

# **EXHIBIT 1**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	) Chapter 11
	)
eTOYS DIRECT 1, LLC, <u>et al.</u> , <sup>1</sup>	) Case No. 08-13412-BS
	) (Jointly Administered)
Debtors.	)
	) <b>Re: Docket No. 65</b>

**ORDER (I) APPROVING ASSET PURCHASE AGREEMENT WITH EAGLE LLC, (II) AUTHORIZING THE DEBTORS TO SELL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES, AND (III) GRANTING OTHER RELATED RELIEF**

Upon the Debtors' Motion Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code for Orders (A) Approving Sale Procedures and Bid Protections, Including Break-Up Fees, in Connection With Sale of Substantially All Assets; (B) Scheduling an Auction for and Hearing to Approve One or More Sales; (C) Approving Notice of Respective Date, Time and Place for Auction and for Hearing on Approval of Sale(s); (D) Authorizing the Debtors (X) to Sell Substantially All Assets, Free and Clear of Liens, Claims, and Encumbrances and to Conduct Sales at the Debtors' Headquarters and Warehouse Locations and (Y) to Assume and Assign Executory Contracts and Unexpired Leases of Nonresidential Real Property; (E) Establishing Procedures in Connection with the Rejection of Executory Contracts and Unexpired Leases of Nonresidential Real Property; and (F) Granting Other Related Relief (the "Motion"), of the above-captioned debtors and debtors in possession (the "Debtors") for the entry of an order pursuant to sections 105, 363, and 365 of Title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: eToys Direct 1, LLC (N/A); The Parent Company (7093); BabyUniverse, Inc. (7990); Dreamtime Baby, Inc. (8047); eToys Direct, Inc. (7296); PoshTots, Inc. (8660); eToys Direct 2, LLC (N/A); eToys Direct 3, LLC (N/A); Gift Acquisition, L.L.C. (0297); and My Twinn, Inc. (1842). The address for each of the Debtors is 717 17<sup>th</sup> Street, Suite 1300, Denver, CO 80202, with the exception of PoshTots, Inc., the address for which is 5500 Cox Road, Suite M, Glenn Allen, VA 23060.

Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing the Debtors to, *inter alia*, (i) conduct an Auction<sup>2</sup> and enter into one or more asset purchase agreements, (ii) sell substantially all of the Debtors’ assets (the “Assets”) free and clear of all liens, claims, encumbrances, and interests, with such sale to be in accordance with the terms and conditions of such asset purchase agreements, and (iii) granting related relief; and this Court having entered an order dated January 16, 2009 (the “Procedures Order,” Docket No. 143), authorizing the Debtors to conduct, and approving the terms and conditions of, the Auction and Sale Procedures to consider higher or otherwise better offers for the Assets, establishing a date for the Auction, and approving, *inter alia*, (i) the Sale Procedures in connection with the Auction; (ii) the form and manner of notice of the Auction, the Sale Procedures, the Cure Notice, and the Sale Hearing; and the Court having established the date of the Sale Hearing; and the Auction having been conducted on February 4, 2009; and the Debtors having determined that Eagle, LLC, a Delaware limited liability company, was the Successful Bidder (the “Buyer”) in connection with the form of asset purchase agreement attached hereto as Exhibit A (the “APA”) and the assets described therein (the “Purchased Assets”); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(a) and (b)(2) and 1334; and consideration of the Motion, the relief requested therein, and the responses thereto, if any, being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections, if any, to the Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and all other pleadings and proceedings in these cases, including the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest; and after due deliberation and sufficient cause appearing therefore;

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or the APA attached hereto as Exhibit A.

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:<sup>3</sup>

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The Court has jurisdiction over this matter and over the property of the Debtors, including the Purchased Assets, and their respective estates pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motions and the basis for the approvals and authorizations herein are (i) Bankruptcy Code sections 102, 105, 363, 1123, 1141, and 1146, and (ii) Bankruptcy Rules 2002, 6004, and 9014.

E. On December 28, 2008 (the "Petition Date"), the Debtors each filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued in possession and management of their businesses and properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

F. As evidenced by the affidavits of service filed with the Court, proper, timely, adequate, and sufficient notice of the Motion, the Sale Procedures, the Auction, and the Sale Hearing have been provided in accordance with Bankruptcy Code sections 102(1), 363(b), and 365, Bankruptcy Rules 2002, 6004, 9006, 9007, 9008, and 9014, the local rules of this Court, the procedural due process requirements of the United States Constitution, and in compliance with

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<sup>3</sup> All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Motion are hereby incorporated herein to the extent not inconsistent herewith.

the Sale Procedures Order. No other or further notice of the Motion, the Sale Procedures, the Auction, the Sale Hearing, or of the entry of this Order is necessary or shall be required.

G. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities, including, without limitation, (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Debtors' prepetition and postpetition lenders, D.E. Shaw Laminar Lending 3 (C), L.L.C., as Administrative Agent and D.E. Shaw Laminar Portfolios, L.L.C. as Lender, and Laminar Direct Capital, L.L.C. (collectively, the "Lenders"); (iii) counsel to the Official Committee of Unsecured Creditors appointed in these chapter 11 cases (the "Committee"); (iv) all parties who have timely filed requests for notice under Rule 2002 of the Federal Rules of Bankruptcy Procedure; (v) all entities who executed non-disclosure agreements with the Debtors in connection with a potential acquisition of any or all of the Assets or who otherwise have expressed to the Debtors an interest in purchasing the Assets; (vi) all UCC-1 parties; (vii) all landlords; (viii) for each state in which the Debtors operate, the applicable taxing authorities; (ix) the Counterparties to the Assignable Contracts and Leases; and (x) all of the Debtors' known unsecured creditors. Other parties interested in bidding on the Purchased Assets were provided, upon request, sufficient information to make an informed judgment on whether to bid on the Purchased Assets.

H. The Debtors have demonstrated a sufficient basis and the existence of exigent circumstances for them to enter into the APA, and to sell the Purchased Assets under Bankruptcy Code sections 363, 1123, and 1141 effective upon the Closing of a sale to the Buyer, and such actions are appropriate exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates, and their creditors.

I. The Sale Procedures set forth in the Procedures Order were non-collusive, substantively and procedurally fair to all parties, and were the result of arm's-length negotiations between the Debtors and other parties in interest.

