

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
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ETAS ID: TM527497

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Bankruptcy Court Order Releasing All Liens including the Security Interest recorded at Reel/Frame 2300/0001		
<b>SEQUENCE:</b>	3		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
GMAC COMMERCIAL CREDIT LLC		01/29/2003	<del>Corporation, NEW YORK</del> Limited Liability Company, NEW YORK
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	HEARTHMARK, LLC		
<b>Street Address:</b>	2381 EXECUTIVE CENTER DRIVE		
<b>City:</b>	BOCA RATON		
<b>State/Country:</b>	FLORIDA		
<b>Postal Code:</b>	33431		
<b>Entity Type:</b>	Limited Liability Company, DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	1717560	IDEAL	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	4045818330		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
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<b>NAME OF SUBMITTER:</b>	Mary Alexander Myers		
<b>SIGNATURE:</b>	/Mary Alexander Myers/		
<b>DATE SIGNED:</b>	06/12/2019		
<b>Total Attachments: 115</b>			
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
Diamond Brands Operating :  
Corp., et al., : Case No. 01-1825 (RJN)  
Debtors. : Jointly Administered  
: Related to Docket Nos.  
----- X 610 and 644

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
CONFIRMING JOINT PLAN OF REORGANIZATION OF  
DIAMOND BRANDS OPERATING CORP. AND ITS DEBTOR AFFILIATES  
PROPOSED BY THE DEBTORS AND JARDEN CORPORATION**

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") and Jarden Corporation having proposed the Joint Plan of Reorganization of Diamond Brands Operating Corp. and its Debtor Affiliates Proposed by the Debtors and Jarden Corporation, dated December 13, 2002 (Docket No. 610) (the "Plan"), as modified pursuant to this Confirmation Order; the Bankruptcy Court having entered its order approving the Disclosure Statement with Respect to Joint Plan of Reorganization of Diamond Brands Operating Corp. and its Debtor Affiliates Proposed by the Debtors and Jarden Corporation (the "Disclosure Statement") on December 13,

2002 (Docket No. 606) (the "Disclosure Statement Order"), the Debtors having filed the Affidavit of Kathleen M. Logan Certifying Voting On and Tabulation of Ballots Accepting and Rejecting the Joint Plan of Reorganization of Diamond Brands Operating Corp. and Its Debtor Affiliates Proposed by the Debtors and Jarden Corporation (the "Voting Declaration") on January 24, 2003; the Bankruptcy Court having established, in the Disclosure Statement Order, January 29, 2003 at 10:00 a.m. (Eastern Standard Time) as the date and time of the hearing pursuant to section 1129 of the Bankruptcy Code to consider Confirmation of the Plan (the "Confirmation Hearing"); affidavits of service having been executed by Kathleen M. Logan and filed with the Bankruptcy Court (Docket No. 626) (the "Declarations of Service"), with respect to the mailing of a notice of the Confirmation Hearing and the other solicitation materials in respect of the Plan in accordance with the Disclosure Statement Order; affidavits of publication having been filed with the Bankruptcy Court (Docket No. 625) (collectively, the "Declarations of Publication") with respect to the publication of the notice of the Confirmation Hearing in accordance with the Disclosure Statement Order; the only objection to Confirmation of the Plan, filed by the United States of Amer-

ica, having been withdrawn pursuant to a stipulation approved by this Court; the Debtors having filed a Memorandum of Law in Support of Confirmation of the Joint Plan of Reorganization of Diamond Brands Operating Corp. and its Debtor Affiliates Proposed by the Debtors and Jarden Corporation (the "Memorandum of Law") on January 24, 2003; the Debtors having filed the Declaration of Naresh K. Nakra in Support of Confirmation of the Joint Plan of Reorganization of Diamond Brands Operating Corp. and Its Debtor Affiliates Proposed by the Debtors and Jarden Corporation (the "Nakra Declaration") and the Declaration of Thane W. Carlston in Support of Confirmation of the Joint Plan of Reorganization of Diamond Brands Operating Corp. and Its Debtor Affiliates Proposed by the Debtors and Jarden Corporation (the "Carlston Declaration") as exhibits to the Memorandum of Law; and Jarden Corporation having filed the Declaration of Martin Franklin in Support of Confirmation of Joint Plan of Reorganization of Diamond Brands Operating Corp. and Its Debtor Affiliates Proposed by the Debtors and Jarden Corporation (Docket No. 649) (the "Franklin Declaration") (collectively, the Nakra Declaration, Carlston Declaration and Franklin Declaration, the "Supporting Declarations"); the Bankruptcy Court having reviewed the Plan,

the Disclosure Statement, the Disclosure Statement Order, the Voting Declaration, the Declarations of Service, the Declarations of Publication, the Objections, the Memorandum of Law, the Supporting Declarations and the other papers before the Bankruptcy Court in connection with the Confirmation of the Plan, and the Supporting Declarations having been admitted into evidence and forming a part of the record in support of Confirmation of the Plan; the Bankruptcy Court having heard the statements of counsel in support of Confirmation at the Confirmation Hearing, as reflected in the record at the Confirmation Hearing; the Bankruptcy Court having considered all testimony presented and evidence admitted at the Confirmation Hearing; the Bankruptcy Court having taken judicial notice of the papers and pleadings on file in the Chapter 11 Case; and the Bankruptcy Court finding that (i) notice of the Confirmation Hearing and the opportunity of any party in interest to object to Confirmation were adequate and appropriate, in accordance with Bankruptcy Rule 2002(b) and the Disclosure Statement Order, as to all parties to be affected by the Plan and the transactions contemplated thereby and (ii) the legal and factual bases set forth at the Confirmation Hearing and as set forth in this Confirmation Order establish just cause for the



relief granted herein; the Bankruptcy Court hereby makes the following Findings of Fact, Conclusions of Law and Order.<sup>1</sup>

IT HAVING BEEN FOUND AND DETERMINED by this Bankruptcy Court that:

A. This Bankruptcy Court has jurisdiction over this Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of the Plan is a "core proceeding" pursuant to 28 U.S.C. § 157(b)(2)(L) and this Bankruptcy Court has jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code, to determine whether the Plan should be confirmed and to enter a Final Order with respect hereto. Venue of this Chapter 11 Case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtors and Jarden Corporation have met their burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code.

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<sup>1</sup> Unless otherwise specified, capitalized terms and phrases used herein have the meanings assigned to them in the Plan. The rules of interpretation set forth in Article I of the Plan shall apply to this Confirmation order (the "Confirmation Order"). In addition, in accordance with Section I.A of the Plan, any term used in the Plan or this Confirmation Order that is not defined in the Plan or this Confirmation Order, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

C. The Plan complies with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and the orders of this Bankruptcy Court with respect to the Plan, thus satisfying the requirements of section 1129(a)(1) of the Bankruptcy Code.

D. The Debtors and Jarden Corporation, as proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and the orders of this Bankruptcy Court with respect to the solicitation of acceptances or rejections of the Plan, thus satisfying the requirements of section 1129(a)(2) of the Bankruptcy Code.

E. The Plan, and the compromises and settlements embodied therein, have been proposed in good faith and not by any means forbidden by law, and the Purchaser is purchasing the Acquired Assets in good faith, as evidenced by, among other things, the totality of the circumstances surrounding the formulation of the Plan, the record of the Chapter 11 Case, and by the recoveries of holders of Claims and Interests thereunder, thus satisfying the requirements of section 1129(a)(3) of the Bankruptcy Code.

F. All payments that have been made or are to be made by the Debtors or Reorganized Debtors under the Plan or by any person acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been approved by, or will be subject to the approval of, the Bankruptcy Court as reasonable, thus satisfying the requirements of section 1129(a)(4) of the Bankruptcy Code.

G. Jarden Corporation, a public company, has been identified along with its Affiliates, as the purchasers of substantially all of the Debtors' assets and information about Jarden was set forth in the Disclosure Statement. The Purchaser has available all necessary cash and other resources required to consummate the Purchase Agreement and the Plan in accordance with their terms. The Purchaser is a third-party purchaser unrelated to the Debtors. No common identity of incorporators, directors or stockholders exists between the Purchaser and the Debtors. The Purchaser is not holding itself out to the public as a continuation of the Debtors. The Purchaser is not the Debtors' successor. The Purchaser shall not be liable for any of the Debtors'

obligations and shall not be responsible for satisfying any claims against the Debtors or the Estates, except as specifically set forth in the Plan or the Purchase Agreement. The identity of the sole officer and director of the Reorganized Debtors has been disclosed as the Plan Administrator and is named in the Plan Administrator Agreement, and the manner of selection and appointment of the Plan Administrator is consistent with the interests of holders of Claims and Interests and with public policy, thus satisfying the requirements of section 1129(a)(5) of the Bankruptcy Code.

H. The Debtors' businesses do not involve the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after Confirmation. Thus, Section 1129(a)(6) of the Bankruptcy Code is inapplicable to these Chapter 11 Case.

I. Section 1129(a)(7) of the Bankruptcy Code requires that each holder of a Claim or Interest in an impaired Class accept the Plan, or receive or retain under the Plan property having a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive on account of such Claim or Interest if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code. The following Classes are

impaired under the Plan: Classes H-3, H-4, O-3 and O-4. Article IX of the Disclosure Statement and the other evidence proffered or adduced at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence or challenged in any of the Objections, and (iii) establish that each holder of an unimpaired Claim or Interest, as the case may be, in such impaired Classes has either accepted the Plan, or will receive or retain under the Plan property having a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date, thus satisfying the requirements of section 1129(a)(7) of the Bankruptcy Code.

J. Section 1129(a)(8) of the Bankruptcy Code requires that for each Class of Claims or Interests under the Plan, such Class has either accepted the Plan or is not impaired under the Plan. Unimpaired Classes H-1 and H-2 and O-1 and O-2 are conclusively presumed to have accepted the Plan without the solicitation of acceptances or rejections pursuant to section 1126(f) of the Bankruptcy Code. Impaired Classes H-3, O-3 and O-4 have accepted the Plan. Because holders of Interests in

impaired Class H-4 neither receive<sup>(b)</sup> or retain any property under the Plan, they are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code, and the requirements of section 1129(a)(8) have not been met, thereby requiring application of section 1129(b) of the Bankruptcy Code. As is more fully set forth in ¶ P of this Confirmation Order, the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to Class H-4.

K. The treatment of Administrative Claims, Priority Tax Claims and Other Priority claims are set forth in sections 2.1(b), 2.1(c), 2.3(b) and 2.4(b) of the Plan, thus satisfying the requirements of section 1129(a)(9).

L. The Plan has been accepted by impaired Classes H-3 and O-3, determined without inclusion of any acceptance of the Plan by any insider, thus satisfying the requirement of section 1129(a)(10) of the Bankruptcy Code.

M. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization of, the Debtors, as the Plan provides for the sale of substantially all of the assets of the Debtors in accordance with the Purchase Agreement, the orderly liquidation of all of the Debtors' remaining

assets not the subject of the Purchase Agreement, the payment of all Allowed Administrative and Priority Claims and a distribution to holders of Allowed General Unsecured Claims of Cash, or Cash and Additional Consideration, in accordance with the priority scheme of the Bankruptcy Code and the provisions of the Plan, thus satisfying the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

N. The Debtors have paid, or will pay on the Effective Date, all amounts due under 28 U.S.C. § 1930, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

O. Section 4.8 of the Plan provides that all employee compensation and benefit plans of the Debtors identified on schedule 2.1.1.22 of the Purchase Agreement, including programs subject to sections 1114 and 1129(a)(13) of the Bankruptcy Code, entered into before or after the Petition Date and not since terminated, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed under Section 6.1 of the Plan, thus satisfying section 1129(a)(13) of the Bankruptcy Code.

P. Holders of Interests in Class H-4 will receive no distributions under the Plan and, accordingly,

are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. This is the only Class which has not accepted, or has been deemed to have rejected, the Plan. The Debtors presented uncontroverted evidence at the Confirmation Hearing that the Plan does not discriminate unfairly and is fair and equitable with respect to the treatment of Interests in Class H-4 because, as required by section 1129(b) (2) (C) of the Bankruptcy Code, there are no holders of interests junior to the holders of Interests in Class H-4 which will receive or retain under the Plan any property on account of such junior interests. Thus, the Plan satisfies section 1129(b) of the Bankruptcy Code and may be confirmed notwithstanding its failure to satisfy section 1129(a) (8) of the Bankruptcy Code. The Plan shall be binding upon the members of Class H-4 upon Confirmation and the occurrence of the Effective Date.

Q. The principal purpose of the Plan is not the avoidance of taxes or avoidance of the requirements of section 5 of the Securities Act of 1933 and no governmental unit has requested that the Bankruptcy Court deny confirmation on such basis, thus satisfying the requirements of section 1129(d) of the Bankruptcy Code.



R. The Technical Modifications to the Plan (the "Technical Modifications") filed contemporaneously herewith and attached hereto as Exhibit B shall be, and they are hereby are, incorporated into and shall be deemed a part of the Plan. Such modifications constitute technical changes and do not materially adversely affect or change the treatment of any Claims or Interests. Accordingly, pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or re-solicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the original Plan. Pursuant to Bankruptcy Rule 3019, such technical modifications shall be deemed accepted by all holders of Claims and Interests who have previously accepted the Plan.

S. The Bankruptcy Court finds that it may properly retain jurisdiction over the matters set forth in Article X of the Plan and section 1142 of the Bankruptcy Code.

T. All conditions precedent to confirmation set forth in Article IX of the Plan have been satisfied,

will be satisfied by entry of this Confirmation Order, or have been duly waived.

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED that:

A. Confirmation.

1. Approval. The Plan, which consists of the Plan as originally filed on December 17, 2002, and the Technical Modifications, and all exhibits, provisions, terms and conditions thereto, and the Plan Administrator Agreement (substantially in the form attached hereto as Exhibit C) are approved and confirmed as having satisfied all of the requirements of Chapter 11 of the Bankruptcy Code. The terms of the Plan, as modified, are incorporated herein by reference and are an integral part of this Confirmation Order. Copies of the Plan and the Technical Modifications are attached hereto as Exhibits A and B respectively. All references to the Plan herein shall be with respect to the Plan as modified by the Technical Modifications.

2. Findings of Fact and Conclusions of Law. The findings of fact and conclusions of law of the Bankruptcy Court set forth herein and at the Confirmation Hearing shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, as made applica-

ble herein by Bankruptcy Rule 9014, and the findings and conclusions of the Bankruptcy Court at the Confirmation Hearing are incorporated herein by reference. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and vice versa.

**B. Effects of Confirmation**

3. Non-discharge of Claims. Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided, however, that no holder of a Claim against any Debtor may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against, any Debtor, Reorganized Debtor, their respective successors or their respective property, except as expressly provided in the Plan.

4. Binding Effect. Notwithstanding the stay contemplated by Bankruptcy Rule 3020(e) and except as otherwise provided in section 1141(d) of the Bankruptcy Code, immediately after entry of this Confirmation Order, the provisions of the Plan and this Confirmation Order shall be deemed binding against the Debtors, the Reorganized Debtors, any and all holders of Claims or Interests in the Debtors (irrespective of whether such Claims or Interests are impaired under the Plan or whether the

holders of such Claims or Interests accepted, rejected or are deemed to have accepted or rejected the Plan), any and all non-debtor parties to executory contracts or unexpired leases with the Debtors, and any and all entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the Plan. Accordingly, as permitted by Bankruptcy Rule 3020(e), the ten (10) day period provided by such rule is hereby waived in its entirety.

**C. Implementation of the Plan.**

5. Sale Free and Clear of Liens. In accordance with the terms of the Plan and the Purchase Agreement, all of the Acquired Assets shall be sold, assigned, transferred, and delivered to Purchaser free and clear of any lien, encumbrance, claim, or interest of any kind or nature (collectively, the "Liens"; provided, however, such term shall exclude any and all permitted Liens under the Purchase Agreement) of any person or entity that encumber or relate to or purport to encumber or relate to the Acquired Assets, with all such Liens to attach to the Cash Consideration in the order of their priority, with the same validity, force and effect which they now have as against the Acquired Assets, subject to any claims and defenses the Debtors may possess with respect thereto.

6. Section 1146(c) Waiver. Pursuant to section 1146(c) of the Bankruptcy Code, any issuance, transfer, or exchange of any security under the Plan, or the making or delivery of any instrument of transfer under the Plan shall not be taxed under any law imposing a stamp tax or other similar tax.

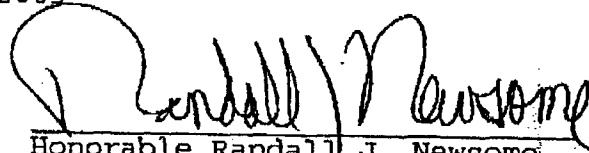
7. Withdrawal of Motion for Substantive Consolidation. As of the later to occur of the Closing or the Effective Date, the Motion of Stephen Compagni Portis for Substantive Consolidation of the Estates of Diamond Brands Incorporated and Diamond Brands Operating Corp. (Docket No. 503) is hereby deemed withdrawn, with prejudice.

8. Retention of Jurisdiction. Notwithstanding confirmation of the Plan or the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including among other things, jurisdiction over the matters set forth in Article X of the Plan, which provisions are incorporated herein by reference.

9. Notice of Entry of Confirmation Order. The Debtors and their authorized agent shall serve notice of (a) entry of this Confirmation Order and (b) the last

date to file (i) Professional Fee Claims (ii) Administrative Expense Claims and (iii) Claims arising from the rejection of executory contracts and unexpired leases, substantially in the form annexed hereto as Exhibit D, which form is hereby approved, on all creditors of the Debtors as of the date hereof, and other parties in interest within five (5) Business Days from the date of entry of this Confirmation Order.

Dated: Wilmington, Delaware  
January 21, 2003



Honorable Randall J. Newsome  
United States Bankruptcy Judge

Exhibit A

Plan

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----	x	
In re:	:	Chapter 11
	:	
DIAMOND BRANDS OPERATING	:	
CORP., <u>et al.</u> ,	:	Case No. 01-1825 (RJN)
	:	
Debtors.	:	Jointly Administered
-----	x	

**JOINT PLAN OF REORGANIZATION OF DIAMOND BRANDS OPERATING  
CORP. AND ITS DEBTOR AFFILIATES PROPOSED BY THE  
DEBTORS AND JARDEN CORPORATION**

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Dated as of: December 13, 2002

TRADEMARK

REEL: 006680 FRAME: 0127



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Article I

DEFINITIONS, RULES OF INTERPRETATION,  
COMPUTATION OF TIME AND GOVERNING LAW

A. Scope of Definitions; Rules of Construction

For purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules. Whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

B. Definitions

"Accredited Investor" means "accredited investor," as defined in Rule 501(a) of the Securities Act of 1933, as amended.

"Acquired Assets" means all of the assets to be sold, assigned, transferred and delivered to the Purchaser pursuant to the Purchase Agreement.

"Acquired Product Lines" means the Debtors' business of designing, manufacturing, marketing and selling plastic cutlery, matches, toothpicks and other wooden and plastic consumer items.

"Additional Consideration" means, at the Purchaser's election, (i) \$6,000,000 in cash payable by wire transfer of immediately available funds or (ii) shares of the Jarden Corporation's Common Stock with an aggregate Fair Market Value of \$6,000,000 as of the date of delivery, which shares shall be freely tradeable, registered and qualified for listing prior to their issuance, to be paid no later than six (6) months after Closing, secured by the Letter of Credit.

"Administrative Claim" means a Claim for payment of an administrative expense of a kind specified in section 503(b) or 1114(e)(2) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code, including, but not limited to, (a) the actual, necessary costs and expenses, incurred after the Petition Date, of preserving the Estates and operating the businesses of the Debtors, including wages, salaries, or commissions for services rendered after the commencement of the Chapter 11 Case, (b) Professional Fee Claims, (c) all fees and charges properly assessed against the Estates under 28 U.S.C. § 1930, and (d) all Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court under section 546(c)(2)(A) of the Bankruptcy Code.

"Affiliate" means any Person which, directly or indirectly, is in control of, is controlled by or is under common control with the party for whom an affiliate is being determined.

"Allowed Claim" means a Claim or any portion thereof (a) that has been allowed by a Final Order, or (b) as to which, on or by the Effective Date, (i) no proof of claim has been filed with the Bankruptcy Court and (ii) the liquidated and noncontingent amount of which is Scheduled, other than a Claim that is Scheduled at zero, in an unknown amount, or as disputed, or (c) for which a proof of claim in a liquidated amount has been timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code, any Final Order of the Bankruptcy Court or other applicable bankruptcy law, and as to which either (i) no objection to its allowance has been filed within the periods of limitation fixed by the Plan, the Bankruptcy Code or by any order of the Bankruptcy Court or (ii) any objection to its allowance has been settled or withdrawn, or has been denied by a Final Order, or (d) that is expressly allowed in this Plan.

"Alternative Transaction" means a sale of the DBI Assets, the DBOC Debtors' Assets, or both, as the case may be, to the Purchaser pursuant to the Purchase Agreement pursuant to sections 363, 365, and any other applicable provisions of the Bankruptcy Code.

"Alternative Transaction Order" means the order entered by the Bankruptcy Court approving an Alternative Transaction.

"Allowed Class . . . Claim" means an Allowed Claim in the particular Class described.

"Assumed Obligations" means "Assumed Obligations" as such term is defined in the Purchase Agreement.

"Ballots" means each of the ballot forms distributed with the Disclosure Statement to holders of Impaired Claims entitled to vote as specified in Section 3.1 of this Plan, in connection with the solicitation of acceptances of the Plan.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as now in effect or hereafter amended.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware or such other court as may have jurisdiction over the Chapter 11 Case.

"Bankruptcy Rules" means, collectively, the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended, as applicable to the Chapter 11 Case or proceedings therein, and the Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Case or proceedings therein, as the case may be.

"Bar Date(s)" means the date(s), if any, designated by the Bankruptcy Court as the last dates for filing proofs of Claim or Interest against the Debtors.

"Business Day" means any day, excluding Saturdays, Sundays or "legal holidays" (as defined in Fed. R. Bankr. P. 9006(a)), on which commercial banks are open for business in New York, New York.

"Cash" means legal tender of the United States or equivalents thereof.

"Cash Consideration" means the Cash paid for the Acquired Assets pursuant to the Purchase Agreement, including the \$1 million deposited in accordance with the Bankruptcy Court's Scheduling Order Establishing (I) Procedures with Respect to Filing of Amended Proposed Plans of Reorganization and (II) Hearing to Consider Proposed Plans of Reorganization, dated October 30, 2002 and pursuant to the terms of the Purchase Agreement and the Earnest Money Deposit Agreement.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.).

"Chapter 11 Case" means the jointly administered chapter 11 cases of the Debtors.

"Charging Lien" means any Lien or other priority in payment arising prior to the Effective Date to which the Indenture Trustees are entitled, pursuant to the Old Indentures, against distributions to be made to holders of Old Note Claims for payment of any Indenture Trustee Fees.

"Claim" means a claim against the Debtors, or any of them, whether or not asserted, as defined in section 101(5) of the Bankruptcy Code.

"Claims Objection Deadline" means the last day for filing objections to Disputed Claims, which day shall be ninety (90) days after the Effective Date, unless such date is extended by the Bankruptcy Court upon request by the Debtors or the Reorganized Debtors.

"Class" means a category of holders of Claims or Interests, as described in Article II of this Plan.

"Closing" means the closing of the transactions contemplated by the Purchase Agreement upon the terms and subject to the satisfaction of the conditions therein.

"Collateral" means any property or interest in the property of a Debtor's Estate subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

"Confirmation" means entry by the Bankruptcy Court of the Confirmation Order.

"Confirmation Date" means the date of entry by the clerk of the Bankruptcy Court of the Confirmation Order.

"Confirmation Hearing" means the hearing to consider confirmation of the Plan under section 1128 of the Bankruptcy Code.

"Confirmation Order" means the order entered by the Bankruptcy Court confirming the Plan.

"Creditor" means any Person who holds a Claim against any of the Debtors.

"Creditors' Committee" means the official committee of unsecured creditors appointed pursuant to section 1102(a) of the Bankruptcy Code in the Chapter 11 Case.

"Cure" means the distribution of Cash, or such other property as may be agreed upon by the parties or ordered by the Bankruptcy Court, with respect to the assumption of an executory contract or unexpired lease, pursuant to section 365(b) of the Bankruptcy Code, in an amount equal to all unpaid monetary obligations, without interest, or such other amount as may be agreed upon by the parties, under such executory contract or unexpired lease, to the extent such obligations are enforceable under the Bankruptcy Code and applicable bankruptcy law.

"DBI" means Diamond Brands Incorporated.

"DBI Assets" means all of the Acquired Assets and all Acquired Product Lines of DBI purchased by the Purchaser pursuant to the terms of the Purchase Agreement.

"DBI Interests" means the common stock of Diamond Brands Incorporated, together with any other options, warrants, conversation rights, rights of first refusal, or other rights, contractual or otherwise, to acquire or receive any common or preferred stock or other equity interest in DBI, and any contracts, subscriptions, commitments or agreements pursuant to which a party was or could have been entitled to receive shares, securities, or other ownership interests in DBI.

"DBI Plan" means this Joint Chapter 11 Plan of Reorganization as it relates to DBI, and all exhibits annexed hereto or referenced herein, as the same may be amended, modified or supplemented from time to time.

"DBI Recovery Pool" means the consideration to be distributed on account of the DBOC Interests to the DBI Estate, and the subsequent distributions by the DBI Estate to holders of Allowed Class H3 Claims, pursuant to the allocation and settlement provisions set forth in Sections 4.16 and 4.17 of this Plan.

"DBOC" means Diamond Brands Operating Corp.

"DBOC Debtors" means DBOC, Forster, Inc. and Diamond Brands Kansas, Inc.

"DBOC Debtors' Assets" means all of the Acquired Assets and Acquired Product Lines of the DBOC Debtors purchased by the Purchaser pursuant to the terms of the Purchase Agreement.

"DBOC Debtors' Plan" means this Joint Amended Chapter 11 Plan of Reorganization as it relates to the DBOC Debtors, and all exhibits annexed hereto or referenced herein, as the same may be amended, modified or supplemented from time to time.

"DBOC Interests" means all interests against the DBOC Debtors, including the common stock of Diamond Brands Operating Corp.

"DBOC Unsecured Creditor Distribution Pool" means the consideration to be distributed by Reorganized DBOC to holders of Allowed Class O3 Claims pursuant to the allocation and settlement provisions set forth in Sections 4.16 and 4.17 of this Plan.

"Debtor(s)" means, individually, and collectively, DBI, DBOC, and DBOC's direct subsidiaries, Forster, Inc. and Diamond Brands Kansas, Inc., including in their capacity as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code, and as reorganized hereunder.

"DIP Facility" means the debtor-in-possession credit facility entered into between the Debtors and the Lenders during the Chapter 11 Case, which was approved by the Bankruptcy Court on a final basis on July 13, 2001.

"DIP Facility Claim" means a Claim arising under or as a result of the DIP Facility, including without limitation the Interest Rate Swap Agreement.

"DIP Lender" means the lenders under the DIP Facility.

"Disclosure Statement" means the written disclosure statement that relates to the Plan, as amended, supplemented, or modified from time to time, and that is prepared and distributed in accordance with section 1125 of the Bankruptcy Code and Fed. R. Bankr. P. 3018.

"Disbursing Agent" means the Reorganized Debtors or any party designated by the Reorganized Debtors, in conjunction with the Creditors' Committee, to serve as disbursing agent under the Plan.

"Disputed Claim" means any Claim that has not been Allowed pursuant to the Plan or a Final Order of the Bankruptcy Court, and

(a) if no Proof of Claim has been filed by the applicable Bar Date, a Claim which has been listed on the Schedules as unliquidated, contingent, or disputed, or in zero or unknown amount, and which has not been resolved by written agreement of the parties or an order of the Bankruptcy Court;

(b) if a Proof of Claim has been filed by the applicable Bar Date, a Claim designated on such Proof of Claim in zero or unknown amount, and which has not been resolved by written agreement of the parties or an order of the Bankruptcy Court;

(c) if a Proof of Claim has been filed by the applicable Bar Date (i) a Claim designated on such Proof of Claim as unliquidated, contingent or disputed; and (ii) as to which a Debtor has timely filed an objection or request for estimation in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court, or which is otherwise disputed by a Debtor in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn, or determined by a Final Order;

(d) for which a Proof of Claim was required to be filed by order of the Bankruptcy Court, but as to which a Proof of Claim was not timely or properly filed;

(e) or that is disputed in accordance with the provisions of this Plan.

"Disputed Claim Amount" means (a) if a liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) the liquidated amount set forth in the Proof of Claim relating to the Disputed Claim; (ii) an amount agreed to by the Debtors and the holder of such Disputed Claim; or (iii) if a request for estimation is filed by the Debtors, the amount at which such Claim is estimated by the Bankruptcy Court; (b) if no liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) an amount agreed to by the Debtors and the holder of such Disputed Claim or (ii) the amount estimated by the Bankruptcy Court with respect to such Disputed Claim; or (c) if the Claim was listed on the Schedules as unliquidated, contingent or disputed and no Proof of Claim was filed, or deemed to have been filed, by the applicable Bar Date and the Claim has not been resolved by written agreement of the parties or an order of the Bankruptcy Court, zero.

"Distribution Date" means the date, occurring as soon as practicable after the Effective Date, upon which distributions are made by the Reorganized Debtors, to holders of Allowed Claims entitled to receive distributions under this Plan.

"Distribution Record Date" means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date designated in the Confirmation Order.

"Earnest Money Deposit Agreement" means that certain deposit letter from the Purchaser addressed and delivered to the Debtors in accordance with the Scheduling Order.

"Effective Date" means the Business Day on which all conditions to the consummation of the Plan as set forth in Article IX of this Plan have been satisfied or waived as provided in Article IX of this Plan and is the effective date of the Plan.

"Environmental Laws" means all federal, state, local and foreign statutes, regulations, ordinances and other provisions having the force or effect of law, all judicial and administrative orders and determinations, all contractual obligations and all common law, in each case concerning public health and safety, worker health and safety, pollution or protection of the environment, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, Release (as that term is defined in CERCLA), threatened Release, control, or cleanup of any Hazardous Substances (including without limitation CERCLA and analogous state laws), each as amended or in effect prior to, on or after the Closing.

