

**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**

**FACULTY LOUNGE PARTNERS**

**Dated as of February \_\_, 2009**

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of February \_\_, 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"), 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, and My Twinn, "Sellers"), and FACULTY LOUNGE PARTNERS, a New Jersey partnership ("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 and 365 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, 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.

“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.

“Bidding Procedures Order” “Bidding Procedures Order” means that certain order of the Bankruptcy Court, entitled “Order (A) Approving Sale Procedures and Bid Protections, Including Break-Up Fee(s), 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),” entered on January 16, 2009.

“Business” means the business of Sellers, including the delivery of products, content and new media resources to expectant parents and families.

“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 6.1.

“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.

“Competing Bid” shall have the meaning set forth in Section 7.1.

“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 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 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 used or useful by Sellers 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 with the foregoing (collectively, “Trademarks”), (iii) domain names; (iv) copyrights, including copyrights in computer software, (v) confidential and proprietary information, including trade secrets and know-how (“Trade Secrets”), (vi) licenses relating to any of the foregoing and (vii) registrations and applications for registration of the foregoing.

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

“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 business, assets, results of operations or financial condition of Sellers or the Business (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.

“Permits” means any approvals, authorizations, consents, licenses, permits or certifications of a Governmental Body.

“Permitted Exceptions” means any Liens or other imperfections in title which would not materially interfere with the use of the Purchased Assets.



“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.

“Purchase Price” shall have the meaning set forth in Section 3.2.

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

“Purchased Intellectual Property” means all Intellectual Property and all related Software and Technology set forth in Schedule 1.1.

“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 and Permitted Exceptions), 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 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 13.2 hereof; and (v) 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, relating to the Purchased Assets.

“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.

“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 12.1.

## 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 of the domain names (the “Business Domain Names”) set forth on Schedule 2.1(a) relating to the Business conducted by the Sellers through such websites (such portion of the Business, but expressly excluding any operations of the Business, hereinafter referred to as the “Domain Business”);

(b) all Purchased Intellectual Property used in connection with or otherwise related to the Business Domain Names and/or the Domain Business, including the Trademarks identified Schedule 2.1(b), and all Documents that are used in, held for use in or intended to be used in, or that arise out of, such Purchased Intellectual Property; and

(c) subject to the provisions of Section 363(b)(1)(A) of the Bankruptcy Code, all goodwill and other intangible assets associated with the Purchased Assets identified in Sections 2.1(a) and (b).

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 each of the following assets:

- (a) all cash, cash equivalents, bank deposits or similar cash items of Sellers;
- (b) the Cash Payment and all of Sellers’ rights under this Agreement and/or other documents and agreements executed in connection with the transactions provided for herein;
- (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;
- (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; and
- (j) any equity interests in any subsidiaries of Sellers.

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; (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 only (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 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 shall permit and authorize Sellers to use and access from the Closing Date through \_\_\_\_\_, all Purchased Intellectual Property used in connection with or otherwise related to the Business Domain Names and/or the Domain Business, if needed by Sellers for liquidation, winding up, tax reporting or other proper purposes; such use and access shall be provided by the Buyer to the Sellers at no cost. In accordance with Section 4.2 hereof, Sellers shall execute a domain name transfer or assignment agreement for each of the Business Domain Names and do such other things as are reasonably required to securely transfer the Business Domain Names to Buyer. In addition, Sellers shall instruct the registrar of record designated

therein to transfer the Business Domain Names to Buyer within one Business day after the Closing Date; however, Buyer hereby acknowledges that Sellers have no control over when such transfer by the registrar of the Business Domain Names to Buyer will occur or be effected.

### 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 Two Hundred Fifty Thousand Dollars (\$250,000) (the "Cash Payment").

Section 3.2 Payment of Purchase Price Within one Business Day after entry of the Bidding Procedures Order, Buyer shall wire Twenty-Five Thousand Dollars (\$25,000) (the "Deposit") into a client trust account maintained by Pachulski Stang Ziehl & Jones LLP. 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 plus all amounts owed in respect of the Assumed Liabilities 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 except as provided in Section 3.1.

