement, (a) Buyer is purchasing the Purchased Assets on an "AS IS" and "WITH ALL FAULTS" basis based solely on Buyer's own investigation of the Purchased Assets and (b) neither of the Sellers nor any broker, agent, officer, employee, servant, attorney, or representative of any Seller has made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Purchased Assets or the Assumed Liabilities, any part of the Purchased Assets or the Assumed Liabilities, relating to

the financial performance of the Purchased Assets or the Business, or the physical condition of the Purchased Assets. Buyer further acknowledges that the consideration for the Purchased Assets specified in this Agreement has been agreed upon by Sellers and Buyer after good-faith arms-length negotiation in light of Buyer's agreement to purchase the Purchased Assets "AS IS" and "WITH ALL FAULTS." Buyer confirms that Sellers have made available to Buyer the opportunity to ask questions of the officers and management of Sellers and to acquire additional information about the Business, the Purchased Assets and the Assumed Liabilities. Buyer agrees, warrants, and represents that, except as set forth in this Agreement, Buyer has relied, and shall rely, solely upon Buyer's own investigation of all such matters, and that Buyer assumes all risks with respect thereto. EXCEPT AS SET FORTH IN THIS AGREEMENT, NO SELLER MAKES ANY EXPRESS WARRANTY, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO ANY REAL OR PERSONAL PROPERTY OR ANY FIXTURES OR THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR THE BUSINESS.

6.7 Financing/Availability of Funds.

Guarantor has agreed to provide the financing for the transactions contemplated by this Agreement on the Closing Date as contemplated by this Agreement. There are no conditions precedent or other contingencies related to the funding of the full amount of the Purchase Price, other than (a) there not having occurred a Buyer Material Adverse Effect, a Seller Material Adverse Effect, or a modification of the Fulfillment Agreement without the prior written consent of Emerald Lane II KVB, LLC, or (b) the ability of the Buyer to pay the Base Purchase Price by offset against the First Priority Secured Debt to the extent provided for by Article 4.2(a). Buyer has no reason to believe that the financing will not be made available to Buyer on the Closing Date. Buyer will have at and after the Closing, funds sufficient to pay the Purchase Price and any other amounts required to be paid in connection with the consummation of the transactions contemplated hereby, and to pay all related fees and expenses.

6.8 No Other Representations or Warranties of Sellers.

(a) Except for the representations and warranties contained in Article 5, Buyer acknowledges that no Seller nor any other Person on behalf of either Seller makes any other express or implied representation or warranty with respect to either Seller or the Business (including representations and warranties as to the condition of the Purchased Assets). Except as set forth in Article 12.16 hereof, no Seller nor any other Person will have or be subject to any liability or indemnification obligation to Buyer or any other Person resulting from the distribution to Buyer, or use by Buyer of, any such information, including any information, documents, projections, forecasts or other material made available to Buyer in any "data rooms," confidential information memoranda or management presentations in expectation of the transactions contemplated by this Agreement.

(b) In connection with investigation by Buyer, Buyer has received or may receive from Sellers certain projections, forward-looking statements and other forecasts and certain business plan information. Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, Buyer is familiar with such uncertainties, that Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to it (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that, except for the representations and warranties contained in Article 5 and subject to the terms and conditions hereof, Buyer shall have no claim against anyone with respect thereto. Accordingly, except for the representations and warranties contained in Article 5, Buyer acknowledges that no Seller makes any

representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans).

ARTICLE 7
ACTION PRIOR TO THE CLOSING DATE

7.1 Investigation of the Business By Buyer.

(a) From and after the date hereof until the Closing, and subject to the confidentiality obligations to which Sellers may be bound and the confidentiality provisions of Article 12.2 of this Agreement, upon reasonable notice Sellers shall afford Buyer's authorized Representatives reasonable access during normal business hours to the offices, properties, key employees, outside accountants, agreements and other documentation and financial records (including computer files, retrieval programs and similar documentation) with respect to the Business, the Purchased Assets and the Assumed Liabilities to the extent Buyer reasonably deems necessary, and shall permit Buyer and its authorized Representatives to make copies of such materials at Buyer's sole expense. From and after the date hereof until the Closing, and subject to the confidentiality obligations to which Sellers may be bound, Sellers shall furnish to Buyer or its authorized Representatives such additional information concerning the Purchased Assets, the Business and the Assumed Liabilities as shall be reasonably requested by Buyer or its authorized Representatives, including all such information as shall be reasonably necessary to enable Buyer or its authorized Representatives to (i) verify the accuracy of Sellers' representations and warranties contained in this Agreement, (ii) verify that Sellers have complied with the covenants contained in this Agreement, and (iii) determine whether the conditions set forth in Article 9 have been satisfied. From and after the date hereof until the Closing, Sellers shall use their best efforts to cause their outside accountants and outside counsel to cooperate with Buyer in such investigation. It is acknowledged and understood that no investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or other agreement given or made by Sellers in this Agreement. Notwithstanding anything to the contrary herein, no such investigation or examination shall be permitted, and no such documents or information shall be required to be provided or made available, to the extent that it would require Sellers to disclose documents or information subject to attorney-client privilege. For the avoidance of doubt, nothing in this Article 7.1 is intended to create a due diligence contingency in favor of Buyer.

(b) Buyer reserves the right to supplement and amend Schedule 2.1(b) (Assigned Agreements).

7.2 Third Party Consents.

Subject to Article 2.5(a), from and after the date hereof until the Closing, each of Sellers, on the one hand, and Buyer, on the other hand, will reasonably cooperate with the other to secure, before the Closing Date, all Third Party Consents to the extent such consents are not provided for, or the need for which are obviated or satisfied, by the Sale Order, *provided* that, subject to Article 2.5(a), neither Sellers nor Buyer shall have any obligation to offer or pay any consideration in order to obtain any such consents, approvals or waivers (in the case of Sellers, unless Buyer requests that Sellers make such a payment or provide such other consideration, and Buyer agrees to pay Sellers or provide such other consideration in advance for such payment and any associated costs); *provided, however*, that neither Buyer nor Sellers shall be required to waive any of the conditions to Closing set forth in Article 9 or Article 10, respectively.

7.3 Governmental Approvals.

(a) From and after the date hereof until the Closing Date, Sellers and Buyer shall act diligently and reasonably, and shall cooperate with each other, to do or cause to be done, all things necessary, proper or advisable consistent with applicable legal requirements to cause the conditions precedent to the Closing to be satisfied and to cause the Closing to occur, including to secure any consents and approvals of any Governmental Authority required to be obtained by them under any applicable antitrust or competition laws, in order to assign or transfer any Permits to Buyer, to permit the consummation of the transactions contemplated by this Agreement, or to otherwise satisfy the conditions set forth in Article 9 and in Article 10, in each case as necessary to the extent such consents are not provided for or satisfied by the Sale Order; provided, however, that neither Sellers, on the one hand, nor Buyer, on the other hand, shall make any agreement or understanding affecting the Purchased Assets or the Business (excluding the Excluded Assets or Excluded Liabilities) as a condition for obtaining any such consents or approvals except with the prior written consent of the other (which consent shall not be unreasonably withheld or delayed. Each of Sellers, on the one hand, and Buyer, on the other hand, shall act diligently and reasonably to cooperate with the other, to the extent commercially reasonable, to obtain the consents and approvals contemplated by this Article 7.4(a); provided, however, neither Sellers nor Buyer shall be required to waive any of the conditions to Closing set forth in Article 10 or Article 9, respectively.

(b) Sellers and Buyer (i) shall promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other Party to review in advance any proposed written communication or information submitted to any such Governmental Authority in response thereto. In addition, none of the Parties shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other Parties in advance and, to the extent permitted by any such Governmental Authority, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable laws, rules or regulations, each Party shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval. Each Party shall also furnish the other Party with such necessary information and assistance as such other party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval. Sellers and Buyer shall prosecute all required requests for approval with all necessary diligence and otherwise use their respective commercially reasonable efforts to obtain the grant thereof by an Order as soon as possible.