"Estate(s)" means, individually, the estate of each Debtor in the Chapter 11 Case, and, collectively, the estates of all Debtors in the Chapter 11 Case, created pursuant to section 541 of the Bankruptcy Code.

"Face Amount" means (a) when used in reference to a Disputed Claim, the full stated amount claimed by the holder of such Claim in any proof of Claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or other applicable bankruptcy law, and (b) when used in reference to an Allowed Claim, the allowed amount of such Claim.

"Fair Market Value" of each share of the Buyer's Common Stock (as defined in the Purchase Agreement) means, as of the date of issuance, the average of the closing prices of the sales of the Buyer's Common Stock on all securities exchanges on which the Buyer's Common Stock may at the time be listed, or, if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day the Buyer's Common Stock is not so listed, the average of the representative bid and asked prices quoted in the NASDAQ System as of 4:00 P.M., New York time, or, if on any day the Buyer's Common Stock is not quoted in the NASDAQ System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau Incorporated, or any similar successor organization, in each such case averaged over a period consisting of the twenty (20) consecutive Business Days immediately preceding the fifth Business Day preceding the date of issuance.

"Final Order" means an order or judgment, the operation or effect of which has not been reversed or stayed, is no longer subject to appeal, *certiorari* proceeding or other proceeding for review, reargument, or rehearing, and as to which no appeal, *certiorari* proceeding, or other proceeding for review, reargument, or rehearing has been requested or is then pending and the time to file any such appeal, *certiorari* proceeding or other proceeding for review, reargument, or rehearing has expired or as to which any right to appeal, petition for *certiorari*, reargue, or seek rehearing shall have been waived in writing in form and substance satisfactory to the Debtors and the Purchaser.

"General Unsecured Claim" means a Claim against a Debtor that is not a DIP Facility Claim, Administrative Claim, Priority Tax Claim, Other Priority Claim, Secured Claim, or Subordinated Claim, including all Old Note Claims.

"Governmental Authorities" means any government of any nation, state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and includes the Bankruptcy Court.

"Hazardous Substances" means any pollutants, contaminants or chemicals, and any industrial, toxic or otherwise hazardous materials, substances or wastes with respect to which liability or standards of conduct are imposed under any Environmental Laws, including, without limitation, petroleum and petroleum-related substances, and asbestos.

"Impaired" means, when used with reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

"Indenture Trustee Fees" means the reasonable compensation, fees, expenses, disbursements and indemnity claims, including, without limitation, attorneys' and agents' fees, expenses and disbursements, incurred by the Indenture Trustees, whether prior to or after the Petition Date and whether prior to or after the consummation of the Plan.

"Indenture Trustees" means the indenture trustees for each of the Old Notes.

"Intercompany Claim" means, as the case may be, any (a) account reflecting intercompany book entries by one Debtor with respect to another Debtor, or (b) any Claim that is not reflected in such book entries and is held by a Debtor against any other Debtor.

"Interest" means the rights and interests of the holder of any equity security, including options or warrants to purchase equity securities, stock appreciation rights or other rights to purchase or deliver in exchange for equity securities, with respect to Debtors, and includes Debtors' common stock (including the Old Common Shares), preferred stock, options or warrants to purchase or otherwise acquire the same and Claims arising out of the purchase and sales.

"Interest Rate Swap Agreement" means that certain agreement styled "Interest Rate Swap Agreement" entered into as of the 7th day of May, 1998, in connection with the pre-petition credit facility provided to DBOC on or about April, 1998, with Wells Fargo Bank, National Association as Floating Rate Payer. Claims arising under and in connection with the Interest Rate Swap Agreement are Allowed DIP Facility Claims.

"Lender" means a "Lender" as defined in the DIP Facility.

"Letter of Credit" means the letter of credit to be issued by Bank of America for the benefit of the Reorganized Debtors no later than ten (10) Business Days prior to Closing, acting by the Plan Administrator and/or Jarden Corporation, to secure the obligation of the Purchaser in connection with the Additional Consideration, which shall be in a form reasonably acceptable to the Debtors, the Plan Administrator, and the Creditors' Committee.

"Lien" means a charge against or interest in property to secure payment of a debt or performance of an obligation.



"Litigation Claims" means the claims, rights of action, suits, or proceedings, whether in law or in equity, whether known or unknown, that the Debtors or their Estates may hold against any Person, which are to be retained by the Reorganized Debtors pursuant to Section 4.12 of this Plan.

"Local Rules" means the Local Rules of the United States Bankruptcy Court for the District of Delaware.

"Net Available Unsecured Creditor Proceeds" means all proceeds derived from the sale or other liquidation of the assets of the Debtors' Estates, pursuant to this Plan or otherwise, remaining after payment in full of all Allowed Administrative Claims, Allowed DIP Facility Claims, Allowed Tax Claims, Allowed Other Priority Claims, Allowed Secured Claims, Cure payments, and any other costs and expenses related to the consummation and implementation of this Plan (subject to the Purchaser's obligations in connection with such Claims under the Purchase Agreement).

"Old Common Shares" means the common shares of DBI issued and outstanding as of the Petition Date.

"Old Indentures" means the (a) Indenture, dated as of April 21, 1998, between Diamond Brands Operating Corp. and State Street Bank and Trust Company, as Indenture Trustee for the 10 1/8% Senior Subordinated Notes due 2008 issued by DBOC; and (b) the Indenture, dated as of April 21, 1998, between Diamond Brands, Inc. and State Street Bank and Trust Company, as predecessor Indenture Trustee, pursuant to which HSBC Bank USA is the successor Indenture Trustee for the 12 7/8% Senior Discount Notes due 2009 issued by DBI and the 12 7/8% Convertible Notes due 2009 issued by DBI.

"Old Note Claims" means any Claim arising from the Old Notes.

"Old Notes" means the (a) 10 1/8% Senior Subordinated Notes due 2008 issued by DBOC; (b) the 12 7/8% Senior Discount Notes due 2009 issued by DBI; and (c) the 12 7/8% Convertible Notes due 2009 issued by DBI.

"Old Securities" means, collectively, the Old Common Shares and the Old Notes.

"Operating Reserve" means the reserve account to be established and maintained by the Reorganized Debtors into which the Reorganized Debtors shall from time to time deposit Cash to fund, among other things, the fees and expenses of the Plan Administrator, the Reorganized Debtors, the Plan Committee, and each of their respective professionals, as set forth more fully in the Plan Administration Agreement.

"Other Priority Claim" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code other than a Priority Tax Claim or an Administrative Claim.

"Permitted Liens" means (i) statutory liens for current property Taxes and assessments not yet due and payable, including, without limitation, liens for *ad valorem* Taxes and statutory liens not yet due and payable arising other than by reason of any default on the part of the Debtors, and (ii) easements, covenants, conditions, restrictions and other similar matters of record on real property, leasehold estates or personalty that do not in any material respect detract from the value of the property subject thereto thereof and do not individually or in the aggregate in any material respect interfere with the present use of the property subject thereto with respect to the Acquired Product Lines.

"Person" means Person as defined in section 101 (41) of the Bankruptcy Code.

"Petition Date" means the date on which the Debtors filed their petitions for relief commencing the Chapter 11 Case.

"Plan" means, individually, the DBI Plan and the DBOC Debtors' Plan.

"Plan Administrator" means the person designated by the Debtors and the Creditors' Committee prior to the Confirmation Date and approved by the Bankruptcy Court pursuant to the Confirmation Order to administer the

Plan in accordance with the terms of the Plan and the Plan Administration Agreement and to take such other actions as may be authorized under the Plan Administration Agreement, and any successor thereto.

**"Plan Administrator Agreement"** means the agreement to be entered into between and among the Debtors and the Plan Administrator, specifying the rights, duties and responsibilities of and to be performed by the Plan Administrator under the Plan, which will be filed prior to the Confirmation Hearing.

**"Plan Committee"** means the Creditors' Committee, as reconstituted after the Confirmation Date to monitor implementation of the Plan and to take such other actions as are set forth in the Plan or as may be approved by the Bankruptcy Court.

**"Plan Exhibit"** means any exhibit or schedule attached hereto.

**"Plan Proponents"** means Jarden Corporation, a Delaware corporation, and the Debtors.

**"Priority Tax Claim"** means a Claim that is entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code.

**"Professional"** means any professional employed in the Chapter 11 Case pursuant to sections 327 or 1103 of the Bankruptcy Code or otherwise and any professionals seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.

**"Professional Fee Claim"** means a Claim of a Professional for compensation or reimbursement of costs and expenses relating to services rendered after the Petition Date and prior to and including the Effective Date.

**"Pro Rata"** means, at any time, the proportion that the Face Amount of a Claim in a particular Class bears to the aggregate Face Amount of all Claims (including Disputed Claims) in such Class, unless the Plan provides otherwise.

**"Proof of Claim"** means the proof of claim that must be filed by a holder of an Impaired Unsecured Claim by the Bar Date.

**"Purchase Agreement"** means the Asset Purchase Agreement dated as of November 27, 2002 between Debtors and the Purchaser, which is attached hereto as Exhibit 1, pursuant to which the Purchaser agrees to purchase the Acquired Assets of the Debtors upon and subject to the terms and conditions contained in the Purchase Agreement and the Plan.

**"Purchase Price"** means the aggregate consideration to be paid for the Acquired Assets, equal to the sum of (i) the Cash Consideration plus (ii) the Additional Consideration.

**"Purchaser"** means Jarden Corporation or one or more of its Affiliates (which shall be formed by Jarden Corporation prior to the Closing if not already in existence) whom Jarden Corporation designates to consummate the Closing.

**"Quarterly Distribution Date"** means the last Business Day of the month following the end of each calendar quarter after the Effective Date; provided, however, that if the Effective Date is within 30 days of the end of a calendar quarter, the first Quarterly Distribution Date will be the last Business Day of the month following the end of the first calendar quarter after the calendar quarter in which the Effective Date falls.

**"Reorganized Debtor(s)"** means, individually, any Reorganized Debtor and, collectively, all Reorganized Debtors, on or after the Effective Date.

**"Restructuring Transactions"** has the meaning ascribed thereto in Section 4.7 of this Plan.

"Schedules" means the schedules of assets and liabilities and the statements of financial affairs, if any, filed in the Bankruptcy Court by the Debtors as such schedules or statements as may be amended or supplemented from time to time in accordance with Fed. R. Bankr. P. 1009 or orders of the Bankruptcy Court.

"Scheduling Order" mean the Bankruptcy Court's Scheduling Order Establishing (I) Procedures with Respect to Filing of Amended Proposed Plans of Reorganization and (II) Hearing Date to Consider Proposed Plans of Reorganization dated October 30, 2002.

"Secured Claim" means a Claim that is secured by a Lien on property in which an Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code. For purposes of classification and treatment, the definition of Secured Claim shall exclude DIP Facility Claims.

"Sharing Percentage" means 50% of Allowed Administrative Claims paid after the date of the Purchase Agreement in excess of \$3,000,000 but only up to \$4,700,000.

"Subordinated Claims" means any Claim subordinated pursuant to sections 510(b) or (c) of the Bankruptcy Code, which shall include any Claim arising from the rescission of a purchase or sale of any Old Security, any Claim for damages arising from the purchase or sale of an Old Security, or any Claim for reimbursement, contribution or indemnification on account of any such Claim.

"Substantial Contribution Claim" means a claim for compensation or reimbursement of expenses incurred in making a substantial contribution in the Chapter 11 Case pursuant to section 503(b)(3),(4), or (5) of the Bankruptcy Code.

"Total Consideration" means the aggregate of the Cash Consideration, the Additional Consideration, the Sharing Percentage (only to the extent payable pursuant to section 2.1(b) of the Plan), and the Assumed Obligations.

"Unimpaired" means, when used with reference to a Claim or Interest, a Claim or Interest that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

"Unimpaired Claim" means a Claim that is not an Impaired Claim.

"Voting Record Date" means the voting record date for voting to accept or reject this Plan, as determined by the Bankruptcy Court.

#### C. Rules of Interpretation

For purposes of the Plan (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or documents being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (b) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented, (c) unless otherwise specified, all references in the Plan to sections, articles, schedules, and exhibits are references to sections, articles, schedules, and exhibits of or to the Plan, (d) the words "herein" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan, (e) captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan, and (f) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

#### D. Computation of Time

In computing any period of time prescribed or allowed by the Plan, the provisions of Fed. R. Bankr. P. 9006(a) shall apply.

## E. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of (i) the State of Delaware shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan and (ii) the laws of the state of incorporation of each Debtor shall govern corporate governance matters with respect to such Debtor, in either case without giving effect to the principles of conflicts of law thereof.

### Article II

#### CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

The Plan is premised on the substantive consolidation of the Estates that comprise the DBOC Debtors only for purposes of voting on, distributions under, and Confirmation of the Plan. The Plan does not provide for the substantive consolidation of DBI and the DBOC Debtors for any purpose, and thus this Plan constitutes separate plans for each of DBI and the DBOC Debtors.

##### 2.1 Unclassified Claims.

In accordance with section 1123(a)(1) of the Bankruptcy Code, DIP Facility Claims, Administrative Claims and Priority Tax Claims, have not been classified, and the respective treatment of such unclassified claims is set forth immediately below.

###### (a) DIP Facility Claims

On the Effective Date, each holder of an Allowed DIP Facility Claim shall receive in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed DIP Facility Claim (i) Cash equal to the principal amount of the DIP Loans, and without duplication, amounts owing pursuant to early termination provision of the Interest Rate Swap Agreement (provided that the Termination Amount as defined in the Interest Rate Swap Agreement shall be determined as follows: (x) prior to the Confirmation Date, the Purchaser and Wells Fargo Bank, National Association shall select five (5) national leading commercial banks (the "Confirmation Banks") which each shall be directed to provide the parties with the Termination Amount as of the close of the market (12:00 noon, Pacific Standard Time) on the Effective Date, (y) the highest and lowest figures provided by the Confirmation Banks shall be disregarded, and the remaining three figures shall be averaged, (z) the average of the three remaining figures provided by the Confirmation Banks as provided in (y) herein shall be conclusively accepted by the parties as the Termination Amount to be paid by Purchaser), together with all accrued and unpaid interest, fees, expenses and charges as set forth in the DIP Facility or as incurred in connection with the Interest Rate Swap Agreement or (ii) such other treatment as to which DBOC and such holder shall have agreed upon in writing. The DIP Facility Claims shall be deemed Allowed in the amounts reflected in the books and records of Wells Fargo Bank, National Association, as Administrative Agent in connection with the DIP Facility and as Floating Rate Payer to the Interest Rate Swap Agreement, as of the Effective Date together with all accrued and unpaid fees, expenses and charges, including legal expenses.

###### (b) Administrative Claims

Except as otherwise provided in this Plan, on, or as soon as reasonably practicable after, the latest of (i) the Distribution Date, (ii) the date such Administrative Claim becomes an Allowed Administrative Claim, or (iii) the date such Administrative Claim becomes payable pursuant to any agreement between a Debtor and the holder of such Administrative Claim, each holder of an Allowed Administrative Claim shall receive in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim (x) Cash equal to the unpaid portion of such Allowed Administrative Claim or (y) such other treatment as to which the applicable Debtor, and such holder shall have agreed upon in writing; *provided, however*, that Allowed Administrative Claims with respect to liabilities incurred by a Debtor in the ordinary course of business during the Chapter 11 Case shall be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto. The Purchaser shall pay to or on behalf of the Debtors Cash up to an amount equal to

the Sharing Percentage as and when Allowed Administrative Claims in excess of \$3,000,000 are paid or to be paid by the Debtors.

(c) **Priority Tax Claims**

Each holder of an Allowed Priority Tax Claim, at the sole option of the Debtors, shall be entitled to receive on account of such Allowed Priority Tax Claim, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Priority Tax Claim, (i) equal Cash payments made on the last Business Day of every three (3) month period following the Effective Date, over a period not to exceed six (6) years after the assessment of the tax on which such Claim is based, totaling the principal amount of such Claim plus simple interest on any outstanding balance from the Effective Date calculated at the interest rate available on ninety (90) day United States Treasuries on the Effective Date or (ii) such other treatment agreed to by the Allowed Priority Tax Claim holder and the Debtors.

(d) **Indenture Trustees' Fees and Expenses**

On or as soon reasonably practicable after the Effective Date, the Reorganized Debtors shall distribute to each Indenture Trustee on behalf of the Old Note Claims the distributions set forth in Section 2.2 of the Plan, subject to the right of the pertinent Indenture Trustee to assert its Charging Lien against the distributions to the extent the Indenture Trustee Fees remain unpaid. Each Indenture Trustee's Charging Lien will be discharged solely upon payment in full of the Indenture Trustee Fees. Accordingly, nothing herein shall be deemed to impair, waive or discharge the Charging Lien, for any fees and expenses not paid by the Reorganized Debtors.

**2.2 Classified Claims and Interests.**

**Summary.**

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, confirmation and distribution pursuant to the Plan and pursuant to §§ 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies for the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies for the description of such different Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

PURSUANT TO SECTION 5.1 OF THE PLAN, THE DBOC DEBTORS WILL BE SUBSTANTIVELY CONSOLIDATED FOR LIMITED PLAN PURPOSES. BECAUSE THE PLAN IS A "POT" PLAN AS TO THE DBOC DEBTORS, DISTRIBUTIONS TO HOLDERS OF ALLOWED CLAIMS IN CLASSES O1 THROUGH O3 WILL BE EQUAL AND RATABLE AS TO THE CREDITORS WITHIN EACH CLASS REGARDLESS OF THE DEBTOR AGAINST WHICH SUCH CREDITOR HOLDS AN ALLOWED CLAIM.

(a) **The classification of Claims and Interests against DBI pursuant to this Plan is as follows:**

	<u>Class</u>	<u>Status</u>	<u>Voting Rights</u>
Class H1	-- Secured Claims	Unimpaired	not entitled to vote
Class H2	-- Other Priority Claims	Unimpaired	not entitled to vote
Class H3	-- General Unsecured Claims	Impaired	entitled to vote
Class H4	-- DBI Interests and Subordinated Claims	Impaired	not entitled to vote

(b) The classification of Claims and Interests against the DBOC Debtors pursuant to this Plan is as follows:

	<u>Class</u>	<u>Status</u>	<u>Voting Rights</u>
Class O1	-- Secured Claims	Unimpaired	not entitled to vote
Class O2	-- Other Priority Claims	Unimpaired	not entitled to vote
Class O3	-- General Unsecured Claims	Impaired	entitled to vote
Class O4	-- DBOC Interests	Impaired	entitled to vote

### 2.3 Classification and Treatment of Claims against DBI.

#### (a) Class H1 -- Secured Claims

(i) **Classification:** Class H1 consists of all Secured Claims against DBI.

(ii) **Treatment:** On, or as soon as reasonably practicable after, the latest of (i) the Distribution Date, (ii) the date such Claim becomes an Allowed Class H1 Claim, or (iii) the date such Class H1 Claim becomes payable pursuant to any agreement between DBI and the holder of such Class H1 Claim, each holder of any Allowed Class H1 Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Class H1 Claim, (x) Cash equal to the unpaid portion of such Allowed Class H1 Claim or (y) such other treatment as to which DBI and such holder shall have agreed upon in writing.

(iii) **Voting:** Class H1 is not impaired and the holders of Allowed Class H1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the holders of Allowed Claims in Class H1 are not entitled to vote to accept or reject the Plan.

#### (b) Class H2 -- Other Priority Claims against DBI

(i) **Classification:** Class H2 consists of all Other Priority Claims against DBI.

(ii) **Treatment:** On, or as soon as reasonably practicable after, the latest of (i) the Distribution Date, (ii) the date such Claim becomes an Allowed Class H2 Claim, or (iii) the date such Class H2 Claim becomes payable pursuant to any agreement between DBI and the holder of such Class H2 Claim, each holder of any Allowed Class H2 Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Class H2 Claim, (x) Cash equal to the unpaid portion of such Allowed Class H2 Claim or (y) such other treatment as to which DBI and such holder shall have agreed upon in writing.

(iii) **Voting:** Class H2 is not impaired and the holders of Allowed Class H2 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the holders of Allowed Claims in Class H2 are not entitled to vote to accept or reject the Plan.

#### Class H3 -- General Unsecured Claims.

(iv) **Classification:** Class H3 consists of all General Unsecured Claims against DBI.

(v) **Treatment:** On or as soon as reasonably practicable after the Distribution Date, each holder of an Allowed Class H3 Claim, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Class H3 Claim, its Pro Rata share of 100% of the DBI Recovery Pool, received by the DBI Estate pursuant to Section 2.4(d)(ii) of this Plan.

(vi) **Voting:** Class H3 is impaired and is entitled to vote to accept or reject the Plan.

**Class H4 -- DBI Interests and Subordinated Claims.**

(vii) **Classification:** Class H4 consists of all DBI Interests and Subordinated Claims against DBI.

(viii) **Treatment:** The holders of Class H4 DBI Interests and Subordinated Claims against DBI shall neither receive any distributions nor retain any property under the Plan. All such Claims and Interests shall be cancelled.

(ix) **Voting:** Class H4 is impaired, but because no distributions will be made to holders of Class H4 Claims nor will such holders retain any property, such holders are conclusively deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. Class H4 is not entitled to vote to accept or reject the Plan.

**2.4 Classification and Treatment of Claims Against DBOC Debtors.**

**(c) Class O1 -- Secured Claims.**

(i) **Classification:** Class O1 consists of all Secured Claims against the DBOC Debtors.

(ii) **Treatment:** On, or as soon as reasonably practicable, after the latest of (i) the Distribution Date, (ii) the date such Claim becomes an Allowed Class O1 Claim, or (iii) the date such Class O1 Claim becomes payable pursuant to any agreement between a DBOC Debtor and the holder of such Class O1 Claim, each holder of an Allowed Class O1 Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Class O1 Claim (x) Cash equal to the unpaid portion of such Allowed Class O1 Claim or (y) such other treatment as to which a DBOC Debtor and such holder shall have agreed upon in writing.

(iii) **Voting:** Class O1 is not impaired and the holders of Allowed Class O1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the holders of Allowed Claims in Class O1 are not entitled to vote to accept or reject the Plan.

**(d) Class O2 -- Other Priority Claims.**

(i) **Classification:** Class O2 consists of all Other Priority Claims against the DBOC Debtors.

(ii) **Treatment:** On, or as soon as reasonably practicable after, the latest of (i) the Distribution Date, (ii) the date such Claim becomes an Allowed Class O2 Claim, or (iii) the date such Class O2 Claim becomes payable pursuant to any agreement between a DBOC Debtor and the holder of such Class O2 Claim, each holder of an Allowed Class O2 Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Class O2 Claim (x) Cash equal to the unpaid portion of such Allowed Class O2 Claim or (y) such other treatment as to which a DBOC Debtor and such holder shall have agreed upon in writing.

(iii) **Voting:** Class O2 is not impaired and the holders of Allowed Class O2 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the holders of Allowed Claims in Class O2 are not entitled to vote to accept or reject the Plan.

**Class O3 -- General Unsecured Claims.**

(iv) **Classification:** Class O3 consists of all General Unsecured Claims against DBOC Debtors.

(v) **Treatment:** On or as reasonably practicable after the Distribution Date, each holder of an Allowed Class O3 Claim, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Class O3 Claim, its Pro Rata share of 100% of the DBOC Unsecured Creditor Distribution Pool.

(vi) **Voting:** Class O3 is impaired and is entitled to vote to accept or reject the Plan.

**Class O4 - DBOC Interests.**

(vii) **Classification:** Class O4 consists of all DBOC Interests.

(viii) **Treatment:** The holders of DBOC Interests shall receive the DBI Recovery Pool, which shall be distributed to the DBI Estate on account of such Interests. After such distribution to the DBI Estate, all of the DBOC Interests shall be deemed cancelled or extinguished.

(ix) **Voting:** Class O4 is impaired and is entitled to vote to accept or reject the Plan.

**2.5 Reservation of Rights Regarding Claims.**

Except as otherwise explicitly provided in the Plan, nothing shall affect the Debtors' or the Reorganized Debtors' rights and defenses, both legal and equitable, with respect to any Claims, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

**Article III**

**ACCEPTANCE OR REJECTION OF THE PLAN**

**3.1 Impaired Classes of Claims and Interests Entitled to Vote.**

Subject to Section 3.4 of the Plan, Claim and Interest holders in each Impaired Class of Claims or Interests are entitled to vote as a class to accept or reject the Plan.

**3.2 Acceptance by an Impaired Class.**

In accordance with section 1126(e) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan.

**3.3 Presumed Acceptances by Unimpaired Classes.**

Classes H1, H2, O1, and O2 are Unimpaired by the Plan. Under section 1126(f) of the Bankruptcy Code, such Claim holders are conclusively presumed to accept the Plan, and the votes of such Claim holders will not be solicited.

**3.4 Classes Deemed to Reject Plan.**

Holders of Claims and Interests in Class H4 are not entitled to receive or retain any property under the Plan. Under section 1126(g) of the Bankruptcy Code, Class H4 is deemed to reject the Plan, and Class H4 votes will not be solicited.



### 3.5 Summary of Classes Voting on the Plan.

As a result of the provisions of Sections 3.3 and 3.4 of this Plan, the votes of holders of Claims in Classes H3, O3, and O4 will be solicited with respect to this Plan.

### 3.6 Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code.

To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, the Plan Proponents, with the consent of the Creditors' Committee, will request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code.

## Article IV

### MEANS FOR IMPLEMENTATION OF THE PLAN

#### 4.1 Consummation of the Transactions Contemplated by the Purchase Agreement.

On the Effective Date, the Debtors shall consummate the transactions contemplated by the Purchase Agreement pursuant to the terms of the Purchase Agreement in exchange for the Total Consideration; provided that the conditions precedent set forth in the Purchase Agreement have been satisfied in accordance with the terms of the Purchase Agreement (or waived by the Purchaser or the Debtors, as the case may be, in its or their sole discretion).

##### (a) Transfer of Acquired Assets

On the Effective Date, the Debtors will tender to the Purchaser duly executed bills of sale and assignment or other appropriate instruments and documents transferring title to and interest in those Acquired Assets and Acquired Product Lines, subject to Permitted Liens, conveyed to the Purchaser pursuant to the Purchase Agreement free and clear of all Liens and interests.

##### (b) Unassumed Liabilities

The Purchaser is acquiring the Acquired Assets and the Acquired Products Lines free and clear of the Unassumed Liabilities (as defined in section 2.4 of the Purchase Agreement). Confirmation of the Plan shall be deemed a release of all Liens and all Unassumed Liabilities, in each case, as to the Acquired Assets and the Acquired Product Lines.

##### (c) Other Documents and Actions

On the Effective Date, the Debtors will deliver, or cause to be delivered, to the Purchaser all other certificates and documents required to be delivered by the Debtors under the Purchase Agreement, in such form and executed in such manner as required by the Purchase Agreement.

#### 4.2 Funding of Cash from Purchaser on the Effective Date.

The Purchase Price will be distributed as follows:

##### (a) Cash Consideration

The Cash Consideration will be paid directly to the DIP Lenders to the extent of the Debtors' outstanding indebtedness obligations, including all fees, expenses, and charges as set forth in the DIP Loan Agreement, but excluding all accrued interest (which interest will be paid from the Debtors' Cash). Any remaining Cash Consideration will be paid to the Debtors which will make all payments (including the setting aside of reserves to pay Disputed Claims and Allowed Claims which are to be paid after the Effective Date) required to be made under this Plan by the Debtors or the Disbursing Agent. On the Effective Date, the Interest Rate Swap Agreement shall be

terminated as of the close of the market on the Effective Date, and the Purchaser shall pay all amounts owing under and in connection with the Interest Rate Swap Agreement (provided that the Termination Amount as defined in the Interest Rate Swap Agreement shall be determined as follows: (i) prior to the Confirmation Date, the Purchaser and Wells Fargo Bank, National Association shall select five (5) national leading commercial banks (the "Confirmation Banks") which each shall be directed to provide the parties with the Termination Amount as of the close of the market (12:00 noon, Pacific Standard Time) on the Effective Date, (ii) the highest and lowest figures provided by the Confirmation Banks shall be disregarded, and the remaining three figures shall be averaged, (iii) the average of the three remaining figures provided by the Confirmation Banks as provided in (ii) herein shall be conclusively accepted by the parties as the Termination Amount to be paid by Purchaser), including fees, expenses and charges, including legal expenses.

**(b) Additional Consideration**

On and after the Effective Date, the Additional Consideration will be delivered to the Debtors unless other Persons are designated in writing from the Reorganized Debtors to the Purchaser no later than January 22, 2003. At least ten (10) Business Days prior to Closing, the Additional Consideration shall be secured by a Letter of Credit to be delivered by the Purchaser at Closing. If the Reorganized Debtors do not properly designate such Person(s), the Additional Consideration will be delivered to the Reorganized Debtors and the Reorganized Debtors will make all disbursements (including the setting aside of reserves to pay Disputed Claims and Allowed Claims which are to be paid after the Effective Date) in accordance with and required to be made under this Plan with the cooperation of the Purchaser with respect to the issuance and distribution of the Additional Consideration.

**4.3 Sources for Plan Distributions.**

All Cash necessary for the Debtors or the Disbursing Agent to make payments of Cash pursuant to the Plan shall be obtained from the Cash Consideration and the Additional Consideration obtained from the consummation of the transactions contemplated by the Purchase Agreement, and Cash or other assets, if any, excluded from the Acquired Assets which is property of one or more Estates.

**4.4 Continued Corporate Existence.**

Subject to the provisions of Section 4.1 of this Plan, and the Restructuring Transactions contemplated in Section 4.7 of this Plan, the Reorganized Debtors shall continue to exist after the Effective Date as separate corporate entities, in accordance with the applicable law in the respective jurisdictions in which they are incorporated and pursuant to their respective certificates or articles of incorporation and by-laws in effect prior to the Effective Date, except to the extent such certificates or articles of incorporation and by-laws are amended by the Plan or the Purchase Agreement, for the limited purposes of (a) distributing all of the assets of the Debtors' Estates that are not Acquired Assets or Acquired Product Lines and (b) providing the Purchaser with transition service pursuant to section 8.7 of the Purchase Agreement. As soon as practicable after the Plan Administrator exhausts the assets of the Debtors' Estates by making the final distribution of Cash under this Plan and the Plan Administrator Agreement, the Plan Administrator shall (a) effectuate the dissolution of each Reorganized Debtor in accordance with the laws of the state of its incorporation and (b) resign as the sole officer and sole director of each Reorganized Debtor. Notwithstanding the foregoing, the Plan Administrator shall not effectuate such dissolution of the Reorganized Debtors before the earlier of (a) such time the Reorganized Debtors satisfy any obligations under section 8.7 to provide the Purchaser with transition service and (b) one year after the Closing.