### 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 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) as soon as practicable following the satisfaction or waiver of the conditions set forth in Article X (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 a date that is two (2) Business Days after the Sale Order becomes a Final Order, 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 as entered by the Bankruptcy Court; 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 3.2 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, and general assignments of all other Purchased Intellectual Property;

(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 Buyer, authorizing the execution, delivery and performance hereof by Buyer, certified by an authorized officer of Buyer and dated as of the Closing Date;

(e) a copy of a certificate of the Secretary of State of the State of New Jersey dated no earlier than ten (10) days before the Closing, certifying that Buyer is in good standing under the Laws of the State of New Jersey, if applicable based on the Buyer's status as a partnership; 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 by the close of business on the date which is five (5) Business Days after the Sale Order becomes a Final Order (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 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 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 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 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; or

(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).

**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) or (e), the Deposit shall be returned to Buyer, and the Parties shall have no further obligations to one another except for any obligations that, by their terms, survive the termination of this Agreement. If this Agreement is terminated pursuant to Sections 4.4(f) or (g), 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 7.1 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 Agreement or to be executed by Sellers in connection with the consummation of the transactions contemplated by this Agreement (the "Sellers Documents"), to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby; and (b) this Agreement has been, and each of the Sellers Documents will be at or prior to the Closing, duly and validly executed and delivered by Sellers and (assuming the due authorization, execution and delivery by the other Parties hereto and thereto and the entry of the Sale Order) this Agreement constitutes, and each of the Sellers Documents when so executed and delivered will constitute, legal, valid and binding obligations of Sellers, enforceable against Sellers in accordance with their respective terms.

Section 5.2 Title to Purchased Assets. Sellers own each of the Purchased Assets, and Buyer will be vested with good title to such Purchased Assets, free and clear of all Liens to the fullest extent permissible under Section 363(f) of the Bankruptcy Code.

Section 5.3 Intellectual Property. To Sellers' knowledge, Sellers own all right, title and interest to, or are licensees with respect to, the Purchased Intellectual Property, and can convey such property free and clear of Liens, other than Permitted Exceptions, pursuant to the Sale Order. To the knowledge of Sellers, (i) no Person is engaging in any activity that infringes any Purchased Intellectual Property and (ii) no claim has been asserted to any Seller that the use of any Purchased Intellectual Property or the operation of the Business infringes or violates the Intellectual Property of any third party. The Purchased Intellectual Property and the rights under the Purchased Contracts include the rights to use all Intellectual Property required to operate the Business.

Section 5.4 No Contracts. There are no oral or written licenses, sublicenses or other agreements to use, access or otherwise related to any of the Purchased Assets, including the Purchased Intellectual Property.

Section 5.5 Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement, and no Person is entitled to any fee or commission or like payment from Buyer or Sellers in respect thereof, in each case other than as set forth on Schedule 5.5.

Section 5.6 Litigation. Except for the Bankruptcy Cases, there is no suit, action, litigation, arbitration proceeding or governmental proceeding or audit, including appeals and applications for review, in progress, pending or, to the best of Sellers' knowledge, threatened against or relating to Sellers or any of the Purchased Assets, or any judgment, decree, injunction, deficiency, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of Sellers to enter into this Agreement or to consummate the transactions contemplated hereby and Sellers are not aware of any existing ground on which any such action, suit or proceeding may be commenced with any reasonable likelihood of success.

Section 5.7 Compliance with Laws. To Sellers' knowledge, Sellers have conducted and are presently conducting the Business in material compliance with all applicable Laws.

Section 5.8 Permits. Schedule 5.8 sets forth all Permits used by Sellers in the Business. Sellers are in compliance with the material terms of all such Permits, and all such Permits are valid and in full force and effect, and no proceeding is pending or, to the knowledge of Sellers, threatened, the object of which is to revoke, limit or otherwise affect any such Permit.