J. The Debtors and their professionals have complied, in good faith, in all respects with the Procedures Order. As demonstrated by the testimony and other evidence proffered or

adduced at the Sale Hearing through marketing efforts and a competitive sale process conducted in accordance with the Procedures Order, the Debtors (i) afforded interested potential purchasers a full, fair, and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase some or all of the Debtors' Assets, and (ii) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Purchased Assets.

K. The Sale Procedures obtained the highest and best value for the Purchased Assets for the Debtors and their estates.

L. The offer of the Buyer, upon the terms and conditions set forth in the APA, including the form and total consideration to be realized by the Debtors pursuant to the APA, (i) is the highest and best offer received by the Debtors for the Purchased Assets; (ii) is fair and reasonable; (iii) is in the best interests of the Debtors' creditors and estates; (iv) constitutes full and adequate consideration and reasonably equivalent value for the Purchased Assets; and (v) will provide a greater recovery for the Debtors' creditors and other interested parties than would be provided by any other practically available alternative.

M. The Buyer is not an "insider" or "affiliate" of the Debtors as those terms are defined in the Bankruptcy Code. The Buyer is a buyer in good faith, as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of Bankruptcy Code sections 363(m) with respect to all of the Purchased Assets. The APA was negotiated and entered into in good faith, based upon arm's-length bargaining, and without misconduct, collusion or fraud of any kind, attempted or otherwise. Neither the Debtors nor the Buyer has engaged in any conduct that would prevent the application of Bankruptcy Code section 363(m) or cause the application of or implicate Bankruptcy Code section 363(n) to the APA or to the consummation of the sale transaction and transfer of the Purchased Assets to the Buyer. The Buyer is entitled to all the protections and immunities of Bankruptcy Code section 363(m).

N. The Debtors have full corporate power and authority to execute the APA and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and

validly authorized by all necessary corporate authority by the Debtors to consummate the transactions contemplated by the APA. No consents or approvals, other than as may be expressly provided for in the APA, are required by the Debtors to consummate such transactions.

O. The Debtors have advanced sound business reasons for seeking to enter into the APA and to sell the Purchased Assets, as more fully set forth in the Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtors' business judgment to sell the Purchased Assets and to consummate the transactions contemplated by the APA. Notwithstanding any requirement for approval or consent by any person, the transfer of the Purchased Assets to the Buyer is a legal, valid and effective transfer of the Purchased Assets.

P. The terms and conditions of the APA, including the consideration to be realized by the Debtors pursuant to the APA, are fair and reasonable, and the transactions contemplated by the APA are in the best interests of the Debtors' estates.

Q. Except as otherwise provided in the APA, the Purchased Assets shall be sold free and clear of all Liens, Claims, Encumbrances, and Interests, with such Liens, Claims, Encumbrances, and Interests to attach to the consideration to be received by the Debtors in the same priority and subject to the same defenses and avoidability, if any, as before the Closing, and the Buyer would not enter into the APA to purchase the Purchased Assets otherwise. All proceeds from the sale of the Purchased Assets, including any deposit constituting a portion of the Purchase Price (the "Proceeds"), shall be paid immediately and directly into an escrow account with an escrow agent reasonably acceptable to the Lenders and the Committee (the "Escrow Account") with the Lenders' Liens to attach to the Proceeds to the same extent, validity, and priority as the Lenders' Liens attached to the Purchased Assets immediately prior to the Closing. The Proceeds shall remain in the Escrow Account until the Court orders the funds released. Under no circumstances shall the use of the escrowed funds under section 363 or otherwise be permitted without the consent of the Lenders in their sole and absolute discretion.

R. The transfer of the Purchased Assets to the Buyer will be a legal, valid, and effective transfer of the Purchased Assets, and shall vest the Buyer with all right, title, and

interest of the Debtors to the Purchased Assets free and clear of any and all Liens, Claims, Encumbrances, and Interests. The Buyer shall not assume or become liable for any Liens, Claims, Encumbrances, and Interests relating to the Purchased Assets being sold by the Debtors.

S. Subject to Paragraph Q hereof, the transfer of the Purchased Assets to the Buyer free and clear of all Liens, Claims, Encumbrances, and Interests will not result in any undue burden or prejudice to any holders of any Liens, Claims, Encumbrances, and Interests as all such Liens, Claims, Encumbrances, and Interests of any kind or nature whatsoever shall attach to the Proceeds of the sale of the Purchased Assets received by the Debtors in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. All persons having Liens, Claims, Encumbrances, or Interests of any kind or nature whatsoever against or in any of the Debtors or the Purchased Assets shall be forever barred estopped and permanently enjoined from pursuing or asserting such Liens, Claims, Encumbrances, or Interests against the Buyer, any of its assets, property, successors or assigns, or the Purchased Assets.

T. Subject to Paragraph Q hereof, the Debtors may sell the Purchased Assets free and clear of all Liens, Claims, Encumbrances, and Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in Bankruptcy Code section 363(f) has been satisfied. Those (i) holders of Liens, Claims, Encumbrances, and Interests and (ii) non-debtor parties, who did not object, or who withdrew their objections, to the sale of the Purchased Assets and the Motion are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2) in the case of the Lenders such consent being subject to the provisions of Paragraph Q hereof. All objections to the Motion have been resolved or, to the extent not resolved, are hereby overruled. Those holders of Liens, Claims, Encumbrances, and Interests who did object fall within one or more of the other subsections of Bankruptcy Code section 363(f) and are adequately protected by having their Liens, Claims, Encumbrances, and Interests, if any, attach to the proceeds of the sale of the Purchased Assets ultimately attributable to the property against



or in which they claim or may claim any Liens, Claims, Encumbrances, and Interests, with such Liens, Claims, Encumbrances, and Interests being subject to treatment as prescribed in the any plan of liquidation proposed by the Debtors or by other, separate order of this Court.

U. Not selling the Purchased Assets free and clear of all Liens, Claims, Interests, and Encumbrances would adversely impact the Debtors' estates, and the sale of Purchased Assets other than free and clear of all Liens, Claims, Encumbrances, and Interests would be of substantially less value to the Debtors' estates.

V. The Buyer will be acting in good faith, pursuant to Bankruptcy Code section 363(m), in closing the transactions contemplated by the APA at any time on or after the entry of this Order, and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h).