**4.5 Cancellation Of Old Securities and Agreements**

(a) On the Effective Date, the Old Securities, the Old Indentures, and any other note, bond, indenture, or other instrument or document evidencing or creating any indebtedness or obligation of a Debtor, shall be automatically canceled and discharged provided, however, that the Old Indentures and Old Notes shall continue in effect solely for the purposes of (i) allowing the holders of the of Claims in Classes H3 and O3 to receive their distributions hereunder, (ii) allowing the Indenture Trustees to make the distributions to be made on account of the Note Claims and (iii) permitting the Indenture Trustees to assert the Charging Lien against such distributions for payment of the Indenture Trustee Fees. Immediately following the completion of distributions to holders of Claims

in Classes H3 and O3, the Indenture Trustees shall be released from all duties, without any further action on the part of the Debtors or Reorganized Debtors.

(b) Nothing herein affects the Indenture Trustees' rights pursuant to the respective Indentures and applicable non-bankruptcy law to assert the Charging Lien, issued pursuant to the pertinent Indenture to secure payment of the Indenture Trustee's fees and expenses, on any distributions hereunder to holders of Claims in Classes H3 and O3. If any Indenture Trustee does not serve as disbursing agent with respect to distributions to its respective holders, then the funds distributed to any such disbursing agent shall be subject to the Charging Lien of the Indenture Trustee under the pertinent Indentures.

#### 4.6 Certificates of Incorporation and By-laws

The certificate or articles of incorporation and by-laws of each Debtor shall be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy Code and shall include, among other things, pursuant to section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by section 1123(a)(6) of the Bankruptcy Code.

#### 4.7 Restructuring Transactions

(a) On or after the Effective Date, the applicable Reorganized Debtors may enter into such transactions and may take such actions as may be necessary or appropriate to effect a corporate restructuring of their respective businesses, to otherwise simplify the overall corporate structure of the Reorganized Debtors, or to reincorporate certain subsidiary Debtors under the laws of jurisdictions other than the laws of which the applicable subsidiary Debtors are presently incorporated. Such restructuring may include one or more mergers, consolidations, restructures, dispositions, liquidations, or dissolutions, as may be determined by the Debtors or the Reorganized Debtors to be necessary or appropriate (collectively, the "Restructuring Transactions"). The actions to effect the Restructuring Transactions may include: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable state law and such other terms to which the applicable entities may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, duty, or obligation on terms consistent with the terms of the Plan and having such other terms to which the applicable entities may agree; (c) the filing of appropriate certificates or articles of merger, consolidation, or dissolution pursuant to applicable state law; and (d) all other actions that the applicable entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions. The Restructuring Transactions may include one or more mergers, consolidations, restructures, dispositions, liquidations, or dissolutions, as may be determined by the Reorganized Debtors to be necessary or appropriate to result in substantially all of the respective assets, properties, rights, liabilities, duties, and obligations of certain of the Reorganized Debtors vesting in one or more surviving, resulting, or acquiring corporations. In each case in which the surviving, resulting, or acquiring corporation in any such transaction is a successor to a Reorganized Debtor, such surviving, resulting, or acquiring corporation will perform the obligations of the applicable Reorganized Debtor pursuant to the Plan to pay or otherwise satisfy the Allowed Claims against such Reorganized Debtor, except as provided in any contract, instrument, or other agreement or document effecting a disposition to such surviving, resulting, or acquiring corporation, which may provide that another Reorganized Debtor will perform such obligations.

(b) The Restructuring Transactions shall include the election by DBOC, in accordance with applicable provisions of Delaware corporate law, to become a limited liability company. The Confirmation Order shall authorize DBOC to become a limited liability company in accordance with Delaware law after Confirmation and prior to the Effective Date. Upon DBOC becoming a limited liability company, such limited liability company shall continue to be a Debtor in these Chapter 11 Cases and shall be deemed to be a successor in interest to DBOC as a corporation in all respects.

#### 4.8 Compensation and Benefit Programs

The Purchaser shall assume only those employee compensation and benefit programs as expressly provide by schedule 2.1.1.22 of the Purchase Agreement. To the extent that an employee compensation or benefit plan is not listed on schedule 2.1.1.22 of the Purchase Plan, such employee compensation or benefit plan shall be deemed rejected.

On the Effective Date, the Purchaser will become the contributing sponsor of the Diamond Brands, Inc. Retirement Plan for Hourly Paid Employees and the Forster, Inc. Employees Pension Plan ("Pension Plans"), as defined under 29 U.S.C. § 1301(a)(13) and 29 C.F.R. § 4001.2, or member of the contributing sponsor's controlled group, as defined under 29 U.S.C. § 1302(a)(14) and 29 C.F.R. § 4001.2. The Debtors do not believe that they are the sponsor of any other employee pension plan. As a contributing sponsor (or member of the controlled group) of the Pension Plans, the Purchaser will fund the Pension Plans in accordance with the minimum funding standards under ERISA, 29 U.S.C. § 1082, pay all required PBGC insurance premiums, 29 U.S.C. § 1307, and comply with all requirements of the Pension Plans and ERISA. The Pension Plans are defined benefit pension plans insured by the Pension Benefit Guaranty Corporation under Title IV of ERISA, 29 U.S.C. §§ 1301-1461. The Pension Plans are subject to the minimum funding requirements of ERISA, 29 U.S.C. § 1084, and section 412 of the Internal Revenue Code, 26 U.S.C. § 412. No provision of or proceeding within the Debtors' reorganization proceedings, this Plan, nor the Confirmation Order shall in any way be construed as discharging, releasing or relieving the Debtors, Reorganized Debtors or any other party (other than the Purchaser) in any capacity, from any liability with respect to the Pension Plans or any other defined benefit pension plan under any law, governmental policy or regulatory provision. With respect to the Purchaser, no provision of or proceeding within the Debtors' reorganization proceedings, this Plan, nor the Confirmation Order shall in any way be construed as discharging, releasing or relieving the Purchaser from any liability that it has by operation of law with respect to the Pension Plans under any law, governmental policy or regulatory provision. PBGC and the Pension Plans shall not be enjoined or precluded from enforcing liability resulting from any of the provisions of this Plan or this Plan's Confirmation.

#### 4.9 Directors And Officers of Reorganized Debtors

On the Effective Date, the Plan Administrator shall become the sole officer and director of the Debtors. The Plan Administrator shall be authorized to execute, deliver, file or record such documents, instruments, releases and other agreements and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

#### 4.10 The Plan Administrator

(a) *Appointment.* From and after the Effective Date, an entity to be designated by the Debtors (and approved by the Creditors' Committee) prior to the Confirmation Date shall serve as the Plan Administrator pursuant to the Plan Administrator Agreement and the Plan, until death, resignation or discharge and the appointment of a successor Plan Administrator in accordance with the Plan Administrator Agreement.

(b) *Rights, Powers and Duties of the Reorganized Debtors and the Plan Administrator.* The Reorganized Debtors shall retain and have all the rights, powers and duties necessary to carry out their responsibilities under the Plan. Such rights, powers and duties, which shall be exercisable by the Plan Administrator on behalf of a Reorganized Debtor pursuant to the Plan and the Plan Administrator Agreement, and as an estate representative pursuant to 11 U.S.C. § 1123(b), shall include, among others:

(i) investing the Reorganized Debtors' Cash, including, but not limited to, the Cash held in the Operating Reserve in (A) direct obligations of the United States of America or obligations of any agency or instrumentality thereof which are guaranteed by the full faith and credit of the United States of America; (B) money market deposit accounts, checking accounts, savings accounts or certificates of deposit, or other time deposit accounts that are issued by a commercial bank or savings institution organized under the laws of the United States of America or any state thereof; or (C) any other investments

that may be permissible under (I) section 345 of the Bankruptcy Code or (II) any order of the Bankruptcy Court entered in the Debtors' Chapter 11 cases;

(ii) calculating and paying of all distributions to be made under the Plan, the Plan Administrator Agreement and other orders of the Bankruptcy Court to holders of Allowed Claims;

(iii) employing, supervising and compensating professionals retained to represent the interests of and serve on behalf of the Reorganized Debtors;

(iv) making and filing tax returns for any of the Debtors or Reorganized Debtor;

(v) objecting to Claims or Interests filed against any of the Debtors' Estates on any basis;

(vi) seeking estimation of contingent or unliquidated claims under 11 U.S.C. § 502 (c);

(vii) seeking determination of tax liability under 11 U.S.C. § 505;

(viii) prosecuting avoidance actions under 11 U.S.C. §§ 544, 545, 547, 548 and 553;

(ix) prosecuting turnover actions under 11 U.S.C. §§ 542 and 543;

(x) prosecuting, settling, dismissing or otherwise disposing of the Litigation Claims;

(xi) dissolving the Reorganized Debtors;

(xii) exercising all powers and rights, and taking all actions, contemplated by or provided for in the Plan Administrator Agreement;

(xiii) coordinating, cooperating and reporting to the Plan Committee;

(xiv) filing any necessary post-confirmation reports with the Bankruptcy Court, paying quarterly fees pursuant to 28 U.S.C. § 1930(a)(6) for each of the Debtors until the entry of a final decree for the respective Debtor, and filing a final report pursuant to Rule 5009-1(c) of the Local Rules prior to the entry of a final decree for any respective Debtor; and

(xv) taking any and all other actions necessary or appropriate to implement or consummate this Plan and the provisions of the Plan Administrator Agreement, including, in the event that the Purchaser elects to pay the Additional Consideration in shares of the Buyer's Common Stock, determining the most cost effective means to provide for the liquidation of any fractional shares that would otherwise be distributed to creditors.

(c) *Compensation of the Plan Administrator.* The Plan Administrator shall be compensated from the Operating Reserve pursuant to the terms of the Plan Administrator Agreement. Any professionals retained by the Plan Administrator shall be entitled to reasonable compensation for services rendered and reimbursement of expenses incurred from the Operating Reserve. The payment of the fees and expenses of the Plan Administrator and its retained professionals shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court but shall be subject to review by the Plan Committee. The Plan Administrator shall deliver to the Plan Committee detailed written invoices with respect to requests for payment of any such fees and expenses.

(d) *Indemnification.* The Reorganized Debtors shall indemnify and hold harmless the Plan Administrator and its professionals, or any duly designated agent or representative thereof (in its capacity as such), from and against and with respect to any and all liabilities, losses, damages, claims, costs and expenses, including but not limited to attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions

or omissions, with respect to the Reorganized Debtors or the implementation or administration of the Plan, other than acts or omissions resulting from the willful misconduct or gross negligence of the Plan Administrator and its professionals, or any duly designated agent or representative thereof (in its capacity as such). To the extent the Reorganized Debtors indemnify and hold harmless the Plan Administrator and its professionals, or any duly designated agent or representative thereof (in its capacity as such), as provided above, the legal fees and related costs incurred by counsel to the Plan Administrator in monitoring and participating in the defense of such claims giving rise to the right of indemnification shall be paid out of the Operating Reserve.

The Reorganized Debtors and the Estates shall, to the fullest extent permitted by the laws of the State of Delaware, indemnify and hold harmless the Plan Administrator (in its capacity as such and as officer and director of Reorganized Debtor) and the Plan Administrator's and the Reorganized Debtors' agents, representatives, professionals and employees (collectively the "Indemnified Parties") from and against and with respect to any and all liabilities, losses, damages, claims, costs and expenses, including but not limited to attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Reorganized Debtors and the Estates or the implementation or administration of the Plan and the Plan Administrator Agreement other than acts or omissions resulting from such Indemnified Party's willful misconduct or gross negligence. To the extent Reorganized Debtor and the Estates indemnify and hold harmless the Indemnified Parties as provided above, the legal fees and related costs incurred by counsel to the Plan Administrator in monitoring and participating in the defense of such claims giving rise to the right of indemnification shall be paid out of the Operating Reserve.

(e) *Authority to Object to Claims and Interests and to Settle Disputed Claims.* From and after the Effective Date, the Reorganized Debtors and the Plan Administrator shall be authorized (i) to object to any Claims or Interests filed against any of the Debtors' Estates which are not deemed as Allowed Claims under the Plan and (ii) pursuant to Fed. R. Bankr. P. 9019(b) and section 105(a) of the Bankruptcy Code, to compromise and settle Disputed Claims, in accordance with the following procedures, which shall constitute sufficient notice in accordance with the Bankruptcy Code and the Bankruptcy Rules for compromises and settlements of claims:

(i) If the Disputed Claim Amount of the Disputed Claim is less than \$50,000, the Reorganized Debtors and the Plan Administrator shall be authorized and empowered to settle a Disputed Claim and execute necessary documents, including a stipulation of settlement or release, without notice to any party.

(ii) If the Disputed Claim Amount of the Disputed Claim is more than \$50,000 but less than \$500,000, the Reorganized Debtors and the Plan Administrator shall be authorized and empowered to settle such Disputed Claim and execute necessary documents, including a stipulation of settlement or release, upon seven (7) Business Days' notice to the Plan Committee.

(iii) If the Disputed Claim Amount of the Disputed Claim is greater than \$500,000, or involves the settlement of any claim of an insider, the Reorganized Debtors and the Plan Administrator shall be authorized and empowered to settle such Disputed Claim and execute necessary documents, including a stipulation of settlement or release, only upon receipt of Bankruptcy Court approval of such settlement.

If the Plan Committee objects to the proposed settlement of a Disputed Claim within the prescribed time deadlines set forth above in such form as the Plan Committee deems reasonably appropriate, then (A) if the Plan Committee withdraws for any reason its objection to such settlement, the Plan Administrator may enter into the proposed settlement without further notice and a hearing or entry of an order of the Bankruptcy Court or (B) if the Plan Committee does not withdraw its objection, the Plan Administrator shall have the option of (I) forgoing entry into the settlement agreement that is the subject of the Plan Committee's objection, (II) modifying the terms of the settlement agreement in a way that results in the Plan Committee withdrawing its objection, or (III) seeking an order of the Bankruptcy Court authorizing the Plan Administrator to enter into the settlement agreement over the Plan Committee's objection. Claims Allowed in the Plan shall not be subject to objection.

#### 4.11 No Revesting of Assets; Releases of Liens

The property of the Debtors' Estates after giving effect to the transactions set forth in sections 4.1 and 4.7 of this Plan shall not be vested in the Debtors on or following the Confirmation Date or the Effective Date but shall remain property of the Estate(s) and continue to be subject to the jurisdiction of the Bankruptcy Court following confirmation of the Plan until distributed to holders of Allowed Claims in accordance with the provisions of the Plan, Plan Administrator Agreement and Confirmation Order. From and after the Effective Date, all such property shall be distributed in accordance with the provisions of the Plan, the Plan Administrator Agreement and the Confirmation Order.

#### 4.12 Preservation Of Rights Of Action

Except as otherwise provided in this Plan or the Confirmation Order, or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all Litigation Claims that the Debtors or the Estates may hold against any Person or entity that are not transferred to Purchaser pursuant to Section 4.1 of this Plan. Each Debtor or its successor(s), in consultation with the Plan Committee, may pursue such retained Litigation Claims as appropriate, in accordance with the best interests of the Reorganized Debtor or its successor(s) who hold such rights.

#### 4.13 Effectuating Documents; Further Transactions

The chief executive officer, chief financial officer, or any other appropriate officer of DBI or any applicable Debtor, as the case may be, shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The secretary or assistant secretary of DBI or any applicable Debtor, as the case may be, shall be authorized to certify or attest to any of the foregoing actions.

#### 4.14 Section 1146 Exemption From Certain Transfer Taxes

Pursuant to section 1146(c) of the Bankruptcy Code, any issuance, transfer, or exchange of any security under the Plan, or the making or delivery of an instrument of transfer under this Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### 4.15 Releases and Related Matters

##### (a) Releases by Debtors

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors and the Reorganized Debtors will be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities whatsoever in connection with or related to the Debtors, the Chapter 11 Case or the Plan (other than the rights of the Debtors or the Reorganized Debtors to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered thereunder) whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors or the Reorganized Debtors, the Chapter 11 Case or the Plan, and that may be asserted by or on behalf of the Debtors or their Estates or the Reorganized Debtors against (i) the Debtors' directors, officers, employees, agents and professionals as of the Petition Date or thereafter, (ii) the Creditors' Committee and the Plan Committee, and their respective members, agents and professionals, (iii) the Plan

Administrator, (iv) the Lenders, the agents under the DIP Facility, and their respective agents and professionals, (v) Wells Fargo, National Association, as Floating Rate Payer under the interest rate agreements with the Debtors, and (vi) the Purchaser, except for the Purchaser's obligations under the Purchase Agreement.

#### (b) Injunction Related to Releases

As further provided in Article XI of this Plan, the Confirmation Order will enjoin the prosecution, of any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, liability or interest released, discharged or terminated pursuant to the Plan.

#### 4.16 Net Recovery Allocation Mechanics

On and after the Effective Date, the Net Available Unsecured Creditor Proceeds shall be allocated in two (2) pools: the DBOC Unsecured Creditor Distribution Pool and the DBI Recovery Pool. The amount of the Indenture Trustee Fees incurred by the respective Indenture Trustees shall initially be allocated to the DBI Recovery Pool and the DBOC Unsecured Creditor Distribution Pool, respectively, for distribution to the appropriate Indenture Trustee prior to the distribution set forth in this Section 4.16 and Section 2.2 of this Plan. The remaining DBOC Unsecured Creditor Recovery Pool shall be distributed to holders of Allowed Class O3 Claims, as set forth in this Plan. The remaining DBI Recovery Pool shall be distributed on account of the DBOC Interests to the DBI Estate, and then distributed by the DBI Estate to the holders of Allowed Class H3 Claims, as set forth in this Plan. The aggregate amount of the Net Available Unsecured Creditor Proceeds allocated to the DBOC Unsecured Creditor Distribution Pool and the DBI Recovery Pool, respectively, shall be calculated so that (a) with respect to the first remaining \$6 million of Net Available Unsecured Creditor Proceeds, holders of Allowed Claims in Class O3 shall receive a percentage recovery on their Allowed Claims that is two (2) times the percentage recovery received by holders of Allowed Claims in Class H3, (b) with respect to the next \$3 million of Net Available Unsecured Creditor Proceeds, holders of Allowed Claims in Class O3 shall receive a percentage recovery on their Allowed Claims that is four (4) times the percentage recovery received by holders of Allowed Claims in Class H3, and (c) with respect to all Net Available Unsecured Creditor Proceeds in excess of \$9 million, holders of Allowed Claims in Class O3 shall receive a percentage recovery on their Allowed Claims that is six (6) times the percentage recovery received by holders of Allowed Claims in Class H3.

#### 4.17 Intercompany Settlement

Pursuant to Bankruptcy Rule 9019 and section 1123(b)(3) of the Bankruptcy Code, and in consideration for the distributions and other benefits provided under the Plan, this Plan shall constitute a good faith compromise and settlement of all claims and controversies related to intercompany and intercreditor issues between the DBOC Debtors and DBI, including, without limitation, potential disputes relating to (a) the relative valuation of the respective assets of the DBOC Debtors and DBI being acquired by the Purchaser, (b) requests for substantive consolidation made by certain creditors of DBI, (c) any other Intercompany Claims and issues between DBI and the DBOC Debtors, and (d) certain tax benefits available to the Estates through DBI's recovery with respect to Class O4. Such settlement, which is effectuated in Section 4.16 of this Plan, shall be binding on all holders of Claims or Interests and all other parties in interest.

#### 4.18 Conversion of Cases if Plan Not Confirmed

(a) In the event that Class H3 votes against the Plan, or if the Plan as to DBI is not confirmed for any other reason after the Debtors and the Creditors' Committee have used their reasonable best efforts to confirm the Plan, notwithstanding anything set forth to the contrary in the Plan, at the Confirmation Hearing the Debtors shall request pursuant to a separately filed motion (timely filed and duly served such that it may be considered at the Confirmation Hearing) that the Bankruptcy Court (i) authorize the sale of DBI Assets as described in the Purchase Agreement to the Purchaser pursuant to the Alternative Transaction, and approve the allocation of value received pursuant to the Purchase Agreement between the DBI Estate and the DBOC Estates equivalent to the allocation determined pursuant to Section 4.16 of this Plan pursuant to sections 363 and 105 of the Bankruptcy Code and Bankruptcy Rule 9019, and (ii) subsequently convert the DBI Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code.



(b) In the event that Class O3 votes against the Plan, or if the Plan as to the DBOC Debtors is not confirmed for any other reason after the Debtors and the Creditors' Committee have used their reasonable best efforts to confirm the Plan, notwithstanding anything set forth to the contrary in the Plan, at the Confirmation Hearing the Debtors shall request pursuant to a separately filed motion (timely filed and duly served such that it may be considered at the Confirmation Hearing) that the Bankruptcy Court (i) authorize the sale of the DBOC Debtors' Assets as described in the Purchase Agreement to the Purchaser pursuant to the Alternative Transaction, and approve the allocation of value received pursuant to the Purchase Agreement between the DBI Estate and the DBOC Estates equivalent to the allocation determined pursuant to Section 4.16 of this Plan pursuant to sections 363 and 105 of the Bankruptcy Code and Bankruptcy Rule 9019, and (ii) subsequently convert the DBOC Debtors' Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code.

#### Article V

### SUBSTANTIVE CONSOLIDATION AND SETTLEMENT OF CLAIMS

#### 5.1 Substantive Consolidation

The Plan does not provide for the substantive consolidation of DBI and the DBOC Debtors. The Plan does, as set forth below, provide for the substantive consolidation of the Estates that comprise the DBOC Debtors, only for purposes of Plan voting, confirmation and distribution purposes.

The Plan is premised upon the substantive consolidation of the Estates that comprise the DBOC Debtors only for purposes of the Plan, for voting, confirmation and distribution purposes. Except as set forth in Section 4.7, the Plan does not contemplate the merger or dissolution of any Debtor entity or the transfer or commingling of any asset of any Debtor. On the Effective Date, (a) all assets and liabilities of the DBOC Debtors of DBOC shall be treated as though they were consolidated for Plan purposes into the assets and liabilities of DBOC; (b) no distributions shall be made under the Plan on account of Intercompany Claims; (c) no distributions shall be made under the Plan on account of DBOC Interests; and (d) all guarantees of the Debtors of the obligations of any other Debtor shall be deemed eliminated so that any claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the consolidated Debtors. Such substantive consolidation (other than for purposes related to the Plan) shall not affect (i) the legal and corporate structures of the Reorganized Debtors, subject to the right of the Debtors or Reorganized DBOC to effect Restructuring Transactions as provided in Section 4.7 of the Plan, (ii) Intercompany Claims, (iii) DBOC Interests, and (iv) pre and post Commencement Date guarantees that are required to be maintained (x) in connection with executory contracts or unexpired leases that were entered into during the Chapter 11 Cases or that have been or will be assumed, or (y) pursuant to the Plan.

#### 5.2 Order Granting Substantive Consolidation

This Plan shall serve as a motion seeking entry of an order substantively consolidating the Chapter 11 Estates with respect to the DBOC Debtors, as described and to the limited extent set forth in Section 5.1 above. Unless an objection to such substantive consolidation is made in writing by any creditor affected by the Plan as herein provided on or before five (5) days prior to the date that is fixed by the Court as the last date on which acceptances to this Plan may be received, or such other date as may be fixed by the Court, the substantive consolidation order (which may be the Confirmation Order) may be entered by the Court. In the event any such objections are timely filed, a hearing with respect thereto shall occur at the Confirmation Hearing. Notwithstanding this provision, nothing herein shall affect the obligation of each and every Debtor to pay quarterly fees to the Office of the United States Trustee in accordance with 28 U.S.C. § 1930(a)(6).

## Article VI

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### 6.1 Assumed Contracts And Leases

(a) As of the Effective Date, each Debtor shall be deemed to have assumed and assigned to the Purchaser, each executory contract and unexpired lease designated by the Purchaser on schedule 2.1.1.5 of the Purchase Agreement which is to be filed and served on each non-Debtor party listed thereon not later than 30 days prior to the Confirmation Hearing, and which schedule shall specify any amounts that the Debtors believe must be paid as Cure. The Confirmation Order shall constitute an order of the Bankruptcy Court pursuant to section 365 of the Bankruptcy Code approving the assumption and assignment of such contracts and leases. Until the date the Debtor commences the solicitation of votes on the Plan, the Purchaser, in its sole discretion, shall have the ability to amend schedule 2.1.1.5 to include executory contracts and unexpired leases or remove executory contracts and unexpired leases from the such schedule. To the extent that an executory contract or unexpired lease is not listed on schedule 2.1.1.5 of the Purchase Agreement as of the Effective Date, such executory contract or unexpired lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code.

(b) Each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire, or occupancy of real property shall include (i) all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease and (ii) all executory contracts or unexpired leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, usufructs, reciprocal easement agreements, vaults, tunnel or bridge agreements or franchises, and any other interests in real estate or rights *in rem* related to such premises, unless any of the foregoing agreements has been rejected pursuant to an order of the Bankruptcy Court.

#### 6.2 Payments Related To Assumption Of Contracts and Leases

Any monetary amounts by which each executory contract and unexpired lease to be assumed and assigned pursuant to the Plan is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by Cure on the Effective Date by (a) the Debtor party to the contract or lease or (b) the assignee of such Debtor party assuming such contract or lease. If there is a dispute regarding (a) the nature or amount of any Cure, (b) the ability of any Reorganized Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (c) any other matter pertaining to assumption, Cure shall occur following the entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment, as the case may be; provided that, if there is a dispute as to the amount of Cure or any requirement for adequate assurance of future performance that cannot be resolved consensually among the parties, the Purchaser, subject to the terms of the Purchase Agreement, shall have the right to direct the Debtors to reject the contract or lease for a period of five (5) days after entry of a Final Order establishing a Cure amount in excess of that provided by the Purchase Agreement or any requirement for adequate assurance of future performance that is not acceptable to the Purchaser. The provisions providing for notices of proposed assumptions and proposed Cure amounts to be sent to applicable third parties and for procedures for objecting thereto will be set forth in a motion to be filed by the Debtors not later than 30 days prior to the Confirmation Hearing. To the extent that an executory contract or unexpired lease is designated by the Purchaser on schedule 2.1.1.5 of the Purchase Agreement, as described in Section 6.1(a) of this Plan, the Purchaser shall satisfy the Cure obligations with respect to such contracts or leases.

#### 6.3 Rejected Contracts and Leases

As of the Effective Date, each executory contract and unexpired lease not listed on schedule 2.1.1.5 of the Purchase Agreement shall be rejected pursuant to section 365 of the Bankruptcy Code. To the extent an executory contract or unexpired lease is not listed on schedule 2.1.1.5, such executory contract or unexpired lease shall be deemed rejected. Each contract or lease that is rejected shall be rejected only to the extent that any such contract or lease constitutes an executory contract or unexpired lease. Listing a contract or lease on any schedule

shall not constitute an admission by a Debtor that such contract or lease is an executory contract or unexpired lease or that any Debtor has any liability thereunder. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejections, pursuant to section 365 of the Bankruptcy Code, as applicable, as of the Effective Date.

#### **6.4 Rejection Damages Bar Date**

If the rejection by a Debtor, pursuant to the Plan or otherwise, of an executory contract or unexpired lease results in a Claim, then such Claim shall be forever barred and shall not be enforceable against any Debtor or Reorganized Debtor or the properties of any of them unless a Proof of Claim is filed with the clerk of the Bankruptcy Court and served upon counsel to the Debtors, and counsel to the Plan Committee, on or before thirty (30) days after such executory contract or unexpired lease is rejected.

### **Article VII**

#### **PROVISIONS GOVERNING DISTRIBUTIONS**

##### **7.1 Distributions For Claims Allowed As Of The Effective Date**

Except as otherwise provided in this Plan or as ordered by the Bankruptcy Court, all distributions to holders of Allowed Claims as of the Effective Date shall be made on the Distribution Date. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Section 8.4 of this Plan.

##### **7.2 Interest On Claims**

Unless otherwise specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy law, post-petition interest shall not accrue or be paid on Claims, and no holder of a Claim (other than a DIP Facility Claim) shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

##### **7.3 Distributions by Disbursing Agent**

(a) Except as set forth in this Section 7.3 of this Plan, the Disbursing Agent shall make all distributions required under this Plan.

(b) If the Disbursing Agent is an independent third party designated by the Reorganized Debtors to serve in such capacity, such Disbursing Agent shall receive, without further Bankruptcy Court approval, reasonable compensation for distribution services rendered pursuant to the Plan and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services from the Reorganized Debtors on terms acceptable to the Reorganized Debtors. No Disbursing Agent shall be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

(c) On the Effective Date, the distributions to be made under the Plan to holders of Old Note Claims shall be made to the respective Indenture Trustee. Distributions to holders of Old Note Claims shall be made by the respective Indenture Trustees, subject to the right of each Indenture Trustee to assert its Charging Lien against such distributions. All payments to holders of Old Note Claims shall only be made to such holders after the surrender by each such holder of the Old Note certificates representing such Old Note Claim, or in the event that such certificate is lost, stolen, mutilated or destroyed, upon the holder's compliance with the requirements set forth in Section 7.7(b). Upon surrender of such Old Note certificates, the Indenture Trustees shall cancel and destroy the pertinent Old Notes. As soon as practicable after surrender of the Old Note certificates evidencing Old Note Claims, the respective Indenture Trustees shall distribute to the holder thereof such holder's Pro Rata share of the distribution, but subject to the rights of each Indenture Trustee to assert its Charging Lien against such distribution. Upon full satisfaction of each of the Indenture Trustee's Fees, the pertinent Indenture Trustee's Charging Lien shall

be released. Nothing herein shall be deemed to impair, waive or discharge either Indenture Trustee's Charging Lien for any unpaid fees and expenses.

#### 7.4 Record Date For Distributions To Holders Of Lender Claims and Old Notes

At the close of business on the Distribution Record Date, the transfer records for the Old Notes and Lender Claims shall be closed, and there shall be no further changes in the record holders of the Old Notes or Lender Claims. None of Reorganized Debtor, the Disbursing Agent, the Indenture Trustees nor the administrative agent for the Lenders shall have any obligation to recognize any transfer of such Old Notes or Lender Claims occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders as of the close of business on the Distribution Record Date.