Section 5.9 Sellers' Representations and Warranties Generally. Sellers' representations and warranties herein (including as made or qualified in the Schedules hereto) are made by the respective Sellers in a corporate or limited liability company capacity, without personal liability to Sellers' directors, officers, members or counsel, or Sellers' signatory, other than with respect to fraudulent or criminal activity with respect to the transactions contemplated hereby.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers that:

Section 6.1 Organization and Good Standing. Buyer is a partnership validly existing and in good standing under the Laws of its state of New Jersey.

Section 6.2 Authorization of Agreement. Buyer has full power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Buyer in connection with the consummation of the transactions contemplated hereby and thereby (the "Buyer Documents"), and to consummate the transactions contemplated hereby and thereby. The execution, delivery

and performance by Buyer of this Agreement and each Buyer Document have been duly authorized by all necessary action on behalf of Buyer. This Agreement has been, and each Buyer Document will be at or prior to the Closing, duly executed and delivered by Buyer and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Buyer Document when so executed and delivered will constitute, legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 6.3 Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer in connection with the transactions contemplated by this Agreement and no person is entitled to any fee or commission or like payment in respect thereof.

Section 6.4 Financial Capability. Buyer (i) has, as of the date hereof, and will have as of the Closing, sufficient funds available to pay the Purchase Price and any expenses incurred by Buyer in connection with the transactions contemplated by this Agreement; (ii) has, as of the date hereof, and will have at Closing, the resources and capabilities (financial or otherwise) to perform its obligations hereunder and (iii) has not, as of the date hereof, and will not have as of the Closing, incurred any obligation, commitment, restriction or Liability of any kind which would impair or adversely affect such resources and capabilities.

Section 6.5 Condition of the Business. Notwithstanding anything contained in this Agreement to the contrary, Buyer acknowledges and agrees that Sellers are not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Sellers in Article V hereof (as modified by the Schedules hereto), and Buyer acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets and the Business are being transferred on a "WHERE IS" and, as to condition, "AS IS" basis and "WITH ALL FAULTS." Without in any way limiting the foregoing, Sellers hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Purchased Assets.

## ARTICLE VII

### BANKRUPTCY COURT APPROVAL

#### Section 7.1 Competing Transaction.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration of Sellers of higher and better competing bids (each a "Competing Bid"). From the date hereof (and any prior time) and until the completion of the auction contemplated hereby or as otherwise directed by the Bankruptcy Court, Sellers are permitted to cause their respective representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates, agents and representatives) in connection with any sale or other disposition of the Purchased Assets. In

addition, Sellers shall have the responsibility and obligation to respond to any inquiries or offers to purchase all or any part of the Purchased Assets and perform any and all other acts related thereto which are required under the Bankruptcy Code or other applicable law, including supplying information relating to the Business and the assets of Sellers to prospective buyers.

(b) Following completion of the auction contemplated hereby, Sellers are not permitted to cause their respective representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates, agents and representatives) in connection with any sale or other disposition of the Purchased Assets. In addition, unless otherwise directed by the Bankruptcy Court, Sellers shall not after completion of the auction contemplated herein respond to any inquiries or offers to purchase all or any part of the Purchased Assets or perform any other acts related thereto, including supplying information relating to the Business and the assets of Sellers to prospective buyers.

Section 7.2 Bankruptcy Court Filing. Sellers shall file the Sale Order with the Bankruptcy Court and seek entry thereof. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of demonstrating that Buyer is a “good faith” Buyer under Section 363(m) of the Bankruptcy Code. In the event the entry of the Sale Order shall be appealed, Sellers shall use its reasonable efforts to defend such appeal.

## ARTICLE VIII

### COVENANTS

Section 8.1 Access to Information. Sellers agree that, prior to the Closing Date, Buyer shall be entitled, through its officers, employees and representatives (including its legal advisors and accountants), to make such investigation of the properties, businesses and operations of the Business and such examination of the books, records and financial condition of the Business, the Purchased Assets and the Assumed Liabilities as it reasonably requests and to make extracts and copies of such books and records. Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances and shall be subject to restrictions under applicable Law. Sellers shall cause their respective officers, employees, consultants, agents, accountants, attorneys and other representatives to cooperate with Buyer and Buyer’s representatives in connection with such investigation and examination, and Buyer and its representatives shall cooperate with Sellers and their respective representatives and shall use their reasonable efforts to minimize any disruption to the Business. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require Sellers or any of their respective Affiliates to disclose information subject to attorney-client privilege or conflict with any confidentiality obligations to which Sellers or any of their respective Affiliates is bound.