W. The transactions contemplated under the APA do not amount to a consolidation, merger, or *de facto* merger of the Buyer and the Debtors and/or the Debtors' estates, there is not substantial continuity between the Buyer and the Debtors, there is no continuity of enterprise between the Debtors and the Buyer, the Buyer is not a mere continuation of the Debtors or their estates, and the Buyer does not constitute a successor to the Debtors or their estates.

X. The sale of the Purchased Assets outside of a plan of reorganization pursuant to the APA neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The sale does not constitute a *sub rosa* chapter 11 plan.

Y. The total consideration provided by the Buyer for the Purchased Assets is the highest and best offer received by the Debtors, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia, for the Purchased Assets.

Z. Time is of the essence in consummating the Sale. In order to maximize the value of the Purchased Assets, it is essential that the Sale of the Purchased Assets occur within the time constraints set forth in the APA. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rule 6004.

AA. The Buyer shall have no obligations with respect to any liabilities of the Debtors other than as may be expressly set forth in the APA.

BB. For purposes of section 363(b)(1) of the Bankruptcy Code, the Debtors either (i) have not, in connection with offering a product or service, disclosed to any individual a policy prohibiting the transfer of “personally identifiable information” (as defined in section 101(41A) of the Bankruptcy Code) about individuals to persons that are not affiliated with the Debtors, or (ii) to the extent of any such disclosure, the transfer to the Buyer of all personally identifiable information included with the Purchased Assets is consistent with the privacy policies applicable to such data in accordance with Section 363(b)(1)(A) of the Bankruptcy Code.

NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The relief requested in the Motion with respect to the Sale of the Purchased Assets and related matters is granted in its entirety, subject to the terms and conditions contained herein.

2. All objections, responses, and requests for continuance concerning the Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Hearing. To the extent any such objection, response or request for continuance was not otherwise withdrawn, waived, or settled, it, and all reservations of rights contained therein, is overruled and denied.

3. Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with all applicable law and rules of Court, including 11 U.S.C. § 102(1) and Bankruptcy Rules 2002 and 6004.

4. The sale of the Purchased Assets, the terms and conditions of the APA (including all schedules and exhibits affixed thereto), the Successful Bid by the Buyer, and the transactions contemplated thereby be, and hereby are, authorized and approved in all respects.

5. The Sale of the Purchased Assets and the consideration provided by the Buyer under the APA is fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

6. The Buyer is hereby granted and is entitled to all of the protections provided to a good faith buyer under Bankruptcy Code section 363(m).

7. Subject to the terms of the APA, the Debtors hereby are authorized to assume, perform under, consummate, and implement the terms of the APA together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the APA, this Order and Sale of the Purchased Assets contemplated thereby including, without limitation, deeds, assignments, stock powers and other instruments of transfer, and to take all further actions as may reasonably be requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to the Buyer, or reducing to possession any or all of the Purchased Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the APA, without any further corporate action or orders of this Court.

8. The Debtors and each other person or entity having duties or responsibilities under the APA, any agreements related thereto or this Order, and their respective directors, officers, employees, members, agents, representatives, and attorneys, are authorized and empowered, subject to the terms and conditions contained in the APA, to carry out all of the provisions of the APA and any related agreements; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the APA, and any related agreements; to take any and all actions contemplated by the APA, any related agreements or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and reasonably necessary or appropriate to implement, effectuate, and consummate, the APA, any related agreements and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by their respective directors, officers, employees, members, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities. The secretary or any assistant secretary of the Debtors shall be, and hereby is, authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtors are further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the APA, any related agreements and this Order, including amended and restated certificates or articles of

incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtors may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act.

9. Effective as of the Closing, (a) the sale of the Purchased Assets by the Debtors to the Buyer shall constitute a legal, valid, and effective transfer of the Purchased Assets notwithstanding any requirement for approval or consent by any person and shall vest the Buyer with all right, title, and interest of the Debtors in and to the Purchased Assets, free and clear of all Claims, Liens, Interests, and Encumbrances of any kind, pursuant to Bankruptcy Code section 363(f), and (b) the assumption of any Assumed Liabilities by the Buyer shall constitute a legal, valid, and effective delegation of any Assumed Liabilities to the Buyer and shall divest the Debtors of all liability with respect to any Assumed Liabilities.

10. The sale of the Purchased Assets is not subject to challenge or avoidance pursuant to Bankruptcy Code section 363(n).

11. On or before the Closing Date, the Buyer shall pay its share of Transfer Taxes, utility charges, personal property taxes or similar ad valorem obligations which the Buyer is obligated to pay under the APA.

12. Upon the Closing, the Debtors shall be, and hereby are, authorized, and empowered, pursuant to Bankruptcy Code sections 105 and 363(b), to sell the Purchased Assets to the Buyer. The sale of the Purchased Assets shall vest the Buyer with all right, title, and interest of the Debtors to the Purchased Assets free and clear of any and all Claims, Liens, Interests, and Encumbrances and other liabilities and claims, whether secured or unsecured,

choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, disputed or undisputed, or known or unknown, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise, with all such Claims, Liens, Interests, and Encumbrances to attach only to the Proceeds of the sale with the same priority, validity, force, and effect, if any, as they now have in or against the Purchased Assets, subject to all claims and defenses the Debtors may possess with respect thereto; provided, however, that the Proceeds shall be paid immediately and directly into the Escrow Account with the Lenders' Liens to attach to the Proceeds to the same extent, validity and priority as the Lenders' Liens attached to the Purchased Assets immediately prior to the Closing. The Proceeds shall remain in the Escrow Account until the Court orders the funds released. Under no circumstances shall the use of the escrowed funds under section 363 or otherwise be permitted without the consent of the Lenders in their sole and absolute discretion. Following the Closing Date, no holder of any Claims, Liens, Interests, and Encumbrances in the Assets shall interfere with the Buyer's use and enjoyment of the Purchased Assets based on or related to such Claims, Liens, Interests and Encumbrances, or any actions that the Debtors may take in their chapter 11 cases and no person shall take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the APA or this Order.

13. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of Liens, Claims, Encumbrances, and Interests, other than Assumed Liabilities, shall be self-executing, and neither the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Order. However, subject to the

terms of the APA the Debtors and the Buyer, and each of their respective officers, employees and agents are hereby authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtors or the Buyer deem reasonably necessary or appropriate to implement and effectuate the terms of the APA and this Order. Moreover, effective as of the Closing, the Buyer, its successors and assigns, shall be designated and appointed the Debtors' true and lawful attorney and attorneys with respect to the Purchased Assets, with full power of substitution, in the Debtors' name and stead, on behalf and for the benefit of the Buyer, its successors and assigns, to demand and receive any and all of the Purchased Assets and to give receipts and releases for and in respect of the Purchased Assets, or any part thereof, and from time to time to institute and prosecute the Debtors' name, for the benefit of the Buyer, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Buyer, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Purchased Assets, and to do all acts and things with respect to the Purchased Assets that the Buyer, its successors and assigns, shall deem reasonably desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Debtors.

14. Upon the Closing Date, the Debtors' creditors are authorized and directed to execute such documents and take all other actions as may be necessary to release any Liens, Claims, Encumbrances, or Interests of any kind against the Purchased Assets, as such Encumbrances may have been recorded or may otherwise exist. If any person or entity that has filed financing statements or other documents or agreements evidencing any Liens, Claims, Encumbrances, or Interests in or against the Purchased Assets shall not have delivered to the Debtors prior to the Closing after request therefor, in proper form for filing and executed by the

appropriate parties, termination statements, instruments of satisfaction, or releases of all such Liens, Claims, Encumbrances, or Interests that the person or entity has with respect to the Purchased Assets, the Buyer may request and direct the Debtors, and the Debtors are hereby authorized, to execute and file such statements, and empowered to perform under, all instruments, releases and other documents on behalf of the person or entity with respect to such Purchased Assets prior to the Closing, and the Buyer is authorized to file such documents after Closing.

15. To the greatest extent available under applicable law, the Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Purchased Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Buyer as of the Closing Date.

16. All of the Debtors' interests in the Purchased Assets to be acquired by the Buyer under the APA shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Buyer. Upon the occurrence of the Closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets acquired by the Buyer under the APA and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets to the Buyer.

17. Except as otherwise provided in the APA, subject to paragraph 12 hereof upon the Closing, each of the Debtors' creditors is authorized and directed to execute such



documents and take all other actions as may be necessary to release their respective Interests or Claims against the Purchased Assets, if any, as may have been recorded or may otherwise exist.

18. Except as otherwise expressly provided in the APA, all persons or entities presently on or after the Closing in possession of some or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Buyer on the Closing Date, or at such time thereafter as the Buyer may request.

19. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and this Order.

20. The Buyer has not assumed or is otherwise not obligated for any of the Debtors' liabilities other than the Assumed Liabilities as set forth in the APA, and the Buyer has not purchased any of the Excluded Assets. Consequently, all persons, Governmental Units (as defined in Bankruptcy Code sections 101(27) and 101(41)) and all holders of Claims, Liens, Interests, or Encumbrances based upon or arising out of liabilities retained by the Debtors are hereby enjoined from taking any action against the Buyer or the Purchased Assets to recover any Claims, Liens, Interests, or Encumbrances or on account of any liabilities of the Debtors other than Assumed Liabilities pursuant to the APA. All persons holding or asserting any Interest in the Excluded Assets are hereby enjoined from asserting or prosecuting such Claims, Liens, Interests, or Encumbrances or cause of action against the Buyer or the Purchased Assets for any liability associated with the Excluded Assets.

21. To the extent permitted under applicable law, the Buyer is not a "successor" to the Debtors or their estates by reason of any theory of law or equity, and the Buyer shall not assume, nor be deemed to assume, or in any way be responsible for any liability

or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales law, successor liability or similar liability except as otherwise expressly provided in the APA. Except to the extent the Buyer assumes the Assumed Liabilities pursuant to the APA, neither the purchase of the Purchased Assets by the Buyer or its affiliates, nor the fact that the Buyer or its affiliates are using any of the Purchased Assets previously operated by the Debtors, will cause the Buyer or any of its affiliates to be deemed a successor in any respect to the Debtors' businesses within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine, or under any product warranty liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine. Buyer and its affiliates shall have no liability or obligation under the WARN Act (29 U.S.C. §§ 210 et seq.) or the Comprehensive Environmental Response Compensation and Liability Act, or any foreign, federal, state or local labor, employment, or environmental law by virtue of the Buyer's purchase of the Purchased Assets.

22. Pursuant to Bankruptcy Code sections 105 and 363, all persons and entities, including, but not limited to, the Debtors, all debt security holders, equity security holders, the Debtors' employees or former employees, governmental, tax and regulatory authorities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding a Lien, Claim, Encumbrance, or Interest of any kind or nature whatsoever against, in or with respect to any of the Debtors or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or

subordinated), arising under or out of, in connection with, or in any way relating to the Debtors, the Purchased Assets, the operation of the Debtors' businesses prior to the Closing Date or the transfer of the Purchased Assets to the Buyer, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such Lien, Claim, Encumbrance or Interest against the Buyer or any affiliate, successor or assign thereof and each of their respective current and former members, officers, directors, managed funds, investment advisors, attorneys, employees, partners, affiliates and representatives (each of the foregoing in its individual capacity), or the Purchased Assets.

23. Subject to the terms of the APA, the APA and any related agreements may be waived, modified, amended, or supplemented by agreement of the Debtors and the Buyer, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is not material and substantially conforms to, and effectuates, the APA and any related agreements.

24. The failure specifically to include any particular provisions of the APA or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtors, and the Buyer that the APA and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to Closing.

25. No bulk sale law or any similar law of any state or other jurisdiction shall apply in any way to the sale and the transactions contemplated by the APA.

26. To the extent any provisions of this Order conflict with the terms and conditions of the APA, this Order shall govern and control.

27. This Order and the APA shall be binding upon and govern the acts of all Persons and entities, including without limitation, the Debtors and the Buyer, their respective successors and permitted assigns, including, without limitation, any Chapter 11 trustee hereinafter appointed for the Debtors' estates or any trustee appointed in a Chapter 7 case if this case is converted from Chapter 11, all creditors of any Debtor (whether known or unknown), filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Purchased Assets.

28. The provisions of this Order are non-severable and mutually dependent.

29. Nothing in any order of this Court or contained in any plan of reorganization or liquidation confirmed in the Chapter 11 Cases, or in any subsequent or converted cases of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the APA or the terms of this Order.