#### 7.5 Means Of Cash Payment

Cash payments made pursuant to this Plan shall be in U.S. funds, by the means agreed to by the payor and the payee, including by check or wire transfer, or, in the absence of an agreement, such commercially reasonable manner as the payor shall determine in its sole discretion.

#### 7.6 Delivery Of Distributions

(a) Distributions to holders of Allowed Claims shall be made by the Disbursing Agent (or appropriate Indenture Trustees) (a) at the addresses set forth on the Proofs of Claim filed by such holders (or at the last known addresses of such holders if no Proof of Claim is filed or if the Debtors have been notified of a change of address), (b) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related Proof of Claim, (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Disbursing Agent has not received a written notice of a change of address, or (d) in the case of the holder of an Allowed Old Note Claim, at the addresses contained in the official records of the indenture trustee under the Old Indenture, or (e) at the addresses set forth in a properly completed letter of transmittal accompanying securities properly remitted to the Debtors. If any holder's distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the Disbursing Agent is notified of such holder's then current address, at which time all missed distributions shall be made to such holder without interest. Amounts in respect of undeliverable distributions made by the Disbursing Agent, shall be returned to the Reorganized Debtors until such distributions are claimed. All claims for undeliverable distributions made by the Disbursing Agent must be made on or before the first (1<sup>st</sup>) anniversary of the Effective Date, after which date all unclaimed property shall revert to the Reorganized Debtors free of any restrictions thereon and the claims of any holder or successor to such holder with respect to such property shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary. Nothing contained in the Plan shall require the Debtors, The Reorganized Debtors, any Disbursing Agent or the appropriate Indenture Trustee to attempt to locate any holder of an Allowed Claim.

(b) Consistent with Bankruptcy Rule 3003(c), the Reorganized Debtors shall recognize a Proof of Claim filed by each of the Indenture Trustees in respect of the Old Note Claims. Accordingly, any Old Note Claim, proof of which is filed by the registered or beneficial holder of an Old Note Claim, respectively, may be disallowed as duplicative of the Claim of the pertinent Indenture Trustee, without need for any further action or Bankruptcy Court order.

#### 7.7 Surrender of Securities and Instruments

##### (a) Old Notes

Except as provided in Section 7.7(b) of the Plan for lost, stolen, mutilated or destroyed Old Notes, each holder of an Allowed Claim evidenced by an Old Note shall tender such Old Note to the respective Indenture Trustee in accordance with written instructions to be provided in a letter of transmittal to such holders by the respective Indenture Trustee as promptly as practicable following the Effective Date. Such letter of transmittal shall specify that delivery of such Old Notes will be effected, and risk of loss and title thereto will pass, only upon the proper delivery of such Old Notes with the letter of transmittal in accordance with such instructions. Such letter of

transmittal shall also include, among other provisions, customary provisions with respect to the authority of the holder of the applicable Old Note to act and the authenticity of any signatures required on the letter of transmittal. All surrendered notes and Old Notes shall be marked as canceled and delivered by the respective Indenture Trustee to Reorganized Debtor.

(b) Lost, Stolen, Mutilated or Destroyed Old Notes

In addition to any requirements under the applicable certificate or articles of incorporation or by-laws of the applicable Debtor, any holder of a Claim evidenced by an Old Note that has been lost, stolen, mutilated or destroyed shall, in lieu of surrendering such Old Note, deliver to the Indenture Trustee: (i) evidence satisfactory to the respective Indenture Trustee of the loss, theft, mutilation or destruction; and (ii) such indemnity as may be required by the respective Indenture Trustee to hold the Indenture Trustee harmless from any damages, liabilities or costs incurred in treating such individual as a holder of an Old Note that has been lost, stolen, mutilated or destroyed. Upon compliance with this Section 7.7(b) by a holder of a Claim evidenced by an Old Note, such holder shall, for all purposes under the Plan, be deemed to have surrendered its Old Note, as applicable.

(c) Failure to Surrender Canceled Old Notes

Any holder of an Old Note that fails to surrender or be deemed to have surrendered such note or Old Note before the first (1st) anniversary of the Effective Date shall have its claim for a distribution on account of such Old Note discharged and shall be forever barred from asserting any such claim against any Reorganized Debtor or their respective property or the Indenture Trustee, and shall not participate in any distribution hereunder, and the distribution that would otherwise have been made to such holder shall be distributed by the pertinent Indenture Trustee to all holders who have surrendered their Note certificates or satisfactorily explained their non-availability to the Indenture Trustee within first (1st) anniversary of the Effective Date.

7.8 Withholding And Reporting Requirements

In connection with this Plan and all distributions hereunder, the Disbursing Agent shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan: (a) each holder of an Allowed Claim that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Disbursing Agent for the payment and satisfaction of such tax obligations.

7.9 Setoffs

The Reorganized Debtors may, but shall not be required to, set off against any Claim not deemed an Allowed Claim under the Plan, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors or the Reorganized Debtors may have against the holder of such Claim; *provided, however*, that neither the failure to do so nor the allowance of any Claim not deemed an Allowed Claim hereunder shall constitute a waiver or release by the Reorganized Debtors of any such claim that the Debtors or the Reorganized Debtors may have against such holder.

## Article VIII

### PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS AND DISTRIBUTIONS WITH RESPECT THERETO

#### 8.1 Prosecution Of Objections to Claims

##### (a) Objections to Claims

All objections to Claims must be filed and served on the holders of such Claims by the Claims Objection Deadline. If an objection has not been filed to a Proof of Claim or a scheduled Claim by the Claims Objection Deadline, the Claim to which the Proof of Claim or scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been allowed earlier.

##### (b) Authority to Prosecute Objections

After the Confirmation Date, the Debtors, the Reorganized Debtors, the Creditors' Committee, and the Plan Committee, as the case may be, will have the authority to file objections, settle, compromise, withdraw or litigate to judgment objections to Claims, including Claims for reclamation under section 546(c) of the Bankruptcy Code. Except as provided below, from and after the Effective Date, the Reorganized Debtors may settle or compromise any Disputed Claim without approval of the Bankruptcy Court.

#### 8.2 Treatment of Disputed Claims

Notwithstanding any other provisions of the Plan, no payments or distributions will be made on account of a Disputed Claim, or, if less than the entire Claim is a Disputed Claim, the portion of a Claim that is disputed, until such Claim becomes an Allowed Claim.

#### 8.3 Disputed Claims Reserves

Prior to making any distributions to holders of Allowed Claims in Classes H-3 and O-3, the Disbursing Agent shall establish appropriate reserves for Disputed Claims in such Classes, respectively, to withhold from any such distributions 100% of distributions to which holders of Disputed Claims in such Classes would be entitled under the Plan as of such date if such Disputed Claims were Allowed Claims in their Disputed Claim Amount. The Disbursing Agent shall also establish appropriate reserves for Disputed Claims in other Classes, as it determines necessary and appropriate.

#### 8.4 Distributions on Account of Disputed Claims Once They Are Allowed and Additional Distributions on Account of Previously Allowed Claims

On each Quarterly Distribution Date, the Reorganized Debtors will make distributions from the Disputed Claims reserves (a) on account of any Disputed Claim that has become an Allowed Claim during the preceding calendar quarter and (b) on account of previously Allowed Claims, of property that would have been distributed to such Claim holders on the dates distributions previously were made to holders of Allowed Claims had the Disputed Claims that have become Allowed Claims been Allowed on such dates. Such distributions will be made pursuant to the provisions of the Plan governing the applicable Class.

Article IX

CONDITIONS PRECEDENT TO CONFIRMATION  
AND CONSUMMATION OF THE PLAN

9.1 Conditions To Confirmation

The following are conditions precedent to the occurrence of the Confirmation Date:

- (a) the entry of an Final Order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code;
- (b) the proposed Confirmation Order shall be in form and substance reasonably acceptable to the Plan Proponents and to the Creditors' Committee;
- (c) all provisions, terms and conditions hereof and of the Purchase Agreement are approved in the Confirmation Order;
- (d) the entry of the Confirmation Order shall be deemed an approval of all of the transactions contemplated by the Purchase Agreement;
- (e) in the event that the DBI Plan is not confirmed simultaneously with the DBOC Debtors' Plan, entry of the Alternative Transaction Order, in form and substance reasonably acceptable to the Purchaser, DBI and the Creditors' Committee; and
- (f) in the event that the DBOC Debtors' Plan is not confirmed simultaneously with the DBI Plan, entry of the Alternative Transaction Order, in form and substance reasonably acceptable to the Purchaser, DBOC and the Creditors' Committee.

9.2 Conditions To Effective Date

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing in accordance with Section 9.3 of this Plan:

- (a) The Confirmation Order shall have been entered and become a Final Order, in form and substance reasonably satisfactory to the Plan Proponents and to the Creditors' Committee, and shall provide that the Purchaser is authorized, and that the Debtors and the Reorganized Debtors are authorized and directed, to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures and other agreements or documents created in connection with the Plan or the Restructuring Transactions;
- (b) the Debtors shall have entered into the Purchase Agreement;
- (c) the transactions contemplated by the Purchase Agreement have been consummated in accordance with all aspects of the Purchase Agreement as reasonably determined by the Purchaser, and, as may be appropriate, the Debtors or Reorganized Debtors, the Creditors' Committee or the Plan Committee, and the Plan Administrator;
- (d) all Plan Exhibits shall be in form and substance reasonably acceptable to the Plan Proponents and the Creditors' Committee, and shall have been executed and delivered by all parties' signatory thereto;
- (e) the Debtors shall be authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures and the agreements or documents created in connection with the Plan;

(f) all actions, documents and agreements necessary to implement the Plan shall have been effected or executed;

(g) in the event that the DBI Plan is not confirmed simultaneously with the DBOC Debtors' Plan, the Alternative Transaction Order shall have become a Final Order; and

(h) in the event that the DBOC Debtors' Plan is not confirmed simultaneously with the DBI Plan, the Alternative Transaction Order shall have become a Final Order.

### 9.3 Waiver Of Conditions

Each of the conditions set forth in Section 9.1 and 9.2 of the Plan may be waived in whole or in part by the Purchaser, but only with the written consent of the Debtors and the Creditors' Committee (except as to 9.1(c) and (f) and 9.2(g) and (h)), which consent shall not be unreasonably withheld. The failure of a party to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

## Article X

### RETENTION OF JURISDICTION

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

(a) allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest not otherwise allowed under the Plan, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

(b) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code; provided, however, that from and after the Effective Date, the payment of the fees and expenses of the retained Professionals of the Reorganized Debtors, the Plan Committee, and the Plan Administrator shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

(c) hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, including, if necessary, the nature or amount of any required Cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan;

(e) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Case;

(f) enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;



(h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with implementation, consummation, or enforcement of the Plan or the Confirmation Order;

(j) enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

(k) hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(l) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;

(m) except as otherwise limited herein, recover all assets of the Debtors and property of the Debtors' Estates, wherever located;

(n) hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(o) hear and determine all disputes involving the existence, nature, or scope of the Debtors' discharge;

(p) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code; and

(q) enter a final decree closing the Chapter 11 Case.

## Article XI

### MISCELLANEOUS PROVISIONS

#### 11.1 Professional Fee Claims

All final requests for compensation or reimbursement of Professional Fees pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code for services rendered prior to the Effective Date and Substantial Contribution Claims under section 503(b)(4) of the Bankruptcy Code must be filed and served on the Reorganized Debtors and their counsel no later than forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to applications of such Professionals or other entities for compensation or reimbursement of expenses must be filed and served on the Reorganized Debtors and their counsel and the requesting Professional or other entity no later than thirty (30) days (or such longer period as may be allowed by order of the Bankruptcy Court) after the date on which the applicable application for compensation or reimbursement was served.

#### 11.2 Administrative Claims Bar Date

All requests for payment of an Administrative Claim (other than as set forth in Section 2.1 of this Plan) must be filed with the Bankruptcy Court and served on counsel for the Debtors and counsel for the Creditors' Committee no later than thirty (30) days after the Effective Date. Unless the Debtors object to an Administrative Claim within forty-five (45) Business Days after receipt, such Administrative Claim shall be deemed allowed in the amount requested. In the event that the Debtors object to an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding the foregoing, no request for

payment of an Administrative Claim need be filed with respect to an Administrative Claim which is paid or payable by a Debtor in the ordinary course of business.

### 11.3 Payment Of Statutory Fees

All fees payable pursuant to section 1930 of Title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation shall be paid on or before the Effective Date and shall thereafter be paid by the Reorganized Debtors until the Chapter 11 Case is closed.

### 11.4 Modifications and Amendments

The Plan may be altered, amended or modified by the Plan Proponents under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date with the written consent of the Creditors' Committee, which consent shall not be unreasonably withheld. After the Confirmation Date and prior to substantial consummation of the Plan, as defined in section 1101(2) of the Bankruptcy Code, the Plan Proponents, with the written consent of the Creditors' Committee, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan and such proceedings do not materially adversely affect the treatment of holders of Claims under the Plan; *provided, however*, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court. If the consent required by this section 11.4 is withheld, then the party seeking alteration, amendment or modification may seek Bankruptcy Court approval of such alteration, modification or amendment, which approval (if granted) shall be binding on the party(ies) whose consent had been withheld.

### 11.5 Revocation and Withdrawal of the Plan

The Purchaser reserves the right to revoke and withdraw the Plan at any time prior to the Confirmation Hearing with the written consent of the Debtors and the Creditors' Committee, which consent shall not be unreasonably withheld. If the consent required by this section 11.5 is withheld, then the Purchaser may seek Bankruptcy Court approval of such revocation and withdrawal, which approval (if granted) shall be binding on the party(ies) whose consent had been withheld.

### 11.6 Severability Of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Plan Proponents, with the consent of the Creditors' Committee (which consent shall not be unreasonably withheld), shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

### 11.7 Conflicts

To the extent that any provision of the Disclosure Statement or the Confirmation Order (or any exhibits, schedules, appendices, supplements or amendments to the foregoing) conflict with or are in any way inconsistent with the terms of the Plan, the Plan shall govern and control except with respect to treatment of holders of Claims or Interests. To the extent that any provision of the Plan conflicts with or is in any way inconsistent with the terms of the Purchase Agreement, the Purchase Agreement shall govern and control.

### 11.8 Successors And Assigns

The rights, benefits and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

### 11.9 Compromises and Settlements After Confirmation

After Confirmation, but prior to the Effective Date, pursuant to Fed. R. Bankr. P. 9019(a), the Debtors, with the consent of the Creditors' Committee, may compromise and settle various Claims against them and/or claims that they may have against other Persons. The Debtors expressly reserve the right (with Bankruptcy Court approval, following appropriate notice and opportunity for a hearing) to compromise and settle Claims against them and claims that they may have against other Persons up to and including the Effective Date. Any disputes between the Debtors and the Creditors' Committee shall be resolved after notice and hearing by the Bankruptcy Court.

### 11.10 Releases And Satisfaction Of Subordination and Other Rights

All Claims of the holders of the DIP Facility Claims, and the Old Note Claims against the Debtors and all rights and claims between or among such holders relating in any manner whatsoever to any claimed subordination rights or rights to assert Claims that are owned by any of the Debtors or their Estates against any other Debtor or third party, shall be deemed satisfied by the distributions under, described in, contemplated by, and/or implemented in Article II of this Plan. Distributions under, described in, contemplated by, and/or implemented by this Plan to the various Classes of Claims hereunder shall not be subject to levy, garnishment, attachment, or like legal process by any holder of a Claim, including, but not limited to, holders of DIP Facility Claims and Old Note Claims, by reason of any claimed subordination rights or otherwise, so that each holder of a Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan.

### 11.11 Discharge Of The Debtors

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided, however, that no holder of a Claim against any Debtor may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against, any Debtor, Reorganized Debtor, their respective successors or their respective property, except as expressly provided herein.

### 11.12 Injunction

(a) Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that from and after the Confirmation Date all Persons who have held, hold or may hold Claims against or Interests in the Debtors are permanently enjoined from taking any of the following actions against the Estate(s), the Plan Administrator, the Plan Committee, or any of their property on account of any such Claims or Interests: (A) commencing or continuing, in any manner or in any place, any action or other proceedings; (B) enforcing attaching, collecting or recovering in any manner any judgment, award, decree or order; (C) creating, perfecting or enforcing any lien or encumbrance; (D) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtors; and (E) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan.

(b) By accepting distributions pursuant to the Plan, each holder of an Allowed Claim receiving distributions pursuant to the Plan will be deemed to have specifically consented to the injunctions set forth in this Section 11.12.

### 11.13 Exculpation And Limitation Of Liability

(a) None of the Debtors, the Reorganized Debtors, the Creditors Committee, the Plan Committee, the Plan Administrator, the Indenture Trustees, the Lenders, the Purchaser, nor any of their respective present or

former members, officers, directors, employees, advisors, or attorneys shall have or incur any liability to any holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, formulating, negotiating or implementing the Plan, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence or willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

(b) Notwithstanding any other provision of this Plan, no holder of a Claim or Interest, no other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, and no successors or assigns of the foregoing, shall have any right of action against any Debtor or Reorganized Debtor, the Purchaser, the Plan Administrator, the Indenture Trustees, the Plan Committee, nor any statutory committee, nor any of their respective present or former members, officers, directors, employees, advisors or attorneys, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, formulating, negotiating or implementing the Plan, solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, the confirmation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence or willful misconduct.

(c) The foregoing exculpation and limitation on liability shall not, however, limit, abridge, or otherwise affect the rights, if any, of the Reorganized Debtors to enforce, sue on, settle, or compromise the Litigation Claims retained pursuant to Section 4.12 of this Plan.

#### 11.14 Binding Effect

The Plan shall be binding upon and inure to the benefit of the Purchaser, the Debtors, all present and former holders of Claims against and Interests in the Debtors, their respective successors and assigns, including, but not limited to, the Reorganized Debtors, and all other parties-in-interest in this Chapter 11 Case.

#### 11.15 Effect of Non-Consummation

Subject to the provisions of Section 4.18 of this Plan, if either Confirmation or consummation of the Plan does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (x) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, any Debtor or any other Person, (y) prejudice in any manner the rights of any Debtor or any Person in any further proceedings involving a Debtor, or (z) constitute an admission of any sort by any Debtor or any other Person.

#### 11.16 Plan Exhibits

Any and all Plan Exhibits, or other lists or schedules not filed with the Plan shall be filed with the Clerk of the Bankruptcy Court at least five (5) Business Days prior to date of the commencement of the Confirmation Hearing. Upon such filing, such documents may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Holders of Claims or Interests may obtain a copy of any such document upon written request to the Debtors in accordance with Section 11.17 of the Plan.

#### 11.17 Notices

Any notice, request, demand, waiver or consent required or permitted to be made or provided to or upon a Debtor or Reorganized Debtor under the Plan shall be (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand delivery, (iii) overnight delivery service, (iv) first class mail, or (v) facsimile

transmission, and (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

DIAMOND BRANDS, INC.  
1600 South Highway 100  
Suite 122  
Minneapolis, MN 55416  
Att'n: Naresh K. Nakra  
Telephone: (952) 543-6200  
Facsimile: (952) 543-6211

with copies to:

SKADDEN, ARPS, SLATE, MBAGHER & FLOM (ILLINOIS)  
333 West Wacker Drive  
Chicago, Illinois 60606-1285  
Att'n: Timothy R. Pohl, Esq.  
Telephone: (312) 407-0700  
Facsimile: (312) 407-0411

BLANK ROME COMISKY & MCCAULEY LLP  
Blank Rome Comisky & McCauley LLP  
One Logan Square  
Philadelphia, PA 19103  
Att'n: Raymond L. Shapiro, Esq.  
Michael Schaedle, Esq.  
Telephone: (215) 569-5500  
Facsimile: (215) 569-5555

KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601  
Att'n: Gary R. Silverman, Esq., Matthew N. Kleiman, Esq.,  
and Geoffrey A. Richards, Esq.  
Telephone: (312) 861-2000  
Facsimile: (312) 861-2200

#### 11.18 Creditors' Committee and Plan Committee

(a) *Dissolution of Creditors' Committee.* The Creditors' Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code and shall perform such other duties as it may have been assigned by the Bankruptcy Court prior to the Effective Date. On the Effective Date, the Creditors' Committee shall be dissolved and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Creditors' Committee's attorneys, accountants and other agents shall terminate. All expenses of Creditors' Committee members and the fees and expenses of their professionals through the Effective Date shall be paid in accordance with the terms and conditions of a Final Order concerning such fees.

(b) *Creation of Plan Committee; Procedures.* On the Effective Date, the Plan Committee shall be formed and constituted. The Plan Committee shall consist of not more than three (3) Creditors' Committee members who shall be appointed by the Creditors' Committee and whose identities shall be disclosed to the Bankruptcy Court at or before the Confirmation Hearing. In the event that no one is willing to serve on the Plan Committee or there shall have been no Plan Committee members for a period of thirty (30) consecutive days, then the Plan Administrator may, during such vacancy and thereafter, ignore any reference in the Plan, the Plan

Administrator Agreement or the Confirmation Order to a Plan Committee, and all references to the Plan Committee's ongoing duties and rights in the Plan, the Plan Administrator Agreement and the Confirmation Order shall be null and void.

(c) *Function and Duration; Compensation and Expenses.* The Plan Committee (i) shall be responsible for (A) instructing and supervising the Reorganized Debtors and the Plan Administrator with respect to their responsibilities under the Plan and the Plan Administrator Agreement, (B) reviewing the prosecution of adversary and other proceedings, if any, including proposed settlements thereof, (C) reviewing objections to and proposed settlements of Disputed Claims, (D) performing such other duties that may be necessary and proper to assist the Plan Administrator and its retained professionals, and (ii) shall remain in existence until such time as the final distributions under the Plan have been made by the Reorganized Debtors. The members of the Plan Committee shall serve without compensation for their performance of services as members of the Plan Committee, except that they shall be entitled to reimbursement of reasonable expenses by the Reorganized Debtors, including reasonable attorneys fees and expenses.

(d) *Liability; Indemnification.* Neither the Plan Committee, nor any of its members or designees, nor any duly designated agent or representative of the Plan Committee, or their respective employees, shall be liable for the act or omission of any other member, designee, agent or representative of the Plan Committee, nor shall any member be liable for any act or omission taken or omitted to be taken in its capacity as a member of the Plan Committee, other than acts or omissions resulting from such member's willful misconduct or gross negligence. The Reorganized Debtors shall indemnify and hold harmless the Plan Committee and its members and designee, and any duly designated agent or representative thereof (in their capacity as such), from and against and with respect to any and all liabilities, losses, damages, claims, costs and expenses, including but not limited to attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, other than as a result of their willful misconduct or gross negligence, with respect to the Reorganized Debtors or the implementation or administration of the Plan. To the extent a Reorganized Debtor indemnifies and holds harmless the Plan Committee and its members and designees, or any duly designated agent or representative thereof (in their capacity as such), as provided above, the legal fees and related costs incurred by counsel to the Plan Committee in monitoring and participating in the defense of such claims giving rise to the right of indemnification shall be paid out of the Operating Reserve.

#### 11.19 Term of Injunctions or Stays

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date.

#### 11.20 Termination of Litigation

##### (a) Interest Rate Swap Agreement Adversary Proceeding.

As of the Effective Date, the Confirmation Order shall constitute a final, non-appealable judgment in favor of Wells Fargo Bank, N.A. in the adversary proceeding commenced by Wells Fargo against DBOC seeking reformation of that certain Interest Rate Swap Agreement dated May 7, 1998 (Adversary Case No. 01-1825). This Plan operates to dismiss with prejudice on the Effective Date all Claims, complaints, objections, litigation and Causes of Action against Wells Fargo Bank, N.A., and the other Lenders arising out of or related to the Interest Rate Swap Agreement.

##### (b) DIP Lender Adversary Proceeding.

As of the Effective Date, the Confirmation Order shall constitute a non-appealable judgment in favor of the DIP Lenders in the adversary proceeding commenced by the Creditors' Committee against the DIP Lenders. This Plan operates to dismiss with prejudice such action on the Effective Date.

Dated as of: December 13, 2002

**PURCHASER:**

**JARDEN CORPORATION**

By: /s/ Desiree DeStefano  
Desiree DeStefano  
Vice President

**DEBTORS:**

**DIAMOND BRANDS INCORPORATED**

By: /s/ Naresh Nakra  
Naresh Nakra  
Chief Executive Officer

**DIAMOND BRANDS OPERATING CORP.**

By: /s/ Naresh Nakra  
Naresh Nakra  
Chief Executive Officer

**DIAMOND BRANDS KANSAS, INC.**

By: /s/ Naresh Nakra  
Naresh Nakra  
Chief Executive Officer

**FORSTER, INC.**

By: /s/ Naresh Nakra  
Naresh Nakra  
Chief Executive Officer

TRADEMARK

REEL: 006680 FRAME: 0166

**EXHIBIT 1**

**PURCHASE AGREEMENT**

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**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**JARDEN CORPORATION,**

**AND**

**DIAMOND BRANDS INC.,**

**DIAMOND BRANDS OPERATING CORP.,**

**DIAMOND BRANDS KANSAS, INC.**

**AND**

**FORSTER, INC.**

**November 27, 2002**

**TRADEMARK**

**REEL: 006680 FRAME: 0168**

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made and entered into as of this 27<sup>th</sup> day of November, 2002, by and among Jarden Corporation, a Delaware corporation (the "*Buyer*"), Diamond Brands, Incorporated, a Minnesota corporation ("*DBI*"), Diamond Brands Operating Corp., a Delaware corporation and wholly-owned subsidiary of DBI ("*DBOC*"), Diamond Brands Kansas, Inc., a Kansas corporation ("*DBKI*"), and Forster, Inc., a Maine corporation and wholly-owned subsidiary of DBOC ("*Forster*"). DBI, DBOC, DBKI and Forster are sometimes referred to herein individually as a "*Debtor*" and collectively as the "*Debtors*." Capitalized terms used but not otherwise defined herein shall have the meanings accorded to them in Section 1.1 hereof.

### RECITALS

A. The Debtors are engaged in the business of designing, manufacturing, marketing and selling plastic cutlery, matches, toothpicks and other wooden and plastic consumer items (the "*Acquired Product Lines*").

B. On May 22, 2001, the Debtors filed in the United States Bankruptcy Court for the District of Delaware (the "*Bankruptcy Court*") for bankruptcy protection pursuant to chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §101 *et seq.* (the "*Bankruptcy Code*"), which chapter 11 case is being administered under case number 01-1825 (the "*Reorganization Cases*").

C. The Debtors continue to produce the Acquired Product Lines as debtors-in-possession.

D. The Buyer wishes to cause the Asset Buyer(s) to purchase from the Debtors, and the Debtors wish to sell to the Asset Buyer(s), certain assets of the Debtors upon the terms set forth herein.

### AGREEMENT

In consideration of the foregoing, the mutual covenants herein contained and other good and valuable consideration (the receipt, adequacy and sufficiency of which are hereby acknowledged by the Parties by their execution hereof), the Parties, intending to be legally bound, hereby agree as follows:

### ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

1.1 **Definitions.** For purposes of this Agreement, the following capitalized terms have the following meanings:

"*Accounts Receivable*" means all accounts receivable (including all intercompany accounts receivable), notes receivable, trade accounts, security deposits and other debts due or accruing to the Debtors.

"*Acquired Assets*" has the meaning set forth in Section 2.1.1 hereof.

"*Acquired Product Lines*" has the meaning set forth in Recital A.

"*Additional Consideration*" means, at the Buyer's election, (i) \$6,000,000 in cash payable by wire transfer of immediately available funds or (ii) shares of the Buyer's Common Stock with an aggregate Fair Market Value of \$6,000,000 as of the date of delivery, which shares shall be freely tradeable, registered and qualified for listing prior to their issuance.

"*Administrative Claim*" has the meaning set forth in the Plan of Reorganization.

"*Affiliate*" means any Person which, directly or indirectly, is in control of, is controlled by or is under common control with the party for whom an affiliate is being determined.

"*Affiliated Group*" means any affiliated group within the meaning of Code §1504(a) and any similar provision of local, state, or foreign law.

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

"*Alternative Transactions Order*" has the meaning set forth in the Plan of Reorganization.

"*Asset Buyer*" means one or more Affiliates of the Buyer (which shall be formed by the Buyer prior to the Closing if not already in existence) whom the Buyer designates to consummate the Closing.

"*Assumed Contracts*" means, collectively, all Contractual Obligations to which any Debtor is a party or by which any Debtor is bound which relate to the Acquired Assets and which are listed on Schedule 2.1.1.5 attached hereto, which Schedule 2.1.1.5 may be amended from time to time by the Buyer in accordance with Section 2.5.

"*Assumed Facilities*" means the premises at which the Debtors produce or distribute the Acquired Product Lines identified in the real property leases which are Assumed Contracts.

"*Assumed Obligations*" has the meaning set forth in Section 2.2.1 hereof.

"*Assumed Owned Real Property*" means the Owned Real Property identified in Schedule 2.1.1.7 attached hereto.

"*Assumed Plans*" has the meaning set forth in Section 2.1.1.22.

"*Audited Financials*" has the meaning set forth in Section 5.5.

"*Bankruptcy Code*" has the meaning set forth in Recital B.

"*Bankruptcy Court*" has the meaning set forth in Recital B.

"*Benefit Plan*" has the meaning set forth in Section 5.13.

"*Books and Records*" means (i) all records and lists of the Debtors, (ii) all records and lists pertaining to the Acquired Product Lines (including, without limitation, merchandize and post-season analysis reports, marketing analysis reports and creative material) or customers, suppliers or personnel of the Debtors (including, without limitation, customer lists, mailing lists, e-mail address lists, recipient lists, sales records, correspondence with customers, customer files and account histories, supply lists and records of purchases from and correspondence with suppliers), (iii) all product, business and marketing plans of the Debtors and (iv) all other books, ledgers, files, reports, plans, drawings and operating records of every kind maintained by the Debtors related to or used in connection with the Acquired Product Lines.

"*Business Day*" means a day other than a Saturday, Sunday or other day on which commercial banks are authorized or required to close under the laws of the United States of America.

"*Buyer*" has the meaning set forth in the opening paragraph of this Agreement.

