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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

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**FORM 8-K**

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**CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): **September 29, 2017**

**Hooker Furniture Corporation**

(Exact Name of Registrant as Specified in Its Charter)

**Virginia**  
(State or other jurisdiction  
of incorporation)

**000-25349**  
(Commission  
File Number)

**54-0251350**  
(IRS Employer  
Identification No.)

**440 East Commonwealth Boulevard**  
**Martinsville, Virginia**  
(Address of Principal Executive Offices)

**24112**  
(Zip Code)

Registrant's Telephone Number, Including Area Code **(276) 632-0459**

(Former Name or Former Address, if Changed Since Last Report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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## Item 1.01 Entry into a Material Definitive Agreement

On September 29, 2017, Hooker Furniture Corporation (the “Company”) and its wholly owned subsidiaries, Bradington-Young, LLC, Sam Moore Furniture LLC and Home Meridian Group, LLC (together with the Company, the “Borrowers”), entered into a second amended and restated loan agreement (the “Amended and Restated Loan Agreement”) with Bank of America, N.A. (“BofA”) in connection with the completion of the acquisition discussed in Item 2.01 below. The Loan Agreement amends and restates the amended and restated loan agreement that the Company, Bradington-Young, LLC and Sam Moore Furniture LLC entered into with BofA on February 1, 2016.

The Company’s existing \$30 million unsecured revolving credit facility (the “Existing Revolver”), \$41 million unsecured term loan (the “Existing Unsecured Term Loan”), and \$19 million term loan secured by a security interest in certain Company-owned life insurance policies (the “Existing Secured Term Loan”) all remain outstanding under the Amended and Restated Loan Agreement. In addition to these facilities, the Amended and Restated Loan Agreement provides the Borrowers with a new \$12 million unsecured term loan (the “New Unsecured Term Loan”).

Amounts outstanding under the New Unsecured Term Loan will bear interest at a rate, adjusted monthly, equal to the then current LIBOR monthly rate plus 1.50%. The Borrowers must repay the principal amount borrowed under the New Unsecured Term Loan in monthly installments of approximately \$143,000, together with any accrued interest, until the full amount borrowed is repaid or until the earlier of September 30, 2022 and the expiration of the Existing Revolver, at which time all amounts outstanding under the New Unsecured Term Loan will become due and payable. The Borrowers may prepay the outstanding principal amount under the New Unsecured Term Loan, in full or in part, on any interest payment date without penalty. On September 29, 2017, the Borrowers borrowed the full \$12 million available under the New Unsecured Term Loan.

Under the Amended and Restated Loan Agreement, the sublimit under the Existing Revolver available for the issuance of letters of credit remains \$4 million. Any amounts outstanding under the Existing Revolver will continue to bear interest at a rate, adjusted monthly, equal to the then current LIBOR monthly rate plus 1.50%. The Borrowers must also continue to pay a quarterly unused commitment fee that is based on the average daily amount of the facility utilized during the applicable quarter.

The outstanding principal amount borrowed under the Existing Unsecured Term Loan will continue to bear interest at a rate, adjusted monthly, equal to the then current LIBOR monthly rate plus 1.50%. The outstanding principal amount borrowed under the Existing Secured Term Loan will continue to bear interest at a rate, adjusted monthly, equal to the then current LIBOR monthly rate plus 0.50%. The Borrowers must continue to repay the principal amount borrowed under the Existing Unsecured Term Loan in monthly installments of approximately \$490,000, together with any accrued interest, until the full amount borrowed is repaid or until February 1, 2021, at which time all amounts outstanding under Existing Unsecured Term Loan will become due and payable. The Borrowers must continue to pay the interest accrued on the principal amount borrowed under Secured Term Loan on a monthly basis until the full principal amount borrowed is repaid or until February 1, 2021, at which time all amounts outstanding under the Existing Secured Term Loan will become due and payable. The Borrowers may prepay the outstanding principal amount borrowed under either the Existing Unsecured Term Loan or the Existing Secured Term Loan, in full or in part, on any interest payment date without penalty.

Under the Amended and Restated Loan Agreement, any accrued and unpaid interest on the Existing Revolver, the Existing Unsecured Term Loan and the Existing Secured Term Loan that remained unpaid as of September 29, 2017 became due and payable by the Borrowers on October 1, 2017. Similarly, any accrued and unpaid letter of credit fees that remained unpaid as of September 29, 2017 became due and payable by the Borrowers on October 1, 2017. As of September 29, 2017, the principal amounts outstanding under the Existing Unsecured Term Loan and the Existing Secured Term Loan were approximately \$26,726,190 and \$17,079,417, respectively.

The Amended and Restated Loan Agreement includes customary representations and warranties and requires the Borrowers to comply with certain customary covenants, including, among other things, the following financial covenants on a consolidated basis: (i) maintaining a ratio of funded debt to EBITDA not exceeding a specified amount and (ii) maintaining a basic fixed charge coverage ratio equal to or exceeding a specified range. The agreement also limits the right of the Borrowers to make capital expenditures, to incur other indebtedness and to create liens upon their assets, subject to certain exceptions. Under the Amended and Restated Loan Agreement, the Borrowers are no longer required to maintain, on a consolidated basis, a specified minimum level of tangible net worth.

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The Amended and Restated Loan Agreement does not restrict the Company's ability to pay cash dividends on, or repurchase, shares of its common stock, subject to the Company's compliance with the financial covenants discussed above.

The foregoing description of the Amended and Restated Loan Agreement is qualified in its entirety by the full text of the same, which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

**Item 2.01 Completion of Acquisition or Disposition of Assets**

On September 29, 2017, the Company completed the previously announced acquisition (the "Acquisition") of substantially all of the assets of Shenandoah Furniture, Inc. ("Shenandoah") pursuant to the Asset Purchase Agreement the Company and Shenandoah entered into on September 6, 2017 (the "Asset Purchase Agreement"). Upon completion, the Company paid \$32.65 million in cash (the "Cash Consideration") and issued 176,018 shares of the Company's common stock (the "Stock Consideration") to the shareholders of Shenandoah as consideration for the Acquisition. The Cash Consideration included an additional payment of approximately \$650,000 pursuant to working capital adjustments provided for in the Asset Purchase Agreement. The number of shares of common stock issued at closing for the Stock Consideration was determined by reference to the mean closing price of the Company's common stock for the ten trading days immediately preceding the business day preceding the closing date (\$45.45).