Section 8.2 Further Assurances. Each of Sellers and Buyer shall use reasonable efforts to (a) take all actions necessary or appropriate to consummate the transactions contemplated by this Agreement and (b) cause the fulfillment at the earliest practicable date of

all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement.

Section 8.3 Confidentiality.

(a) Buyer acknowledges that the confidential information provided to it in connection with this Agreement, including under Section 8.1, and the consummation of the transactions contemplated hereby, is subject to the terms and conditions of that certain letter agreement, by and among Buyer and Sellers, dated as of \_\_\_\_\_, 2009.

(b) Following the completion of the auction contemplated hereby, Sellers agree to maintain, and shall cause their respective Affiliates to maintain, unless disclosure is required by applicable Law, the confidentiality of any confidential information regarding the Business which is in Sellers' or any of their respective Affiliate's possession or which Sellers or any of their respective Affiliates are aware of. Sellers hereby further agree, unless disclosure is required by applicable Law, to take all appropriate steps, and to cause each of their respective Affiliates to take all appropriate steps, to safeguard such confidential information and to protect it against disclosure, misuse, espionage, loss and theft. In furtherance and not in limitation of the foregoing, Sellers shall not, and shall cause their respective Affiliates not to, unless required by applicable Law, disclose to any Person (a) any confidential information regarding the Business or (b) any of the discussions or negotiations conducted in connection with this Agreement. In the event Sellers or any of their respective Affiliates are obligated by a Law or an Order to disclose any confidential information regarding the Business or the Buyer, Sellers, on their own behalf and on behalf of their respective Affiliates, as the case may be, shall promptly notify Buyer in writing, which notification shall include the nature of the applicable Law or Order and the extent of the required disclosure, so that the Buyer may seek an appropriate protective order at its own expense or waive compliance with the provisions of this Section 8.3. Notwithstanding anything in this Section 8.3 to the contrary, unless disclosure is required by applicable Law, the confidentiality of any Trade Secrets of the Business or Buyer shall be maintained for so long as such Trade Secrets continue to be entitled to protection as Trade Secrets of the Business and Buyer, respectively.

Section 8.4 Preservation of Records. Sellers and Buyer agree that each of them shall preserve and keep the records held by it or their respective Affiliates relating to the Business for a period of three (3) years from the Closing Date and shall make such records and personnel available to the other as may be reasonably required by such party in connection with, among other things, any insurance claims by, Legal Proceedings or Tax audits against or governmental investigations of Sellers or Buyer or any of their Affiliates or in order to enable Sellers or Buyer to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event Sellers, on the one hand, or Buyer, on the other hand, wish to destroy such records after that time, such Party shall first give ninety (90) days' prior written notice to the other and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within that ninety (90) day period, to take possession of the records within one hundred and eighty (180) days after the date of such notice.

Section 8.5 Publicity. Neither Sellers, on the one hand, nor Buyer, on the other hand, shall issue any press release or public announcement concerning this Agreement or the

transactions contemplated hereby without obtaining the prior written approval of the other Party hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Buyer or Sellers, disclosure is otherwise required by applicable Law or with respect to filings to be made with the Bankruptcy Court in connection with this Agreement. Notwithstanding the foregoing, the Parties may publicly disclose the existence of this Agreement.