"*Buyer's Common Stock*" means the common stock, par value \$.01 per share, of the Buyer.

"*Buyer's Representations*" means all representations and warranties of the Buyer contained in

#### Article VI.

"*Cash Purchase Price*" has the meaning as set forth in Section 3.1 hereof.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.).

"**Claim**" has the meaning set forth in §101(5) of the Bankruptcy Code.

"**Closing Date**" has the meaning set forth in Section 4.1.

"**Closing**" has the meaning set forth in Section 4.1.

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

"**Commercially Reasonable Efforts**" means efforts which are commercially reasonable under the circumstances taking into account all relevant facts, but such term does not include the provision of any material consideration to any Third Party or the suffering of any material economic detriment to a Party's ongoing operations for the taking of any action (including the procurement of any consent, authorization or approval) required under this Agreement except for: (i) the costs of gathering or supplying any data or other information or making any filings; (ii) fees and expenses of counsel and consultants; and (iii) customary fees and charges of Governmental Authorities and Third Parties.

"**Confidentiality Agreement**" means that certain Confidentiality Agreement entered into between the Buyer and one of the Debtors.

"**Confirmation Date**" means the date on which the Confirmation Order is entered by the Clerk of the Bankruptcy Court in the docket for the Reorganization Cases, unless otherwise ordered by the Bankruptcy Court or such other court of competent jurisdiction exercising jurisdiction over the matters set forth in the Confirmation Order.

"**Confirmation Order**" means the order of the Bankruptcy Court confirming the Plan of Reorganization pursuant to §1129 of the Bankruptcy Code.

"**Contractual Obligation**" means any binding contract, obligation, agreement, commitment or undertaking, whether oral or written, including, without limitation, any equipment leases and Facility Leases.

"**Controversy**" means any action, suit, proceeding, hearing, arbitration, investigation, inquiry, complaint, charge, judgment, order, decree, injunction, ruling, counterclaim, cross-claim, demand, cause of action, writ or assessment.

"**Copyrights**" means copyrights, including all renewals and extensions thereof, copyright registrations and applications for registration thereof, and non-registered copyrights.

"**Creditors' Committee**" has the meaning set forth in the Plan of Reorganization.

"**Cure Amount**" means the distribution of cash, or such other property as may be agreed upon by the Parties or ordered by the Bankruptcy Court, with respect to the assumption of an Assumed Contract, pursuant to Section 365(b) of the Bankruptcy Code, in an amount equal to all unpaid monetary obligations, without interest, or such other amount as may be agreed upon by the Parties, under such Assumed Contract, to the extent such obligations are enforceable under the Bankruptcy Code and applicable bankruptcy law.

"**Current Balance Sheet**" has the meaning set forth in Section 5.5.

"**DBI**" has the meaning set forth in the opening paragraph to this Agreement.

"**DBI Plan**" has the meaning set forth in the Plan of Reorganization.

"**DBKI**" has the meaning set forth in the opening paragraph of this Agreement.

**"DBOC"** has the meaning set forth in the opening paragraph to this Agreement.

**"Debtor"** and **"Debtors"** has the meaning set forth in the opening paragraph to this Agreement.

**"Debtors' Knowledge"** means the actual knowledge, after reasonable investigation, of any executive officer or facility manager of the Debtors.

**"Debtors' Representations"** means those representations and warranties of the Debtors in Article V hereof.

**"Deposit"** means the \$1,000,000 in earnest money deposited by the Buyer pursuant to the Earnest Money Deposit Agreement.

**"DIP Administrative Agent"** means Wells Fargo Bank, National Association with respect to that certain DIP Loan Agreement.

**"DIP Lenders"** means the syndicate of banks and other financial institutions which are parties to the DIP Loan Agreement.

**"DIP Loan Agreement"** means the credit agreement dated June 1, 2001, providing up to \$92,250,000, and entered into by the Debtors, the DIP Lenders and the DIP Administrative Agent, which credit agreement was approved by order of the Bankruptcy Court entered on July 13, 2001.

**"Earnest Money Deposit Agreement"** means that certain deposit letter from the Buyer addressed and delivered to the Debtors in accordance with the Scheduling Order.

**"Employee Benefit Plan"** means any: (i) non-qualified deferred compensation or retirement plan or arrangement which is an Employee Pension Benefit Plan; (ii) qualified defined contribution retirement plan or arrangement which is an Employee Pension Benefit Plan; (iii) qualified defined benefit retirement plan or arrangement which is an Employee Pension Benefit Plan (including any Multiemployer Plan); (iv) Employee Welfare Benefit Plan, material fringe benefit plan, severance or change of control benefit or other executive compensation or benefit; (v) equity-based plan or arrangement, including any stock option plan, stock purchase plan, stock appreciation rights or phantom stock plan; (vi) bonus plan or arrangement or incentive award plan or arrangement; (vii) consulting agreement or employment agreement; or (viii) vacation policy.

**"Employee Pension Benefit Plan"** has the meaning set forth in ERISA §3(2).

**"Employee Welfare Benefit Plan"** has the meaning set forth in ERISA §3(1).

**"Environment"** has the meaning set forth in CERCLA.

**"Environmental Laws"** means all federal, state, local and foreign statutes, regulations, ordinances and other provisions having the force or effect of law, all judicial and administrative orders and determinations, all contractual obligations and all common law, in each case concerning public health and safety, worker health and safety, pollution or protection of the environment, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, Release, threatened Release, control, or cleanup of any Hazardous Substances (including without limitation CERCLA and analogous state laws), each as amended or in effect prior to, on or after the Closing.

**"Equipment"** means all machinery, equipment, vehicles, furniture, furnishings, fixtures, operating equipment, supplies and tools, computer hardware and all parts, spares and accessories thereof and ascensions thereto.

**"ERISA"** means the Employee Retirement Income Security Act of 1974.



"ERISA Affiliate" means any trade or business (irrespective of whether incorporated) which is a member of a group of which any of the Debtors is a member and thereafter treated as a single employer under §414(b), (c), (m) or (o) of the Code or applicable Treasury Regulations.

"Excluded Assets" has the meaning set forth in Section 2.3 hereof.

"Excluded Contracts" has the meaning set forth in Section 2.3.3 hereof.

"Excluded Environmental Liabilities" means any Liability or investigatory, corrective, removal or remedial obligation, whenever arising or occurring, arising under Environmental Laws with respect to the Debtors, the Acquired Assets, the Owned Real Property, the Leased Facilities, or any properties or facilities currently or formerly owned, operated or occupied by the Debtors (including without limitation any arising from the on-site or off-site Release, threatened Release, treatment, storage, disposal, or arrangement for disposal of Hazardous Substances) whether or not constituting a breach of any representation or warranty herein and whether or not set forth on any disclosure schedule hereto, except where the facts or circumstances underlying any such Liability or obligation were solely caused by the operation of the Acquired Assets after the Closing Date.

"Excluded Real Property" has the meaning set forth on Schedule 2.3.5 (Excluded Assets).

"Exhibits" means the exhibits hereto.

"Facility Leases" means all leases, subleases, licenses, concessions and other agreements (written or oral), pursuant to which any Debtor holds a leasehold or subleasehold estate in, or is granted the right to use or occupy, any land, buildings, structures, improvements, fixtures or other interest in real property which is used or intended to be used in, or otherwise related to, the Acquired Product Lines.

"Fair Market Value" of each share of the Buyer's Common Stock means, as of the date of issuance, the average of the closing prices of the sales of the Buyer's Common Stock on all securities exchanges on which the Buyer's Common Stock may at the time be listed, or, if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day the Buyer's Common Stock is not so listed, the average of the representative bid and asked prices quoted in the NASDAQ System as of 4:00 P.M., New York time, or, if on any day the Buyer's Common Stock is not quoted in the NASDAQ System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau Incorporated, or any similar successor organization, in each such case averaged over a period consisting of the twenty (20) consecutive Business Days immediately preceding the fifth Business Day preceding the date of issuance.

"Final Order" means any order which has been entered by the Bankruptcy Court or any other court of competent jurisdiction that has not been reversed or stayed, is no longer subject to appeal, *certiorari* proceeding or other proceeding for review, reargument, or rehearing, and as to which no appeal, *certiorari* proceeding, or other proceeding for review, reargument, or rehearing has been requested or is then pending and the time to file any such appeal, *certiorari* proceeding or other proceeding for review, reargument, or rehearing has expired or as to which any right to appeal, petition for *certiorari*, reargue, or seek rehearing shall have been waived in writing in form and substance satisfactory to the Debtors and the Buyer.

"Forster" has the meaning set forth in the opening paragraph of this Agreement.

"GAAP" means, at a given time, United States generally accepted accounting principles, consistently applied.

"Governmental Authority" means any government of any nation, state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and includes the Bankruptcy Court.

**"Hart-Scott-Rodino Act"** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

**"Hazardous Substances"** means any pollutants, contaminants or chemicals, and any industrial, toxic or otherwise hazardous materials, substances or wastes with respect to which liability or standards of conduct are imposed under any Environmental Laws, including, without limitation, petroleum and petroleum-related substances, and asbestos.

**"Indebtedness"** with respect to any Person means any obligation of such Person for borrowed money, and in any event shall include (i) any Liability incurred for all or any part of the purchase price of property or other assets or for the cost of property or other assets constructed or of improvements thereto, other than accounts payable included in current liabilities and incurred in respect of property purchased in the Ordinary Course of Business, (ii) the face amount of all letters of credit issued for the account of such Person, (iii) Liabilities (whether or not such Person has assumed or become liable for the payment of such obligation) secured by Liens, (iv) all guarantees and similar Liabilities of such Person, (v) all accrued interest, fees and charges in respect of any Indebtedness and (vi) all prepayment premiums and penalties, and any other fees, expenses, indemnities and other amounts payable as a result of the prepayment or discharge of any Indebtedness.

**"Intellectual Property"** means all of the following as they exist in any jurisdictions throughout the world, in each case, to the extent owned by, licensed to, or otherwise used or held for use by any of the Debtors:

(i) patents, pending patent applications, industrial rights and the inventions, designs and improvements described and claimed therein, patentable inventions, and other patent rights (including any divisionals, continuations, continuations-in-part, renewals, substitutions or reissues thereof, whether or not patents are issued on any such applications and whether or not any such applications are amended, modified, withdrawn or refilled);

(ii) Trademarks;

(iii) Copyrights;

(iv) Trade Secrets;

(v) all web sites and web pages and related rights and items; and

(vi) Software.

**"Inventory"** means all inventory held by any Debtor for sale in the Ordinary Course of Business and all raw materials, work-in-process, semi-finished or finished products and similar items with respect to such inventory, in each case wherever the same may be located.

**"IP License(s)"** means all permits, licenses, sublicenses and other agreements or permissions under which any Debtor is a licensee or otherwise authorized to use or practice, or under which any Debtor is a licensor of, any Intellectual Property.

**"Law"** means any law, rule, regulation, order, decree or other requirement having the force of law and, where applicable, any interpretation thereof by any authority having jurisdiction with respect thereto or charged with the administration thereof.

**"Leased Facilities"** means the real property leased or subleased by the Debtors pursuant to the Facility Leases.

**"Letter of Credit"** has the meaning set forth in the Plan of Reorganization, provided that the Letter of Credit shall be issued by Bank of America.

"*Liability*" means any obligation or liability (in each case, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and regardless of when asserted), including, without limitation, any obligation or liability for Taxes.

"*Licensed IP*" means Intellectual Property that is the subject of an IP License.

"*Lien*" means an indenture, as defined in §101(28) of the Bankruptcy Code; a judicial lien, as defined in §101(36) of the Bankruptcy Code; a lien, as defined in §101(37) of the Bankruptcy Code; a security interest, as defined in §101(51) of the Bankruptcy Code; a statutory lien, as defined in §101(53) of the Bankruptcy Code; and any other any mortgage, deed of trust, security agreement, pledge, hypothecation, assignment, deposit arrangement, lien (statutory or otherwise), security interest, financing statement or preferential arrangement of any kind or nature whatsoever, including any conditional sale or other title retention agreement.

"*Material Adverse Change*" or "*Material Adverse Effect*" means, any event, change, condition or matter that individually or in the aggregate results in or would reasonably be expected to result in a material adverse effect or change in the results of operations or condition (financial or otherwise) of the Debtors, the Acquired Product Lines or the Acquired Assets.

"*Material Customers*" has the meaning set forth in Section 5.23.

"*Material Suppliers*" has the meaning set forth in Section 5.23.

"*Multiemployer Plan*" means a "multiemployer plan" as defined in §3(37) and §4001(a)(3)(A) of ERISA.

"*Notice*" means any summons, citation, directive, order, claim, litigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from a Governmental Authority including any lien imposed pursuant to any Environmental Law on property owned, leased, occupied or used by the Debtors or any predecessor or former Affiliates thereof.

"*Options*" means options, warrants, rights of first refusal, purchase rights, sale rights, subscription rights, puts, calls, conversion rights, exchange rights or similar Contractual Obligations.

"*Order*" means any decree, order, injunction, rule, judgment, consent of or by any court or governmental authority.

"*Ordinary Course of Business*" means the production and distribution of the Acquired Product Lines by the Debtors in the usual and ordinary course consistent with past practice and custom.

"*Owned Real Property*" means all land and all buildings, structures, fixtures and other improvements located thereon, and all easements, rights of way, servitudes, tenements, hereditaments, appurtenances, privileges and other rights with respect thereto owned by the Debtors.

"*Party*" means a Person named as entering into this Agreement.

"*Permit*" means all approvals, authorizations, consents, licenses, franchises, orders, registrations, certificates, variances, permits and similar rights, in each case obtained from or issued by any Governmental Authority.

"*Permitted Liens*" means (i) statutory liens for current property Taxes and assessments not yet due and payable, including, without limitation, liens for *ad valorem* Taxes and statutory liens not yet due and payable arising other than by reason of any default on the part of the Debtors, and (ii) easements, covenants, conditions, restrictions and other similar matters of record on real property, leasehold estates or personality that do not in any material respect detract from the value of the property subject thereto thereof and do not individually or in the

aggregate in any material respect interfere with the present use of the property subject thereto with respect to the Acquired Product Lines.

"*Person*" means any natural person, corporation, limited partnership, general partnership, joint venture, association, company, trust, joint stock company, bank, trust company, land trust, vehicle trust, business trust, real estate investment trust, estate, limited liability company, limited liability partnership, limited liability limited partnership or other organization irrespective of whether it is a legal entity, and any Governmental Authority.

"*Plan of Reorganization*" means the Plan of Reorganization Sponsored by Jarden Corporation in substantially the form attached hereto as Exhibit A.

"*Proceeding*" has the meaning set forth in Section 2.4.10 hereof.

"*Purchase Price*" has the meaning set forth in Section 3.1 hereof.

"*Regulation*" means any law, statute, regulation, ruling, rule or Order of, administered or enforced by or on behalf of, any court or governmental authority.

"*Rehired Employees*" has the meaning set forth in Section 7.5.2 hereof.

"*Release*" has the meaning set forth in CERCLA.

"*Reorganization Cases*" has the meaning set forth in Recital B.

"*Responsible Officer*" means: (i) in the case of a corporation, a president, a chief executive officer, a chief financial officer, a vice president or a treasurer of such corporation; (ii) in the case of a partnership, a general partner therein; or (iii) in the case of a limited liability company, a manager or managing member of such entity.

"*Rule*" or "*Rules*" means the Federal Rules of Bankruptcy Procedure.

"*Schedules*" means the schedules attached hereto.

"*Scheduling Order*" means the Bankruptcy Court's Scheduling Order Establishing (I) Procedures with Respect to Filing of Amended Proposed Plans of Reorganization and (II) Hearing Date to Consider Proposed Plans of Reorganization dated as of October 30, 2002.

"*Software*" means computer software programs and software systems, including, without limitation, all databases, compilations, tool sets, compilers, higher level or "proprietary" languages, and all related material documentation and information, whether in source code, object code or human readable form.

"*Solicitation Date*" means the date on which the Debtors distribute the Plan of Reorganization to its creditors for the solicitation of such creditors' approval of the Plan of Reorganization.

"*Stock*" means shares of capital stock (including common and preferred stock) or other equity interests (regardless of how designated) of or in a corporation or comparable entity (including a partnership, joint venture or limited liability company), whether voting or nonvoting, or general or limited.

"*Stock Equivalents*" means all securities convertible into or exercisable or exchangeable for Stock and all Options to purchase or subscribe for Stock, whether or not presently convertible, exercisable or exchangeable.

"*Subsidiaries*" means, with respect to any Person, any corporation a majority of the total voting power of shares of stock of which is entitled (without regard to the occurrence of any contingency) to vote in the

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

**"Surveys"** has the meaning set forth in Section 4.3.10.

**"Tax"** and, with correlative meaning, **"Taxes"** mean with respect to any Person (i) all federal, state, local, county, foreign and other taxes, assessments or other government charges, including, without limitation, any income, alternative or add-on minimum tax, estimated gross income, gross receipts, sales, use, *ad valorem*, value added, transfer, capital stock franchise, profits, license, registration, recording, documentary, intangibles, conveyancing, gains, withholding, payroll, employment, social security (or similar), unemployment, disability, excise, severance, stamp, occupation, premium, property (real and personal), environmental or windfall profit tax, custom duty or other tax, governmental fee or other like assessment, charge, or tax of any kind whatsoever, together with any interest, penalty, addition to tax or additional amount imposed by any Governmental Authority responsible for the imposition of any such tax (domestic or foreign) whether such Tax is disputed or not, or (ii) liability for the payment of any amounts of the type described in clause (a) above relating to any other Person as a result of being party to any agreement to indemnify such other Person, being a successor or transferee of such other Person, or being a member of the same Affiliated Group or any consolidated, combined, unitary or other group with such other Person.

**"Tax Return"** means any report, return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto.

**"Third Party"** means any Person other than Debtors, the Buyer or any of their respective Affiliates.

**"Title Commitments"** has the meaning set forth in Section 4.3.9.

**"Title Insurer"** has the meaning set forth in Section 4.3.9.

**"Title Policies"** has the meaning set forth in Section 4.3.9.

**"Trademarks"** means trademarks, service marks, trade dress, trade names, brand names, domain names, designs, logos or corporate names and all translations, adaptations, derivations and combinations of the foregoing including, in each case, the goodwill associated therewith, whether registered or unregistered, and all registrations and applications for registration thereof, which shall include, without limitation, "Diamond Brands" and "Forster" or any derivation thereof.

**"Trade Secrets"** means trade secrets, confidential business information and other proprietary information including, without limitation, designs, research and development information, technical information, specifications, operating and maintenance manuals, methods, engineering drawings, know-how, data, mask works, discoveries, inventions, industrial designs and other proprietary rights (whether or not patentable or subject to copyright, mask work, or trade secret protection).

**"Transition Period"** has the meaning set forth in Section 8.6 hereof.

**"Treasury Regulation"** means those regulations promulgated by the United States Department of the Treasury pursuant to the authority of the Code or any other revenue law of the United States of America.

**"Unassumed Liabilities"** has the meaning set forth in Section 2.4 hereof.

**"WARN Act"** means the Worker Adjustment and Retraining Notification Act, as amended, and any similar foreign, state or local law, regulation or ordinance.

**1.2 Rules of Construction.** Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular and vice versa; (ii) references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement; (iii) references to one gender include all genders; (iv) "including" is not limiting; (v) "or" has the inclusive meaning represented by the phrase "and/or"; (vi) the words "hereof," "herein," "hereby," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (vii) section, clause, Exhibit and Schedule references are to this Agreement unless otherwise specified; (viii) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; and (ix) general or specific references to any Law mean such Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises regarding this Agreement, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

## ARTICLE II

### PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

#### 2.1 Purchase and Sale of Assets.

**2.1.1** Subject to the terms and conditions set forth in this Agreement, at the Closing, the Debtors shall sell, contribute, convey, assign, transfer and deliver to the Asset Buyer (or, if there is more than one Asset Buyer, then to such Asset Buyer designated by the Buyer), free and clear of all Liens (other than Permitted Liens), and the Asset Buyer(s) shall purchase, acquire and take assignment and delivery of, for the consideration set forth in Section 3.1, all properties, assets, rights, titles and interests of every kind and nature, owned or leased by the Debtors (including indirect and other forms of beneficial ownership) as of the Closing Date, which are used in, useful for or otherwise associated with the Acquired Product Lines, whether tangible or intangible, real or personal and wherever located and by whomever possessed, including, without limitation, all of the following assets but excluding Excluded Assets pursuant to Section 2.3 (all of the assets to be sold, assigned, transferred and delivered to the Buyer hereunder referred to herein collectively as the **"Acquired Assets"**):

**2.1.1.1** all marketable securities and other short-term investments, deposits and advances, prepaid and other current assets relating to the Acquired Product Lines, including, without limitation, all cash (including, without limitation, checking account balances, certificates of deposit and other time deposits and petty cash);

**2.1.1.2** all Accounts Receivables (whether current or noncurrent) and all causes of action specifically pertaining to the collection of all Accounts Receivable;

**2.1.1.3** all promotional allowances and vendor rebates and similar items;

**2.1.1.4** all Intellectual Property, along with all income, royalties, damages and payments due or payable to the Debtors as of the Closing or thereafter, including, without limitation, damages and payments for past, present or future infringements or misappropriations thereof, the right to sue and recover for past infringements or misappropriations thereof and any and all corresponding rights that, now or hereafter, may be secured throughout the world and all copies and tangible embodiments of any such Intellectual Property in the Debtors' possession or control;

**2.1.1.5** all of the Debtors' rights under the Assumed Contracts;

2.1.1.6 all bank accounts, safety deposit boxes, lock boxes and the like and a list of the foregoing shall be set forth on Schedule 2.1.1.6 attached hereto;

2.1.1.7 all Assumed Owned Real Property;

2.1.1.8 all Assumed Facilities and all plants, buildings and other improvements located on such property, and all easements, licenses, rights of way, Permits and all appurtenances to the real property leases which are Assumed Contracts including, without limitation, all appurtenant rights in and to public streets, whether or not vacated;

2.1.1.9 all leasehold improvements and all Equipment owned by the Debtors with respect to the Acquired Product Lines, wherever located, including, without limitation, all such items which are located in any building, warehouse, office or other space leased, owned or occupied by the Debtors;

2.1.1.10 all Inventories, replacement and spare parts, packaging materials, operating supplies, and fuels, owned by the Debtors with respect to the Acquired Product Lines, wherever located;

2.1.1.11 all office supplies, production supplies, spare parts, other miscellaneous supplies, and other tangible property of any kind relating to the Acquired Product Lines, wherever located, including, without limitation, all property of any kind located in any building, office or other space leased, owned or occupied by the Debtors or in any warehouse where any of the Debtors' properties and assets may be situated;

2.1.1.12 except as set forth in Section 2.3.1, all claims, deposits, prepayments, warranties, guarantees, refunds, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent), other than those relating exclusively to Excluded Assets;

2.1.1.13 the right to receive and retain mail, Accounts Receivable payments and other communications relating to the Acquired Product Lines;

2.1.1.14 the right to bill and receive payment for products shipped or delivered and services performed but unbilled or unpaid as of the Closing;

2.1.1.15 all Books and Records (excluding the originals of the minute books, stock books and all Tax Returns of any Debtor);

2.1.1.16 all advertising, marketing and promotional materials and all other printed or written materials;

2.1.1.17 all Permits and the rights to all data and records held by the Governmental Authorities issuing or otherwise authorizing such Permits;

2.1.1.18 all goodwill as a going concern and all other intangible properties;

2.1.1.19 all telephone numbers used by the Debtors with respect to the Acquired Product Lines;

2.1.1.20 all rights to indemnification relating to the Acquired Assets or the Acquired Product Lines existing prior to the Closing Date;

2.1.1.21 all rights under insurance policies to the extent related to or payable in connection with any of the Acquired Assets, the Assumed Obligations, Assumed Facilities, or the Assumed Owned Real Property existing prior to the Closing Date;

2.1.1.22 the Employee Benefit Plans set forth on Schedule 2.1.1.22 (the "Assumed Plans"); and

2.1.1.23 all security deposits relating to Assumed Contracts.

2.1.2 At the Closing, all of the Acquired Assets shall be sold, assigned, transferred, conveyed and delivered to the applicable Asset Buyer free and clear of all Liens (other than Permitted Liens) in accordance with the terms of the Plan of Reorganization and the Confirmation Order and sections 363(f) and 365 of the Bankruptcy Code.

## 2.2 Assignment and Assumption of Certain Liabilities.

2.2.1 Subject to the terms and conditions set forth in this Agreement, at the Closing, the Asset Buyer(s) shall assume from the Debtors and thereafter be responsible for the payment and/or performance of, in accordance with their terms, only the following liabilities and obligations of the Debtors (collectively, the "Assumed Obligations"): (i) obligations under the Assumed Contracts first arising after the Closing, (ii) the "Pay to Stay Bonus" and "Performance Bonus" payments under the Debtors' Key Employee Retention Program in an amount not to exceed \$1,200,000, (iii) obligations associated with the Assumed Plans, (iv) obligations with respect to any unused vacation or sick leave earned and accrued (to the extent not paid) by the Rehired Employees as of the Closing Date; (v) obligations with respect to Rehired Employees' wages and salary earned and accrued (to the extent not paid) as of the Closing Date and (vi) the Liabilities set forth on Schedule 2.2.1(vi) attached hereto; provided, that this Section 2.2.1 shall not limit any claims or defenses the Buyer or any Asset Buyer may have in respect of the Assumed Obligations against any Person other than the Debtors. The Debtors hereby acknowledge and agree that neither the Buyer nor any Asset Buyer is assuming from the Debtors, or is in any way responsible for, any of the Unassumed Liabilities.

2.2.2 The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any Third Party against the Buyer, any Asset Buyer or the Debtors as compared to the rights and remedies which such Third Party would have had against the Debtors absent the Reorganization Cases, had the Buyer or the Asset Buyer(s) not assumed such Assumed Obligations.

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

2.3.1 any and all rights of the Debtors under this Agreement (including all cash and non-cash consideration payable or deliverable to Debtors) and avoidance claims or causes of action arising under the Bankruptcy Code or applicable state law, including, without limitation, all rights and avoidance claims of Debtors arising under chapter 5 of the Bankruptcy Code;

2.3.2 all Owned Real Property other than the Assumed Owned Real Property;

2.3.3 all Leased Facilities other than the Assumed Facilities;

2.3.4 all Contractual Obligations to which any Debtor is a party or by which any Debtor is bound which are not Assumed Contracts (collectively, the "Excluded Contracts");

2.3.5 all of the assets set forth on Schedule 2.3.5 attached hereto; provided that the Buyer may amend Schedule 2.3.5 at any time on or before one (1) day prior to the Closing Date in order to exclude from the definition of Acquired Asset any Licensed IP the Debtors use of which is not in compliance with the terms and conditions of any applicable IP License;

2.3.6 income Tax Returns and related materials;



2.3.7 all Tax refunds, rebates, credits and similar items relating to any period, or portion of any period, on or prior to the Closing Date; and

2.3.8 the equity securities of any Debtor.

2.4 **No Other Liabilities Assumed.** Each Debtor acknowledges and agrees that pursuant to the terms and provisions of this Agreement, neither the Buyer nor any Asset Buyer shall assume, and shall not be deemed to have assumed, any Claim against, or any debt or other Liability of, any Debtor or any of the Debtors' respective Affiliates whatsoever (other than the Assumed Obligations), including, without limitation, the following (collectively, the "Unassumed Liabilities"):

2.4.1 except as specifically assumed under Section 2.2, any Liability of, or Claim against, any of the Debtors or any predecessor(s) or Affiliates of any of the Debtors that arose prior to, during or in connection with the Reorganization Cases;

2.4.2 any Liability of, or Claim against, any of the Debtors or any predecessor(s) or Affiliate(s) of the Debtors that relate to any of the Excluded Assets (including any amounts relating to the rejection of Excluded Contracts);

2.4.3 any Cure Amounts with respect to the Assumed Contracts in excess of in the amount of such Cure Amounts set forth on Schedule 2.1.1.5 as of the Solicitation Date;

2.4.4 Excluded Environmental Liabilities (whether or not constituting a "Liability of any Debtor or any of the Debtors' Affiliates" for the purposes of the preamble to this Section 2.4);

2.4.5 any Liability of, or Claim against, any of the Debtors or any predecessor(s) or Affiliate(s) of any of the Debtors or for which the Debtors or any predecessor(s) or Affiliate(s) of the Debtors could be liable relating to Taxes (including with respect to the Acquired Assets or otherwise) including, without limitation, any Taxes that will arise as a result of the sale of the Acquired Assets or the assumption of the Assumed Obligations pursuant to this Agreement and any deferred Taxes of any nature;

2.4.6 except as specifically assumed under Section 2.2, any Liability of, or Claim against, any of the Debtors for any legal, accounting, investment banking, brokerage or similar fees or expenses incurred by any Debtor in connection with, resulting from or attributable to the transactions contemplated by this Agreement or otherwise;

2.4.7 except as specifically assumed under Section 2.2, all Indebtedness of any Debtor or any predecessor(s) or Affiliate(s) of any Debtor;

2.4.8 all outstanding Stock and Stock Equivalents of the Debtors and any Liabilities and/or Claims in any way related thereto;

2.4.9 except as specifically assumed under Section 2.2, any Liability of, or Claim against, any of the Debtors or any predecessor(s) or Affiliate(s) of the Debtors resulting from, caused by or arising out of, or which relate to, directly or indirectly, the production and distribution of the Acquired Product Lines or ownership or lease of any properties or assets or any properties or assets (including, without limitation, the Acquired Assets) previously used by the Debtors, or other actions, omissions, including, without limitation, any amounts due or which may become due or owing under the Assumed Contracts with respect to the period prior to Closing (other than any Cure Amounts for which the Buyer may be responsible in accordance with Section 2.6), whether known or unknown on the date hereof;

2.4.10 any Liability of, or Claim against, any of the Debtors or any predecessor(s) or Affiliate(s) of the Debtors resulting from, caused by or arising out of, or which relate to, directly or indirectly, the production or distribution of the Acquired Product Lines anywhere or ownership or lease of any properties or assets or any properties or assets previously used by the Debtors at any time, or other actions, omissions or events occurring prior

to the Closing and which (i) constitute, may constitute or are alleged to constitute a tort, breach of contract or violation of any law, rule, regulation, treaty or other similar authority or (ii) relate to any and all Claims, disputes, demands, actions, liabilities, damages, suits in equity or at law, administrative, regulatory or quasi-judicial proceedings, accounts, costs, expenses, setoffs, contributions, attorneys' fees and/or causes of action of whatever kind or character ("*Proceeding*") against the Debtors or any predecessor(s) or Affiliate(s) of the Debtors, whether past, present, future, known or unknown, liquidated or unliquidated, accrued or unaccrued, pending or threatened;

2.4.11 except as specifically assumed under Section 2.2, any Liability of, or Claim against, the Debtors arising out of any Proceeding commenced after the Closing and arising out of, or relating to, any occurrence or event happening prior to the Closing;

2.4.12 except as specifically assumed under Section 2.2, any Liability of, or Claim against, any of the Debtors (whether known or unknown) with respect to the employees or former employees, or both, of any Debtor arising from the production or distribution of the Acquired Product Lines prior to the Closing, including, without limitation, payroll, vacation, sick leave, worker's compensation, unemployment benefits, pension benefits, employee stock option or profit sharing plans, health care plans or benefits, or any other employee plans or benefits or other compensation of any kind to any employee, and obligations of any kind including, without limitation, any Liability pursuant to the WARN Act for any action or inaction prior to the Closing;

2.4.13 except with respect to the Assumed Plans, any Liability of, or Claim against, any of the Debtors arising under any Employee Benefit Plan or any other employee benefit plan, program or arrangement at any time maintained, sponsored or contributed to by any Debtor or any ERISA Affiliate, or with respect to which any of the Debtors or any ERISA Affiliate has any liability;

2.4.14 any Liability of, or Claim against, any of the Debtors on, arising out of or relating to services and/or products of any of the Debtors to the extent provided, manufactured, developed and/or sold prior to the Closing;

2.4.15 any Liability of, or Claim against, any of the Debtors under any Assumed Contract which arises after the Closing but which arises out of or relates to any breach that occurred prior to the Closing;

2.4.16 any Liability of, or Claim against, any of the Debtors under any Excluded Contract;

2.4.17 except as specifically assumed under Section 2.2, any Liability of, or Claim against, any of the Debtors under any employment, severance, retention or termination agreement with any employee, consultant or contractor of Debtors;

2.4.18 any Liability of, or Claim against, any of the Debtors arising out of or relating to any grievance by any Debtor's employees, whether or not the affected employees are Rehired Employees;

2.4.19 any Liability of, or Claim against, any of the Debtors to any shareholder or Affiliate of any Debtor;

2.4.20 any Liability of, or Claim against, any of the Debtors to indemnify, reimburse or advance amounts to any officer, director, employee or agent of any Debtor;

2.4.21 any Liability of, or Claim against, any of the Debtors to distribute to any Debtor's shareholders or otherwise apply all or any part of the consideration received hereunder;

2.4.22 any Liability of, or Claim against, any of the Debtors arising out of or resulting from any Debtor's noncompliance with any Law;

2.4.23 any Liability of, or Claim against, any of the Debtors based upon any of the Debtors' acts or omissions occurring after the Closing; and

2.4.24 any Liability of, or Claim against, any of the Debtors under this Agreement or any other document executed in connection herewith.