The representations, warranties and covenants included in the Asset Purchase Agreement were made solely for purposes of the agreement and may be subject to important qualifications and limitations agreed to by the parties in connection with negotiating the terms of the Asset Purchase Agreement, including exceptions set forth on confidential disclosure schedules. Accordingly, the Company's shareholders should not rely on such representations, warranties and covenants as characterizations of the actual state of related facts or circumstances, and should bear in mind that such representations, warranties and covenants were made solely for the benefit of the parties to the Asset Purchase Agreement, were negotiated for purposes of allocating contractual risk among such parties and may be subject to contractual standards of materiality that differ from those generally applicable to shareholders. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date hereof and any such subsequent information may not be fully reflected in the Company's public disclosures.

The foregoing description of the Asset Purchase Agreement and Acquisition is qualified in its entirety by the full text of the Asset Purchase Agreement, which is filed as Exhibit 2.1 to this Current Report on Form 8-K and incorporated herein by reference.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of the Registrant**

The information disclosed in Item 1.01 above is incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities**

The issuance of the Stock Consideration has not been and will not be registered under the Securities Act of 1933, as amended, and was conducted in reliance on the exemption for nonpublic offerings provided by Rule 506 of Regulation D promulgated thereunder.

**Item 9.01 Financial Statements and Exhibits**

(a) Financial Statements of Business Acquired

The financial statements required by this Item will be filed by an amendment to this Current Report on Form 8-K no later than 71 calendar days after the date this Current Report on Form 8-K is required to be filed.

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(b) Pro Forma Financial Information

The pro forma financial information required by this Item will be filed by amendment to this Current Report on Form 8-K no later than 71 calendar days after the date this Current Report on Form 8-K is required to be filed.

(d) Exhibits

2.1\* [Asset Purchase Agreement, dated as of September 6, 2017, by and among Hooker Furniture Corporation, Shenandoah Furniture Corporation, Gideon C. Huddle and Candace H. Payne \\*\\*](#)

10.1\* [Second Amended and Restated Loan Agreement, dated as of September 29, 2017, between Bank of America, N.A. and Hooker Furniture Corporation, Bradington-Young, LLC, Sam Moore Furniture LLC and Home Meridian Group, LLC](#)

\* Filed herewith.

\*\* Pursuant to Rule 601(b)(2) of Regulation S-K, the Company agrees to furnish supplementally to the Securities and Exchange Commission, upon request, any omitted schedules or similar attachments to Exhibit 2.1.

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**HOOKER FURNITURE CORPORATION**

By: /s/ Paul A. Huckfeldt  
Paul A. Huckfeldt  
Senior Vice President – Finance and Accounting  
Chief Financial Officer

Date: September 29, 2017

**ASSET PURCHASE AGREEMENT**

**by and among**

**Hooker Furniture Corporation,**

**as Buyer**

**and**

**Shenandoah Furniture, Inc.,**

**as Seller**

**and**

**Gideon C. Huddle and Candace H. Payne,**

**as Shareholders**

**Dated September 6, 2017**

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### EXHIBITS

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Exhibit B	-	Form of Bill of Sale
Exhibit C	-	Form of Assignment and Assumption Agreement
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Pursuant to Rule 601(b)(2) of Regulation S-K, Hooker Furniture Corporation agrees to furnish supplementally to the Securities and Exchange Commission, upon request, any omitted schedules or similar attachments to Exhibit 2.1.

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is dated September 6, 2017, by and among Hooker Furniture Corporation, a Virginia corporation ("Buyer"); Shenandoah Furniture, Inc., a Virginia corporation ("Seller"); Gideon C. Huddle, a resident of the Commonwealth of Virginia ("G.C. Huddle"); and Candace H. Payne, a resident of the State of North Carolina ("C.H. Payne") (G.C. Huddle and C.H. Payne are referred to herein as "Shareholders").

### RECITALS

A. Seller is engaged in the business of developing, designing, manufacturing, distributing, promoting, importing, selling or providing wood, metal or upholstered residential furniture products at the middle to upper price points (the "Business").

B. Shareholders collectively own 25,000 shares of the common stock, par value \$1.00 per share, of Seller, which constitute one hundred percent (100%) of the issued and outstanding shares of capital stock of Seller. Seller desires to sell, and Buyer desires to purchase, the Assets of Seller for the consideration and on the terms set forth in this Agreement.

The parties, intending to be legally bound, agree as follows:

## 1. DEFINITIONS AND USAGE

### 1.1 Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

"401(k) Plan" – as defined in Section 10.1(d).

"Accounting Expert" – a nationally recognized top-ten independent public accounting firm that has not previously been engaged by any of the Parties in the twenty-four (24) months preceding the Closing Date and that is agreed upon by Buyer and Seller in writing.

"Accounts Receivable" – (a) all trade accounts receivable and other rights to payment from customers of Seller and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to customers of Seller, (b) all other accounts or notes receivable of Seller and the full benefit of all security for such accounts or notes and (c) any claim, remedy or other right related to any of the foregoing.

"Active Employees" – as defined in Section 10.1(a).

"Affiliate" – with respect to a Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" (including "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or

cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” – as defined in the first paragraph of this Agreement.

“Anti-Bribery Laws” – as defined in Section 3.27.

“Applicable Accounting Principles” – GAAP applied in a manner consistent with the preparation of the Financial Statements, including with respect to the application of the same practices, procedures, judgments, policies and assumptions as the Financial Statements (but only to the extent that such practices, procedures, judgments, policies and assumptions are in accordance with GAAP) and those practices, procedures, judgments, policies and assumptions set forth on Part 1.1(a).

“Appurtenances” – all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of the Land, including all easements appurtenant to and for the benefit of any Land (a “Dominant Parcel”) for, and as the primary means of access between, the Dominant Parcel and a public way, or for any other use upon which lawful use of the Dominant Parcel for the purposes for which it is presently being used is dependent, and all rights existing in and to any streets, alleys, passages and other rights-of-way included thereon or adjacent thereto (before or after vacation thereof) and vaults beneath any such streets.

“Assignment and Assumption Agreement” – as defined in Section 2.7(d)(ii).

“Assumed Contracts” - as defined in Section 2.1(d).

“Assumed Liabilities” – as defined in Section 2.4(a).

“ASTM Standard” -- ASTM “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” with designation E1527-13.

“Balance Sheet” – as defined in Section 3.4.

“Basket” – as defined in Section 11.4(a).

“Best Efforts” – the commercially reasonable best efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result in a reasonably expeditious manner, provided, however, that a Person required to use Best Efforts under this Agreement will not be thereby required to take actions that would result in a material adverse change in the benefits to such Person of this Agreement and the Contemplated Transactions or to dispose of or make any change to its business, expend any material funds or incur any other material burden.