30. Notwithstanding anything to the contrary in the APA or in Bankruptcy Rules 6004, 6006, and 7062, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Buyer are free to close under the APA at any time, subject to the terms of the APA. In the absence of any person or entity obtaining a stay pending appeal, if the Debtors and the Buyer close under the APA, the Buyer shall be deemed to be acting in "good faith" and shall be entitled to the protections of Bankruptcy Code section 363(m) as to all aspects of the transactions under and pursuant to the APA if this Order or any authorization contained herein is reversed or modified on appeal.

31. This Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the Procedures Order, and the APA in all respects and to decide any disputes concerning this Order, the APA, or the rights and duties of the parties hereunder or thereunder or any issues relating to the APA and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Purchased Assets and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Purchased Assets free and clear of all Liens, Claims, Interests, and Encumbrances.

Dated: \_\_\_\_\_, 2009

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Honorable Brendan L. Shannon  
United States Bankruptcy Judge

# **EXHIBIT A**

**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**THE PARENT COMPANY, ETOYS DIRECT, INC., ETOYS DIRECT 1,  
LLC, ETOYS DIRECT 2, LLC, ETOYS DIRECT 3, LLC, BABYUNIVERSE,  
INC., POSHTOTS, INC., DREAMTIME BABY, INC., MY TWINN, INC.  
AND GIFT ACQUISITION, L.L.C.**

**AND**

**EAGLE, LLC**

**Dated as of February 11, 2009**

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of February 11, 2009 (this "Agreement"), is entered into by and among THE PARENT COMPANY, a Colorado corporation ("Parent"), ETOYS DIRECT, INC., a Colorado corporation ("eToys Direct"), ETOYS DIRECT 1, LLC, a Delaware limited liability company ("eToys 1"), ETOYS DIRECT 2, LLC, a Delaware limited liability company ("eToys 2"), ETOYS DIRECT 3, LLC, a Delaware limited liability company ("eToys 3"), BABYUNIVERSE, INC., a Colorado corporation ("BabyUniverse"), POSHTOTS, INC., a Colorado corporation ("PoshTots"), DREAMTIME BABY, INC., a Colorado corporation ("Dreamtime"), MY TWINN, INC., a Colorado corporation ("My Twinn"), and GIFT ACQUISITION, L.L.C., a Delaware limited liability company ("Gift", and collectively with Parent, eToys Direct, eToys 1, eToys 2, and eToys 3, BabyUniverse, PoshTots, Dreamtime, My Twinn and Gift, "Sellers"), and EAGLE, LLC, a Delaware limited liability company ("Buyer").

### WITNESSETH:

WHEREAS, on December 28, 2008 (the "Petition Date"), Sellers filed voluntary petitions for reorganization relief (the "Bankruptcy Cases") pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, Sellers presently conduct the Business;

WHEREAS, Sellers desire to sell, transfer and assign to Buyer, and Buyer desires to acquire and assume from Sellers, pursuant to Sections 363 of the Bankruptcy Code, the Purchased Assets and Assumed Liabilities as more specifically provided herein; and

WHEREAS, certain terms used in this Agreement are defined in Section 1.1.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the Parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1. Certain Definitions. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, and notwithstanding that D.E. Shaw & Co. might otherwise be considered an "affiliate" of Sellers as such term is defined in the Bankruptcy Code, neither D.E. Shaw & Co. nor its affiliates (other

than Sellers themselves) shall be deemed to be an “Affiliate” of Sellers for purposes of this Agreement.

“Applicable Privacy Policies” shall mean the privacy policies attached as Schedule 1.1(a).

“Assumed Liabilities” shall have the meaning set forth in Section 2.3.

“Bankruptcy Cases” shall have the meaning set forth in the Recitals.

“Bankruptcy Code” shall have the meaning set forth in the Recitals.

“Bankruptcy Court” shall have the meaning set forth in the Recitals.

“Business” means the business of Sellers directly related to the Purchased Intellectual Property.

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

“Buyer” shall have the meaning set forth in the Recitals.

“Buyer Documents” shall have the meaning set forth in Section 6.2.

“Cash Payment” shall have the meaning set forth in Section 3.1.

“Closing” shall have the meaning set forth in Section 4.1.

“Closing Date” shall have the meaning set forth in Section 4.1.

“Code” means the Internal Revenue Code of 1986, as amended.

“Customer” or “customer” means any person transacting business with or providing data to the Sellers or using the ecommerce websites hosted at the Purchased Domain Names.

“Deposit” shall have the meaning set forth in Section 3.1.

“Documents” means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials specifically related to the Purchased Assets, in each case whether or not in electronic form.

“Employee Claims” means any claim, demand, action, cause of action, damage, loss, cost, Liability or expense, including legal costs, made or brought by any Employee, including, but not limited to, any Employment Claim made pursuant to any applicable Laws relating to

employment standards, occupational health and safety, labor relations, workers compensation, pay equity, employment equity, the Americans with Disabilities Act, the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Family and Medical Leave Act or the Fair Labor Standards Act or any other federal, state or local, statutory or decisional Law regarding employment discrimination.

“Employee Obligations” means all wages, bonuses, vacation pay, sick time, pension payments, overtime pay, change of control payments, severance pay and any other termination or severance obligations and any other compensation or obligation which may be due by statute, contract or Law relating to the employment of the Employees.

“Employees” means all individuals, as of the date hereof, whether or not actively at work as of the date hereof, who are employed by Sellers in connection with the Business, together with individuals who are hired in respect of the Business after the date hereof and prior to the Closing.

“Excluded Assets” shall have the meaning set forth in Section 2.2.

“Excluded Liabilities” shall have the meaning set forth in Section 2.3.

“Final Order” means an Order, judgment, or other decree of the Bankruptcy Court that has not been vacated, reversed, modified, amended, or stayed, and for which the time to further appeal or seek review or rehearing has expired; provided, however, that any such Order, judgment or other decree of the Bankruptcy Court shall be deemed to be a Final Order upon its entry (without reference to the expiration of the time for appeal or review) if no objection to such Order, judgment or other decree is received by the Bankruptcy Court prior to its entry by the Bankruptcy Court.

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Body” means any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

“Indebtedness” of any Person means, without duplication, (i) the principal and interest of, and premium (if any) in respect of, (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued liabilities arising in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of other Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other

Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“Intellectual Property” means all worldwide intellectual property rights in connection with the Purchased Assets, including all (i) patents, patent applications and inventions, (ii) trademarks, service marks, trade names and trade dress, which expressly includes the goodwill and any common law rights associated therewith and with the Purchased Domain Names (collectively, “Trademarks”), (iii) copyrights, including copyrights in computer software, (iv) confidential and proprietary information, including trade secrets and know-how (“Trade Secrets”), (v) licenses relating to any of the foregoing and (vi) registrations and applications for registration of the foregoing, in each case as set forth on Schedule 1.1(b).