7.4 Intentionally Omitted.

7.5 Intentionally Omitted.

7.6 Bankruptcy Court Approval.

(a) Sellers and Buyer acknowledge that this Agreement and the sale of the Purchased Assets and the assumption of the Assumed Liabilities and the assumption and assignment of the Assigned

Agreements and all of Sellers' duties and obligations hereunder are subject to Bankruptcy Court approval and the entry of the Sale Order. Sellers and Buyer acknowledge that to obtain approval of this Agreement and the Sale Order, Sellers must demonstrate that they have taken reasonable steps to obtain the highest and best price possible for the Purchased Assets, including (i) giving notice of the transactions contemplated by this Agreement to creditors and other interested parties, (ii) seek and continuing to seek higher and better offers for the purchase and sale of the Purchased Assets, subject to the provisions of Article 7.8, and (iii) complying with any and all other provisions of the Bankruptcy Code and orders of the Bankruptcy Court relating to the sale of the Purchased Assets.

(b) In the event an appeal is taken or a stay pending appeal is requested, from the Sale Order or any other order related to the sale to Buyer of the Purchased Assets, Sellers shall immediately notify Buyer of such appeal or stay request and shall provide to Buyer promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from either of such orders.

(c) From and after the date hereof until the Closing, so long as Buyer is not in breach of this Agreement, Sellers shall not take any action which is intended to result in, or fail to take any action the intent of which failure to act would result in, the reversal, voiding, modification or staying of the Sale Order or any other order related to the sale to Buyer of the Purchased Assets.

(d) Buyer acknowledges that it is Buyer's obligation to provide adequate assurance of future performance of the Assigned Agreements pursuant to Section 365(b) of the Bankruptcy Code and, notwithstanding anything to the contrary herein, that Sellers shall not be obligated to assume and assign any Assigned Agreement with respect to which Buyer fails to satisfy the Bankruptcy Court as to adequate assurance of future performance (collectively, if any, the "Non-Assured Contracts") and Buyer's obligation to close the transactions contemplated herein shall not be conditioned upon the transfer and assignment to Buyer of any such Non-Assured Contracts.

(e) Subject to the provisions of Article 7.8, the Sellers shall continue to seek higher and better offers for the purchase and sale of the Purchased Assets, whether through advertisements to the public, or in any other manner that the Sellers deem in their business judgment to be warranted and appropriate, or through any other means as may be directed by the Bankruptcy Court.

7.7 Bankruptcy Filings.

From and after the date hereof until the Closing Date, Buyer shall have access to copies of all pleadings, motions, notices, statements, schedules, applications, reports and other papers that are filed in the Bankruptcy Cases on or after the time of their filing.

7.8 Solicitation of Competing Offers.

Sellers have been and are now seeking offers to purchase all or substantially all of the Purchased Assets of the Debtors. To date, Sellers have received a credible offer from Buyer and no others. Buyer acknowledges and agrees that Sellers can and will continue to actively seek higher and better offers for the purchase and sale of the Purchased Assets and Buyer fully supports Sellers' efforts in that regard for a limited period of time; *provided, however*, that if Sellers receive an offer from a third party that, taking into account the value of the Purchase Price less the value of the Termination Fee (as defined herein), the Sellers deem to be a higher and better offer (a "Bona Fide Offer"), Sellers shall promptly give Buyer and First Priority Secured Lender written notice of such Bona Fide Offer, which notice shall include a copy of any and all such Bona Fide Offers and all materials submitted therewith, and shall, to the extent not included in any such Bona Fide Offers, identify the prospective purchaser and contain all details of the

offer, including, but not limited to, the proposed purchase price, cash, cash equivalents, and other non-cash value and consideration proposed to be paid or delivered to Sellers from such proposed sale, the means of any third party financing and any contingencies for such financing as set forth in the Bona Fide Offer, the amount of cash proposed to be paid to the First Priority Secured Lender from the proceeds of such sale, and the amount proposed to be paid to the Sellers for allowed administrative claims and priority unsecured claims against the Bankruptcy Estates, and a statement that such Bona Fide Offer has agreed to assume Sellers' rights and agree to perform Sellers' obligations under the Fulfillment Agreement. Buyer shall have a right of first refusal to match or better such Bona Fide Offer, which right of first refusal shall exercise in writing, if at all, on or before the third (3rd) business day after Buyer's receipt of Sellers' written notice to Buyer of such a Bona Fide Offer.

7.9 Sale Order.

If Sellers do not receive a Bona Fide Offer by 4:00 p.m. prevailing eastern time on April 27, 2012, Sellers shall discontinue seeking higher and better offers and immediately give Buyer written confirmation that Sellers have not received any Bona Fide Offer, and that they have discontinued seeking higher and better offers. In the event of the foregoing, Sellers shall file a motion with the Bankruptcy Court no later than 4:00 p.m. prevailing eastern time on April 30, 2012, seeking a Sale Order, on an expedited basis, in the form attached hereto as Exhibit D or otherwise in a form agreeable to Buyer. Unless otherwise agreed to by Buyer in writing, Sellers shall use commercially reasonable best efforts to obtain the entry of such a Sale Order by the Bankruptcy Court on or before May 11, 2012 but in no event later than May 31, 2012 when this Agreement shall terminate, subject to any and all surviving obligations, if the Closing has not occurred, or if the date for the Closing to occur has not been extended by written agreement of the Sellers and the Buyer.

ARTICLE 8
ADDITIONAL AGREEMENTS

8.1 Taxes.

(a) Except as specifically set forth herein (including Article 8.1(b)), Sellers shall be liable for and shall pay, and pursuant to Article 8.1(c) shall reimburse Buyer for, all Taxes (whether assessed or unassessed) applicable to the Business and the Purchased Assets, in each case attributable to periods (or portions thereof) ending on or prior to the Closing Date. Without limiting the obligations of Buyer contained elsewhere in this Agreement (including Article 8.1(b)), Buyer shall be liable for and shall pay, and pursuant to Article 8.1(c) shall reimburse the applicable Seller for, all Taxes (whether assessed or unassessed) applicable to the Business, the Purchased Assets and the Assumed Liabilities, in each case attributable to periods (or portions thereof) beginning after the Closing Date. For purposes of this paragraph (a), any period beginning before and ending after the Closing Date shall be treated as two partial periods, one ending on the day preceding the Closing Date and the other beginning on the Closing Date except that Taxes (such as property Taxes) imposed on a periodic basis shall be allocated on a daily basis.

(b) Without limiting the other terms set forth in this Agreement, any sales Tax, use Tax, real property transfer or gains Tax, documentary stamp Tax or similar Tax attributable to the sale or transfer of the Purchased Assets and not exempted under the Sale Order or by Section 1146(c) of the Bankruptcy Code ("Transfer Taxes") shall be borne by Buyer. Sellers and Buyer shall use reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Purchased Assets from any such Transfer Taxes. Buyer shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes; provided, however, that in the event any such Tax Return requires execution by Sellers, Buyer shall prepare and deliver to Sellers a copy of such Tax Return at least ten (10) days before

the due date thereof, and Sellers shall promptly execute such Tax Return and deliver it to Buyer, which shall cause it to be filed.

(c) Sellers or Buyer, as the case may be, shall promptly provide reimbursement for any Tax paid by one Party all or a portion of which is the responsibility of the other Party in accordance with the terms of this Article 8.1. Within a reasonable time prior to the payment of any such Tax, the Party paying such Tax shall give notice to the other of the Tax payable and each Party's respective liability therefor, although failure to do so will not relieve the other Party from its liability hereunder.

8.2 Collection of Receivables.

If, after the Closing Date, Sellers shall receive payment from any account debtor with respect to any Assigned Agreement, Sellers shall promptly thereafter deliver such funds and assets to Buyer and take all steps necessary to vest title to such funds and/or assets in Buyer. Sellers shall provide Buyer with a written report on the status of such collections, if any, within ten (10) days after Buyer's written request, which request may not be sent more frequently than one time every ninety (90) days.