Section 8.6 Operation of Business. Until the Closing, Sellers shall use commercially reasonable efforts, except as otherwise required, authorized or restricted pursuant to an Order of the Bankruptcy Court, to operate the Business in the Ordinary Course of Business. Sellers shall use commercially reasonable efforts to (A) preserve intact their respective business organizations, (B) maintain the Business, (C) keep available the services of their respective officers and employees, (D) maintain satisfactory relationships with licensors, licensees, suppliers, contractors, distributors, consultants, customers and others having business relationships with Sellers in connection with the operation of the Business and (E) pay all of their post-petition obligations in the Ordinary Course of Business. Sellers also shall continue to operate the websites that constitute the Purchased Assets in the Ordinary Course of Business until Closing. Without limiting the generality of the foregoing, and except (i) as otherwise expressly provided in or contemplated by this Agreement, or (ii) required, authorized or restricted pursuant to an Order of the Bankruptcy Court, on or prior to the Closing Date, Sellers may not, without the prior written consent of Buyer:

- (a) modify in any manner the compensation of any of the Employees, or accelerate the payment of any such compensation (other than in the Ordinary Course of Business or such that the liability associated with such modification is excluded from the Assumed Liabilities);
- (b) engage any new Employee other than in the Ordinary Course of Business;
- (c) sell, lease or otherwise dispose of, mortgage, hypothecate or otherwise encumber any Purchased Asset (other than in the Ordinary Course of Business);
- (d) fail to pay any required filing, processing or other fee, and use commercially reasonable efforts to maintain the validity of Sellers' rights in, to or under any Purchased Intellectual Property;
- (e) fail to use commercially reasonable efforts to maintain all Permits of Sellers, including those used in the operation of the Business;
- (f) make any unusual or extraordinary efforts to collect any outstanding accounts receivable or intercompany obligation, liability or Indebtedness, give any discounts or concessions for early payment of such accounts receivable or intercompany obligation, liability or Indebtedness, other than the usual discounts given by the Business in the Ordinary Course of Business and make any sales of, or convey any interest in, any accounts receivable or intercompany obligation, liability or Indebtedness to any third party;
- (g) engage in any transaction with any Affiliate, subsidiary, shareholder, officer or director of any Seller (other than in the Ordinary Course of Business), incur or assume

any long term or short term debt with or on behalf of any such Person or guarantee, endorse or otherwise be liable or responsible (whether directly, indirectly, contingently or otherwise) for the obligations of any such Person;

- (h) make any change in their method of accounting, except in accordance with GAAP;
- (i) enter into any Contract that would survive the Closing; and
- (j) agree, whether in writing or otherwise, to do any of the foregoing.

## ARTICLE IX

### CONDITIONS TO CLOSING

Section 9.1 Conditions Precedent to Obligations of Buyer. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Buyer in whole or in part to the extent permitted by applicable Law):

(a) The representations and warranties of Sellers set forth in this Agreement qualified as to materiality shall be true and correct and those not so qualified shall be true and correct in all material respects, at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties qualified as to materiality shall be true and correct and those not so qualified shall be true and correct in all material respects, on and as of such earlier date); and Buyer shall have received a certificate signed by an authorized officer of each Seller, dated the Closing Date, to the forgoing effect in his or her corporate or limited liability company (not personal) capacity (it being acknowledged and agreed that the signatory to such certificate shall have no personal liability as a result of signing such certificate);

(b) Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them prior to the Closing Date, and Buyer shall have received a certificate signed by an authorized officer of each Seller, dated the Closing Date, to the forgoing effect in his or her corporate or limited liability company (not personal) capacity (it being acknowledged and agreed that the signatory to such certificate shall have no personal liability as a result of signing such certificate);

(c) Sellers shall have delivered, or caused to be delivered, to Buyer, all of the items set forth in Section 4.2, or such items are otherwise satisfied as of the Closing; and

(d) From the date hereof through the Closing Date, (i) there shall have been no Material Adverse Effect and (ii) Sellers shall have delivered to Buyer a certificate (executed in corporate or limited liability company capacity, without liability to Sellers' signatory), dated as of the Closing Date, to such effect.

Section 9.2 Conditions Precedent to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part to the extent permitted by applicable Law):

(a) The representations and warranties of Buyer set forth in this Agreement qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, on and as of such earlier date); and Sellers shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect in his or her corporate or limited liability company or partnership (not personal) capacity (it being acknowledged and agreed that the signatory to such certificate shall have no personal liability as a result of signing such certificate);

(b) Buyer shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Buyer on or prior to the Closing Date, and Sellers shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect in his or her corporate or limited liability company or partnership (not personal) capacity (it being acknowledged and agreed that the signatory to such certificate shall have no personal liability as a result of signing such certificate);

(c) Sellers shall have received the Deposit; and

(d) Buyer shall have delivered, or caused to be delivered, to Sellers the Cash Payment in accordance with Section 3.1.