“Law” means any federal, state, local or foreign law, statute, code, ordinance, rule, regulation or any Order.

“Legal Proceeding” means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

“Liability” means any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due), and including all costs and expenses relating thereto.

“Lien” means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, or transfer restriction under any shareholder or similar agreement or encumbrance.

“Material Adverse Effect” means (i) a material adverse effect on the Purchased Assets (except for the Bankruptcy Cases), or (ii) a material adverse effect on the ability of Sellers to consummate the transactions contemplated by this Agreement or perform their respective obligations under this Agreement, other than the effect of any change resulting from any action taken by Buyer or its Affiliates with respect to the transactions contemplated hereby or with respect to Sellers, or any effect resulting from the filing of the Bankruptcy Case (including the failure or delay of vendors to deliver goods without a reasonable assurance of payment therefor), or from Orders of the Bankruptcy Court or other courts of competent jurisdiction, and reasonably anticipated effects thereof.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

“Ordinary Course of Business” means the ordinary and usual course of normal day-to-day operations of the Business consistent with the past practice of the Business through the date hereof, subject to any duties and restrictions imposed on Sellers under the Bankruptcy Code.

“Parties” means Sellers and Buyer.

“Person” means any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“Petition Date” shall have the meaning set forth in the Recitals.

“Process” or “Processing” means any operation or set of operations performed upon Purchased Customer Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation, alteration, retrieval, consultation, use, disclosure, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of such information.

“Purchase Price” shall have the meaning set forth in Section 3.1.

“Purchased Assets” shall have the meaning set forth in Section 2.1.

“Purchased Customer Data” shall mean the customer information database and customer data listed on Schedule 1.1(b), to the extent that the Bankruptcy Court has found that the sale to Buyer of personally identifiable data included therein is consistent with the privacy policies applicable to such data in accordance with Section 363(b)(1)(A) of the Bankruptcy Code; all such personally identifiable data with respect to which the Bankruptcy Court has not made such a finding shall be excluded from the Purchased Customer Data and shall not be transferred to Buyer.

“Purchased Domain Names” shall mean all of the domain names listed on Schedule 1.1 and the domain name registrations (including all rights in contracts for the registration of such domain names with the applicable registrars), trademark rights and goodwill associated with such domain names.

“Purchased Intellectual Property” means all Intellectual Property, the Purchased Domain Names, the Purchased Customer Data and all related Software and Technology set forth in Schedule 1.1(b).

“Sale Motion” means the motion or motions of Sellers filed with the Bankruptcy Court seeking approval and entry of the Sale Order.

“Sale Order” shall be an Order of the Bankruptcy Court in form and substance acceptable to Buyer and Sellers approving this Agreement and all of the terms and conditions hereof, approving the sale and assignment to Buyer of all of the Purchased Assets (assuming Buyer is the winning bidder at the auction contemplated hereby), and approving and authorizing Sellers to consummate the transactions contemplated hereby. Without limiting the generality of the foregoing, such order shall find and provide, among other things, that (i) the Purchased Assets sold to Buyer pursuant to this Agreement shall be transferred to Buyer free and clear of all Liens (other than Liens specifically assumed or created by Buyer), claims (other than Assumed Liabilities), encumbrances and interests (including Liens, claims, encumbrances and interests of any Governmental Body), such Liens, claims, encumbrances and interests to attach to the proceeds of sale of the Purchased Assets; (ii) Buyer has acted in “good faith” within the meaning of Section 363(m) of the Bankruptcy Code; (iii) this Agreement was negotiated, proposed and entered into by the Parties without collusion, in good faith and from arm’s length bargaining positions; (iv) the sale to Buyer of all personally identifiable data included in the Purchased Customer Data is consistent with the privacy policies applicable to such data in accordance with Section 363(b)(1)(A) of the Bankruptcy Code; (v) the Bankruptcy Court shall retain jurisdiction

to resolve any controversy or claim arising out of or relating to this Agreement, or the breach hereof as provided in Section 12.2 hereof; and (vi) this Agreement and the transactions contemplated hereby are not subject to rejection or avoidance by any chapter 7 or chapter 11 trustee of Sellers.

“Sellers” shall have the meaning set forth in the Recitals.

“Sellers Documents” shall have the meaning set forth in Section 5.1.

“Software” means, except to the extent generally available for purchase from third Persons, any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (ii) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons and (iv) all documentation including user manuals and other training documentation related to any of the foregoing, in each case, directly relating to the Purchased Assets as provided in Schedule 1.1(b).

“Tax Return” means all returns, declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes.

“Taxes” means (i) all federal, state, local or foreign taxes, charges or other assessments, including, without limitation, all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, and (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with any item described in clause (i).

“Technology” means, collectively, all designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used or useful in connection with the Purchased Assets or in the design, development, reproduction, maintenance or modification of, any of the Purchased Assets, in each case directly relating to the Purchased Assets as provided in Schedule 1.1(b).

“Termination Date” shall have the meaning set forth in Section 4.4(a).

“Trademarks” shall have the meaning set forth in Section 1.1 (in the definition of Intellectual Property).

“Trade Secrets” shall have the meaning set forth in Section 1.1 (in the definition of Intellectual Property).



“Transfer Taxes” shall have the meaning set forth in Section 11.1.

Section 1.2. Other Definitional and Interpretive Matters.

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

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

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

Exhibits/Schedules. The Exhibits and Schedules to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one Schedule shall not be deemed to have been disclosed on any other Schedule. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

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

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

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

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

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

## ARTICLE II

### PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1. Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing Buyer shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Buyer, all of Sellers' right, title and interest in, to and under the Purchased Assets. "Purchased Assets" shall mean the following assets of Sellers (but excluding Excluded Assets) as of the Closing related to the Business:

- (a) all Purchased Intellectual Property and all Documents; and
- (b) all goodwill and other intangible assets directly related to the Purchased Intellectual Property.