“Bill of Sale” – as defined in Section 2.7(d)(i).

“Breach” – any breach of, or any inaccuracy in, any representation or warranty or any breach of, or failure to perform or comply with, any covenant or obligation, in or of this Agreement or any other Contract, or any event for which if notice was given to a counterparty and if uncured

after the expiration of any applicable cure period would constitute such a breach, inaccuracy or failure.

“Bulk Sales Laws” – as defined in Section 5.8.

“Business” – as defined in Recital A.

“Business Day” – any day other than (a) Saturday or Sunday or (b) any other day on which banks in the Commonwealth of Virginia are permitted or required to be closed.

“Buyer” – as defined in the first paragraph of this Agreement.

“Buyer Common Stock” – the common stock of Buyer, no par value.

“Buyer Fundamental Representations” – the representations set forth in Sections 4.1, 4.3(a) and 4.5.

“Buyer Indemnified Parties” – as defined in Section 11.2.

“Buyer Plan” – as defined in Section 10.1(d).

“Buyer SEC Documents” – as defined in Section 4.7.

“Buyer Share Amount” – a number of Buyer Shares equal to (rounded up to the nearest whole share) (x) \$8,000,000 *divided by* (y) the mean closing price of the Buyer Common Stock as reported in the NASDAQ Stock Market Composite Transactions quotations, as quoted in the Wall Street Journal, for the ten (10) Trading Days immediately preceding the Business Day immediately preceding the Closing Date; *provided that* the Buyer Share Amount shall be proportionately adjusted to reflect any splits, combinations, stock dividends, recapitalizations, reorganizations or reclassifications with respect to the Buyer Shares or any transaction in which the Buyer Shares are converted into other securities or cash, in each case, occurring between the first and last Trading Day used in the calculation of the mean closing price pursuant to clause (y).

“Buyer Shares” – shares of Buyer Common Stock.

“Buyer’s Closing Documents” – as defined in Section 4.3(a).

“C.H. Payne” – as defined in the first paragraph of this Agreement.

“Cash Consideration” – \$32,000,000 *plus* (a) the Estimated Net Working Capital Overage, if any, estimated in accordance with Section 2.8, or *minus* (b) the Estimated Net Working Capital Underage, if any, estimated in accordance with Section 2.8.

“Closing” – as defined in Section 2.6.

“Closing Date” – as defined in Section 2.6.

“Closing Effective Time” – 11:59:59 p.m. on the Closing Date.

“COBRA” – as defined in Section 3.16(f).

“Code” – the Internal Revenue Code of 1986, as amended from time to time.

“Collinsville Property” – the land and real property (together with all improvements thereon and Appurtenances thereto) owned by Seller in fee simple and described in Part 1.1(b).

“Competing Business” – as defined in Section 10.9(a).

“Confidentiality Agreement” – that certain Confidentiality Agreement, effective as of June 29, 2017, by and between Buyer and Seller.

“Consent” – any approval, consent, ratification, waiver or other authorization.

“Contemplated Transactions” – all of the transactions contemplated by this Agreement.

“Contract” – any agreement, contract, Lease, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding.

“Copyrights” – as defined in Section 3.25(a)(iii).

“Data Privacy and Security Laws” means any Legal Requirement governing (a) the proper use, collection, recording, storing, altering, retrieving, consulting, transferring, disclosing (whether authorized or unauthorized) or otherwise processing personally identifiable information regarding an individual who can be identified from such data or from such data and other information in the possession of Seller (e.g., customer name, street address, telephone number, e-mail addresses, credit card or other payment information, social security numbers, driver’s license numbers or biometric data), (b) notification to individuals or Governmental Bodies upon loss, unauthorized access or other misuse of personal data and (c) the administrative, technical, or physical controls that protect personally identifiable information from unauthorized access, use or disclosure.

“Defined Benefit Plan” – as defined in Section 3.16(a).

“Direct Claim” – as defined in Section 11.5(c).

“Disclosure Letter” – the disclosure letter delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement.

“Employee Plans” – as defined in Section 3.16(a).

“Employment Agreements” – as defined in Section 2.7(d)(v).

“Encumbrance” – any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.



“Environment” – soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air and sub-slab air), plant and animal life and any other environmental medium or natural resource.

“Environmental, Health and Safety Liabilities” – any cost, damages, expense, liability, obligation or other responsibility arising from or under any Environmental Law or Occupational Safety and Health Law, including those consisting of or relating to:

- (a) any environmental, health or safety matter or condition (including on-site or off-site contamination, occupational safety and health and regulation of any chemical substance or product);
- (b) any fine, penalty, judgment, award, settlement, legal or administrative proceeding, damages, loss, claim, demand or response, remedial or inspection cost or expense arising under any Environmental Law or Occupational Safety and Health Law;
- (c) financial responsibility under any Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any cleanup, removal, containment or other remediation or response actions (“Cleanup”) required by any Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other Person) and for any natural resource damages; or
- (d) any other compliance, corrective or remedial measure required under any Environmental Law or Occupational Safety and Health Law.

The terms “removal,” “remedial” and “response action” include the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”).

“Environmental Law” – any Legal Requirement that requires or relates to:

- (a) advising appropriate authorities, employees or the public of intended or actual Releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment;
- (b) preventing or reducing to acceptable levels the Release of pollutants or hazardous substances or materials into the Environment, or regulating the discharge or emission of pollutants or contaminants;
- (c) reducing the quantities, preventing the Release or minimizing the hazardous characteristics of wastes that are generated, or the proper handling, storage, reuse, recycling, treatment or disposal of solid waste;

(d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of;

(e) protecting resources, species or ecological amenities;

(f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances;

(g) assessing, removing, cleaning up and monitoring pollutants that have been Released, preventing the Threat of Release or paying the costs of such assessment, removal, clean up, monitoring or prevention;

(h) obtaining or complying with Governmental Authorizations for the ownership, use, operation, siting or maintenance of any real or personal property, including equipment and fixtures; or

(i) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

“Equitable Exceptions” – as defined in Section 3.2(a).

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

“ERISA Affiliate” – as defined in Section 3.16(a).

“Escrow Agreement” – as defined in Section 2.7(d)(vii).

“Escrow Amount” – \$2,000,000.

“Escrow Fund” – as defined in Section 2.11.

“Escrow Termination Date” – as defined in Section 2.11.

“Estimated Net Working Capital Overage” – as defined in Section 2.8.

“Estimated Net Working Capital Underage” – as defined in Section 2.8.

“Exchange Act” – the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Excluded Assets” – as defined in Section 2.2.