8.3 Name Change.

Within thirty (30) days after the Closing Date, Sellers shall file the Articles of Amendment and shall promptly thereafter provide Buyer with written evidence of such name changes.

8.4 Employee Matters.

(a) No Obligation. Neither Buyer nor any of its Affiliates has any obligation to offer employment to any Person currently or formerly employed by either Seller. Buyer and its Affiliates reserve the right, in its or their sole discretion, to make offers of employment to one or more current or former employees of Sellers on terms and conditions satisfactory to Buyer or its Affiliates.

(b) No Third Party Beneficiary. No provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of Sellers or any other Person (including any beneficiary or dependent thereof) of any nature or kind whatsoever, including, without limitation, in respect of continued employment (or resumed employment) for any specified period.

8.5 Post-Closing Cooperation and Access to Books and Records

For a period ending on the later of (i) the closing of the Bankruptcy Case and (ii) three (3) years after the Closing Date (or such longer period as may be required by any Governmental Authority or ongoing claim):

(a) Buyer shall not dispose of or destroy any of the business records and files of the Business held by Buyer or any of its Subsidiaries and relating to the period preceding the Closing Date. If Buyer wishes to dispose of or destroy such records and files after that time, Buyer shall first give thirty (30) days' prior written notice to Sellers or any successor or designated bankruptcy estates representative, and Sellers or any successor or designated bankruptcy estates representative shall have the right, at their option and expense, upon prior written notice to the notifying party within such 30-day period, to take possession of the records and files within fifteen (15) days after the date of such notice.

(b) Each Party (the "Requested Party") shall allow any other Party (including, for clarity, any trust established under a chapter 11 plan of Sellers or any other successors of Sellers) and any of their directors, officers, employees, counsel, representatives, accountants and auditors, at such other

Party's sole cost and expense, reasonable access during normal business hours, and upon reasonable advance notice, to all employees, if any (including the assistance of such employees as described below) and files of the Requested Party and any books and records and other materials included in the Purchased Assets relating to periods prior to the Closing Date in connection with (A) the wind-down of the operations of Sellers, whether or not relating to or arising out of this Agreement or the transactions contemplated hereby, including the preparation of tax returns, amended tax returns or claim for refund (and any materials necessary for the preparation of any of the foregoing), financial statements for periods ending on or prior to the Closing Date, the management and handling of any audit, investigation, litigation or other proceeding in, whether such audit, investigation, litigation or other proceeding is a matter with respect to which indemnification may be sought hereunder), and complying with the rules and regulations of the IRS, the Securities and Exchange Commission or any other Governmental Authority or otherwise relating to Sellers' other businesses or operations or such causes of action; (B) the prosecution, investigation or resolution of any pending or potential causes of action; (C) the resolution or reconciliation of claims filed against Sellers' bankruptcy estates; or (D) otherwise in connection with carrying out the functions of any such trusts or successors; *provided, however*, that Sellers, on the one hand, and Buyer, on the other hand, will be required to sign a non-disclosure agreement, if reasonably requested by Buyer or Sellers or any successor or designated bankruptcy estates representative, respectively, prior to Buyer or Sellers or any successor or designated bankruptcy estates representative's provision of information to Sellers or any successor or designated bankruptcy estates representative or Buyer, respectively, that constitutes a Trade Secret, or is otherwise confidential or proprietary in nature.

8.6 Exclusive Remedy.

In the event that a Closing pursuant to this Agreement does not occur, subject to Article 11.1(c)(i) in all circumstances, Sellers acknowledge and agree that their sole and exclusive remedy against the Buyer with respect to any and all claims relating to the subject matter of this Agreement or the transactions contemplated hereby (except for fraud or intentional misrepresentation) shall be to retain the Deposit as liquidated damages. In the event a Closing pursuant to this Agreement occurs, the parties shall have the rights and remedies provided for under applicable law.

8.7 Insurance Contracts.

Notwithstanding anything to the contrary contained herein, with respect to Contracts for casualty insurance coverage that are not Assigned Agreements, including property, fire, flood and other similar coverages that may be in effect with respect to the Purchased Assets, on or prior to Closing Buyer may choose to notify Sellers that it wishes such coverages extended beyond Closing for a period of up to thirty (30) days, in which case Sellers shall use good faith efforts to continue such coverages in place for such time period, if such continuance is permissible under the terms of such coverages, with Buyer responsible for all premium costs related thereto.

8.8 Good Faith Efforts to Close by Date Certain; Disclosure.

Subject to the terms and conditions of this Agreement, Sellers and Buyer agree that they will use their commercially reasonable good faith efforts to close the transactions contemplated hereunder by May 18, 2012 or within five (5) business days after entry of the Sale Order, whichever is later. .

ARTICLE 9
CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE

The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived in whole or in part (but only in writing) by Buyer:

9.1 Accuracy of Representations.

All of the representations and warranties made by Sellers in this Agreement shall be true and correct in all material respects (other than those representations and warranties that are qualified by materiality or Seller Material Adverse Effect, which shall be true and correct in all respects as so qualified therein) as of the date hereof and as of the Closing Date as though made at and as of the Closing Date (except to the extent such representations and warranties expressly speak as of an earlier date, which shall be true and correct as of such date); *provided, however*, that in the event of a breach of a representation or warranty, other than a representation or warranty qualified by a Seller Material Adverse Effect, the condition set forth in this Article 9.1 shall be deemed satisfied unless the effect of all such breaches of representations and warranties taken together result in a Seller Material Adverse Effect. Buyer shall have received a certificate signed by a duly authorized representative of each of the Sellers to such effect.

9.2 Sellers' Performance.

Each Seller shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed by such Seller on or prior to the Closing Date, and Buyer shall have received a certificate signed by a duly authorized representative of each of the Sellers to such effect.

9.3 No Order.

No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or Legal Requirement which is in effect and has the effect of making illegal or otherwise restraining or prohibiting the consummation of the transactions contemplated by this Agreement.

9.4 Governmental Authorizations.

All authorizations, consents, orders or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Authority which are necessary to consummate the transactions contemplated hereby shall have been filed, been obtained or occurred and such authorizations, consents, orders or approvals shall not have expired or been withdrawn.

9.5 Sellers' Deliveries.

Each of the deliveries required to be made to Buyer pursuant to Article 4.4 shall have been so delivered.

9.6 Sale Order.

The Sale Order shall have been timely entered by the Bankruptcy Court in a form approved of by Buyer and have become final and not be subject to any appeal, stay, modification, reversal or vacation, and the Sale Order shall remain in full force and effect as of the Closing.

9.7 No Dismissal or Conversion.

The Bankruptcy Cases shall not have been dismissed or converted to cases under Chapter 7 of the Bankruptcy Code.

9.8 Other.

There has been no (a) Buyer Material Adverse Effect, (b) Seller Material Adverse Effect (c) modification of the Fulfillment Agreement (other than in the form of **Exhibit K** hereto) and (d) the ability of the Buyer to pay the Base Purchase Price by way of offset against the First Priority Secured Debt to the extent provided for by Article 4.2(a) shall not have been denied, reduced or impaired in any way.

ARTICLE 10
CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE

The obligations of Sellers to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived (but only in writing) by the Sellers:

10.1 Accuracy of Representations.

All of the representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects (other than those representations and warranties that are qualified by materiality, which shall be true and correct in all respects as so qualified therein) as of the date hereof and as of the Closing Date as though made at and as of the Closing Date (except to the extent such representations and warranties expressly speak as of an earlier date, which shall be true and correct as of such date). Sellers shall have received a certificate signed by a duly authorized representative of Buyer to such effect.

10.2 Buyer's Performance.

Buyer shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed by Buyer on or prior to the Closing Date, and Sellers shall have received a certificate signed by a duly authorized representative of Buyer to such effect.