Section 2.2. Excluded Assets. Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to Buyer, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets. "Excluded Assets" shall mean all assets, properties, interests and rights of Sellers other than the Purchased Assets, including, but not limited to, each of the following assets:

- (a) all cash, cash equivalents, bank deposits or similar cash items of Sellers;
- (b) the Cash Payment;
- (c) all of Sellers' deposits or prepaid charges and expenses paid exclusively in connection with or relating exclusively to any Excluded Assets;
- (d) any accounts receivable and proceeds relating thereto;
- (e) all intercompany obligations, liabilities and Indebtedness, including any note Indebtedness, owed to or by Sellers to or by any Affiliates of Sellers;
- (f) any Intellectual Property rights of Sellers other than the Purchased Intellectual Property;
- (g) any (i) confidential personnel and medical records pertaining to any Employee; (ii) other books and records that Sellers is required by Law to retain or that Sellers determine are necessary or advisable to retain, including Tax Returns, financial statements, and corporate or other entity filings; provided, however, that Buyer shall have, to the extent allowed by applicable Law, the right to make copies of any portions of such retained books and records that relate to any of the Purchased Assets; (iii) minute books, stock or membership interest records and corporate seals; and (iv) documents relating to proposals to acquire the Business, including the Purchased Assets, by Persons other than Buyer;
- (h) any claim, right or interest of Sellers in or to any refund, rebate, abatement or other recovery for Taxes of Sellers, together with any interest due thereon or penalty rebate arising therefrom, and all Tax credits and other Tax attributes of Sellers;

(i) any rights, claims or causes of action of Sellers against third parties relating to assets, properties, business or operations of Sellers, other than the Purchased Assets, arising out of events occurring on or prior to the Closing Date and causes of action under Chapter 5 of Title 11 of the United States Code, and proceeds deriving therefrom;

(j) any stock or other equity interests in Sellers or in any subsidiaries of Sellers;

(k) all intercompany receivables of Sellers; and

(l) the assets set forth on Schedule 2.2.

Section 2.3. Assumption of Liabilities. On and subject to the terms and conditions of this Agreement, Buyer shall assume and become responsible for all of the Assumed Liabilities at the Closing. Buyer will not assume or have any responsibility, however, with respect to any Liabilities of Sellers not expressly included within the definition of Assumed Liabilities, including: (i) Taxes related to the Business for all Tax periods prior to and following Closing, and related to the Purchased Assets for all Tax periods (or portions thereof) ending on or prior to the Closing; (ii) any costs or expenses incurred in connection with, or related to, the administration of the Bankruptcy Case, including any accrued professional fees and expenses of attorneys, accountants, financial advisors and other professional advisors related to the Bankruptcy Case; (iii) Liabilities to the extent relating to the Excluded Assets; (iv) Liabilities and obligations of Sellers under this Agreement; (v) all intercompany obligations, liabilities and Indebtedness, including any note Indebtedness, owed by Sellers to any Affiliates of Sellers, and all intercompany rights to payments from any Affiliates of Sellers; (vi) any Employee Obligations to any Employee (past, present or future) of the Sellers; (vii) any Employee Claim; and (ix) all other liabilities and obligations for which Buyer does not expressly assume any liability (collectively, the “Excluded Liabilities”). Buyer’s assumption of the Assumed Liabilities shall in no way expand the rights or remedies of third parties against Buyer as compared to the rights and remedies which such parties would have had against Sellers had this Agreement not been consummated. From and after the Closing Date, Buyer shall pay, perform and discharge, as and when due or as may otherwise be agreed between Buyer and the obligee, all of the Assumed Liabilities. The “Assumed Liabilities” are specifically limited only to post-Closing Liabilities relating to the Purchased Assets (and expressly excludes any Liabilities relating to the Purchased Assets that arose, that accrued, or that were incurred prior to the Closing) and all Liabilities relating to the amounts required to be paid by Buyer under this Agreement.

Section 2.4. Further Conveyances and Assumptions. From time to time following the Closing, Sellers and Buyer shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Buyer and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Buyer under this Agreement and the Sellers Documents and to assure fully to Sellers and their respective Affiliates and their respective successors and assigns, the assumption of the Liabilities and obligations intended to be assumed by Buyer under this

Agreement and the Sellers Documents, and to otherwise make effective the transactions contemplated hereby and thereby.

Section 2.5. Pre- and Post-Closing and Transitional Matters.

(a) From and after Closing, Sellers shall retain full right and authority to use, enforce, pursue remedies and take actions with respect to any of the Excluded Assets. Sellers shall provide all assistance reasonably requested by Buyer to ensure a smooth transfer of the Purchased Assets at Closing. In addition, Buyer agrees to put in place auto-response rules for a specific list of corporate email and email group addresses provided by Sellers. Sellers will provide an initial list of email addresses to be configured for auto-response and will provide the content of the auto-response messages. Buyer agrees to put in place the requested auto-response rules for the initial list prior to modifying the Mail Exchange records for etoys.com and babyuniverse.com to point to its own servers. Additionally, Buyer understands that in order to facilitate the transfer of ownership for Internet domains purchased by other buyers of Sellers' assets, Sellers will need to receive emails sent to hostmaster@etoys.com through and including February 28, 2009. Buyer agrees to forward emails sent to hostmaster@etoys.com to hostmaster@parentco.com through and including February 28, 2009, and additionally Buyer and Sellers agree to assist each other as reasonably required to accomplish domain registry transfer and management tasks. Buyer shall use commercially reasonable efforts to execute Sellers' e-mail auto-response and forwarding instructions pursuant to this paragraph, but shall not be liable for any damages incurred by Sellers or any other party resulting from any failure to execute such instructions.

ARTICLE III

CONSIDERATION

Section 3.1. Purchase Price. In consideration of the transfer of all of the Purchased Assets to Buyer and the other undertakings set forth herein, Buyer will pay to Sellers Two Million One Hundred Fifty Thousand Dollars (\$2,150,000), (the "Cash Payment"). Prior to the date hereof, Buyer has deposited Two Hundred Fifteen Thousand Dollars (\$215,000) into a client trust account maintained by Pachulski Stang Ziehl & Jones LLP as a deposit relating to the Purchased Assets. At Closing, Buyer will pay Sellers, by wire transfer of immediately available funds to an account designated by Sellers, an amount equal to the Cash Payment, less the Deposit. As additional consideration for the transfer of the Purchased Assets and the undertakings set forth herein, at Closing Buyer will assume the Assumed Liabilities. The Cash Payment is referred to in this Agreement as the "Purchase Price." The Purchase Price will be paid to Sellers as provided hereunder, without offset or reduction.