The Parties acknowledge and agree that disclosure of any Liability on any Schedule to this Agreement shall not create an Assumed Obligation or other Liability of or Claim against the Buyer or any Asset Buyer, except where such disclosed obligation has been expressly assumed by an Asset Buyer as an Assumed Obligation in accordance with the provisions of Section 2.2 hereof.

#### 2.5 Assumption of Certain Contractual Obligations; Excluded Contracts.

2.5.1 At the Closing, the applicable Debtors shall assume and such Debtors shall assign to the applicable Asset Buyer(s) the Assumed Contracts. The Assumed Contracts shall be identified on Schedule 2.1.1.5 by the date of the Assumed Contract, the other party or parties to the Assumed Contract and the address of such party or parties, and all such information shall be included on an exhibit attached to a motion for the authority to assume and assign the Assumed Contracts which motion shall be filed by the Debtors at the direction of the Buyer. Such exhibit shall also set forth the amounts necessary to cure defaults under each of such Assumed Contracts as determined by the Debtors based on the Debtors' Books and Records. Until the Solicitation Date, the Buyer, in its sole discretion, by delivery of written notice to the Debtors, shall have the right to (i) add any Contractual Obligation to Schedule 2.1.1.5 and/or (ii) exclude any Contractual Obligation listed on Schedule 2.1.1.5, and the Buyer shall not acquire any rights or assume any Liabilities with respect to any such excluded Contractual Obligation. The Plan of Reorganization shall reflect that the applicable Asset Buyer's promise to perform from and after the Closing under the Assumed Contracts shall be the only adequate assurance of future performance necessary to satisfy the requirements of Section 365 of the Bankruptcy Code in respect of the assignment to the applicable Asset Buyer of such Assumed Contracts.

2.6 Deemed Consents; Cures. For all purposes of this Agreement (including all representations and warranties of the Debtors contained herein), the Debtors shall be deemed to have obtained all required consents in respect of the assignment of any Assumed Contract or Assumed Lease if, and to the extent that, pursuant to the Plan of Reorganization or other Bankruptcy Court order, the Debtors are authorized to assume and assign Assumed Contracts to the Asset Buyer(s) pursuant to section 365 of the Bankruptcy Code and any applicable Cure Amount has been satisfied. If there exists on the Closing Date any default related to an Assumed Contract which relates to the Acquired Product Lines, the Buyer shall be responsible for Cure Amounts only to the extent such Cure Amounts are set forth on Schedule 2.1.1.5 as of the Solicitation Date as a condition to the assumption and assignment of such Assumed Contract. At the Closing, the Buyer shall provide funds to the Debtors (by wire transfer of immediately available funds) in an amount sufficient to pay all such Cure Amounts not to exceed the aggregate amount of the Cure Amounts set forth on Schedule 2.1.1.5 as of the Solicitation Date for such Assumed Contracts. Immediately upon receipt by the Debtors of such funds, the Debtors shall pay all Cure Amounts for such Assumed Contracts.

### ARTICLE III BASIC TRANSACTION

3.1 Purchase Price. The aggregate consideration (the "Purchase Price") to be paid for the Acquired Assets shall be an amount equal to the sum of (i) cash in the amount of (a) \$12,950,000 plus (b) the balance, as of the Closing, of the principal amount due under the DIP Loan Agreement, taking into account all payments made in respect of such principal amount by the Debtors through the Closing (collectively the "Cash Purchase Price") plus (ii) the Additional Consideration (which amount, if requested in writing by the Debtors at least ten (10) Business Days prior to the Closing, shall be secured by a Letter of Credit to be delivered by the Buyer at the Closing). Allowed Administrative Claims (as defined in the Plan of Reorganization) shall be treated in accordance with the terms of the Plan of Reorganization.

### 3.2 Payment of the Deposit and Purchase Price.

3.2.1 The Buyer will deposit the Deposit with the Debtors in accordance with the terms of the Earnest Money Deposit Agreement. The Parties hereby agree that it is impossible to determine accurately the amount of damages that the Debtors would suffer if the transactions contemplated hereby were not consummated as a result of a breach of this Agreement by the Buyer. As a result, notwithstanding anything herein to the contrary, if (i) the Buyer materially breaches its obligations under this Agreement (which breach has not been cured within ten (10) Business Days following receipt by the Buyer from the Debtors of written notice of such breach); and (ii) the Debtors terminate this Agreement in accordance with Section 9.1.4, the Buyer shall be obligated to pay liquidated damages in the amount of the Deposit in accordance with the terms of the Earnest Money Deposit Agreement, and the receipt by the Debtors of the Deposit shall be the Debtors' sole and exclusive remedy as liquidated damages. Accordingly, if liquidated damages are payable hereunder in accordance with the foregoing, the Deposit (together with all interest accrued thereon) shall be released to the Debtors in accordance with the terms of the Earnest Money Deposit Agreement. If this Agreement is terminated for any reason other than under the foregoing circumstances, the Debtors shall upon such termination return to the Buyer the Deposit together with all interest accrued thereon in accordance with the terms of the Earnest Money Deposit Agreement, and neither the Buyer nor the Asset Buyer(s) shall have any further obligation of any kind to any of the Debtors. Upon the consummation of the Closing hereunder, the Deposit (together with all interest accrued thereon) shall be applied by the Debtors against the Cash Purchase Price as set forth in Section 3.2.2 below.

3.2.2 At the Closing, the Buyer shall cause the Asset Buyer(s) to pay by wire transfer of immediately available funds an amount in cash equal to the Cash Purchase Price less the amount of the Deposit (together with all interest accrued thereon). Such payment shall be made to the Debtors to such account as designated by the Debtors in writing to the Buyer, in accordance with the terms of the Plan of Reorganization, no later than two (2) Business Days prior to the Closing Date. No later than six (6) months following the Closing Date, the Buyer shall deliver the Additional Consideration to such Person(s) as designated by the Debtors in writing to the Buyer no later than January 22, 2003; provided that if no such designation is made on or prior to January 22, 2003, the Additional Consideration shall be delivered to the Debtors. If requested in writing by the Debtors no later than ten (10) Business Days prior to the Closing, the Buyer shall deliver to the Debtors a Letter of Credit in an amount equal to the Additional Consideration.

3.3 Allocation of Purchase Price. The Buyer and the Debtors shall allocate the Purchase Price (plus the Assumed Obligations) among the Acquired Assets as set forth on Schedule 3.3 attached hereto (which schedule shall be agreed to by the Parties no later than thirty (30) Business Days after to the Closing), and such Schedule shall be used by the parties in preparing (i) Form 8594, Asset Acquisition Statement, for the Buyer and the Debtors and (ii) all Tax Returns. The Buyer and the Debtors shall each file Form 8594 prepared in accordance with this Section 3.3 with its federal income Tax Return for its tax period which includes the Closing Date. All allocations made pursuant to this Section 3.3 shall be binding upon the parties and upon each of their successors and assigns, and the Parties shall report the transactions contemplated by this Agreement in accordance with such allocations.

#### ARTICLE IV CLOSING; CONDITIONS TO CLOSING.

4.1 Closing. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") will take place at 10:00 a.m. Chicago time on February 7, 2003, or, at the Buyer's sole election, as soon as practicable following the Confirmation Date, or at such other date, time or place which the Parties may mutually agree (the "Closing Date"). The Closing shall occur at the offices of Kirkland & Ellis, 200 East Randolph Drive, Chicago, Illinois.

**4.2 The Debtors' Conditions.** All of the obligations of the Debtors hereunder are subject to the satisfaction of every one of the following conditions precedent unless, and only to the extent, waived in writing by DBOC (on behalf of the Debtors):

**4.2.1** this Agreement, any documents related hereto and the transactions contemplated hereby (including the Plan of Reorganization) have been approved and authorized to the extent required by the Bankruptcy Code pursuant to an order of the Bankruptcy Court in form and substance reasonably satisfactory to DBOC (on behalf of the Debtors), which order has been entered for at least ten days, has not been modified, reversed or amended in any manner materially adverse to the Debtors and has not been stayed pending a timely commenced appeal, and no order staying the consummation of the transactions contemplated by this Agreement has been entered in connection with any timely commenced appeal or certiorari;

**4.2.2** the Confirmation Order has been signed by the Bankruptcy Court and duly entered on the docket for the Reorganization Cases by the Clerk of the Bankruptcy Court in form and substance reasonably acceptable to DBOC (on behalf of the Debtors), has been entered for at least ten days and has not been modified, reversed or amended in any manner materially adverse to the Debtors, and there is no stay in effect with respect to the Confirmation Order and no pleading has been filed seeking such a stay or appeal of the Confirmation Order;

**4.2.3** the Buyer's Representations are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made at and as of the Closing Date (without giving effect to any disclosures made by the Buyer after the date hereof) (provided, however, that if any portion of any representation or warranty is already qualified by materiality, for purposes of determining whether this Section 4.2.3 has been satisfied with respect of such portion of such representation or warranty, such portion of such representation or warranty as so qualified must be true and correct in all respects);

**4.2.4** the covenants, agreements and undertakings of the Buyer herein have been complied with in all material respects;

**4.2.5** the waiting period under the Hart-Scott-Rodino Act, if applicable, has expired or been terminated;

**4.2.6** no Controversy is pending or overtly threatened by or before any arbitrator or Governmental Authority which is reasonably likely to enjoin, restrain or prohibit, or result in material damages in respect of, or which is related to or arises out of, this Agreement or the consummation of the transactions contemplated hereby; and

**4.2.7** at the Closing, the Buyer and the Asset Buyer(s) have tendered to DBOC (acting on behalf of the Debtors) the following documents, executed in a manner and otherwise in form and substance reasonably satisfactory to DBOC (acting on behalf of the Debtors):

**4.2.7.1** a duly executed assumption agreement or other appropriate instruments (including, without limitation, appropriate Intellectual Property assignments in recordable form to the extent necessary to assign such Intellectual Property rights) assigning the Assumed Obligations to the applicable Asset Buyer;

**4.2.7.2** a copy of resolutions duly adopted by the board of directors of the Buyer authorizing the execution and delivery of this Agreement and by the board of directors of the Buyer and the Asset Buyer(s) authorizing the execution and delivery of any other agreement to which it is a party in connection herewith and the consummation of the transactions herein and therein contemplated to be consummated by the Buyer or the Asset Buyer(s), as applicable, duly certified, as of the applicable Closing Date, by a duly authorized agent or officer of the Buyer or the Asset Buyer(s), as applicable; and

**4.2.7.3** a certificate, dated as of the Closing Date, of a Responsible Officer of the Buyer to the effect that the Buyer's Representations are true and correct in all material respects on and as of the Closing Date, as though made on and as of the Closing Date (without giving effect to any disclosures made by the Buyer

after the date hereof) (provided, however, that if any portion of any representation or warranty is already qualified by materiality, for purposes of determining whether this Section 4.2.7.3 has been satisfied with respect of such portion of such representation or warranty, such portion of such representation or warranty as so qualified must be true and correct in all respects) and that the Buyer has complied in all material respects with its covenants hereunder.

**4.3 Buyer's Conditions.** All of the obligations of the Buyer hereunder are subject to the satisfaction of every one of the following conditions precedent as of the Closing unless, and only to the extent, waived in writing by the Buyer:

**4.3.1** this Agreement, any documents related hereto and the transactions contemplated hereby have been approved and authorized to the extent required by the Bankruptcy Code pursuant to an Order or Orders of the Bankruptcy Court in form and substance reasonably satisfactory to the Buyer, which Order has not been modified, reversed or amended in any manner adverse to the Buyer and has become a Final Order, and no Order staying the consummation of the transactions contemplated by this Agreement has been entered in connection with any timely commenced appeal or certiorari;

**4.3.2** the Confirmation Order has been signed by the Bankruptcy Court and duly entered on the docket for the Reorganization Cases by the Clerk of the Bankruptcy Court in form and substance reasonably satisfactory to the Buyer and has not been modified, reversed or amended in any manner, there is no stay in effect with respect to the Confirmation Order, no pleading has been filed seeking such a stay or appeal of the Confirmation Order and the Confirmation Order is a Final Order; without limiting the generality of the foregoing, the Confirmation Order must provide, among other things, in form and substance reasonably satisfactory to the Buyer, that: (i) the Acquired Assets shall have been sold, contributed, conveyed, assigned, transferred and delivered to the Asset Buyer(s) free and clear of all Liens (other than Permitted Liens); (ii) the transactions contemplated by this Agreement are approved and effected pursuant to the Plan of Reorganization; (iii) the Bankruptcy Court retains exclusive jurisdiction to interpret and enforce the provisions of (1) this Agreement and any related agreements to which the Buyer and the Debtors (as the case may be) are a party and (2) the Confirmation Order in all respects; (iv) neither the Buyer nor the Asset Buyer(s) shall be liable for any of the Unassumed Liabilities; (v) the Bankruptcy Court approves and authorizes the assumption and assignment of the Assumed Contracts set forth on Schedule 2.1.1.5 as of the Closing and (vi) the provisions of the Confirmation Order are nonseverable and mutually dependent;

**4.3.3** all Claims against the Debtors are treated and discharged pursuant to the Plan of Reorganization and the Confirmation Order (other than the Assumed Obligations expressly assumed by the Asset Buyer(s) hereunder);

**4.3.4** the Debtors' Representations are true and correct in all material respects on and as of the Closing Date with the same force and effect, as if made at and as of the Closing Date (without giving effect to any disclosures made by the Debtors after the date hereof) (provided, however, that if any portion of any representation or warranty is already qualified by materiality, for purposes of determining whether this Section 4.3.4 has been satisfied with respect of such portion of such representation or warranty, such portion of such representation or warranty as so qualified must be true and correct in all respects);

**4.3.5** the covenants, agreements and undertakings of the Debtors herein have been complied with in all material respects;

**4.3.6** no Material Adverse Change has occurred since the date hereof, and the Debtors have delivered to the Buyer a certificate, dated as of the Closing Date and signed in its name by a Responsible Officer of each Debtor, confirming the foregoing;

**4.3.7** the waiting period under the Hart-Scott-Rodino Act, if applicable, has expired or been terminated;

**4.3.8** no Controversy is pending or threatened by or before any arbitrator or Governmental Authority which is reasonably likely to enjoin, restrain or prohibit, or result in material damages in respect of, or

which is related to or arises out of, this Agreement or the consummation of the transactions contemplated hereby, or which could reasonably be expected to result in a Material Adverse Change;

4.3.9 the Debtors have obtained, in preparation for the Closing, at their own cost and expense, and have delivered to the Buyer no later than ten (10) days prior to the Closing, a commitment for an ALTA Owners Policy of Title Insurance 1992 Form, for each parcel of Assumed Owned Real Property and each material Assumed Facility identified by the Buyer (the "Title Commitments"), issued by the corporate office of Chicago Title Insurance Company located in Chicago, Illinois (the "Title Insurer"), in such amount as the Buyer determines to be the fair market value (including all improvements thereon), insuring the Buyer's or the applicable Asset Buyer's interest, as applicable, in such parcel as of the Closing, subject only to the Permitted Liens. The Debtors shall deliver at the time of delivery of the Title Commitments, copies of all documents of record referred to therein. The Debtors will provide the Buyer with title insurance policies ("Title Policies") on or before the applicable closing date, from the Title Insurer based upon the Title Commitments. The Debtors will deliver to the Title Insurer all affidavits, GAP undertakings and other title clearance documents necessary to issue the Title Policies and endorsements thereto. Each such Title Policy will be dated as of the Closing Date and (i) insure fee simple title to the Assumed Owned Real Property or legal, valid, binding and enforceable leasehold interest in each Assumed Facility (as the case may be) and all recorded easements benefiting such parcels, subject only to Permitted Liens, with gap coverage from the Debtors through the date of recording (ii) contain an "extended coverage endorsement" insuring over the general exceptions contained customarily in such policies, (iii) contain an ALTA Zoning Endorsement 3.1, with parking (or equivalent), (iv) contain an endorsement insuring that the parcel described in such Title Policy is the parcel shown on the survey delivered with respect to such parcel and a survey accuracy endorsement, (v) contain an endorsement insuring that each street adjacent to such parcel is a public street and that there is direct and unencumbered pedestrian and vehicular access to such street from such parcel, (vi) if the real estate covered by such policy consists of more than one record parcel, contain a "contiguity" endorsement insuring that all of the record parcels are contiguous to one another, (vii) contain a tax number endorsement and (viii) contain such other endorsements as the Buyer and the Buyer's lender may reasonably request;

4.3.10 the Debtors have procured, at their own cost and expense, in preparation for the Closing, and shall have delivered to the Buyer no later than ten (10) days prior to the Closing Date, current surveys of each of the Assumed Owned Real Property and each material Assumed Facility ("Surveys"), prepared by a licensed surveyor, satisfactory to the Buyer, and conforming to 1999 ALTA/ACSM Minimum Detail Requirements for Urban Land Title Surveys, including Table A Items Nos. 1, 2, 3, 4, 6, 7(a), (b)(1) and (c), 8, 9, 10, 11(b)(2), 13, 14, 15 and 16, and such standards as the Title Insurer may require as a condition to the removal of any survey exceptions from the Title Policy, and certified to the Buyer, the Buyer's lenders and the Title Insurer, within twenty-three days of the applicable closing date, in a form satisfactory to such parties. The Surveys shall not disclose any encroachments from or onto any of the Assumed Owned Real Property or Assumed Facility or any portion thereof or any other such survey defect which has not been cured or insured over to the Buyer's reasonable satisfaction prior to the Closing Date;

4.3.11 subject to Section 2.6 hereof, the Debtors shall have obtained and delivered to the Buyer all material Third Party consents that are required in order to prevent a breach of or default under, a termination or modification of, or acceleration of the terms of, any Assumed Contract, in each case on terms satisfactory to the Buyer;

4.3.12 in the event that the DBI Plan is not confirmed simultaneously with the Plan of Reorganization, the Bankruptcy Court shall have entered no later than the Confirmation Date the Alternative Transactions Order, in form and substance reasonably acceptable to the Buyer and reasonably acceptable to DBI and the Creditors' Committee; and

4.3.13 at the Closing, the applicable Debtor has tendered to the Buyer or the Asset Buyer(s), as applicable, the following documents, executed in a manner and otherwise in form and substance reasonably satisfactory to the Buyer:

4.3.13.1 a duly executed bill or bills of sale and assignment or other appropriate instruments (including, without limitation, appropriate Intellectual Property assignments in recordable form to the

extent necessary to assign such Intellectual Property rights), transferring title to and interest in the Acquired Assets to the Asset Buyer(s);

4.3.13.2 a copy of resolutions duly adopted by the board of directors of the Debtors authorizing the execution and delivery of this Agreement and any other agreement executed and delivered by the Debtors in connection herewith and the consummation of the transactions herein and therein contemplated to be consummated by the Debtors, duly certified, as of the Closing Date, by the secretary or any assistant secretary of each Debtor;

4.3.13.3 a certificate, dated as of the Closing Date, of a Responsible Officer of each Debtor to the effect that the Debtors' Representations are true and correct in all material respects on and as of the Closing Date, as though made on and as of the Closing Date (without giving effect to any disclosures made by the Debtors after the date hereof) (provided, however, that if any portion of any representation or warranty is already qualified by materiality, for purposes of determining whether this Section 4.3.14.3 has been satisfied with respect of such portion of such representation or warranty, such portion of such representation or warranty as so qualified must be true and correct in all respects) and that such Debtor has complied in all material respects with its covenants hereunder;

4.3.13.4 a certificate of the Secretary and another officer of each Debtor that contains their certification of the names and signatures of the officers of such Debtor who have been authorized to execute and deliver this Agreement and any other agreement executed and delivered on behalf of such Debtor in connection herewith;

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

4.3.13.6 an affidavit from each Debtor stating such Debtor's taxpayer identification number and that such Debtor is not a foreign person pursuant to section 1445(b)(2) of the Code;

4.3.13.7 special warranty or limited warranty deeds (as may be applicable) with respect to each Assumed Owned Real Property, in form and substance reasonably satisfactory to Buyer, subject only to the Permitted Liens;

4.3.13.8 certificates of title and title transfer documents to all titled motor vehicles;

4.3.13.9 an assignment and assumption agreement with respect to Permits and warranties in form and substance reasonably acceptable to the Buyer, whereby the Debtors shall assign to the Buyer all of their respective rights in and to any Permits and warranties relating to the Acquired Assets or the Acquired Product Lines, to the extent such Permits and warranties are assignable;

4.3.13.10 all Books and Records (excluding the originals of the minute books, stock books and all Tax Returns of any Debtor); and

4.3.13.11 such other instruments as shall be reasonably requested or required by the Buyer to vest in the Asset Buyer(s) title in and to the Acquired Assets in accordance with the provisions hereof;

4.3.14 all proceedings in connection with the transactions contemplated by this Agreement, and all documents and instruments incident thereto, are reasonably satisfactory in form and substance to the Buyer, and the Buyer has received all such documents and instruments, or copies thereof, certified if requested, as may be reasonably requested;

4.3.15 all consents, licenses, permits, approvals and authorizations of any Third Party necessary for consummation of the transactions contemplated hereby have been obtained or made and copies thereof delivered to the Buyer (other than those consents, licenses, permits, approvals and authorizations which have been provided for in the Confirmation Order); and



4.3.16 the process and proceedings relating to the Reorganization Cases from the date of the filing of the Plan of Reorganization to the date of the confirmation of the Plan of Reorganization are reasonably satisfactory to the Buyer.

## ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE DEBTORS

The Debtors hereby jointly and severally represent and warrant to the Buyer that, with respect to the Acquired Product Lines, the statements contained in this Article V are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article V.

**5.1 Organization; Authorization.** Each Debtor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation as designated in the first paragraph of this Agreement and, subject to entry of the Confirmation Order, has the requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Subject to entry of the Confirmation Order, the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action of each Debtor. This Agreement has been duly and validly executed by each Debtor and, subject to the entry of the Confirmation Order, constitutes a legal, valid and binding obligation of each Debtor, enforceable against it in accordance with its terms.

**5.2 No Conflict; Consents.** Subject to the entry of the Confirmation Order, neither the execution and delivery of this Agreement nor the consummation of any or all of the transactions contemplated hereby will (i) violate the certificate of incorporation or by-laws (or other governing instrument) of any Debtor; (ii) violate, be in conflict with or constitute an enforceable default under, or require the consent of any third party to, any Assumed Contract; or (iii) to the Debtors' knowledge, violate any Laws or Orders applicable to the Acquired Product Lines.

**5.3 Consents and Approvals of Governmental Authorities.** Other than the approval of the Bankruptcy Court and consent under the Hart-Scott-Rodino Act, no consent, approval or authorization of, or declaration, filing or registration with, any Governmental Authority is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

**5.4 Contracts.** Schedule 5.4 sets forth a list of all Contractual Obligations of the Debtors and, to the Debtors' knowledge, sets forth all Cure Amounts as of the date of this Agreement. Each Contractual Obligation is valid, binding and enforceable in accordance with its material terms, and is in full force and effect. Except as set forth on Schedule 5.4 and except for defaults of the type referred to in Section 365(b)(2) of the Bankruptcy Code, there are no material defaults or events that, with notice or lapse of time or both, would constitute a material default by any Debtor or, to the Debtor's knowledge, any other party under any of the Contractual Obligations.

**5.5 Financial Statements.** The Debtors have delivered to the Buyer the audited consolidated balance sheet, income statement and statement of cash flows of Debtors for the fiscal year ended December 31, 2001, (the "Audited Financials") attached as Schedule 5.5 hereto and the interim unaudited balance sheet, income statement and statement of cash flows of Debtors for the fiscal period ended as of the last day of the most recent full month preceding the date of this Agreement attached as Schedule 5.5 hereto (collectively, the "Current Balance Sheet"). The Audited Financials fairly and accurately reflect, in all material respects, the financial position of Debtors on a consolidated basis as of the dates thereof, and have been prepared in accordance with GAAP consistently applied during the periods involved, except as indicated in the notes thereto. The Current Balance Sheet fairly and accurately reflects, in all material respects, the financial position of Debtors as of the date thereof, and has been prepared in accordance with GAAP consistently applied during the periods involved, subject to the absence of footnotes and year-end adjustments (which would not be material).

**5.6 Equipment.** Set forth on Schedule 5.6 is a complete and correct list of all Equipment as of the last day of the most recent full month preceding the date of this Agreement. Such Equipment is sufficient to produce or distribute the Acquired Product Lines as these were produced or distributed prior to May 22, 2001, and is in good operating condition and repair, subject to normal wear and tear.

**5.7 Inventory.** With respect to the Acquired Product Lines, the amount of Inventory on hand (i) has been manufactured and/or purchased in the Ordinary Course of Business; and (ii) is not obsolete and is of a quality usable and saleable in the Ordinary Course of Business, other than with respect to reserves reflected in the financial statements described in Section 5.5 above that are maintained by Debtors for obsolete or "slow moving" inventory.

**5.8 Intellectual Property.**

**5.8.1** Schedule 5.8 sets forth the following items owned or licensed by the Debtors or otherwise used or held for use by the Debtors with respect to the Acquired Product Lines: (i) all U.S. and foreign issued patents and utility patents, and all pending patent applications relating to any inventions, and all reissues, divisions, continuations, continuations-in-part, extensions, reexaminations or interferences of them; (ii) all U.S. and foreign registered trademarks, registered service marks, trademark and service mark applications, unregistered trademarks and service marks, trade names and logos; (iii) all U.S. and foreign registered copyrights and copyright applications and all renewals and extensions; (iv) a general identification of all logos and domain name addresses; and (v) material Software (other than commercially available off-the-shelf software purchased or licensed for less than a total cost of \$1,000 in the aggregate).

**5.8.2** Schedule 5.8 sets forth all IP Licenses granted by or to any Debtor and all other agreements to which any Debtor is a party, which create rights in such Debtor or in any Third Party regarding any Intellectual Property specifically or other intellectual property generally. The IP Licenses are binding against such Debtor and in full force and effect. The continued use by the Buyer (or the Asset Buyer(s) as applicable) of any IP License or Licensed IP is not restricted by any IP License.

**5.8.3** Except as set forth on Schedule 5.8, the Debtors are the owners, free and clear of all liens, claims and encumbrances (except Permitted Liens and liens under the DIP Loan Agreement which will be terminated as of the Closing), of all right, title and interest in or have a valid and enforceable license to use, all Intellectual Property necessary for the production and distribution of the Acquired Product Lines, as presently conducted or as presently proposed to be conducted, and the Debtors have the absolute right to use and assign those rights without seeking the approval or consent of any Third Party and without payments to any Third Party. All registrations and applications for the Intellectual Property are in full force and effect. There are no existing or, to Debtors' knowledge, threatened claims or proceedings by any Person and there is no basis for any claim or proceeding relating to the use by the Debtors of the Intellectual Property or challenging its ownership of the same. Except as set forth on Schedule 5.8, to the Debtors' knowledge, no Third Party has infringed, misappropriated, or otherwise conflicted with any of the Debtors' Intellectual Property and to the Debtors' knowledge, there are no facts that indicate a likelihood of any of the foregoing.

**5.8.4** To the Debtors' knowledge, no Debtor has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any intellectual property rights of third parties, and, except as set forth on Schedule 5.8, no Debtor has received any charge, complaint, claim, or notice alleging any such interference, infringement, misappropriation or violation and there is no basis for any such claim.