“Excluded Life Insurance Policy” – the respective life insurance policies of G.C. Huddle, C.H. Payne and John P. Payne, as more fully described in Part 1.1(c).

“Facilities” – any real property, buildings, improvements and other facilities, whether owned in fee simple or by leasehold, and any other interest in real property currently owned,

leased, occupied or operated by Seller, including the Tangible Personal Property used or operated by Seller, at the respective locations of the premises leased under Real Property Leases as specified in Section 3.8, including without limitation, the Operating Facilities, but excluding the Collinsville Property and the facilities located thereon,. Notwithstanding the foregoing, for purposes of the definitions of “Hazardous Activity” and “Remedial Action” and Sections 3.22 and 11.3, “Facilities” shall mean any real property, leasehold or other interest in real property currently or formerly owned or operated by Seller.

“Financial Statements” – as defined in Section 3.4.

“Final Net Working Capital Statement” – as defined in Section 2.9(a).

“G.C. Huddle” – as defined in the first paragraph of this Agreement.

“GAAP” – generally accepted accounting principles for financial reporting in the United States.

“Governing Documents” – with respect to any particular entity, (a) if a corporation, the articles or certificate of incorporation and the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles of organization and operating agreement; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (f) all equityholders’ agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equityholders of any Person; and (g) any amendment or supplement to any of the foregoing.

“Governmental Authorization” – any Consent, Order, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

“Governmental Body” – any:

- (a) nation, state, county, city, town, borough, village, district or other jurisdiction;
- (b) federal, state, local, municipal, foreign or other government;
- (c) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal, arbitrator or other entity exercising governmental or quasi-governmental powers);
- (d) multinational organization or body;
- (e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or

(f) official of any of the foregoing.

“Hazardous Activity” – the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Material in, on, under, about or from any of the Facilities or any part thereof into the Environment and any other act, business, operation or thing that increases the danger, or risk of danger, or poses an unreasonable risk of harm, to persons or property on or off the Facilities.

“Hazardous Material” – any substance, material or waste which is or will foreseeably be regulated by any Governmental Body, including any material, substance or waste which is defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “contaminant,” “toxic waste,” “toxic substance,” “oil,” “petroleum,” “solid waste” or “pollutant” under any provision of Environmental Law, and including petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde and polychlorinated biphenyls.

“High Point Lease” – as defined in Section 2.7(d)(xi).

“High Point Phase I” – as defined in Section 2.7(d)(xxi).

“Improvements” – all buildings, structures, fixtures and improvements located on the Land or included in the Assets, including those under construction.

“Indemnified Party” – as defined in Section 11.5.

“Indemnifying Party” – as defined in Section 11.5.

“Insurance Policies” – as defined in Section 3.21(a).

“Intellectual Property Assets” – as defined in Section 3.25(a).

“Intellectual Property Assignment” – as defined in Section 2.7(d)(iv).

“Interim Balance Sheet” – as defined in Section 3.4.

“Inventories” – all inventories of Seller, wherever located, including all finished goods, work in process, raw materials, spare parts and all other materials and supplies to be used or consumed by Seller in the production of finished goods.

“IRS” – the United States Internal Revenue Service and, to the extent relevant, the United States Department of the Treasury.

“Knowledge of Buyer” or “Buyer’s Knowledge” or any similar knowledge qualification – the actual or constructive knowledge of those persons listed on Part 1.1(d), after due and reasonable inquiry.

“Knowledge of Seller” or “Seller’s Knowledge” or any similar knowledge qualification – the actual or constructive knowledge of those persons listed on Part L.1(e), after due and reasonable inquiry.

“Land” – all parcels and tracts of land in which Seller and/or a Landlord has an ownership interest.

“Landlord” – means Huddle Associates, L.P., Huddle Investments, LLC, Huddle Carolina LLC, and Huddle Associates, L.P. for each of the Martinsville Facility Lease, the Mt. Airy Facility Lease, the Valdese Facility Lease and the High Point Lease, respectively.

“Lease” – any Real Property Lease or any lease or rental agreement, license, right to use or installment and conditional sale agreement to which Seller is a party and any other Seller Contract pertaining to the leasing or use of any Tangible Personal Property.

“Legal Requirement” – any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, rule, ordinance, order, decree, regulation, statute or treaty.

“Liability” – with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Losses” – losses, damages, Liabilities, deficiencies, Proceedings, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; provided, however, that “Losses” shall not include punitive damages, except in the case of actual fraud or to the extent actually awarded to a Governmental Authority or other third party.

“Marks” – as defined in Section 3.25(a)(i).

“Martinsville Facility Lease” – as defined in Section 2.7(d)(viii).

“Martinsville Phase I” – as defined in Section 2.7(d)(xviii);

“Material Adverse Effect” – any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the Business, (b) the value of the Purchased Assets, or (c) the ability of Seller to consummate the Contemplated Transactions on a timely basis; provided, however, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industry in which the Business operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this

Agreement, except pursuant to Sections 3.2(b), 3.2(c) and 5.4; (vi) any changes in applicable Legal Requirements or accounting rules, including GAAP; or (vii) the public announcement, pendency or completion of the Contemplated Transactions; provided further, however, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur only to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Business compared to other participants in the industry in which the Business operates.

“Material Consents” – as defined in Section 7.3.

“Mt. Airy Facility Lease” – as defined in Section 2.7(d)(ix).

“Multiemployer Plan” – as defined in Section 3.16(a).

“Net Working Capital” means, as of the Closing, (a) the sum of accounts receivable, Inventory and prepaid expenses and other current assets of the Seller, other than any Excluded Assets, *less* (b) the sum of accounts payable, accrued expenses and other current liabilities of Seller including, for the avoidance of doubt, annual bonus amounts for members of management of Seller that are accrued and expensed but not paid by Seller prior to the Closing Date (collectively, “Current Liabilities”) and excluding any Retained Liabilities. For the avoidance of doubt, in calculating the Net Working Capital, Buyer shall be able to use relevant information available up until the time in which the Net Working Capital Statement is delivered; *provided* that the Buyer shall provide the Seller and its Representatives the right to observe and participate in any physical count of the Inventory of the Business to be used in the calculation of Net Working Capital.

“Net Working Capital Estimate” – as defined in Section 2.8.

“Net Working Capital Statement” – as defined in Section 2.9(a).

“Net Working Capital Target” – \$4,176,876.13 as determined in accordance with Applicable Accounting Principles.

“Nonmaterial Consents” – as defined in Section 2.10(c).

“Notice of Disagreement” – as defined in Section 2.9(f).