ARTICLE IV

CLOSING AND TERMINATION

Section 4.1. Closing Date. Subject to the satisfaction of the conditions set forth in Section 9.1, Section 9.2 and Section 9.3 hereof (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assignment and assumption of the Assumed Liabilities provided for in Article II hereof (the “Closing”) shall take place at the Wilmington, Delaware offices of Pachulski Stang Ziehl & Jones LLP (or at such other place as the Parties may designate in writing) on February 18, 2009, or as soon thereafter as practicable following the satisfaction or waiver of the conditions set forth in Article IX (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) and no later than February 20, 2009, unless another time or date, or both, are agreed to in writing by the Parties hereto. The date on which the Closing shall be held is referred to in this Agreement as the “Closing Date,” and the Closing shall be deemed effective at the close of business on the Closing Date.

Section 4.2. Deliveries by Sellers. At the Closing, Sellers shall deliver to Buyer:

- (a) duly executed assignments of the U.S. trademark registrations and applications included in the Purchased Intellectual Property, in a form suitable for recording in the U.S. trademark office; duly executed domain name assignment agreements, in form and substance reasonably acceptable to Buyer; and general assignments of all other Purchased Assets;
- (b) the officer’s certificate required to be delivered pursuant to Section 9.1(a) and Section 9.1(b);
- (c) a certified copy of the Sale Order; and
- (d) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Buyer, as may be necessary to convey the Purchased Assets to Buyer.

Section 4.3. Deliveries by Buyer. At the Closing, Buyer shall deliver to Sellers:

- (a) the Cash Payment, less the Deposit, in immediately available funds, as set forth in Section 3.1 hereof;
- (b) duly executed assignments of the U.S. trademark registrations and applications included in the Purchased Intellectual Property, in a form suitable for recording in the U.S. trademark office; duly executed domain name assignment agreements, in form and substance reasonably acceptable to Buyer; and general assignments of all other Purchased Assets;
- (c) the officer’s certificate required to be delivered pursuant to Section 9.2(a) and Section 9.2(b) hereof;
- (d) a copy of resolutions of the sole manager of Buyer, authorizing the execution, delivery and performance hereof by Buyer, certified by the sole manager of Buyer and dated as of the Closing Date;

(e) a copy of a certificate of the Secretary of State of the State of Delaware dated within ten (10) days of the Closing, certifying that Buyer is in good standing under the Laws of the State of Delaware; and

(f) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Sellers, as may be necessary to convey the Purchased Assets to Buyer.

Section 4.4. Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by mutual written consent of Sellers and Buyer;

(b) by Sellers or Buyer, as applicable, if any of the conditions set forth in Section 9.3 shall have become incapable of fulfillment other than as a result of a breach by the Sellers or Buyer, as applicable, of any covenant or agreement contained in this Agreement, and such condition is not waived by the non-breaching party;

(c) by Buyer, if the Closing shall not have occurred on or before February 20, 2009 (the "Termination Date"); provided, however, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer, then Buyer may not terminate this Agreement pursuant to this Section 4.4(c);

(d) by Buyer, if any of the conditions to the obligations of Buyer set forth in Section 9.1 or Section 9.3 shall have become incapable of fulfillment other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement, and such condition is not waived by Buyer;

(e) by Buyer, if there shall be a material breach by Sellers of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 9.1 or Section 9.3 and which breach cannot be cured or has not been cured by the earlier of (i) 10 (ten) Business Days after the giving of written notice by Buyer to Sellers of such breach and (ii) the Termination Date;

(f) by Sellers, if any condition to the obligations of Sellers set forth in Section 9.2 or Section 9.3 shall have become incapable of fulfillment other than as a result of a breach by Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers;

(g) by Sellers, if there shall be a material breach by Buyer of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 9.2 or Section 9.3 and which breach cannot be cured or has not been cured by the earlier of (i) 10 (ten) Business Days after the giving of written notice by Sellers to Buyer of such breach and (ii) the Termination Date;

(h) by Sellers or Buyer if there shall be in effect a final nonappealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; it being agreed that the Parties hereto

shall promptly appeal any adverse determination which is not nonappealable (and pursue such appeal with reasonable diligence); or

(i) by Sellers, if the Closing shall not have occurred on or before the Termination Date; provided, however that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Sellers, then Sellers may not terminate this Agreement pursuant to this Section 4.4(i).

**Section 4.5. Procedure Upon Termination.** In the event of termination and abandonment by Buyer or Sellers, or both such Parties, pursuant to Section 4.4 hereof, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate, and the purchase of the Purchased Assets hereunder shall be abandoned, without further action by Buyer or Sellers. If this Agreement is terminated as provided herein each Party shall redeliver all documents, work papers and other material of any other Party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the Party furnishing the same. If this Agreement is terminated pursuant to Sections 4.4(a), (b), (c), (d), (e), (f) (as it relates to Section 9.3), or (h), the Deposit shall be returned to Buyer, and the Parties shall have no further obligations to one another except for any rights under Section 4.6(b) and any other obligations that, by their terms, survive the termination of this Agreement. If this Agreement is terminated pursuant to Sections 4.4(f) (as it relates to Section 9.2), (g) or (i), the Deposit shall be retained by Sellers, without prejudice to any other remedies that may be available to Sellers in law or in equity.

**Section 4.6. Effect of Termination.**

(a) In the event that this Agreement is validly terminated in accordance with Section 4.4, this Agreement shall terminate and each of the Parties shall be relieved of its respective duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Buyer or Sellers; provided, however, that the obligations of the Parties set forth in Section 4.5, Section 8.3, Section 8.5 and Article XII hereof shall survive any such termination and shall be enforceable hereunder.

(b) Except for fraud or willful misconduct by Sellers, Buyer acknowledges and agrees that the return of the Deposit, if applicable pursuant to the provisions of Section 4.5, shall be the sole and exclusive remedy of Buyer with respect to any failure by Sellers to consummate the transactions contemplated by this Agreement.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby jointly and severally represent and warrant to Buyer that:

**Section 5.1. Authorization of Agreement.** Subject to the entry of the Sale Order:  
(a) Sellers each have all requisite power, authority and legal capacity to execute and deliver this Agreement and Sellers each have all requisite power, authority and legal capacity to execute and deliver each other agreement, document, or instrument or certificate contemplated by this