10.3 No Order.

No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or Legal Requirement which is in effect and has the effect of making illegal or otherwise restraining or prohibiting the consummation of the transactions contemplated by this Agreement.

10.4 Governmental Authorizations.

All authorizations, consents, orders or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Authority which are necessary to consummate the transactions contemplated hereby shall have been filed, been obtained or occurred and such authorizations, consents, orders or approvals shall not have expired or been withdrawn.

10.5 Buyer's Deliveries.

Each of the deliveries required to be made to Sellers pursuant to Article 4.3 shall have been so delivered.

10.6 Sale Order.

The Sale Order shall have been timely entered by the Bankruptcy Court in a form approved of by Buyer and have become final and not be subject to any appeal, stay, modification, reversal or vacation, and the Sale Order shall remain in full force and effect as of the Closing.

10.7 Payment of Purchase Price.

Buyer shall have made on the Closing Date all of the payments, applied all credits, and made all liability assumptions as required by and in accordance with Article 4.2.

ARTICLE 11
TERMINATION

11.1 Termination Events.

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

(a) by either Sellers or Buyer:

(i) if a closing condition under Articles 9 or 10 hereof becomes impossible to satisfy on or before the Closing Date (or such earlier date on which the condition is required to be satisfied) in favor of the Party attempting to terminate the Agreement (unless such failure is caused by such terminating Party (or in the case of a Seller as the termination party, any Seller's failure));

(ii) if the Closing shall not have occurred by May 31, 2012; *provided, however,* that the right to terminate this Agreement under this Article 11.1(a)(ii) shall not be available to any party whose failure (or in the case of a Seller as the terminating party, any Seller's failure) to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Sale Order to have been entered on or prior to such date;

(iii) if a Governmental Authority issues a ruling or Order prohibiting the transactions contemplated hereby; or

(iv) by mutual written consent of Sellers and Buyer.

(b) by Buyer:

(i) in the event of any material breach by Sellers of any of Sellers' agreements, covenants, representations or warranties contained herein or in the Sale Order or any other order related to the sale to Buyer of the Purchased Assets, and the failure of Sellers to cure such breach within seven (7) days after receipt of the Buyer Termination Notice specified in this subsection; *provided, however,* that Buyer (i) is not itself in material breach of its representations, warranties, covenants or agreements contained herein or in the Sale Order or any other order related to the sale to Buyer of the Purchased Assets, (ii) notifies Sellers in writing (the "Buyer Termination Notice") of its intention to exercise its rights under this Agreement as a result of the breach, and (iii) specifies in such Buyer Termination Notice the representation, warranty, covenant or agreement contained herein or in the Sale Order, or any other order related to the sale to Buyer of the Purchased Assets of which Sellers are allegedly in material breach; or

(ii) if the Bankruptcy Court does not enter the Sale Order on or before May 31, 2012;

(iii) if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement, or a trustee is appointed for Sellers and such trustee rejects the transactions contemplated by this Agreement; or

(iv) if the Sellers accept a Bona Fide Offer of a third party and the Buyer does not exercise its right of first refusal.

(c) by Sellers:

(i) in the event of any material breach by Buyer of any of Buyer's agreements, covenants, representations or warranties contained herein or in the Sale Order or any other order related to the sale to Buyer of the Purchased Assets, and the failure of the Buyer to cure such breach within seven (7) days after receipt of the Seller Termination Notice specified in this subsection; *provided, however,* that (i) Sellers are not themselves in material breach of their representations, warranties, covenants or agreements contained herein or in the Sale Order or any other order related to the sale to Buyer of the Purchased Assets, (ii) Sellers notify Buyer in writing (the "Sellers' Termination Notice"), and (iii) Sellers specify in such Sellers' Termination Notice the representation, warranty, covenant or agreement contained herein or in the Sale Order, or any other order related to the sale to Buyer of the Purchased Assets of which Buyer is allegedly in material breach; or

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

11.2 Effect of Termination.

(a) In the event of termination of this Agreement by either party, except as otherwise provided in this Article 11.2, all rights and obligations of the parties under this Agreement shall terminate without any liability of any Party to any other Party. The provisions of Article 6.4, this Article 11.2, Articles 12.1, 12.2, 12.3, 12.15 and 12.16 and, to the extent applicable, the other provisions of Article 12, shall expressly survive the expiration or termination of this Agreement.

(b) Notwithstanding Article 11.2(a), in the event of a termination pursuant to Article 11.1(c)(i) only, Sellers shall be entitled to retain the Deposit as liquidated damages as their sole and exclusive remedy against Buyer in all respects for any claim against Buyer, whether arising under this Agreement, at law, at equity or otherwise.

(c) In the event of a termination pursuant to this Article 11 (other than pursuant to Article 11.1(c)(i)), Sellers shall immediately return to Buyer the Deposit (together with interest accrued thereon) by wire transfer of immediately available funds to an account designated by Buyer.

(d) In the event of a termination pursuant to Article 11.1(b)(iv), the Buyer shall be entitled to the payment of the Termination Fee on the earlier of the Closing of a transaction proposed under a Bona Fide Offer or June 15, 2012, which the Sellers shall pay to Buyer by wire transfer of immediately available funds to the account specified in writing by Buyer to Sellers. The Termination Fee shall constitute a super-priority claim with priority over any and all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code.

ARTICLE 12
GENERAL PROVISIONS

12.1 Non-Survival of Representations and Warranties; Survival of Contracts.

All representations and warranties herein shall terminate on the Closing Date. The covenants of the Parties herein shall survive the Closing Date according to their terms.

12.2 Confidential Nature of Obligations.

The following paragraph is subject to any disclosure requirements under the Bankruptcy Code or imposed by the Bankruptcy Court or as Sellers may reasonably deem necessary or appropriate in order to facilitate the transactions contemplated herein:

Buyer and Sellers each agrees that it will treat in confidence all documents, materials and other information which it shall have obtained regarding the other party during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), the investigation provided for herein and the preparation of this Agreement and other related documents, and, in the event the transactions contemplated hereby shall not be consummated, at the request of the disclosing party, will return to the other party all copies of nonpublic documents and materials which have been furnished in connection therewith. Such non-public documents, materials and information shall not be communicated to any third Person (other than to Buyer's and Sellers' counsel, accountants or financial advisors, in each case subject to the recipient's agreement to keep the same confidential). No other party shall use any confidential information in any manner whatsoever except solely for the purpose of evaluating the proposed purchase and sale of the Purchased Assets; provided, however, that after the Closing, any confidential information included in the Purchased Assets or the Assumed Liabilities shall be deemed the confidential information of Buyer, and Sellers shall maintain the confidentiality thereof in accordance with this Article 12.2. The obligation of each party to treat such documents, materials and other information in confidence shall not apply to any information which (i) is or becomes available to such party from a source other than the disclosing party, (ii) is or becomes available to the public other than as a result of disclosure by such party or its agents or (iii) is required to be disclosed under applicable law or judicial process (including under the Bankruptcy Code or as required by the Bankruptcy Court), but only to the extent it must be disclosed. Notwithstanding clause (iii) of the preceding sentence, in the event that any party is required to disclose any confidential information by applicable law, judicial process or rule of any national securities exchange, it is agreed that the party subject to such requirement will provide the other party with prompt notice of such requirement and such party may seek an appropriate protective order if it so desires.

12.3 Public Announcements.

The initial press release relating to this Agreement shall be a joint press release, the text of which shall be agreed to by the Buyer and Sellers. Unless otherwise required by applicable Legal Requirement or by obligations of the Parties or their Affiliates pursuant to any listing agreement with or rules of any securities exchange or as otherwise permitted or contemplated by this Agreement, the Parties hereto shall consult with each other before issuing any other press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby or the activities and operations of the other Party and shall not issue any such release or make any such statement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed).