“Occupational Safety and Health Law” – any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, including the Occupational Safety and Health Act, and any program, whether governmental or private (such as those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

“Operating Facility” or “Operating Facilities” – as defined in Section 2.7(d)(iii).

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

“Ordinary Course of Business” – an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if that action:

(a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person;

(b) does not require authorization by the board of directors or shareholders of such Person; and

(c) is broadly similar in nature, scope and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal, day-to-day operations of other Persons that are in the same line of business as such first Person.

“P. Payne” – Phil Payne, a resident of the State of North Carolina.

“Part” – a part or section of the Disclosure Letter.

“Parties” – Buyer, Seller and the Shareholders.

“Patents” – as defined in Section 3.25(a)(ii).

“PBGC” – as defined in Section 3.16(b).

“Permitted Encumbrances” – as defined in Section 3.9(a).

“Person” – an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

“Proceeding” – any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body.

“Purchased Assets” – as defined in Section 2.1.

“Purchased Price” – as defined in Section 2.3.

“Purchased Price Allocation” – as defined in Section 2.5.

“Real Property” – the Land and Improvements and all Appurtenances thereto.

“Real Property Lease” – any lease, sublease, license, rental or other similar agreement pertaining to the use or occupancy by Seller of any land, improvements or other facilities not owned by Seller, together with all amendments, extensions and other modifications thereto.

“Record” – information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Registered IP” – as defined in Section 3.25(b).

“Related Person” –

With respect to a particular individual:

- (a) each other member of such individual’s Family;
- (b) any Person that is directly or indirectly controlled by any one or more members of such individual’s Family;
- (c) any Person in which members of such individual’s Family hold (individually or in the aggregate) a Material Interest; and
- (d) any Person with respect to which one or more members of such individual’s Family serves as a director, officer, partner, executor or trustee (or in a similar capacity).

With respect to a specified Person other than an individual:

- (a) any Person that directly or indirectly controls, is directly or indirectly controlled by or is directly or indirectly under common control with such specified Person;
- (b) any Person that holds a Material Interest in such specified Person;
- (c) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity);
- (d) any Person in which such specified Person holds a Material Interest; and
- (e) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity).

For purposes of this definition, (a) “control” (including “controlling,” “controlled by,” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall be construed as such term is used in the rules promulgated under the Securities Act; (b) the “Family” of an individual includes (i) the individual, (ii) the individual’s spouse, (iii) any other natural person who is related to the individual or the individual’s spouse within the second degree and (iv) any other natural person who resides with such individual; and (c) “Material Interest” means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of voting securities or other voting interests representing at least ten percent (10%) of the outstanding voting power of a Person or equity securities or other equity interests representing at least ten percent (10%) of the outstanding equity securities or equity interests in a Person.



“Release” – any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into or out of any property.

“Remedial Action” – all actions, including any capital expenditures, required or voluntarily undertaken (a) to clean up, remove, treat or in any other way address any Hazardous Material or other substance; (b) to prevent the Release or Threat of Release or to minimize the further Release of any Hazardous Material or other substance so it does not migrate or endanger or threaten to endanger public health or welfare or the Environment; (c) to perform pre-remedial studies and investigations or post-remedial monitoring and care; or (d) to bring all Facilities and the operations conducted thereon into compliance with Environmental Laws and environmental Governmental Authorizations.

“Representative” – with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

“Restricted Material Contracts” – as defined in Section 2.10(b).

“Restricted Nonmaterial Contracts” – as defined in Section 2.10(c).

“Restricted Period” – as defined in Section 10.9(a).

“Restrictive Covenant Agreement” – as defined in Section 2.7(d)(vi).

“Retained Liabilities” – as defined in Section 2.4(b).

“SEC” – the United States Securities and Exchange Commission.

“Securities Act” – as defined in Section 3.3.

“Seller” – as defined in the first paragraph of this Agreement.

“Seller Contract” – any Contract (a) under which Seller has or may acquire any rights or benefits; (b) under which Seller has or may become subject to any obligation or liability; or (c) by which Seller or any of the assets owned or used by Seller is or may become bound.

“Seller Fundamental Representations” – the representations set forth in Sections 3.1(b), 3.2(a), 3.9, 3.14, 3.16, 3.22, 3.28, 3.29, 3.30 and 3.31.

“Seller Indemnified Parties” – as defined in Section 11.3.

“Seller’s Closing Documents” – as defined in Section 3.2(a).

“Shareholders” – as defined in the first paragraph of this Agreement.

“Showroom” – as defined in Section 2.7(d)(xi).

“SNDA” – as defined in Section 7.7.

“Software” – all computer software and subsequent versions thereof, including source code, object, executable or binary code, objects, comments, screens, user interfaces, report formats, templates, menus, buttons and icons and all files, data, materials, manuals, design notes and other items and documentation related thereto or associated therewith.

“Stock Consideration” – as defined in Section 2.3.

“Subsidiary” – with respect to any Person (the “Owner”), any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation’s or other Person’s board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred), are held by the Owner or one or more of its Subsidiaries.

“Tangible Personal Property” – all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property (other than Inventories) of every kind owned or leased by Seller (wherever located and whether or not carried on Seller’s books), together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

“Tax” – any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees’ income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever and any interest, penalty, addition or additional amount thereon imposed, assessed or collected by or under the authority of any Governmental Body or payable under any tax-sharing agreement or any other Contract or pursuant to operation of law.

“Tax Return” – any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

“Third Party” – a Person that is not a party to this Agreement.

“Third-Party Claim” – as defined in Section 11.5(a).

“Threat of Release” – a reasonable likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

“Trade Secrets” – as defined in Section 3.25(a)(v).

“Trading Day” means a day on which the NASDAQ Stock Market is open for trading and the Buyer Common Stock is being publicly traded on such market.

“Transaction Documents” means this Agreement, the Confidentiality Agreement, the Escrow Agreement, the Employment Agreements, the Non-Competition Agreement, the Bill of Sale, the Assignment and Assumption Agreement, Intellectual Property Assignment, the Martinsville Facility Lease, the Mt. Airy Facility Lease, the Valdese Facility Lease, the High Point Lease and the other agreements, instruments and documents required to be delivered at the Closing.

“Transferred Employees” – as defined in Section 10.1(b)(i).

“Valdese Facility Lease” – as defined in Section 2.7(d)(x).

“Valdese Phase I” – as defined in Section 2.7(d)(xix);

“WARN Act” – as defined in Section 3.23(d).