**5.8.5** The Debtors have taken Commercially Reasonable Efforts to maintain the confidentiality of their Trade Secrets.

**5.8.6** Each present or past employee, officer, consultant or any other person who developed any part of the Intellectual Property has vested in a Debtor any and all right, title and interest in and to all such Intellectual Property.

5.8.7 All Software owned or licensed by the Debtors for use in connection with the Acquired Product Lines, or necessary for the production or distribution of the Acquired Product Lines as such production or distribution is currently conducted or anticipated to be conducted is set forth in Schedule 5.8.

5.8.8 The execution of this Agreement will not result in the loss or impairment of the rights of the Buyer or the Asset Buyer(s) to own or use any of the Intellectual Property.

5.8.9 The Debtors' products relating to the Acquired Product Lines have been marked as required by the applicable patent statute and the Debtors have given the public notice of its Copyrights and notice of its Trademarks as required by the applicable Trademark and Copyright statutes.

5.9 Compliance with Laws. Except as set forth on Schedule 5.9, (i) the production and distribution of the Acquired Product Lines have been conducted in all material respects in accordance with all applicable Laws (including all Environmental Laws) of all Governmental Authorities having jurisdiction over Debtors and applicable to the Acquired Assets and (ii) no Debtor has received any notification of any asserted present or past failure by any Debtor to comply with any such Laws during the past three (3) years which apply to the Acquired Product Lines or the Acquired Assets.

5.10 Books and Records. All of the Books and Records of the Debtors have been made available to the Buyer. The Books and Records are complete and correct in all material respects.

5.11 Permits. Set forth on Schedule 5.11 is a complete list of all of the Debtors' Permits relating to the Acquired Assets and the Acquired Product Lines. Except as set forth on Schedule 5.11, such Permits (i) are valid and effective, (ii) represent all Permits required by any Governmental Authority with jurisdiction over the Acquired Product Lines or the Acquired Assets to own and operate the Acquired Assets in connection with the Acquired Product Lines in the same manner as operated prior to the date hereof and (iii) may be transferred or reissued to the Buyer or the Asset Buyer, as applicable, without the approval of any Third Party.

#### 5.12 Environmental Matters.

5.12.1 Except as set forth on Schedule 5.12, the Debtors and the Acquired Assets are and have been in material compliance with all applicable Environmental Laws. The Debtors have obtained all Permits and approvals required under applicable Environmental Laws for the ownership and operation of the Acquired Assets, all such Permits and approvals are in effect, the Debtors have not received written Notice of any action to revoke or modify any of such Permits or approvals, and the ownership and operation of the Acquired Assets is and has been in material compliance with all terms and conditions thereof. No Debtor has received written Notice of any pending or threatened claim or investigation by any Governmental Authority or any other Person concerning potential liability of any of the Debtors under Environmental Laws in connection with the ownership or operation of the Acquired Assets. There has not been a Release to the Environment of any Hazardous Substance at, upon, in, from or under (i) any of the Assumed Owned Real Property, Assumed Facilities or other properties upon which any of the Debtor's assets are or were located at any time during the Debtors' ownership thereof or (ii) at any location to or from which a Debtor has transported or arranged for the transportation of Hazardous Substances from an Assumed Facility or the Assumed Owned Real Property. None of the Assumed Facilities nor the Assumed Owned Real Property is currently, and, to the Debtors' knowledge, none of the Assumed Facilities nor the Assumed Owned Real Property has been, used as a treatment, storage or disposal facility for Hazardous Waste, as such term is defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et. Seq.; and, to the Debtors' knowledge, no Hazardous Substances are present on any Assumed Facility or the Assumed Owned Real Property, except in compliance with all applicable Environmental Laws and as are used in the operation of the Acquired Assets.

5.12.2 The Debtors have delivered to the Buyer all correspondence, test results, records, notices, disclosures and reports in any of the Debtor's possession or control with respect to the Debtors, the Assumed Owned Real Property or any Assumed Facility, including all material correspondence with any Governmental Authority concerning any and all past and/or present health, safety and/or environmental issues or concerns.

5.12.3 Except as set forth on Schedule 5.12, no Debtor has received Notice, or otherwise obtained knowledge, of the existence of any circumstances or conditions that have a reasonable likelihood of resulting in any damages for which it could be liable arising pursuant to any Environmental Law.

### 5.13 Employees; Benefit Plans.

5.13.1 Set forth on Schedule 5.13 is the following: (i) a listing of the names, titles and dates of hire of all of the employees of the Debtors who are not governed by any collective bargaining agreement, (ii) a list of collective bargaining agreements entered into by the Debtors and (iii) a list of all "employee benefit plans" (within the meaning of Section 3(3) of ERISA), whether or not subject to ERISA, in which current or former employees of the Business participate (collectively, the "*Benefit Plans*"). The annual salaries and bonuses of such employees of the Debtors and a copy of such collective bargaining arrangements and employee benefit plans have been made available to the Buyer on or prior to the date hereof.

5.13.2 Except as set forth on Schedule 5.13, none of the Benefit Plans is, and no Debtor has ever maintained or had an obligation to contribute to, or incurred any other obligation with respect to (i) a plan subject to Title IV of ERISA or Section 412 of the Code or Title I, Subtitle B, Part 3 of ERISA, (ii) a Multiemployer Plan or (iii) a funded welfare benefit plan, as defined in Section 419 of the Code. None of the Debtors has any agreement or commitment to create any additional Benefit Plan, or to modify or change any existing Benefit Plan.

5.13.3 The Debtors have performed and complied with all of their obligations under and with respect to the Benefit Plans in all material respects and each of the Benefit Plans has, at all times, in form, operation and administration complied in all material respects with its terms, and, where applicable, the requirements of the Code, ERISA and all other applicable Laws. Each Benefit Plan which is intended to be "qualified" within the meaning of Section 401(a) of the Code has been determined by the Internal Revenue Services to be so qualified, nothing has occurred which could reasonably be expected to adversely affect such qualified status, and, to the extent required by applicable law, each such Benefit Plan was timely amended and filed with the Internal Revenue Service with respect to the legislation referred to as GUST.

5.13.4 There are no unpaid contributions due prior to the date hereof with respect to any Benefit Plan that are required to have been made under its terms and provisions, any related insurance contract or any applicable Law. There are no trusts or similar funding vehicles, reserve assets, surpluses or prepaid premiums with respect to any Benefit Plan that is a welfare plan.

5.13.5 No Debtor nor any ERISA Affiliate thereof has incurred any liability or taken any action, and the Debtors have no knowledge of any action or event, that could cause any Debtor or any ERISA Affiliate thereof to incur any liability (i) under Section 412 of the Code or Title IV of ERISA with respect to any "single-employer plan," as defined in Section 4001(a)(15) of ERISA, or (ii) on account of a partial or complete withdrawal, as defined in Section 4203 and 4205 of ERISA, respectively, with respect to any Multiemployer Plan or on account of unpaid contributions to any Multiemployer Plan.

5.13.6 There are no Controversies pending, or to the Debtors' knowledge, threatened that involve any employees employed in connection with the Business. Each Debtor has complied, and is in substantial compliance, in all material respects with all Laws relating to the employment of labor, including, without limitation, any provision thereof relating any provision thereof relating to wages, hours, collective bargaining, employee health, immigration, layoffs, safety and welfare, and the payment of social security and similar taxes. There are presently no unfair labor practice complaints or other material labor controversies pending against any Debtor, union representation questions involving persons employed by the Debtors, or, to the Debtors' knowledge, current activities or proceedings of any labor union (or representative thereof) to organize any unorganized employees of any Debtor or any strikes, slowdowns, work stoppages, lockouts, or threats thereof, by or with respect to any employees of any Debtor.

5.14 **Absence of Certain Changes.** Except as set forth in Schedule 5.14, since the date of the Current Balance Sheet: (i) there has been no Material Adverse Change; (ii) there has been no damage, destruction or loss to any material asset or property, tangible or intangible, of the Debtors, ordinary wear and tear excepted; (iii) other than

in connection with the proposed sale of the Acquired Assets and the Acquired Product Lines, the Business has been conducted only in the Ordinary Course of Business; (iv) no Debtor has increased the compensation of any officer or granted any general salary or benefits increase to their employees other than in the Ordinary Course of Business; (v) the post-Petition liabilities have been paid in the Ordinary Course of Business; and (vi) there has been no material change by the Debtors, in relation to the Acquired Product Lines or in accounting principles, practices or methods.

**5.15 Liabilities.** None of the Debtors has any Liabilities other than (i) Liabilities as set forth in the Current Balance Sheet or referred to in the footnotes to the Audited Financials, (ii) Liabilities set forth in Schedule 5.15 and (iii) Liabilities incurred after the date of the Current Balance Sheet in the Ordinary Course of Business.

**5.16 Insurance.** Schedule 5.16 contains an accurate summary description of all policies of property, fire and casualty, product liability, workers compensation and other forms of insurance owned by or held by any Debtor in connection with the Acquired Assets or the Acquired Product Lines, together with a list of all outstanding claims against any insurer relating to the Acquired Assets or the Acquired Product Lines. Except as set forth on Schedule 5.16, no Debtor has received (a) any notice of cancellation or non-renewal of any policy described in such Schedule 5.16 or refusal of coverage thereunder, (b) any notice that any issuer of such policy has filed for protection under applicable insolvency laws or is otherwise in the process of liquidating or has been liquidated, or (c) any other indication that such policies are no longer in full force or effect or that the issuer of any such policy is no longer willing or able to perform its obligations thereunder.

**5.17 Taxes.** Except as set forth on Schedule 5.17, all Tax returns, reports and forms of the Debtors due prior to the date hereof with respect to the Acquired Assets or the Acquired Product Lines have been timely filed and properly reflect the tax liability of the Debtors with respect to the applicable periods, and no extension of time with respect to any date on which any Tax return, report or form was or is to be filed with respect to the Debtors is in force. All Taxes and withholding amounts due and payable (or required to be withheld) prior to the date hereof have been paid (or withheld). Except as set forth on Schedule 5.17, no ongoing audit, litigation or similar proceeding concerning any Tax returns of any Debtor has been proposed, threatened, or is in progress nor does there exist any waiver or agreement for the extension of time for the assessment of any Taxes against any Debtor. Except as set forth on Schedule 5.17, there are no Liens on any of the assets of the Debtors that arose in connection with any failure (or alleged failure) to pay any Tax and there are no claims for Taxes, and to Debtors' knowledge, no basis for which any such claims might be made, that might result in any such Liens. Except as set forth on Schedule 5.17, no claim has ever been made by a taxing authority in a jurisdiction where the Debtors do not currently file Tax returns that any Debtor is or may be subject to taxation by such jurisdiction. None of the Acquired Assets is a "tax exempt use property" within the meaning of Section 168(h) of the Code. None of the Acquired Assets is subject to a lease made pursuant to Section 168(f)(8) of the Internal Revenue Code of 1954.

**5.18 Accounts Receivable.** The Accounts Receivable constitute bona fide, valid and collectible claims arising in the Ordinary Course of Business in a manner consistent with the Debtors' normal credit practices and are subject to no set-offs or counterclaims, subject only to reasonable reserves for bad debts calculated in a manner consistent with the Debtors' past practice.

**5.19 Brokers; Agents.** Except with respect to Jefferies & Company, Inc., the Debtors have not dealt with any agent, finder, broker or other representative in any manner which could result in the Buyer or the Asset Buyer(s) being liable for any fee or commission in the nature of a finder's fee or originator's fee in connection with the subject matter of this Agreement.

**5.20 Warranty Obligations.** Schedule 5.20 contains a true and complete description of the Debtors' experience over the past three years with respect to product warranty obligations, pricing and other accommodations with respect to the Acquired Product Lines. To the best of Debtors' knowledge, as of November 1, 2002, sufficient reserves were maintained on the books of the Debtors to cover the Debtors' product warranty obligations. Over the past three years, the Debtors have had no product recall obligations.

**5.21 Real Property.** Attached hereto as Schedule 5.21 is a description of all Assumed Owned Real Property and the Assumed Facilities. True and complete copies of all owners policies of title insurance obtained for the benefit of any of the Debtors have been delivered to the Buyer. The Debtors own good and marketable fee title

to the Assumed Owned Real Property. At the Closing, such title shall be free and clear of all Liens other than Permitted Liens. Except as set forth in Schedule 5.21, the Assumed Owned Real Property and the Assumed Facilities constitute all of the real property used by any of the Debtors in connection with the Acquired Assets or the Acquired Product Lines. Each parcel included in the Assumed Owned Real Property constitutes a separate tax lot. There is no pending or, to the Debtors' knowledge, threatened condemnation (or sale in lieu thereof) affecting the Assumed Owned Real Property.

**5.22** **Litigation.** Except as set forth on Schedule 5.22 or claims made in connection with the Reorganization Cases, there are no actions, claims, charges, complaints, material grievances, causes of action, proceedings, suits or investigations pending or, to the Debtors' knowledge, threatened, against the Debtors or any of their respective assets, properties or rights, before (or that could come before) any Governmental Authority or arbitrator that would result in a Material Adverse Change. Except in connection with the Reorganization Cases, none of Debtors is subject to any Order entered in any lawsuit or proceeding.

**5.23** **Trade Relations.** On or prior to the date hereof, the Debtors have delivered to the Buyer a list of each of the Debtors' ten largest customers (the "*Material Customers*") and ten largest suppliers (the "*Material Suppliers*"), as determined by the dollar amount of sales to such customers and purchases from such suppliers for the year ending December 31, 2001. Except as set forth on Schedule 5.23, there exists no actual or, to the Debtors' knowledge, threatened, cancellation of, or (except for the tightening of credit terms as a result of Reorganization Cases) any material adverse modification to or change in, the business relationship of the Debtors with any Material Customer or Material Supplier.

**5.24.** **Subsidiaries.** Schedule 5.24 sets forth the name and jurisdiction of incorporation of each Subsidiary of the Debtors, the number of shares of each class of each of the Debtors' Subsidiary's Stock (both authorized, issued and outstanding), the names of the holders of each such issued share of Stock and the number of shares held by each such holder, the number of shares of each such Subsidiary's Stock held in treasury and each Subsidiary's directors and officers. There are no voting trusts, proxies or other agreements or understandings with respect to the voting of any Stock of any Subsidiary.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER.

The Buyer represents and warrants to the Debtors that the statements contained in this Article VI are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article VI.

**6.1** **Organization.** The Buyer is, and, as of the Closing each Asset Buyer will be, a duly organized and validly existing corporation in good standing under the laws of the jurisdiction of its organization, and the Buyer has, and as of the Closing each Asset Buyer will have, the power and authority to own, lease and operate its assets and properties and to conduct its business as now being conducted (or in the case of each Asset Buyer, conducted as of the Closing).

**6.2** **Authorization.** There is no provision in the Buyer's, and as of the Closing, there will not be in any Asset Buyer's, organizational documents which prohibits or limits the Buyer's or any Asset Buyer's respective ability to consummate the transactions contemplated to be consummated by the Buyer and the Asset Buyer(s) hereunder. The Buyer has, and each Asset Buyer will have, the full right, power and authority to enter into this Agreement and to consummate or cause to be consummated all of the transactions and to fulfill all of the obligations contemplated to be consummated or fulfilled by the Buyer and each Asset Buyer hereunder. The execution and delivery of this Agreement by the Buyer and the due consummation by the Buyer of the transactions contemplated to be consummated by the Buyer and each Asset Buyer hereby have been, and with respect to each Asset Buyer will be, duly authorized by all necessary action of the general partners, board of directors or members or managers, as applicable, of the Buyer or such Asset Buyer, respectively. This Agreement constitutes a legal, valid and binding

agreement of the Buyer enforceable against the Buyer in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles.

6.3 **No Conflict or Violation.** Except as may be required by the Hart-Scott-Rodino Act, neither the execution and delivery of this Agreement by the Buyer, nor the consummation by the Buyer or any Asset Buyer of the transactions contemplated to be consummated by the Buyer and such Asset Buyer hereby nor compliance by the Buyer and each Asset Buyer with any of the provisions hereof will result in: (i) a violation of or a conflict with any provision of the organizational documents of the Buyer or any Asset Buyer, as applicable; or (ii) a violation of any Law, or order, judgment, writ, injunction, decree or award, or an event which, with the giving of notice, lapse of time or both, would result in any such violation.

6.4 **Consents and Approvals.** No consent, approval or authorization of any Person, nor any declaration, filing or registration with any Governmental Authority or other Person, is required to be made or obtained by the Buyer in connection with the execution, delivery and performance by the Buyer of the transactions contemplated to be consummated by the Buyer hereunder, except as may be required by the Hart-Scott-Rodino Act.

6.5 **Brokers.** No agent, broker or other Person acting pursuant to express or implied authority of the Buyer is entitled to a commission or finder's fee in connection with the transactions contemplated by this Agreement or, pursuant to express or implied authority of the Buyer, will be entitled to make any claim (including the assertion of a Lien) against the Debtors for a commission or finder's fee.

#### ARTICLE VII ACTIONS PRIOR TO AND ON THE CLOSING

7.1 **Conduct of the Business prior to the Closing.** Except as otherwise expressly contemplated by this Agreement or with the prior written consent of the Buyer, from the date hereof until the Closing, each of the Debtors shall, with respect to the Acquired Product Lines and the Acquired Assets (i) produce and distribute the Acquired Product Lines in the Ordinary Course of Business (including with respect to the payment of accounts payable to the fullest extent permissible under the Bankruptcy Code), (ii) use Commercially Reasonable Efforts to preserve intact the Acquired Product Lines, to keep available the services of present employees with respect thereto and to maintain appropriate levels of inventory and (iii) not take any action inconsistent with this Agreement or with the consummation of the Closing. Without limiting the generality of the foregoing, except as otherwise expressly contemplated by this Agreement or with the prior written consent of the Buyer, from the date hereof until the Closing, each Debtor shall:

7.1.1 not sell, assign, transfer, convey, pledge, mortgage, lease, license or otherwise dispose of or encumber their respective assets, or any interests therein, other than in the Ordinary Course of Business and consistent with past practice or as set forth on Schedule 7.1.1;

7.1.2 not make any material change in its methods of management, marketing, accounting or operating (or practices relating to payments);

7.1.3 provide to the Buyer, (i) all financial information which the Debtors are required to provide to the DIP Lenders under the DIP Loan Agreement and (ii) on a weekly basis, any other management reports and financial information prepared by or for the Debtors in the Ordinary Course of Business;

7.1.4 not take any action which is inconsistent with its obligations under this Agreement;

7.1.5 maintain the Acquired Assets in good operating condition and repair, subject to ordinary wear and tear;

7.1.6 continue all of its existing policies of insurance (or comparable insurance) in full force and effect and at least at such levels as are in effect on the date hereof, up to and including the Closing (and not

cancel any such insurance or take, or fail to take, any action that would enable the insurers under such policies to avoid liability for claims arising out of occurrences prior to the Closing);

7.1.7 not enter into any transaction or make or enter into any Contractual Obligation or amend any such obligation which is not in the Ordinary Course of Business;

7.1.8 not grant any increase in the compensation payable or to become payable to any employee (including, without limitation, retention or stay bonus arrangements), except such increases as are required by contract and not contribute or make any commitment to, or representation that it shall, contribute any amounts to any Employee Benefit Plan of the Debtors, or otherwise alter any such Employee Benefit Plan of the Debtors or the funding thereof except as required by law or by the terms of any such plan as in effect on the date of this Agreement;

7.1.9 maintain the Books and Records in the usual, regular and ordinary manner and consistent with past practice;

7.1.10 maintain compliance with all Laws, rules and Regulations of all federal, state, local or foreign governmental or regulatory bodies that relate to the Acquired Product Lines and the Acquired Assets;

7.1.11 not implement any employee layoffs that could implicate the WARN Act;

7.1.12 apply or continue prosecution of applications already submitted for any Permits required under Environmental Laws for the continued operation of the Acquired Assets (as they are currently being operated) up to and after the Closing;

7.1.13 not incur any Liability, whether absolute, fixed or contingent, except in the Ordinary Course of Business;

7.1.14 not sell, transfer, license or otherwise dispose of, or agree to sell, transfer, license or otherwise dispose of, or permit to lapse any of the Intellectual Property;

7.1.15 not dividend, distribute or otherwise pay out any cash or cash equivalents except (i) for the payment of the Debtors' trade payables in the Ordinary Course of Business, (ii) to pay for professional fees and expenses incurred by the Debtors (to the extent that the payment of such professional fees and expenses is permitted by the Bankruptcy Court) and (iii) to pay interest due under the DIP Loan Agreement;

7.1.16 not incur any Indebtedness including, without limitation, drawing down any amounts under the DIP Loan Agreement; and

7.1.17 not terminate, discontinue, close or dispose of any plant, Leased Facility or business operation relating to the Acquired Product Lines.

The Debtors shall not (i) take or agree or commit to take any action that would make any of the Debtors' Representations inaccurate in any material respect at, or as of any time prior to, the Closing or (ii) omit or agree to omit to take any action necessary to prevent any such representation or warranty from being inaccurate in any material respect at any such time.

## 7.2 Inspection.

7.2.1 The Debtors agree that, prior to the Closing, the Buyer, the Buyer's lenders, and their respective representatives shall, upon reasonable notice and so long as such access does not unreasonably interfere with the business operations of the Debtors, have reasonable access during normal business hours to all Leased Facilities and Owned Real Property and shall be entitled to make such reasonable investigation of the properties, businesses and operations of the Debtors (including, without limitation, any "Phase I" or "Phase II" environmental investigations) and such examination of the Books and Records and financial condition of the Debtors as it reasonably requests and to make extracts and copies to the extent necessary of such Books and Records; provided



that the Buyer shall be bound by and shall comply with the terms of the Confidentiality Agreement with respect to the Buyer's ability to use or disclose any such information; and provided further that no investigation pursuant to this Section 7.2 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the transactions contemplated by this Agreement.

**7.2.2** The Debtors agree that, prior to the Closing, the Buyer and the Buyer's lenders shall, upon reasonable notice and so long as such access does not unreasonably interfere with the business operations of the Debtors, through its authorized officers, employees, agents and representatives, have reasonable access during normal business hours to all facilities of the Debtors for the purposes of permitting the Buyer's lenders (or a Third Party service provider selected by the Buyer's lenders) to conduct a physical inventory of the Inventory. The cost of any such physical inventory shall be the responsibility of the Buyer or the Buyer's lenders.

**7.2.3** The Debtors shall deliver to the Buyer copies of the Debtors' interim monthly and year-to-date consolidated financial statements as soon as reasonably practicable (and in any event within 15 days) following the end of each monthly accounting period during the period between the date of this Agreement and the Closing. These financial statements shall include income statements, balance sheets, profit and loss and other analyses and comparisons to the Debtors' budget for the Acquired Product Lines, as well as an explanation of the assumptions and the accounting policies and practices used in preparation thereof and such other matters as the Buyer may reasonably request and, if any, interim statements and operating reports filed with the United States Trustee or the Bankruptcy Court.

### **7.3 Consents and Commercially Reasonable Efforts.**

**7.3.1 Authorizations.** Upon the approval of this Agreement by the Bankruptcy Court, the Parties will commence to take all Commercially Reasonable Efforts required to obtain all authorizations, consents, approvals, orders and agreements of, and to give all notices and make all filings with, Governmental Authorities and any other Person necessary to authorize, approve or permit their respective obligations pursuant to this Agreement and the consummation of the transactions contemplated hereby. Subject to the terms and conditions herein provided, each of the Parties covenants and agrees to cooperate fully with each other and use its Commercially Reasonable Efforts to take, or cause to be taken, all actions or do, or cause to be done, all things necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated hereby. The Parties will cooperate with one another: (i) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material Contractual Obligations in connection with the consummation of the transactions contemplated by this Agreement; and (ii) in seeking any such actions, consents, approvals or waivers or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers. Subject to applicable Laws relating to the exchange of information, the Parties shall have the right to review in advance, and to the extent practicable each will consult with the other on, all information related to the Parties and their respective subsidiaries that appears in any filing made with, or written materials submitted to, any Third Party or Governmental Authority in connection with the transactions contemplated by this Agreement.

**7.3.2 Hart-Scott-Rodino Act.** Upon the approval of this Agreement by the Bankruptcy Court or earlier if directed by the Buyer, the Parties, if applicable, will promptly prepare and file with the Federal Trade Commission and the Antitrust Division of the United States Department of Justice Notification and Report Forms and documentary material which comply with the provisions of the Hart-Scott-Rodino Act and the rules thereunder and will use Commercially Reasonable Efforts to promptly file any additional information requested as soon as practicable after receipt of the request. The Buyer will pay all filing and other fees in connection with such filings.

**7.3.3 Plan of Reorganization.** The Debtors will not amend the Plan of Reorganization except in accordance with the terms of the Plan of Reorganization. The Debtors will use Commercially Reasonable Efforts to have the Plan of Reorganization confirmed by the Bankruptcy Court as soon as possible.

**7.3.4 Regulatory Approvals.** No Party will take any action which will have the effect of delaying, impairing or impeding the receipt of any required regulatory approvals.

**7.3.5 Notices of Certain Events.** Each Party will notify the other Party of: (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; (iii) any actions, suits, claims, investigations or proceedings commenced or, to its knowledge threatened against, relating to or involving or otherwise affecting such Party or any of its Affiliates which relate to the consummation of the transactions contemplated by this Agreement; and (iv) any change that is reasonably likely to result in a Material Adverse Change or is likely to delay or impede the ability of any Party to consummate the transactions contemplated by this Agreement or to fulfill its obligations set forth herein.

**7.3.6 Forbearance Agreement.** The Debtors will use their best efforts to obtain an Order by the Bankruptcy Court that prohibits the DIP Lenders from exercising any of their rights under the Forbearance Agreement dated as of August \_\_, 2002 by and between the DIP Lenders and the Debtors which could materially adversely effect the Debtors or interfere with the Debtors' use and enjoyment of the Acquired Assets.

**7.4 Employee Benefit Plans.** The Debtors agree that, except as expressly contemplated by this Agreement or otherwise consented to in writing by the Buyer, from the date of this Agreement through the Closing, none of the Debtors shall:

**7.4.1** increase the compensation payable to or to become payable to any director or executive officer of the Debtors or any ERISA Affiliate, except for increases in salary or wages payable or to become payable upon promotion to an office having greater operational responsibilities and otherwise in the Ordinary Course of Business;

**7.4.2** grant any severance or termination pay (other than pursuant to the severance policies of the Debtors or any ERISA Affiliate or any Contractual Obligation binding on the Debtors or any ERISA Affiliate, in each case as in effect on the date of this Agreement and disclosed in the schedules to this Agreement) to, or enter into any employment or severance agreement with, any director, officer of the Debtors or any ERISA Affiliate, either individually or as part of a class of similarly situated Persons;

**7.4.3** establish, adopt or enter into any Employee Benefit Plan; or

**7.4.4** except as required by Law or the terms of the applicable Employee Benefit Plan, amend or take any other actions, including acceleration of vesting and waiver of performance criteria, with respect to any Employee Benefit Plan.

**7.5 Employees.**

**7.5.1** Immediately prior to the Closing, the employment of the employees employed in connection with the Acquired Product Lines shall be terminated by the Debtors, and all employees set forth on Schedule 7.5.1 shall have the right to apply for employment with the Buyer and/or the Asset Buyer(s). The Debtors acknowledge that the Buyer and/or the Asset Buyer(s) intend to make offers of employment to certain employees employed in connection with the Acquired Product Lines, on terms and conditions of employment that may be different from those provided by the Debtors, and that it is uncertain how many employees of the Debtors will accept employment with the Buyer and/or the Asset Buyer(s). The number of offers of employment made by the Buyer and/or the Asset Buyer(s), and the terms and conditions of such offers, shall be determined by the Buyer in its sole discretion and in accordance with applicable law. Except to the extent specifically assumed under Section 2.2 hereof, the Debtors shall be responsible for any and all wages, bonuses, commissions, employee benefits, retention or stay bonus arrangements, and other compensation (including all obligations under any Employee Benefit Plans) due to the employees employed in connection with the Acquired Product Lines arising out of their employment with the Debtors prior to and as of the Closing.

**7.5.2** Nothing contained in this Agreement shall confer upon any employee of the Debtors hired by the Buyer and/or any Asset Buyer (the "*Rehired Employees*") any right with respect to continuance of employment by the Buyer, nor shall anything herein interfere with the right of the Buyer and/or the Asset Buyer(s)

to terminate the employment of any Rehired Employees at any time, with or without notice, or restrict the Buyer and/or the Asset Buyer(s), in the exercise of their business judgment in modifying any of the terms or conditions of employment of the Rehired Employees after the Closing.

**7.6 Debtors' Cooperation in Hiring of Employees.** The Debtors shall cooperate with the Buyer and shall, permit the Buyer a reasonable period prior to the Closing Date (i) to meet with employees of the Debtors (including managers and supervisors) who are employed in connection with the Acquired Product Lines at such times as the Buyer shall reasonably request, (ii) to speak with such employees' managers and supervisors (in each case with appropriate authorizations and releases from such employees) who are being considered for employment by the Buyer and/or the Asset Buyer(s), (iii) to distribute to such employees of the Debtors such forms and other documents relating to potential employment by the Buyer and/or the Asset Buyer(s) after the Closing as the Buyer may reasonably request, and (iv) to the extent permitted by applicable law, to permit the Buyer's counsel, upon request, to review personnel files and other relevant employment information regarding employees of the Debtors.

**7.7 WARN Act.** In respect of notices and payments relating to events occurring on or prior to the Closing, the Debtors shall be jointly and severally responsible for and assume all liability for any and all notices, payments, fines or assessments due to any government authority, pursuant to any applicable federal, state or local law, common law, statute, rule or regulation with respect to the employment, discharge or layoff of employees by the Debtors as of or before the Closing, including but not limited to the WARN Act. Likewise, in respect of notices and payments relating to events occurring after the Closing, the Asset Buyer(s) shall be responsible and assume all liability for any and all notices, payments, fines or assessments due to any Governmental Authority, pursuant to any applicable Law, including but not limited to the WARN Act, with respect to the employment, discharge or layoff of Rehired Employees.