12.4 Notices.

All notices, consents, waivers and other communications under this Agreement must be in writing and shall be deemed to have been duly given when: (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile or e-mail (with written confirmation of receipt), or (c) when received by the addressee, if sent by a delivery service (prepaid, receipt requested) or (d) when received by the addressee, if sent by registered or certified mail (postage prepaid, return receipt requested), in each case to the appropriate addresses, representative (if applicable) and facsimile numbers or e-mail addresses set forth below (or to such other addresses, representative and facsimile numbers as a Party may designate by notice to the other Parties given in accordance with this Article 12.4):

(i) If to Sellers, then to:

K. Van Bourgondien of Virginia, Inc.
c/o John F. Van Bourgondien
2356 Saratoga Bay Drive
West Palm Beach, Florida 33409
E-Mail: tulipvb@gmail.com; and

191 Peninsula Drive
Babylon, New York 11702
Telephone: (631) 669-6049

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

Dennis T. Lewandowski, Esq.
Kaufman & Canoles, P.C.
150 West Main Street
Suite 2100
Norfolk, Virginia 23510
Telephone: 757-624-3252
Fax : 757-624-3169
Email: dtlewand@kaufcan.com

and

Gus J. James, II, Esq.
Kaufman & Canoles, P.C.
150 West Main Street
Suite 1900
P. O. Box 3037
Norfolk, Virginia 23510
Telephone: (757) 624-3236
Fax : (757) 624-3169
Email: gjjames@kaufcan.com

(ii) If to Buyer, then to:

Emerald Lane II KVB, LLC
110 West Elm Street
Tipp City, Ohio 45371-1699
Attn: K. Niles Kinerk, Chairman and Eric Hamant, CEO and President
E-mail: nkinerk@gardensalive.com, and
Eric Hamant, President and CEO
E-mail: ehamant@gardensalive.com

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

Kavinoky Cook LLP
726 Exchange Street, Suite 800
Buffalo, New York 14210
Attn: David A. LoTempio, Esq.
E-mail: dlotempio@kavinokycook.com
Facsimile: 716-845-6474

and

Jager Smith P.C.
One Financial Center
Boston, Massachusetts 02111-2621
Attn: Michael J. Fencer, Esq.
E-mail: mfencer@jagersmith.com
Facsimile: 617-951-2424

12.5 Waiver.

Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given; and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

12.6 Entire Agreement; Amendment.

This Agreement (including the disclosure schedules and the exhibits hereto) and the other Transaction Documents supersede all prior agreements (other than the Confidentiality Agreement, which shall remain in full force and effect) between the Parties with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between the Parties with respect to their subject matter (other than the Confidentiality Agreement, which shall remain in full force and effect; *provided, however*, that notwithstanding anything to the contrary herein, if and when the Closing occurs, the obligations under the Confidentiality Agreement of Buyer, Guarantor and each of their respective attorneys and accountants shall terminate). This Agreement may not be amended except by a written agreement executed by Buyer and Sellers.

12.7 Assignment.

This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party hereto by operation of law or otherwise without the express written consent of the other Parties (which consent may be granted or withheld in the sole discretion of such other Party); *provided, however*, that Buyer shall be permitted, upon prior notice to Sellers, to assign all or part of its rights or obligations hereunder, but no such assignment shall relieve Buyer of its obligations under this Agreement.

12.8 Severability.

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Legal Requirement or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any Party in any material respect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

12.9 Section Headings, Construction.

The headings of Sections in this Agreement are provided for convenience only and shall not affect its construction or interpretation. All references to "Article," "Section" or "Sections" refer to the corresponding Article, Section or Sections of this Agreement. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms. The Exhibits attached hereto and the Schedules attached hereto (including the Sellers' Disclosure Schedule referred to herein and attached hereto) are hereby incorporated herein and made a part hereof as if fully set forth herein.

12.10 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Virginia applicable to contracts executed in and to be performed in that State, and, to the extent applicable, the Bankruptcy Code.

(b) The Parties agree that the Bankruptcy Court shall be the exclusive forum for enforcement of this Agreement or the transactions contemplated hereby and (only for the limited purpose of such enforcement) submit to the jurisdiction thereof; *provided* that if the Bankruptcy Court determines that it does not have subject matter jurisdiction over any action or proceeding arising out of or relating to this Agreement, then each party: (i) agrees that all such actions or proceedings shall be heard and determined in a federal court sitting in Norfolk, Virginia; (ii) irrevocably submits to the jurisdiction of such court in any such action or proceeding; (iii) consents that any such action or proceeding may be brought in such courts and waives any objection that such party may now or hereafter have to the venue or jurisdiction or that such action or proceeding was brought in an inconvenient court; and (iv) agrees that service of process in any such action or proceeding may be effected by providing a copy thereof by any of the methods of delivery permitted by Article 12.4 to such Party at its address as provided in Article 12.4 (provided that nothing herein shall affect the right to effect service of process in any other manner permitted by law).

(c) EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY

JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH OF THE PARTIES HERETO HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS ARTICLE 12.10(c).

12.11 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. A signature of a party to this Agreement sent by facsimile, PDF, electronic mail (including a scanned portable document format copy sent by electronic mail), or other electronic transmission shall have the same force and effect as an original signature of such party.

12.12 Time of Essence.

Time is of the essence as to the performance of all duties and obligations under this Agreement.

12.13 No Third Party Beneficiaries.

This Agreement is for the sole benefit of the Guarantor, the Fulfillment Agent, the First Priority Secured Lender, the Parties hereto and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

12.14 Sellers' Disclosure Schedule. The Sellers' Disclosure Schedule is qualified in its entirety by reference to the specific provisions of this Agreement and is not intended to constitute, and shall not be construed as constituting, representations or warranties of Sellers, except as and to the extent provided in this Agreement. The specification of any dollar amount in the representations and warranties contained in this Agreement or the inclusion of any specific item in the Sellers' Disclosure Schedule is not intended to imply that such amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed or are within or outside of the ordinary course of business, and none of the Parties shall use the fact of the setting forth of such amounts or the fact of the inclusion of any such item in the Sellers' Disclosure Schedule in any dispute or controversy with any party as to whether any obligation, item or matter not included in a section of the Sellers' Disclosure Schedule is or is not required to be disclosed (including whether such amounts or items are required to be disclosed as material) or in the ordinary course of business for the purposes of this Agreement. If and to the extent any information required to be furnished in any section of the Sellers' Disclosure Schedule is contained in this Agreement or in any section of the Sellers' Disclosure Schedule, such information shall be deemed to be included in all sections of the Sellers' Disclosure Schedule to the extent the relevance of such disclosure to such other section or sections is reasonably apparent on its face. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. In no event shall any disclosure of such additional matters be deemed or interpreted to broaden or otherwise amend any of the covenants or representations or warranties in this Agreement. The information contained in the Sellers' Disclosure Schedule is disclosed solely for purposes of this Agreement, and no information contained therein shall be deemed to be an admission by any party thereto to any third party of any matter whatsoever, including of any violation of law or breach of any agreement.

Headings have been inserted in the sections of the Sellers' Disclosure Schedule for the convenience of reference only and shall to no extent have the effect of amending or changing the express description of the sections as set forth in this Agreement.

12.15 Expenses.

Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors, accountants and other advisors, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses, subject to Bankruptcy Court approval, whether or not the Closing shall have occurred. As between Buyer and Sellers, Sellers shall bear all of the costs of administration of the Bankruptcy Case.

12.16 Non-Recourse.

No past, present or future director, officer, manager, employee, incorporator, member, partner, stockholder, agent, attorney or representative of the respective parties to this Agreement, in such capacity (any such Person in such capacity, a "No Recourse Party"), shall have any liability or obligation with respect to this Agreement or the transactions contemplated hereby, or with respect to any claim or cause of action that may arise out of this Agreement or the transactions contemplated hereby, or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby; in each case except for any claim or cause of action against a No Recourse Party (x) arising out of or in connection with the fraud, bad faith or willful misconduct of such No Recourse Party, including in connection with this Agreement or any other Transaction Document, or (y) otherwise expressly permitted to be brought against a No Recourse Party pursuant to any other Transaction Document, as applicable. For the avoidance of doubt, nothing in this Article 12.16 is intended to or shall be deemed to in any way limit or affect any rights of Sellers or Buyer with respect to any claims against any person arising out of actions or conduct of such person arising prior to or outside the context of this Agreement.