## 1.2 Usage

(a) Interpretation. In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) “hereunder,” “hereof,” “hereto,” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

(vii) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;

(viii) “or” is used in the inclusive sense of “and/or”;

(ix) with respect to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding”;  
and

(x) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

(c) Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

## **2. Sale and Transfer of Assets; Closing**

### **2.1 Assets to be Sold**

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, but effective as of the Closing Effective Time, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller’s right, title and interest in and to all of Seller’s property, rights and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, including the following (but excluding the Excluded Assets):

(a) all Tangible Personal Property, including those items described in Part 2.1(a);

(b) all Inventories;

(c) all Accounts Receivable;

(d) all Seller Contracts, including those listed in Part 3.20(a) (“Assumed Contracts”), and all outstanding offers or solicitations made by or to Seller to enter into any Contract;

(e) all Governmental Authorizations and all pending applications therefor or renewals thereof, in each case to the extent transferable to Buyer, including those listed in Part 3.17(b);

(f) all data and Records related to the operations of Seller, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records and, subject to Legal Requirements, copies of all personnel Records and other Records described in Section 2.2(g);

(g) all of the intangible rights and property of Seller, including Intellectual Property Assets, going concern value, goodwill, telephone, telecopy and e-mail addresses, data/databases and listings and those items listed in Part 3.25(b);

(h) all insurance proceeds, if any, recovered pursuant to Section 10.13;

(i) all claims of Seller against third parties relating to the Purchased Assets, whether choate or inchoate, known or unknown, contingent or noncontingent (other than a right to submit a claim in the future for insurance benefits), including all such claims listed in Part 2.1(i);

(j) all rights of Seller relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof that are not listed in Part 2.2(d) and that are not excluded under Section 2.2(h); and

(k) the property, rights and assets expressly designated in Part 2.1(k).

All of the property, rights and assets to be transferred to Buyer hereunder are herein referred to collectively as the “Purchased Assets.”

Notwithstanding the foregoing, the transfer of the Purchased Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Purchased Assets unless Buyer expressly assumes that Liability pursuant to Section 2.4(a).

## **2.2 Excluded Assets**

Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following assets of Seller (collectively, the “Excluded Assets”) are not part of the sale and purchase contemplated hereunder, are excluded from the Purchased Assets and shall remain the property of Seller after the Closing:

(a) all cash, cash equivalents and short-term investments;

(b) all minute books, stock Records and corporate seals of Seller;

(c) the shares of capital stock of Seller held in treasury;

(d) those rights relating to deposits and prepaid expenses and claims for refunds and rights to offset in respect thereof listed in Part 2.2(d);

(e) all insurance policies and benefits (including the Excluded Life Insurance Policies) and rights thereunder (except to the extent specified in Section 2.1(h));

(f) all of the Seller Contracts listed in Part 2.2(f);

(g) all personnel Records and other Records that Seller is required by law to retain in its possession;

(h) all claims for refund of Taxes and other governmental charges of whatever nature;

- (i) all rights in connection with and assets of the Employee Plans;
- (j) all rights of Seller under this Agreement and the other Transaction Documents;
- (k) the Collinsville Property, and all of Seller's rights, title and interest therein;
- (l) the property, rights and assets expressly designated in Part 2.2(l); and
- (m) all rights and control of its attorney-client privilege and any other related rights vis a vis its legal counsel.

### **2.3 Consideration**

Upon the terms and subject to the conditions of this Agreement, in consideration of the purchase of the Purchased Assets, Buyer shall (a) deliver the Cash Consideration by making the cash payments specified in Sections 2.7(a)–2.7(b); (b) issue to the Shareholders a number of newly-issued Buyer Shares equal to, in the aggregate, the Buyer Share Amount (the "Stock Consideration"; and, together with the Cash Consideration, the "Purchase Price"), such Buyer Shares to be validly issued, fully paid and non-assessable, and free and clear of all Encumbrances (other than restrictions arising under applicable securities Legal Requirements), which will be registered in the name of the applicable Shareholder by book entry in an account or accounts with Buyer's transfer agent; provided that the Stock Consideration shall be proportionately adjusted to reflect any splits, combinations, stock dividends, recapitalizations, reorganizations or reclassifications with respect to the Buyer Shares or any transaction in which the Buyer Shares are converted into other securities or cash, in each case, occurring between the date of this Agreement and the Closing Date; and (c) assume and agree to pay, perform and discharge when due, all of the Assumed Liabilities.

### **2.4 Liabilities**

(a) Assumed Liabilities. On the Closing Date, but effective as of the Closing Effective Time, Buyer shall assume and agree to discharge only the following Liabilities of Seller (the "Assumed Liabilities"):

(i) any trade account payable reflected on the Interim Balance Sheet (other than a trade account payable to any Shareholder or a Related Person of Seller or any Shareholder) that remains unpaid at and is not delinquent as of the Closing Effective Time;

(ii) any trade account payable (other than a trade account payable to any Shareholder or a Related Person of Seller or any Shareholder) incurred by Seller in the Ordinary Course of Business between the date of the Interim Balance Sheet and the Closing Effective Time that remains unpaid at and is not delinquent as of the Closing Effective Time;

(iii) any Liability to Seller's customers incurred by Seller in the Ordinary Course of Business for non-delinquent orders outstanding as of the Closing Effective Time reflected on Seller's books (other than any Liability arising out of or relating to a Breach that occurred prior to the Closing Effective Time);

(iv) any Liability to Seller's customers under written warranty agreements in the forms disclosed in Part 2.4(a)(iv) given by Seller to its customers prior to the Closing Effective Time (other than any Liability arising out of or relating to a non-warranty Breach that occurred prior to the Closing Effective Time);

(v) any Liability arising after the Closing Effective Time under the Assumed Contracts (other than any Liability arising out of or relating to a Breach that occurred prior to the Closing Effective Time);

(vi) any Liability of Seller arising after the Closing Effective Time under any Seller Contract included in the Purchased Assets that is entered into by Seller after the date hereof in accordance with the provisions of this Agreement (other than any Liability arising out of or relating to a Breach that occurred prior to the Closing Effective Time);

(vii) any Liability arising after the Closing Effective Time from the assumption of Seller's welfare plans relating to medical, dental, vision, life, accidental death and disability, short-term disability and long-term disability (the "Assumed Welfare Plans"); and

(viii) any Liability of Seller described in Part 2.4(a)(viii).