Section 9.3 Conditions Precedent to Obligations of Buyer and Sellers. The respective obligations of Buyer and Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Buyer and Sellers in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(b) the Bankruptcy Court shall have entered the Bidding Procedures Order, in form and substance acceptable to Sellers and Buyer, by no later than January 30, 2009;

(c) the Bankruptcy Court shall have entered the Sale Order, in form and substance acceptable to Sellers and Buyer, by no later than February 6, 2009; and

(d) the Sale Order shall have become a Final Order (unless this condition shall have been waived in writing by Buyer).



Section 9.4 Frustration of Closing Conditions. Neither Sellers nor Buyer may rely on the failure of any condition set forth in Section 9.1, Section 9.2 or Section 9.3, as the case may be, if such failure was caused by such Party's failure to comply with any provision of this Agreement.

## ARTICLE X

### NO SURVIVAL

Section 10.1 No Survival of Representations and Warranties. The Parties hereto agree that the representations and warranties contained in this Agreement shall not survive the Closing hereunder, and none of the Parties shall have any liability to each other after the Closing for any breach thereof. The Parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive the Closing hereunder, and each Party hereto shall be liable to the other after the Closing for any breach thereof.

## ARTICLE XI

### TAX MATTERS

Section 11.1 Transfer Taxes. Buyer and Sellers shall seek to include in the Sale Order a provision that provides that the transfer of the Purchased Assets shall be free and clear of any sales, use, stamp, documentary stamp, filing, recording, transfer or similar fees or taxes or governmental charges (including any interest and penalty thereon) payable in connection with the transactions contemplated by this Agreement ("Transfer Taxes") under Bankruptcy Code Section 1146(c). If not included, Buyer shall be responsible for all Transfer Taxes.

Section 11.2 Prorations. All personal property Taxes or similar ad valorem obligations levied with respect to the Purchased Assets for any taxable period that includes the Closing Date and ends after the Closing Date, whether imposed or assessed before or after the Closing Date, shall be prorated between Sellers and Buyer as of 12:01 a.m. (New York time) on the day following the Closing Date. Such Taxes that first become payable in calendar year 2009 shall be apportioned between Sellers and Buyer using the calendar-year method. Under the calendar-year method, any Tax bill that first becomes due and payable during a calendar year is deemed to be related to that entire calendar year. Sellers' share of the Tax bills first becoming due and payable during 2008 shall be determined by multiplying the sum of the 2008 Tax bills by a fraction, the numerator of which shall be the number of days from and including January 1 to, and including, the Closing Date, and the denominator of which shall be 365. Buyer's share shall be the aggregate amount of all such bills less Sellers' share. If the exact amount of any personal property Taxes is not known on the Closing Date, the apportionment shall be based upon a reasonable amount, without subsequent adjustment.

Section 11.3 Purchase Price Allocation. Within sixty (60) days after the Closing Date, Buyer and Sellers will agree to a certificate of allocation detailing the allocation of the Purchase Price among the Purchased Assets. If required by applicable law, Buyer and Sellers will each file an Internal Revenue Service Form 8594 "Asset Acquisition Statement under Section 1060" at the times and in the manner as required by Treasury Regulation 1.1060-1 consistent with such certificate of allocation. The certificate of allocation will be conclusive and binding on the

Parties for all purposes, including reporting and disclosure requirements under the Code and any foreign, state, or local Tax authority.

## ARTICLE XII

### MISCELLANEOUS

Section 12.1 Expenses. Except as otherwise provided herein, each of Sellers and Buyer shall bear their own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

Section 12.2 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.6 hereof; provided, however, that if the Bankruptcy Case has closed, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware and any appellate court thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereto hereby consents to process being served by any Party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 12.6.