Signatures Appear on Next Page

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be executed and delivered by their duly authorized representatives, all as of the date first written above.

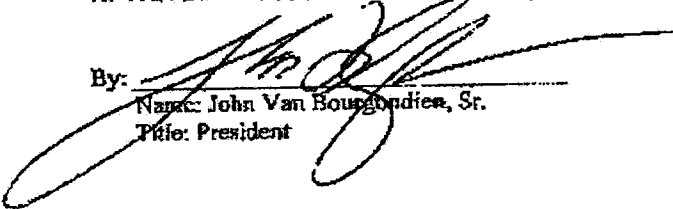
BUYER:

EMERALD LANE II KVB, LLC

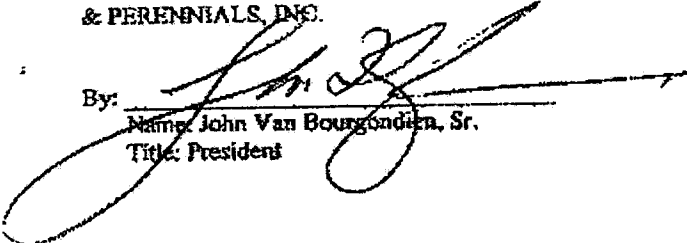
By: 
Name: Eric Harant
Title: CEO and President

SELLERS:

K. VAN BOURGONDIEEN OF VIRGINIA, INC.

By: 
Name: John Van Bourgondien, Sr.
Title: President

SIMPLE PLEASURES FLOWERBULBS
& PERENNIALS, INC.

By: 
Name: John Van Bourgondien, Sr.
Title: President

CONSENT OF FIRST PRIORITY SECURED LENDER

The First Priority Secured Lender hereby consents to those terms and provisions of this Asset Purchase Agreement requiring its consent under the Bankruptcy Code, including, but not limited to, the Buyer's funding of the Estate Payment Consideration and the application of the Base Purchase Price against the First Priority Secured Debt and acknowledges that it will not assert any lien or claim against the Estate Payment Consideration (including the Deposit) if the Buyer (or any Affiliate or assignee of the Buyer) and Sellers close the transactions contemplated by this Agreement.

SECURED LENDER:

EMERALD LANE II KVB, LLC

BY: 
NAME: ERIC HAMANT
TITLE: CEO AND PRESIDENT

LIST OF EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Bill of Sale
B	Buyer's Disclosure Schedule
C	Guaranty of Gardens Alive, Inc.
D	Sale Order
E	Sellers' Disclosure Schedule
F	Assignment and Assumption Agreement
G	Assignment of Patents
H	Assignment of Trademarks
I	Assignment of Copyrights
J	Assignment of Domain Names
K	Amended and Restated Fulfillment Agreement

LIST OF SCHEDULES

Schedule 2.1(a)	Accounts Receivable
Schedule 2.1(b)	Assigned Agreements
Schedule 2.1(c)	Business Records
Schedule 2.1(e)	Furniture, Fixtures and Equipment
Schedule 2.1(g)	Inventory
Schedule 2.1(h)	Intellectual Property
	(i) Copyrights
	(ii) Domain Names
	(iii) Patents
	(iv) Software
	(v) Trademarks
	(vi) Trade Secret
Schedule 2.1(i)	Permits
Schedule 2.1(j)	PO/lockboxes maintained by or with the Fulfillment Agent
Schedule 2.1 (k)	Purchased Customer Deposits, cash and cash equivalents
Schedule 2.1(l)	Bank Accounts of Sellers
Schedule 3.3	Allocation Schedule(s)

EXHIBIT G

ASSIGNMENT OF PATENTS

K. VAN BOURGONDIEN OF VIRGINIA, INC.

ASSIGNMENT OF PATENTS

Whereas K. VAN BOURGONDIEN OF VIRGINIA, INC. ("KVB"), a Delaware corporation, may be the respective owner of record of certain Patents, (the "Patents"); and

Whereas Emerald Lane II KVB, LLC, a Delaware limited liability company, with an office at 5100 Schenley Place, Lawrenceburg, Indiana 47025 (the "Assignee"), is desirous of acquiring the entire right, title and interest in and to the same said Patents.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, KVB does hereby fully assign, transfer and release unto Assignee all of KVB's right, title and interest in and to the said Patents, along with all current or future continuations, continuations-in-part, divisionals, requests for reexamination (RCE), substitutes, renewals, reissues, reexaminations, and any other related patent applications, either domestic or foreign, and all inventions disclosed in the Patents, free and clear of all liens, claims, encumbrances and interests of any kind, the same to be held and enjoyed by Assignee, for its own use, benefit and behoof, and for its legal representatives and assigns, to the full end of the term for which said Patents are granted, as fully and entirely as the same would have been held by KVB had this Assignment not been made. KVB hereby authorizes and requests the Commissioner of Patents and Trademarks of the United States of America, and any Official of any country or countries foreign to the United States, whose duty it is to issue patents on any such applications as aforesaid, to issue all Patents for said applications and inventions to Assignee, its successors, legal representatives and assigns.

KVB further assigns, transfers and releases to Assignee any and all claims for damages by reason of past, present or future continuing infringement of said Patents, and the right to sue for and collect the same for its own use and benefit and that of its successors, assigns, or other legal representatives.

Dated: May __, 2012

K. VAN BOURGONDIEN OF VIRGINIA, INC.

By: _____
Name: John Van Bourgondien, Sr.
Title: President

STATE OF)
) SS.:
COUNTY OF)

On the ____ day of May, 2012 before me the undersigned, personally appeared John Van Bourgondien, Sr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Assignment and acknowledged to me that he executed the same in his capacity as an authorized representative of K. Van Bourgondien of Virginia, Inc. and that by his signature on the Assignment he executed the Assignment on behalf of K. Van Bourgondien of Virginia, Inc., and that John Van Bourgondien, Sr. made such appearance before the undersigned in the City of _____ and State of _____.

Notary Public

04894/31533/386078.1

SIMPLE PLEASURES FLOWEBULBS & PERENNIALS, INC.

ASSIGNMENT OF PATENTS

Whereas SIMPLE PLEASURES FLOWEBULBS & PERENNIALS, INC. ("SPF"), a New York corporation, is the respective owner of record of the Patents described on Schedule A attached hereto (the "Patents"), and

Whereas Emerald Lane II KVB, LLC, a Delaware limited liability company, with an office at 5100 Schenley Place, Lawrenceburg, Indiana 47025 (the "Assignee"), is desirous of acquiring the entire right, title and interest in and to the same said Patents.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SPF does hereby fully assign, transfer and release unto Assignee all of SPF's right, title and interest in and to the said Patents, along with all current or future continuations, continuations-in-part, divisionals, requests for reexamination (RCE), substitutes, renewals, reissues, reexaminations, and any other related patent applications, either domestic or foreign, and all inventions disclosed in the Patents, free and clear of all liens, claims, encumbrances and interests of any kind, the same to be held and enjoyed by Assignee, for its own use, benefit and behoof, and for its legal representatives and assigns, to the full end of the term for which said Patents are granted, as fully and entirely as the same would have been held by SPF had this Assignment not been made. SPF hereby authorizes and requests the Commissioner of Patents and Trademarks of the United States of America, and any Official of any country or countries foreign to the United States, whose duty it is to issue patents on any such applications as aforesaid, to issue all Patents for said applications and inventions to Assignee, its successors, legal representatives and assigns.

SPF further assigns, transfers and releases to Assignee any and all claims for damages by reason of past, present or future continuing infringement of said Patents, and the right to sue for and collect the same for its own use and benefit and that of its successors, assigns, or other legal representatives.