(b) Retained Liabilities. The Retained Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller. "Retained Liabilities" shall mean every Liability of Seller other than the Assumed Liabilities, including:

(i) any Liability arising out of or relating to products of Seller to the extent manufactured or sold prior to the Closing Effective Time other than to the extent assumed under Section 2.4(a)(iii), (iv) or (v);

(ii) any Liability under any Contract assumed by Buyer pursuant to Section 2.4(a) that arises after the Closing Effective Time to the extent it arises out of a Breach by Seller that occurred prior to the Closing Effective Time;

(iii) any Liability for Taxes, including (A) any Taxes arising as a result of Seller's operation of its business or ownership of the Purchased Assets prior to the Closing Effective Time, (B) any Taxes assessable against Seller that will arise as a result of the sale of the Purchased Assets pursuant to this Agreement and (C) any deferred Taxes of any nature;

(iv) any Liability under any Contract not assumed by Buyer under Section 2.4(a), including any Liability arising out of or relating to Seller's credit facilities or any security interest related thereto;

(v) any Environmental, Health and Safety Liabilities arising out of or relating to the operation of Seller's Business or Seller's leasing, ownership or operation of real property (except as may be the responsibility of Buyer under the Martinsville Facility Lease, the Mt. Airy Facility Lease, the Valdese Facility Lease and the High Point Lease);

(vi) any Liability under the Employee Plans, including but not limited to the 401(k) Plan (but excluding the Assumed Welfare Plans with respect to Liabilities after the Closing Effective Time) or relating to payroll, vacation, sick leave, workers' compensation, unemployment benefits, pension benefits, employee stock option or profit-sharing plans, health care plans or benefits or any other employee plans or benefits of any kind for Seller's employees or former employees or both;

(vii) any Liability under any employment, severance, retention or termination agreement with any employee of Seller or any of its Related Persons;

(viii) any Liability arising out of or relating to any employee grievance whether or not the affected employees are hired by Buyer;

(ix) any Liability of Seller to any Shareholder or Related Person of Seller or any Shareholder;

(x) any Liability to indemnify, reimburse or advance amounts to any officer, director, employee or agent of Seller;

(xi) any Liability to distribute to any of Seller's shareholders or otherwise apply all or any part of the consideration received hereunder;

(xii) any Liability arising out of any Proceeding pending as of the Closing Effective Time;

(xiii) any Liability arising out of any Proceeding commenced after the Closing Effective Time to the extent resulting from or arising out of occurrences or events happening prior to the Closing Effective Time;

(xiv) any Liability arising out of or resulting from Seller's compliance or noncompliance with any Legal Requirement or Order of any Governmental Body;

(xv) any Liabilities associated with debt, loans or credit facilities of Seller and the Business owing to a Person;

(xvi) any Liability of Seller under this Agreement or any other document executed in connection with the Contemplated Transactions;  
and

(xvii) any Liability of Seller based upon Seller's acts or omissions occurring after the Closing Effective Time.

(c) Notwithstanding anything else herein to the contrary, to the extent any Liabilities are included as a Current Liabilities in the final calculation of the Final Net Working Capital, they shall be treated as Assumed Liabilities to the extent set forth in the final calculation of the Final Net Working Capital.



## **2.5 Allocation**

Within one hundred twenty (120) days of the Closing, the Parties shall agree on an allocation of the Purchase Price (including any adjustments made thereto) and any liabilities assumed, for Tax purposes, which shall be prepared in a manner reasonably consistent with the practices, procedures, judgments, policies, assumptions and example allocation set forth on Exhibit A (such allocation, the "Purchase Price Allocation"). The Buyer shall prepare, and provide to Seller, a draft Purchase Price Allocation within ninety (90) days after Closing. The Seller shall provide any comments to the draft Purchase Price Allocation to Buyer within twenty (20) days upon receipt thereof. If Seller does not provide any comments within the requisite time period, the draft Purchase Price Allocation shall be treated as final. The Parties agree to use the final Purchase Price Allocation for all Tax purposes and in all filings, declarations and reports with the IRS in respect thereof, including any reports required to be filed under Section 1060 of the Code and the Treasury Regulations promulgated thereunder. The Parties shall timely file, or cause to be timely filed, IRS Form 8594 (or any comparable form under state, local or foreign Tax Legal Requirements) and any required attachments thereto in accordance with the final Purchase Price Allocation. Neither Buyer nor Seller shall take any position in any Tax Return, audit, or otherwise, that is inconsistent with the final Purchase Price Allocation, nor shall Buyer or Seller in any way represent that the final Purchase Price Allocation is not correct, unless otherwise required by applicable Legal Requirements.

## **2.6 Closing**

The closing of the Contemplated Transactions (the "Closing") shall take place on the first Friday that follows the twentieth day after the date of this Agreement, or on such other date as is mutually agreeable to the parties hereto, provided in either case that all Closing conditions set forth in ARTICLE 6 shall have been fully satisfied or duly waived (other than conditions which, by their nature, are to be satisfied on the Closing Date, but subject to the satisfaction or due waiver of such conditions at such time) at the offices of McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219, and/or by facsimile, electronic mail or overnight courier delivery as the Parties may agree. The date on which the Closing takes place shall be the "Closing Date". The Closing shall be deemed to be effective as of the Closing Effective Time.

## **2.7 Closing Obligations**

In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing:

- (a) Buyer shall deliver the Escrow Amount, in cash by wire transfer of immediately available funds, to the Escrow Agent, to be held and disbursed by the Escrow Agent in accordance with this Agreement and the Escrow Agreement;
- (b) Buyer shall pay or cause to be paid, in cash by wire transfer of immediately available funds, any remaining Cash Consideration (after deducting the payments in subsection (a) above) to Seller;

(c) in accordance with Section 2.3(b), Buyer shall issue to the applicable Shareholders the Stock Consideration and shall register such Buyer Shares in the name of each the Shareholders by book entry in an account or accounts with Buyer's transfer agent;

(d) Seller shall deliver to Buyer the following items (in form and substance reasonably satisfactory to Buyer and its counsel, unless otherwise specified below):

(i) a bill of sale for all of the Purchased Assets that are Tangible Personal Property in substantially the form of Exhibit B (the "Bill of Sale"), duly executed by Seller;

(ii) an assignment of all of the Purchased Assets that are intangible personal property in substantially the form of Exhibit C, which assignment shall also contain Buyer's undertaking and assumption of the Assumed Liabilities (the "Assignment and Assumption Agreement"), duly executed by Seller;

(iii) lease termination agreements among Seller and each Landlord terminating any and all prior verbal or written leases, licenses or occupancy agreements among such parties with respect to the premises described in the Martinsville Facility Lease, the Mt. Airy Facility Lease and the Valdese Facility Lease, respectively (each an "Operating Facility" and together, the "Operating Facilities), and the High Point Lease, effective at or prior to the commencement of the Martinsville Facility Lease, the Mt. Airy Facility Lease, the Valdese Facility Lease and the High Point Lease, in substantially the forms of Exhibits D-1, D-2, D-3 and D-4, respectively, duly executed by Seller and Landlord;