Section 12.3 Waiver of Right to Trial by Jury. Each Party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

Section 12.4 Entire Agreement; Amendments and Waivers. This Agreement (including the Schedules and Exhibits hereto) represents the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought or, if such amendment, supplement, modification or waiver can be so construed, by both Parties. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party



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

D.E. Shaw Laminar Lending 3 (C), L.L.C.  
c/o D.E. Shaw & Co., L.P.  
120 West 45th Street, 39th Floor  
New York, New York 10036  
Attention: Sarah Johnson  
E-mail: Sarah.Johnson@deshaw.com  
Telecopier: (212)845-1833  
Attention: Debbie Blank  
Telecopier: (713) 292-5454  
E-mail: [REDACTED]

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

Klee, Tuchin, Bogdanoff & Stern LLP  
1999 Avenue of the Stars, 39th Floor  
Los Angeles, California 90067  
Attn: Michael L. Tuchin  
Telecopier: (310) 407-9090  
E-mail: MTuchin@ktbslaw.com

If to Buyer, to:

FACULTY LOUNGE PARTNERS  
35 Cameo Drive  
Cherry Hill, New Jersey 08003  
Attn: Ari Goldberger, Esq.  
Telecopier: [REDACTED]  
E-mail: \_\_\_\_\_

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

Michael Bernstein, Esq.  
Arnold & Porter LLP  
555 Twelfth Street  
Washington, DC 20004  
Telecopier: [REDACTED]  
E-mail: \_\_\_\_\_

Section 12.7 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 12.8 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Sellers, on the one hand, or Buyer, on the other hand, (by operation of law or otherwise) without the prior written consent of the other Parties hereto and any attempted assignment without the required consents shall be void; provided, however, that Buyer may assign any or all of its rights, interests, and obligations hereunder to one or more of its Affiliates, provided, further, however, no such assignment shall relieve Buyer of its obligations hereunder. No assignment of any obligations hereunder shall relieve the Parties hereto of any such obligations. Upon any such permitted assignment, the references in this Agreement to Buyer shall also apply to any such assignee unless the context otherwise requires.

Section 12.9 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile or electronic mail), each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

**SELLERS:**

eTOYS DIRECT 1, LLC

By: eToys Direct, Inc.,  
its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE PARENT COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BABYUNIVERSE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

eTOYS DIRECT, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

POSHTOTS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

DREAMTIME BABY, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MY TWINN, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

eTOYS DIRECT 2, LLC

By: eToys Direct, Inc.,  
its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

eTOYS DIRECT 3, LLC

By: eToys Direct, Inc.,  
its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GIFT ACQUISITION, L.L.C.

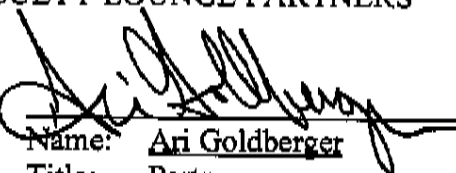
By: eToys Direct, Inc.,  
its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

**BUYER:**

FACULTY LOUNGE PARTNERS

By:   
Name: Ari Goldberger  
Title: Partner

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]



SCHEDULE 2.1(a)

BUSINESS DOMAIN NAMES

**toys.com\***  
toys.org  
toyz.com  
babyshades.com  
babytv.com  
bestoys.com  
birthday.net  
birthdays.com  
birthdays.net  
birthdays.org  
brainplay.com  
cozybaby.com  
ebirthdays.com  
e-birthdays.com  
e-birthdays.net  
ekid.com  
ekids.com  
eparties.com  
epregnancy.com  
happybirthdays.com  
hobbies.com  
ibabygear.com  
itoys.com  
ittybittees.com  
maternityuniverse.com  
mybabytv.com  
pinata.com  
playtimebaby.com  
playtimekids.com  
toygiftshop.com  
toyregistry.com  
toysearch.com  
toysearch.net  
toyselect.com  
toystoystoys.com  
toytown.com  
toywizard.com  
twinns.com  
twinns.net  
twinns.org  
wegetoys.com  
wegettoys.com

\* The Buyer attributes 90% of the Purchase Price to the Business Domain Names noted above with an asterisk – namely the toys.com domain name.

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]