Dated: May __, 2012

SIMPLE PLEASURES FLOWEBULBS
& PERENNIALS, INC.

By: _____
Name: John Van Bourgondien, Sr.
Title: President

STATE OF)
) SS.:
COUNTY OF)

On the ____ day of May, 2012 before me the undersigned, personally appeared John Van Bourgondien, Sr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Assignment and acknowledged to me that he executed the same in his capacity as an authorized representative of Simple Pleasures Flowerbulbs & Perennials, Inc. and that by his signature on the Assignment he executed the Assignment on behalf of Simple Pleasures Flowerbulbs & Perennials, Inc., and that John Van Bourgondien, Sr. made such appearance before the undersigned in the City of _____ and State of _____.

Notary Public

04894/31533/386077.1

SCHEDULE A

OWNER: Simple Pleasures Flowerbulbs & Perennials, Inc., a New York Corporation

PATENT	PATENT NO.	ISSUE DATE	APPLICATION NUMBER	FILE DATE	COUNTRY
Display rack	5,881,892	March 16, 1999	08/940,482	September 30, 1997	USA
Storage and display box	5,836,509	November 17, 1998	08/940,483	September 30, 1997	USA
Display rack	N/A	N/A	CA 2248813	September 28, 1998	Canada
Storage and display box	N/A	N/A	CA 2248811	September 28, 1998	Canada
Storage and display box	0,905,031		98203268.2	September 29, 1998	EPO
Display rack			98203267.4	September 29, 1998	EPO
	217,274		98203268.2	September 29, 1998	Austria
	69805258		98203268.2	September 28, 1998	Germany
			313875/98	September 30, 1998	Japan
			313876/98	September 30, 1998	Japan

EXHIBIT H

ASSIGNMENT OF TRADEMARKS

K. VAN BOURGONDIEN OF VIRGINIA, INC.

ASSIGNMENT OF TRADEMARKS/SERVICE MARKS

Whereas K. VAN BOURGONDIEN OF VIRGINIA, INC. ("KVB"), a Delaware corporation, may have adopted and used certain trademarks, trade names and/or service marks (hereinafter collectively described as the "Marks"); some of which Marks may be the subject of pending applications with the United States Patent and Trademark Office, some of which Marks may be the subject of registrations with the United States Patent and Trademark Office, some of which Marks may be the subject of pending applications with foreign trademark offices and some of which Marks may be the subject of registrations with foreign trademark offices; and

Whereas Emerald Lane II KVB, LLC, a Delaware limited liability company, with an office at 5100 Schenley Place, Lawrenceburg, Indiana 47025 (the "Assignee"), is desirous of acquiring said Marks and the goodwill associated therewith.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, KVB does hereby fully assign, transfer and release unto Assignee all of KVB's right, title and interest in and to the said Marks, worldwide, including, but not limited to, all of KVB's right, title, and interest in and to any national, foreign and United States federal and state pending applications, registrations, renewals and extensions thereof, as well as all common law rights, for such Marks, together with the goodwill of the business symbolized by the Marks and all benefits relating to the foregoing whether before or hereafter accrued (including, without limitation, the exclusive right to apply for, maintain and renew any application and registration for the Marks), free and clear of all liens, claims, encumbrances and interests of any kind. For any United States federal trademark application for which a supported claim of use has not been filed with and accepted by the United States Patent and Trademark Office as of the effective date of this Assignment, KVB also does hereby fully assign, transfer and release unto Assignee that portion of KVB's business to which the applicable Mark(s) pertain.

KVB further assigns, transfers and releases to Assignee any and all royalties, income, payments and proceeds, whether now accrued or accruing in the future, as well as all claims for damages by reason of past, present or future continuing infringement of said Marks, and the right to sue for and collect the same for its own use and benefit and that of its successors, assigns, or other legal representatives.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Trademarks/Service Marks to be executed as of the day and year indicated below.

Dated: May __, 2012

K. VAN BOURGONDIEN OF VIRGINIA, INC.

By: _____
Name: John Van Bourgondien, Sr.
Title: President

04894/31533/386076.1

STATE OF)
) SS.:
COUNTY OF)

On the ____ day of May, 2012 before me the undersigned, personally appeared John Van Bourgondien, Sr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Assignment and acknowledged to me that he executed the same in his capacity as an authorized representative of K. Van Bourgondien of Virginia, Inc. and that by his signature on the Assignment he executed the Assignment on behalf of K. Van Bourgondien of Virginia, Inc., and that John Van Bourgondien, Sr. made such appearance before the undersigned in the City of _____ and State of _____.

Notary Public

SIMPLE PLEASURES FLOWERBULBS & PERENNIALS, INC.

ASSIGNMENT OF TRADEMARKS/SERVICE MARKS

Whereas SIMPLE PLEASURES FLOWERBULBS & PERENNIALS, INC. ("SPF"), a New York corporation, has adopted and used certain trademarks, trade names and/or service marks, including but not limited to the trademarks, trade names and/or service marks listed on Schedule A attached hereto (hereinafter collectively described as the "Marks"); some of which Marks may be the subject of pending applications with the United States Patent and Trademark Office, some of which Marks may be the subject of registrations with the United States Patent and Trademark Office, some of which Marks may be the subject of pending applications with foreign trademark offices and some of which Marks may be the subject of registrations with foreign trademark offices, as more specifically described on Schedule A; and

Whereas Emerald Lane II KVB, LLC, a Delaware limited liability company, with an office at 5100 Schenley Place, Lawrenceburg, Indiana 47025 (the "Assignee"), is desirous of acquiring said Marks and the goodwill associated therewith.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SPF does hereby fully assign, transfer and release unto Assignee all of SPF's right, title and interest in and to the said Marks, worldwide, including, but not limited to, all of SPF's right, title, and interest in and to any national, foreign and United States federal and state pending applications, registrations, renewals and extensions thereof, as well as all common law rights, for such Marks, together with the goodwill of the business symbolized by the Marks and all benefits relating to the foregoing whether before or hereafter accrued (including, without limitation, the exclusive right to apply for, maintain and renew any application and registration for the Marks), free and clear of all liens, claims, encumbrances and interests of any kind. For any United States federal trademark application for which a supported claim of use has not been filed with and accepted by the United States Patent and Trademark Office as of the effective date of this Assignment, SPF also does hereby fully assign, transfer and release unto Assignee that portion of SPF's business to which the applicable Mark(s) pertain.

SPF further assigns, transfers and releases to Assignee any and all royalties, income, payments and proceeds, whether now accrued or accruing in the future, as well as all claims for damages by reason of past, present or future continuing infringement of said Marks, and the right to sue for and collect the same for its own use and benefit and that of its successors, assigns, or other legal representatives.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Trademarks/Service Marks to be executed as of the day and year indicated below.

Dated: May __, 2012

SIMPLE PLEASURES FLOWERBULBS
& PERENNIALS, INC.

By: _____
Name: John Van Bourgondien, Sr.
Title: President

04894/31533/386075.1

STATE OF)
) SS.:
COUNTY OF)

On the ____ day of May, 2012 before me the undersigned, personally appeared John Van Bourgondien, Sr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Assignment and acknowledged to me that he executed the same in his capacity as an authorized representative of Simple Pleasures Flowerbulbs & Perennials, Inc. and that by his signature on the Assignment he executed the Assignment on behalf of Simple Pleasures Flowerbulbs & Perennials, Inc., and that John Van Bourgondien, Sr. made such appearance before the undersigned in the City of _____ and State of _____.