**7.8 Bankruptcy Actions.** The Debtors will provide the Buyer with a reasonable opportunity to review and comment upon all motions, applications and supporting papers prepared by the Debtors relating to this Agreement (including forms of Orders and notices to interested parties) prior to the filing thereof in the Reorganization Cases. All motions, applications and supporting papers prepared by the Debtors and relating to the approval of this Agreement (including forms of Orders and notices to interested parties) to be filed on behalf of the Debtors after the date hereof must be acceptable in form and substance to Buyer, in its reasonable discretion.

**7.9 Excluded Real Property.** The Debtors agree that the covenants contained in Section 7.1 hereof shall apply to the Excluded Real Property. The Debtors further agree that the Buyer shall have the right to cause the Debtors to dispose of the Excluded Real Property prior to the Closing and to control all aspects of such disposition including, without limitation, (i) the hiring of real estate brokers, (ii) the negotiation of price and other terms of sale for any parcel of the Excluded Real Property, and (iii) directing a donation of any parcel of the Excluded Real Property. Any proceeds received by the Debtors in connection with the disposition of any of the Excluded Real Property whether by sale, condemnation or otherwise and whether received prior to or after the Closing, shall be Acquired Assets for all purposes of this Agreement. At the Buyer's direction, the Debtors will promptly execute any documents the Buyer reasonably requests to effectuate the disposition of the Excluded Real Property, including, without limitation, purchase and sale agreements, deeds, transfer declarations and closing statements. In addition, the Debtors shall obtain all necessary sale orders from the Bankruptcy Court to effectuate such dispositions of the Excluded Real Property. If on or prior to the Closing the Excluded Real Property is not disposed of pursuant to this Agreement, at the Debtors' request, the Buyer will assume the Excluded Real Property at Closing.

## ARTICLE VIII ACTIONS AFTER THE CLOSING

### 8.1 Employee Benefit Plans.

**8.1.1** To the extent responsible on the Closing Date, the Debtors shall be responsible for all Employee Benefit Plans (other than the Assumed Plans) and to the extent not specifically assumed under Section 2.2.1 hereof, all obligations and liabilities thereunder. Except for the Assumed Plans or obligations specifically

assumed under Section 2.2.1 hereof, or as required by operation of applicable Law, neither the Buyer nor any Asset Buyer shall assume any Employee Benefit Plans or any obligation or liability thereunder, and the Asset Buyer(s) shall provide benefits to those Rehired Employees as of or after the Closing as the Buyer, in its sole discretion, shall determine. Except for obligations arising, and relating solely to periods, after the Closing with respect to the Assumed Plans or obligations specifically assumed under Section 2.2.1 hereof, the Debtors shall indemnify, defend and hold harmless the Buyer and the Asset Buyer(s) from and against any and all Claims or Liabilities under any Employee Benefit Plans. With respect to all Claims by current and former employees of the Debtors who are or were employed in connection with the Acquired Product Lines arising prior to or as of the Closing under any Employee Benefit Plans, whether insured or otherwise (including, but not limited to, life insurance, medical and disability programs), the Debtors shall, at their own expense, honor or cause their respective insurance carriers to honor such claims, whether made before or after the Closing, in accordance with the terms and conditions of such Employee Benefit Plans without regard to the employment by the Buyer or the Asset Buyer(s) of any such employees after the Closing and without regard to the assumption by the Buyer or the Asset Buyer(s) of the Assumed Plans.

8.1.2 As soon as reasonably possible after the Closing Date, the Buyer shall cause each Rehired Employee to be given credit for his or her service with the Debtors (only to the extent such service is taken into account under any Debtor's vacation or sick leave policy, program or arrangement) for the purpose of determining such Rehired Employee's vacation and sick leave (on a going-forward basis) in any vacation or sick leave plan, program or arrangement maintained for the Buyer's employees' benefit on or after the Closing Date; provided, however, neither the Buyer nor the Asset Buyer(s) shall be obligated to pay any cash amounts based on such credit. Notwithstanding the forgoing, the Buyer and the Asset Buyer(s) shall be responsible only for accrued liabilities and claims with respect to vacation and sick leave earned or accrued by Rehired Employees on or prior to the Closing Date to the extent such Liability is specifically assumed under Section 2.2.1 hereof.

8.2 Cooperation of the Buyer and the Debtors. The Buyer and the Debtors jointly covenant and agree that, from and after the Closing Date, the Buyer and the Debtors will each use Commercially Reasonable Efforts to cooperate with each other in connection with any action, suit, proceeding, investigation or audit of the other relating to (a) the preparation of an audit of any Tax Return of any Debtor or the Buyer for all periods prior to or including the Closing Date and (b) any audit of the Buyer or any Asset Buyer and/or any audit of any Debtor with respect to the sales, transfer and similar Taxes imposed by the laws of any state or political subdivision thereof, relating to the transactions contemplated by this Agreement. In furtherance hereof, the Buyer and the Debtors further covenant and agree to promptly respond to all reasonable inquiries related to such matters and to provide, to the extent reasonably possible, substantiation of transactions and to make available and furnish appropriate documents and personnel in connection therewith. All costs and expenses incurred in connection with this Section 8.2 referred to herein shall be borne by the party who is subject to such action.

8.3 Further Assurances; Certain Consents. From time to time after the Closing and without further consideration, (i) the Debtors, upon the request of the Buyer, shall execute and deliver such documents and instruments of conveyance and transfer as the Buyer may reasonably request in order to consummate more effectively the purchase and sale of the Acquired Assets as contemplated hereby and to vest in the Asset Buyer title to the Acquired Assets transferred hereunder, and (ii) the Buyer, upon the request of the Debtors, shall execute and deliver (or shall cause to be executed and delivered) such documents and instruments of contract or lease assumption as Debtors may reasonably request in order to confirm the Asset Buyer(s)' liability for the obligations specifically assumed hereunder or otherwise more fully consummate the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, if a consent of a Third Party which is required in order to assign any Acquired Asset (or Claim, right or benefit arising thereunder or resulting therefrom) is not obtained prior to the Closing, or if an attempted assignment would be ineffective or would adversely affect the ability of any Debtor to convey its interest in question to the applicable Asset Buyer, the Debtors will cooperate with the Buyer and use Commercially Reasonable Efforts in any lawful arrangement to provide that the applicable Asset Buyer shall receive the interests of any Debtor in the benefits of such Acquired Asset. If any consent or waiver is not obtained before the Closing and the Closing is nevertheless consummated, each Debtor agrees to continue to use Commercially Reasonable Efforts to obtain all such consents as have not been obtained prior to such date.

8.4 **Name Changes.** Promptly after the Closing, each Debtor shall and shall cause each of its Subsidiaries to take all necessary action to change its name to a name bearing no resemblance to the names set forth on the signature pages to this Agreement and following the Closing each Debtor shall not and shall cause its Subsidiaries not to use, directly or indirectly, the name "Diamond" or "Forster" or any other name which is confusingly similar thereto.

8.5 **Accounts Receivable/Collections.** After the Closing, the Debtors shall permit the applicable Asset Buyer to collect, in the name of the Debtors, all Accounts Receivable constituting part of the Acquired Assets and to endorse with the name of any Debtor for deposit in the applicable Asset Buyer's account any checks or drafts received in payment thereof. Debtors shall promptly deliver to the applicable Asset Buyer any cash, checks or other property that they may receive after the Closing in respect of any Accounts Receivable or other asset constituting part of the Acquired Assets.

8.6 **Access to Information.** For a period of twenty-four (24) months after the Closing Date (the "Transition Period"), each Party and their representatives shall have reasonable access to, and each shall have the right to photocopy, all of the Books and Records relating to the Acquired Product Lines or the Acquired Assets, including all employee records or other personnel and medical records required by law, legal process or subpoena, in the possession of the other party to the extent that such access may reasonably be required by such Party in connection with the Assumed Obligations or the Unassumed Liabilities, or other matters relating to or affected by the operation of the Acquired Product Lines and the Acquired Assets. During the Transition Period, and only to the extent that the Buyer's operation of the Acquired Assets is not interrupted in any material respect, the Buyer agrees to provide the Debtors, during ordinary business hours and upon reasonable notice and at any Debtor's request, with reasonable access to employees of the Buyer and/or the Asset Buyer(s) for purposes of winding down the estates of the Debtors. Such access shall be afforded by the party in possession of such Books and Records upon receipt of reasonable advance notice and during normal business hours; provided, however, that (A) any such investigation shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of any party or its affiliates, (B) no party shall be required to take any action which would constitute a waiver of the attorney-client privilege and (C) no party need supply the other party with any information which such party is under a legal obligation not to supply. The party exercising this right of access shall be solely responsible for any costs or expenses incurred by it pursuant to this Section 8.6. If the party in possession of such Books and Records shall desire to dispose of any such Books and Records upon or prior to the expiration of such period, such party shall, prior to such disposition, give the other party a reasonable opportunity at such other party's expense, to segregate and remove such Books and Records as such other party may select.

8.7 **Transition Services.** Following the Closing, the Debtors shall provide to the Asset Buyer(s) and the Buyer various services, including without limitation, operations support services (e.g., storage space for the Acquired Assets) and other transition services pursuant to mutually acceptable terms and conditions.

#### ARTICLE IX TERMINATION

9.1 **Termination and Abandonment.** This Agreement may be terminated and abandoned at any time prior to the Closing Date:

9.1.1 by mutual written consent of the Parties;

9.1.2 by the Buyer if the Closing has not occurred on or before February 7, 2003; provided that if the Buyer is in breach of its obligations under this Agreement, the Buyer may not terminate this Agreement under this Section 9.1.2 if its breach is a primary cause of the delay of the Closing;

9.1.3 by the Buyer, so long as the Buyer is not then in breach of its obligations hereunder, if there has been a material breach of a Debtor's Representation as of the date of this Agreement or at the time of termination as if made on the date of such termination, except to the extent it relates to a particular date, or if there has been a material breach by the Debtors of their obligations under this Agreement, and in either case which

breach, if curable, has not been cured within ten (10) Business Days following receipt by the Debtors of written notice of such breach and is existing at the time of termination of this Agreement;

9.1.4 by the Debtors, so long as none of the Debtors is then in breach of its obligations hereunder, if there has been a material breach of a Buyer's Representation as of the date of this Agreement or at the time of termination as if made on the date of such termination, except to the extent it relates to a particular date, or if there has been a material breach by the Buyer of its obligations under this Agreement, and in either case which breach, if curable, has not been cured within ten (10) Business Days following receipt by the Buyer of written notice of such breach and is existing at the time of termination of this Agreement; and

9.1.5 by the Buyer or the Debtors, if any event occurs which renders satisfaction of one or more of its conditions to effect the Closing impossible; provided that the Buyer or the Debtors, as the case may be, shall not be entitled to terminate this Agreement pursuant to this Section 9.1.5 if the impossibility results primarily from such party itself breaching any representation, warranty or covenant contained in this Agreement.

9.2 **Notice of Termination.** In the event of the termination of this Agreement by either the Buyer or the Debtors in accordance with Section 9.1, the terminating Party shall give prompt written notice thereof to the non-terminating Party.

9.3 **Effect of Termination.** Except as specifically provided in Section 3.2.1, in the event of the termination or abandonment of this Agreement in accordance with the provisions of Section 9.1, the Deposit will be returned to the Buyer in accordance with the Earnest Money Deposit Agreement, and this Agreement thereafter shall become null and void and cease to have any effect other than the provisions of Sections 5.19, 6.5, 10.9 and 10.22, which sections shall survive such termination.

9.4 **No Survival of Representations and Warranties.** The representations and warranties of the Debtors and the Buyer contained in this Agreement or in any instrument delivered in connection herewith shall not survive the Closing.

## ARTICLE X GENERAL PROVISIONS

10.1 **Amendment and Modification.** No amendment, modification, supplement, termination, consent or waiver of any provision of this Agreement, nor consent to any departure therefrom, will in any event be effective unless the same is in writing and is signed by Buyer and the Debtors. Any waiver of any provision of this Agreement and any consent to any departure from the terms of any provision of this Agreement is to be effective only in the specific instance and for the specific purpose for which given.

10.2 **Assignments.** No Party may assign or transfer any of its rights or obligations under this Agreement (whether voluntarily or involuntarily or by operation of Law (including a merger or consolidation), judicial decree or otherwise) to any other Person without the prior written consent of the other Party. Notwithstanding the foregoing, the Buyer may assign its rights and obligations under this Agreement to (i) any Affiliate of the Buyer and (ii) as collateral for indebtedness for borrowed money, the Acquired Product Lines or the Acquired Assets without the consent of the Debtors, but no such assignment shall relieve the Buyer of any of its obligations hereunder.

10.3 **Business Day.** If any day on which any payment is required to be made hereunder, or on which any notice must be sent, or on which any time period described herein commences or ends is not a Business Day, then such day will be deemed for all purposes of this Agreement to fall on the next succeeding day which is a Business Day.

10.4 **Captions.** Captions contained in this Agreement and the table of contents preceding this Agreement have been inserted herein only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

**10.5 Counterpart Facsimile Execution.** For purposes of this Agreement, a document (or signature page thereto) signed and transmitted by facsimile machine or telecopier is to be treated as an original document. The signature of any Party thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any Party, any facsimile or telecopy document is to be re-executed in original form by the Parties who executed the facsimile or telecopy document. No Party may raise the use of a facsimile machine or telecopier or the fact that any signature was transmitted through the use of a facsimile or telecopier machine as a defense to the enforcement of this Agreement or any amendment or other document executed in compliance with this Section.

**10.6 Counterparts.** This Agreement may be executed by the Parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the Parties notwithstanding that all the Parties are not signatories to the same counterpart.

**10.7 Entire Agreement.** This Agreement, together with the Plan of Reorganization, constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersede all prior agreements, letters of intent, understandings, negotiations and discussions of the Parties, whether oral or written. If there are any inconsistencies between the terms of this Agreement and the terms of the Plan of Reorganization, the Parties and the Creditors' Committee hereby agree to work in good faith to resolve any such inconsistencies.

**10.8 Schedules and Exhibits.** All of the Schedules and Exhibits attached to this Agreement are deemed incorporated herein by reference.

**10.9 Expenses Incurred by the Parties.** Except as otherwise provided herein, in the Plan of Reorganization or agreed to in writing by the Parties, all legal and other costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby are to be paid by the Party incurring such costs and expenses.

**10.10 Failure or Delay.** No failure on the part of any Party to exercise, and no delay in exercising, any right, power or privilege hereunder operates as a waiver thereof; nor does any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. No notice to or demand on any Party in any case entitles such Party to any other or further notice or demand in similar or other circumstances.

**10.11 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (regardless of the laws that might otherwise govern under applicable Delaware principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies.

**10.12 Legal Fees.** In the event any Party brings suit or institutes arbitration proceedings to construe or enforce the terms hereof, or raises this Agreement as a defense in a suit or arbitration proceeding brought by another Party, the prevailing Party in such suit or arbitration proceeding shall be entitled to recover its attorneys' fees and expenses. The Debtors agree to pay directly all Taxes, fees and other charges, including all sales Taxes, transfer Taxes and recording charges, incurred as a result of the consummation of the transactions contemplated by this Agreement. The Debtors will seek a provision in the Confirmation Order that exempts the transactions contemplated hereby from Taxes pursuant to §1146(c) of the Bankruptcy Code.

**10.13 Notices Between the Parties.** All notices, consents, requests, demands and other communications hereunder are to be in writing, and are deemed to have been duly given or made: (i) when delivered in person; (ii) three days after deposited in the United States mail, first class postage prepaid; (iii) in the case of telegraph or overnight courier services, one Business Day after delivery to the telegraph company or overnight courier service with payment provided; (iv) in the case of telecopy or fax, when sent, verification received; or (v) in the case of electronic transmission such as e-mail, when sent; in each case addressed as follows:

if to the Buyer:

Jarden Corporation  
555 Theodore Fremd Avenue  
Suite B-302  
Rye, NY 10580-1455  
Attn: Martin E. Franklin  
Fax No. (914) 967-9405  
e-mail: mfranklin@jardencorp.com

with a copy to:

Kirkland & Ellis  
200 East Randolph Drive  
56<sup>th</sup> Floor  
Chicago, Illinois 60601  
Attention: Gary R. Silverman  
Fax No: (312) 861-2200  
e-mail: gsilverman@chicago.kirkland.com

if to the Debtors:

Diamond Brands, Inc.  
1660 South Highway 100  
Suite 122  
Minneapolis, MN 55416  
Attn: Naresh K. Nakra  
Fax No. (952) 543-6211  
e-mail: mnakra@diamondbrands.com

with a copy to:

Skadden Arps Slate Meagher & Flom  
333 West Wacker Drive  
Chicago, Illinois 60606  
Attn: Timothy R. Pohl  
Fax No. (312) 464-0411  
e-mail: tpohl@skadden.com

or to such other address as any Party may designate by notice to the other Party in accordance with the terms of this Section.

**10.14 Publicity Regarding This Agreement.** Any publicity release, advertisement, filing, public statement or announcement made by or at the request of any Party regarding this Agreement or any of the transactions contemplated hereby is to be first reviewed by and must be satisfactory to the other Party. Notwithstanding the preceding sentence, if a Party is required by applicable Law to make any publicity release, filing, public statement or announcement, the issuing Party may make the same without the approval of the other Party but the issuing Party must use Commercially Reasonable Efforts to consult with the other Party before making any such release, public statement or announcement.



**10.15 Remedies Are Exclusive.** Except in the case of fraud or willful misconduct, the remedies provided herein are the sole remedies of the Parties and are exclusive of any remedies or rights that might be available to any Party at law, in equity or otherwise.

**10.16 Severability.** Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction is, as to such jurisdiction, ineffective to the extent of any such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof, or affecting the validity, enforceability or legality of such provision in any other jurisdiction, unless the ineffectiveness of such provision would result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable. Upon a determination that any provision of this Agreement is prohibited, unenforceable or not authorized, the Parties agree to 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 are consummated as originally contemplated to the fullest extent possible.

**10.17 Specific Performance and Injunctive Relief.** Each Party recognizes that, if it fails to perform, observe or discharge any of its obligations under this Agreement, no remedy at law will provide adequate relief to the other Party. Therefore, each Party is hereby authorized to demand specific performance of this Agreement, and is entitled to temporary and permanent injunctive relief, in a court of competent jurisdiction at any time when the other Party fails to comply with any of the provisions of this Agreement applicable to it. To the extent permitted by Law, each Party hereby irrevocably waives any defense that it might have based on the adequacy of a remedy at law which might be asserted as a bar to such remedy of specific performance or injunctive relief.

**10.18 Submission to Jurisdiction.** ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO MUST BE BROUGHT IN THE BANKRUPTCY COURT AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF SUCH COURT. THE PARTIES IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH ANY OF THEM MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH JURISDICTION. EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF SUCH COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO EACH OF THE OTHER PARTIES AT ITS ADDRESS PROVIDED HEREIN, SUCH SERVICE TO BECOME EFFECTIVE 30 DAYS AFTER SUCH MAILING.

**10.19 Successors and Assigns.** All provisions of this Agreement are binding upon, inure to the benefit of and are enforceable by or against the Parties and their respective heirs, executors, administrators or other legal representatives and permitted successors and assigns.

**10.20 Third-Party Beneficiary.** This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns, and no other Person has any right, benefit, priority or interest under or because of the existence of this Agreement except as specifically set forth herein.

**10.21 Effective Control.** If the transactions contemplated under this Agreement (as may be amended, supplemented or otherwise modified from time to time) are consummated and the Plan of Reorganization (as may be amended, supplemented or otherwise modified from time to time) is confirmed in accordance with the terms and conditions hereunder and thereunder, the Parties hereby agree that the date on which the Buyer and the Asset Buyer(s) will be deemed to have acquired effective control (i.e., the risks and rewards of ownership) of the Acquired Product Lines shall be January 1, 2003.

**10.22 Liability of Buyer's Affiliates.** No past, present or future director, officer, employee, member, shareholder, incorporator, partner or Affiliate of the Buyer or any Affiliate thereof will have any Liability for any obligations of the Buyer under this Agreement or for any Claim based on, in respect of or by reason of such obligations or their creation.

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The next page is the only signature page.}*

IN WITNESS WHEREOF, the Parties hereto have caused this Asset Purchase Agreement to be executed and delivered on the date first above written.

**BUYER:**

**JARDEN CORPORATION**

By: /s/ Desiree DeStefano  
Desiree DeStefano  
Vice President

**DEBTORS:**

**DIAMOND BRANDS INC.**

By: /s/ Naresh Nakra  
Naresh Nakra  
Chief Executive Officer

**DIAMOND BRANDS OPERATING CORP.**

By: /s/ Naresh Nakra  
Naresh Nakra  
Chief Executive Officer

**DIAMOND BRANDS KANSAS, INC.**

By: /s/ Naresh Nakra  
Naresh Nakra  
Chief Executive Officer

**FORSTER, INC.**

By: /s/ Naresh Nakra  
Naresh Nakra  
Chief Executive Officer

## SCHEDULES

These are the Schedules referred to in the Asset Purchase Agreement, dated as of November 27, 2002 (the "Agreement"), by and among Jarden Corporation, a Delaware corporation ("Buyer"), Diamond Brands Incorporated, a Minnesota corporation ("DBI"), Diamond Brands Operating Corp., a Delaware corporation and wholly-owned subsidiary of DBI ("DBOC"), Diamond Brands Kansas, Inc., a Kansas corporation and wholly-owned subsidiary of DBOC ("DBKI"), and Forster, Inc., a Maine corporation and wholly-owned subsidiary of DBOC ("Forster"). DBI, DBOC, DBKI and Forster are sometimes referred to herein individually as a "Debtor" and collectively as the "Debtors." Terms used herein, unless otherwise defined herein, have the meanings ascribed to them in the Agreement. Information provided on one Schedule shall suffice, without repetition or cross-reference, as a disclosure of such information on any other relevant Schedule, if the disclosure on one Schedule is sufficient on its face without further inquiry reasonably to inform Buyer of the information required to be disclosed on such other Schedules to avoid a misrepresentation under the relevant counterpart Sections of the Agreement. Disclosures set forth in the documents appended hereto are deemed to be incorporated by reference into the Schedules to which they are appended. The inclusion of any item in any Schedule shall not establish any threshold of materiality.

**PLEASE NOTE THAT DUE TO THE VOLUMINOUS NATURE OF THE SCHEDULES, WHICH WERE FILED IN THEIR ENTIRETY WITH THE ASSET PURCHASE AGREEMENT ATTACHED AS EXHIBIT 1 TO THE DISCLOSURE STATEMENT FILED WITH THE BANKRUPTCY COURT ON NOVEMBER 27, 2002 (DOCKET NO. 580), THE SCHEDULES ARE NOT INCLUDED HEREWITH. COPIES OF THE SCHEDULES ARE AVAILABLE, UPON REQUEST, FROM COUNSEL TO THE DEBTORS, SKADDEN, ARPS, SLATE, MEAGHER & FLOM, 333 WEST WACKER DRIVE, CHICAGO, ILLINOIS (BY CONTACTING RENA SAMOLE, ESQ. AT 312-407-0857) OR ONE RODNEY SQUARE, WILMINGTON, DELAWARE 19801 (BY CONTACTING PATRICIA WIDDOSS, ESQ. AT 302-651-3103).**

**Schedule 5.8**

**Intellectual Property**

DBI United States Trademarks

Mark	Reg./App. No.	Reg./App. Date	Status	Security Interest
DIAMOND REFLECTIONS and Design	2,232,149	Reg. 3/6/1999	Registered	
ELITE TOOTHPICK HOLDER	76/082,325	Filed 7/3/2000	Pending	
LASALLE "10" (Stylized Letters)	1,680,911	Reg. 3/31/1992	Registered	
OHIO BLUE TIP	2,289,979	Reg. 11/2/1999	Registered	
ROSE BUD	75/476,026	Filed 4/29/1998	Pending	
SAFE & SOUND	76/082,347	Filed 7/3/2000	Registered	
SHAKE-A-PICK	76,226,530	Filed 3/19/2001	Pending	
STRIKE-A-FIRE	76/089,513	Filed 7/17/2000	Pending	

DBI Canadian Trademarks

Mark	Reg./App. No.	Reg./App. Date	Status	Security Interest
CONDITION- ING PLUS	TMA375,693	Reg. 11/16/1990	Registered	
LASALLE	TMA383,100	Reg. 4/19/1991	Registered	
LASALLE "10"	TMA428,722	Reg. 6/17/1994	Registered	
LASALLE "10" and De- sign	TMA417,225	Reg. 9/24/1993	Registered	
NAIL RE- COVERY SYSTEM	TMA375,694	Reg. 11/16/1990	Registered	
SILK WRAP	TMA385,403	Reg. 6/7/1991	Registered	

DBI Domain Names

Domain Name	Registration Date	Status	Security Interest
DIAMONDBRANDS.COM	8/14/1996	Registered; Expires 8/15/2007	
FORSTERINC.COM	8/14/1996	Registered; Expires 8/15/2003	
PLASTICUTLERY.COM	7/20/1999	Registered; Expires 7/20/2005	
WOODENMATCHES.COM	7/20/1999	Registered; Expires 7/20/2005	
DIAMONDBRANDS.BIZ		Registered; Expires 11/18/2003	
FORSTERINC.BIZ		Registered; Expires 11/18/2003	
WOODSIES.BIZ		Registered; Expires 11/18/2003	
WOODENMATCHES.BIZ		Registered; Expires 5/23/2005	
WOODENCRAFTS.BIZ		Registered; Expires 5/23/2005	
TOOTHPICKS.BIZ		Registered; Expires 5/23/2005	

DBOC United States Trademarks

Mark	Reg./App. No.	Reg./App. Date	Status	Security Interest
10 STRONG, LONG NAILS IN 10 SHORT DAYS	1,895,804	Reg. 5/30/1995	Registered; Section 8 A- fidavit not filed by 11/30/2001 deadline; may be cancelled	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/6522
BAR-STIX	575,331	Reg. 6/2/1953	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522



Mark	Reg./App. No.	Reg./App. Date	Status	Security Interest
BLUE TIP and Design	186,690	Reg. 7/22/1984	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
DESIGN ONLY [Diamond and Design]	167,347	Reg. 5/1/1923	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
DIAMOND BRANDS and Design	1,612,581	Reg. 9/11/1990	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
DIAMOND	167,348	Reg. 5/1/1923	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
DIAMOND (Stylized Letters)	535,047	Reg. 12/19/1950	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
DIAMOND and Design	1,610,353	Reg. 8/21/1990	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
DIAMOND	771,013	Reg. 6/9/1964	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
DIAMOND MATCHES and Design	170,566	Reg. 7/17/1923	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
DIAMOND	270,580	Reg. 5/6/1930	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
DIAMOND and Design	771,379	Reg. 6/16/1964	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522

Mark	Reg./App. No.	Reg./App. Date	Status	Security Interest
DIAMONDWARE	1,878,205	Reg. 2/7/1995	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
DOMINO and Design	171,995	Reg. 8/21/1923	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
DOMINO	171,994	Reg. 8/21/1923	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
INDIVIDUALS (Stylized Letters)	76/269,756	Filed 6/1/2001	Pending	
POCKETBOX SLIM	1,984,015	Reg. 3/31/1981	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
POCKETBOX	1,150,004	Reg. 3/31/1981	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
POCKETBOX	1,150,015	Reg. 3/31/1981	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522.
RED TOP and Design	170,617	Reg. 7/17/1923	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522.
SIGNAL LIGHT	760,208	Reg. 11/19/1963	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
SIGNAL LIGHT and Design	760,207	Reg. 11/19/1963	Registered	Security Interest to Security Pacific Business Credit recorded 5/9/1983 Reel/Frame 0440/0961; Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522

Mark	Reg./App. No.	Reg./App. Date	Status	Security Interest
THREE TORCHES TREATED IM- PREGNATED SAFETY MATCHES UN- ION ALUMETIERE UA and Design	155,545	Reg. 5/30/1922	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522
UNIVERSAL	2,187,641	Reg. 9/8/1998	Registered	
VICTORIA and Design	1,253,914	Reg. 10/11/1983	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1729/0522

DBOC Patents

Title	Patent No.	Issue Date	Status	Security Interest
FIRE STARTER	D294,649	3/8/1988	Expired 3/8/2002	Wells Fargo Bank, N.A. Security Interest recorded 4/30/1998 at Reel/Frame 9146/0904
FIRE STARTER	D296,016	5/31/1988	Issued; Expires 5/31/2002	Wells Fargo Bank, N.A. Security Interest recorded 4/30/1998 at Reel/Frame 9146/0904

DBOC UCC Prefixes and EDI Comm. ID Numbers

UCC Company Prefix/EDI Comm. ID Number
041426/6128790000
048789

Forster United States Trademarks

Mark	Reg./App. No.	Reg./App. Date	Status	Security Interest
CRAFT BASICS	1,962,543	Reg. 3/12/1996	Registered; Supplemental Register	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147
DESIGN ONLY [Full Figure Boy]	1,205,578	Reg. 8/17/1982	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147
DESIGN ONLY [Boy Design]	1,230,030	Reg. 3/8/1983	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147
FORSTER (Stylized Letters)	539,201	Reg. 3/13/1951	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147
FORSTER IDEAL (Stylized Letters)	628,367	Reg. 6/5/1956	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147
FORSTER	1,924,904	Reg. 10/3/1995	Registered	
FORSTER	1,513,348	Reg. 11/22/1988	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147; Security Interest granted by Seneca Sports, Inc. to GMAC Commercial Credit LLC recorded 5/14/2001 Reel/Frame 2300/0001.
GRIP RITE	1,519,859	Reg. 1/10/1989	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147
IDEAL (Stylized Letters)	501,132	Reg. 7/27/1948	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147
IDEAL (Stylized Letters)	542,859	Reg. 5/29/1951	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147

Mark	Reg./App. No.	Reg./App. Date	Status	Security Interest
IDEAL	1,717,560	Reg. 9/22/1992	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147. Security Interest granted by Seneca Sports, Inc. to GMAC Commercial Credit LLC recorded 5/14/2001 Reel/Frame 2300/0001.
SKILL STICKS	1,228,588	Reg. 2/22/1983	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147
WOODSIES	1,675,103	Reg. 2/11/1992	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147. Security Interest granted by Seneca Sports, Inc. to GMAC Commercial Credit LLC recorded 5/14/2001 Reel/Frame 2300/0001.
WORLD'S FAIR	557,102	Reg. 4/8/1952	Registered	Security Interest to Wells Fargo Bank, N.A. recorded 4/30/1998 Reel/Frame 1723/0147