Notary Public

SCHEDULE A

OWNER: Simple Pleasures Flowerbulbs & Perennials, Inc., a New York Corporation

All, trademarks, trade names and service marks owned by Simple Pleasures Flowerbulbs & Perennials, Inc., including, but not limited to, those identified in the below chart, as well as the below listed applications and/or registrations:

MARK	STATUS	REGISTRATION NUMBER	REGISTRATION DATE	SERIAL NUMBER	FILE DATE	COUNTRY
PERFECT PARTNERS	Registered	3279663	August 14, 2007	78848927	March 29, 2006	USA
SIMPLY THE BEST	Abandoned	N/A	N/A	78772874	December 14, 2005	USA
INSPIRATION BLENDS EXTENDED BLOOMS	Abandoned	N/A	Abandoned September 10, 2007	77368502	January 10, 2008	USA
			N/A			
INSPIRATION BLENDS	Abandoned	N/A	Abandoned October 30, 2008	77368477	January 10, 2008	USA
			N/A			
PERFECT PARTNERS	Registered	2167712	June 23, 1998	75327239	July 18, 1997	USA
SIMPLE PLEASURES	Registered	2219473	January 19, 1999	75216251	December 20, 1996	USA
PERFECT PARTNERS & DESIGN	Registered	TMA511277	April 29, 1999	0851719	July 23, 1997	Canada

SIMPLY THE BEST	Registered	TMA728303	November 13, 2008	1290043	February 15, 2006	Canada
SIMPLE PLEASURES FLOWERBULBS AND PERENNIALS & DESIGN	Registered	TMA502567	October 21, 1998	0831965	December 19, 1996	Canada
SIMPLE PLEASURES & Design	Registered	TMA574430	January 27, 2003	1057535	April 28, 2000	Canada
SIMPLE PLEASURES FLOWERBULBS & PERENNIALS and Design	Registered	4280713	June 4, 1999	H09-032745	March 26, 1997	Japan
SIMPLE PLEASURES FLOWERBULBS & PERENNIALS and Design	Registered	000509695	June 29, 1999		April 4, 1997	CTM
PERFECT PARTNERS and Design	Registered	001995075	May 16, 2002		November 28, 2000	CTM
SIMPLE PLEASURES FLOWERBULB & PERENNIALS & DESIGN						Benelux
SIMPLE PLEASURES & DESIGN						Belarus
SIMPLE PLEASURES & DESIGN						Russian Federation

SIMPLE PLEASURES & DESIGN									Kazakhstan
SIMPLE PLEASURES & DESIGN									China
SIMPLE PLEASURES & DESIGN									Korea

LIST OF SCHEDULES

Schedule 2.1(a)	Accounts Receivable
Schedule 2.1(b)	Assigned Agreements
Schedule 2.1(c)	Business Records
Schedule 2.1(e)	Furniture, Fixtures and Equipment
Schedule 2.1(g)	Inventory
Schedule 2.1(h)	Intellectual Property
	(i) Copyrights
	(ii) Domain Names
	(iii) Patents
	(iv) Software
	(v) Trademarks
	(vi) Trade Secret
Schedule 2.1(i)	Permits
Schedule 2.1(j)	PO/lockboxes maintained by or with the Fulfillment Agent
Schedule 2.1 (k)	Purchased Customer Deposits, cash and cash equivalents
Schedule 2.1(l)	Bank Accounts of Sellers
Schedule 3.3	Allocation Schedule(s)

SCHEDULE 2.1(h)

INTELLECTUAL PROPERTY

(i) **COPYRIGHTS**

All

(ii) **DOMAIN NAMES**

OWNER: K. VAN BOURGONDIEN OF VIRGINIA, INC., a Delaware corporation

All domain names owned by K. Van Bourgondien of Virginia, Inc., if any.

OWNER: SIMPLE PLEASURES FLOWERBULBS & PERENNIALS, INC., a New York corporation

All domain names owned by Simple Pleasures Flowerbulbs & Perennials, Inc., including, but not limited to, those identified in the below chart:

Domain Name / TLD	Exp Date
simplepleasure.com	October 7, 2014

(ii) **PATENTS**

OWNER: K. VAN BOURGONDIEN OF VIRGINIA, INC., a Delaware corporation

All patents owned by K. Van Bourgondien of Virginia, Inc., as well as all applications and/or registrations, if any.

OWNER: Simple Pleasures Flowerbulbs & Perennials, Inc., a New York corporation

All patents owned by Simple Pleasures Flowerbulbs & Perennials, Inc., including, but not limited to, those identified in the below chart, as well as the below listed applications and/or registrations:

All patents owned by Simple Pleasures Flowerbulbs & Perennials, Inc., including, but not limited to, those identified in the below chart, as well as the below listed applications and/or registrations:

PATENT	PATENT NO.	ISSUE DATE	APPLICATION NUMBER	FILE DATE	COUNTRY
Display rack	5,881,892	March 16, 1999	08/940,482	September 30, 1997	USA
Storage and display box	5,836,509	November 17, 1998	08/940,483	September 30, 1997	USA
Display rack	N/A	N/A	CA 2248813	September 28, 1998	Canada
Storage and display box	N/A	N/A	CA 2248811	September 28, 1998	Canada
Storage and display box	0,905,031		98203268.2	September 29, 1998	EPO
Display rack			98203267.4	September 29, 1998	EPO
	217,274		98203268.2	September 29, 1998	Austria
	69805258		98203268.2	September 28, 1998	Germany
			313875/98	September 30, 1998	Japan
			313876/98	September 30, 1998	Japan

(iv) **SOFTWARE**

All

(v) **TRADEMARK**

All, including but not limited to:

OWNER: K. Van Bourgondien of Virginia, Inc., a Delaware corporation

All, trademarks, trade names and service marks owned by K. Van Bourgondien of Virginia, Inc.

OWNER: Simple Pleasures Flowerbulbs & Perennials, Inc., a New York corporation

All, trademarks, trade names and service marks owned by Simple Pleasures Flowerbulbs & Perennials, Inc., including, but not limited to, those identified in the below chart, as well as the below listed applications and/or registrations:

MARK	STATUS	REGISTRATION NUMBER	REGISTRATION DATE	SERIAL NUMBER	FILE DATE	COUNTRY
PERFECT PARTNERS	Registered	3279663	August 14, 2007	78848927	March 29, 2006	USA
SIMPLY THE BEST	Abandoned	N/A	N/A	78772874	December 14, 2005	USA
			Abandoned			
			September 10, 2007			
INSPIRATION BLENDS EXTENDED BLOOMS	Abandoned	N/A	N/A	77368502	January 10, 2008	USA
			Abandoned			
			October 30, 2008			
INSPIRATION BLENDS	Abandoned	N/A	N/A	77368477	January 10, 2008	USA

Abandoned

October 30, 2008

PERFECT PARTNERS	Registered	2167712	June 23, 1998	75327239	July 18, 1997	USA
SIMPLE PLEASURES	Registered	2219473	January 19, 1999	75216251	December 20, 1996	USA
PERFECT PARTNERS & DESIGN	Registered	TMA511277	April 29, 1999	0851719	July 23, 1997	Canada
SIMPLY THE BEST	Registered	TMA728303	November 13, 2008	1290043	February 15, 2006	Canada
SIMPLE PLEASURES FLOWERBULBS AND PERENNIALS & DESIGN	Registered	TMA502567	October 21, 1998	0831965	December 19, 1996	Canada
SIMPLE PLEASURES & Design	Registered	TMA574430	January 27, 2003	1057535	April 28, 2000	Canada
SIMPLE PLEASURES FLOWERBULBS & PERENNIALS and Design	Registered	4280713	June 4, 1999	H09-032745	March 26, 1997	Japan
SIMPLE PLEASURES FLOWERBULBS	Registered	000509695	June 29, 1999		April 4, 1997	CTM

& PERENNIALS
and Design

PERFECT
PARTNERS and
Design

Registered 001995075

May 16, 2002

November 28, 2000 CTM

SIMPLE
PLEASURES
FLOWERBULB
& PERENNIALS
& DESIGN

Benelux

SIMPLE
PLEASURES &
DESIGN

Belarus

SIMPLE
PLEASURES &
DESIGN

Russian
Federation

SIMPLE
PLEASURES &
DESIGN

Kazakhstan

SIMPLE
PLEASURES &
DESIGN

China

SIMPLE
PLEASURES &
DESIGN

Korea