(iv) assignments of all Intellectual Property Asset in substantially the form of Exhibit E, duly executed by Seller (the "Intellectual Property Assignment");

(v) employment agreements in the form of Exhibit F, duly executed by C.H. Payne and P. Payne, respectively (the "Employment Agreements");

(vi) a restrictive covenant agreement in the form of Exhibit G, duly executed by G.C. Huddle (the "Restrictive Covenant Agreement");

(vii) an escrow agreement in substantially the form of Exhibit H, duly executed by Seller and the escrow agent (the "Escrow Agreement");

(viii) a facility lease in substantially the form of Exhibit I, duly executed by Landlord (the "Martinsville Facility Lease");

(ix) a facility lease in substantially the form of Exhibit J, duly executed by Landlord (the "Mt. Airy Facility Lease");

(x) a facility lease in substantially the form of Exhibit K, duly executed by Landlord (the "Valdese Facility Lease");

(xi) a showroom lease in substantially the form of Exhibit L, duly executed by Landlord (the "High Point Lease") for the showroom located in High Point, NC (the "Showroom");

(xii) a certificate pursuant to Treasury Regulation Section 1.1445-2(b) in form of Exhibit M, duly executed and acknowledged by Seller, certifying that Seller is not a foreign person within the meaning of Section 1445 of the Code;

(xiii) certificate(s) of insurance evidencing Buyer being named as an additional insured under Seller's insurance policies in effect as of the Closing Date;

(xiv) releases of all Encumbrances on the Purchased Assets, other than Permitted Encumbrances, including releases or certificates of satisfaction of each mortgage, deed of trust or other similar encumbrance of record with respect to each parcel of real property included in the Purchased Assets, if any;

(xv) certificate dated as of a date not earlier than the third Business Day prior to the Closing as to the good standing of Seller in the Commonwealth of Virginia;

(xvi) a certificate, dated as of the Closing Date, executed by Seller stating that the conditions specified in Section 7.1 (provided, however, that such certificate may reflect any updates to the Disclosure Letter made pursuant to Section 5.5), Section 7.2 and Section 7.9, as they relate thereto, have been satisfied;

(xvii) a certificate of the Secretary of Seller, dated as of the Closing Date, certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Seller, (i) certifying and attaching all requisite resolutions or actions of Seller's board of directors and shareholders approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and the change of name contemplated by Section 10.4 and (ii) certifying to the incumbency and signatures of the officers of Seller executing this Agreement and any other document relating to the Contemplated Transactions and accompanied by the requisite documents for amending the relevant Governing Documents of Seller required to effect such change of name in form sufficient for filing with the appropriate Governmental Body;

(xviii) revisions to the "Phase I Environmental Site Assessment Shenandoah Furniture, Inc. Property 225 Beaver Creek Drive Martinsville, Henry County, Virginia" prepared by ECS Mid-Atlantic, LLC dated August 28, 2017 (the "Martinsville Phase I") that include (1) addressing the Martinsville Phase I to Buyer as the "user" as defined in the ASTM Standard or providing a reliance letter and addendum allowing Buyer to rely on the Martinsville Phase I as the "user" the form and substance of which shall be reasonably acceptable to Buyer, (2) incorporating user provided information from Buyer into the revised Martinsville Phase I or reliance letter and addendum in accordance with the ASTM Standard and (3) confirming that the land leased under the Martinsville Facility Lease is the same property that is the subject of the Martinsville Phase I;

(xix) revisions to the "Report of Phase I Site Assessment 1801 Main Street East Property Valdese, NC" prepared by McGill Associates dated August 24, 2017 (the "Valdese Phase I") that include (1) addressing the Valdese Phase I to Buyer as the "user" as defined in the ASTM Standard or providing a reliance letter and addendum allowing Buyer to rely on the Valdese Phase I as the "user" the form of which shall be reasonably

acceptable to Buyer, (2) incorporating user provided information from Buyer into the revised Valdese Phase I or reliance letter and addendum in accordance with the ASTM Standard, (3) confirming that the land leased under the Valdese Facility Lease is the same property that is the subject of the Valdese Phase I, (4) including as attachments the following documents referenced in such Valdese Phase I: (a) the “EDR Regulatory Review Report,” (b) “Affidavit and Indemnity Regarding Hazardous Materials,” and (c) the executive summary of the “Phase I ESA provided by Engineering and Environmental Services, PLLC,” and (5) modifying or adding as needed the an environmental lien and activity and use limitation search of the land subject to the Valdese Facility Lease;

(xx) a Phase I environmental site assessment for the Operating Facility in Mt. Airy, North Carolina completed in accordance with the ASTM Standard, that (1) is addressed to Buyer as the “user” as defined in the ASTM Standard, (2) includes an environmental lien and activity and use limitation search of the land subject to the Mt. Airy Lease completed by EDR, (3) incorporates user provided information from Buyer, (4) has all components completed within one hundred eighty (180) days of the Closing Date in accordance with the ASTM Standard, (5) identifies no materially different “recognized environmental conditions,” “controlled recognized environmental conditions,” “historic recognized environmental conditions,” or “business environmental risks” as defined in the ASTM Standard (or other similar designations as may be used in the assessment) that were not identified in the “Phase I Environmental Site Assessment Shenandoah Furniture, Inc. Property Henredon Plant, 109 Mountain View Drive, Mount Airy, Surry County, North Carolina” prepared ECS Mid-Atlantic, LLC dated April 9, 2013, and (6) does not include any recommendations for further action;

(xxi) revisions to the Phase I Environmental Site Assessment Shenandoah Furniture 423 Manning Street, 420 S. Centennial Street, and 325 E. Grimes Avenue, High Point North Carolina dated August 30, 2017 and prepared by Kleinfelder, Inc. (the “High Point Phase I”) that include (1) addressing the High Point Phase I to Buyer as the “user” as defined in the ASTM Standard or providing a reliance letter and addendum allowing Buyer to rely on the High Point Phase I as the “user” the form and substance of which shall be reasonably acceptable to Buyer, (2) incorporating user provided information from Buyer into the revised High Point Phase I or reliance letter and addendum in accordance with the ASTM Standard, (3) adding an environmental lien and activity and use limitation search of the land subject to the High Point Lease completed by Kleinfelder, Inc., and (4) deleting or modifying the first sentence of the last paragraph of Section 1.5 of the High Point Phase I clarifying Buyer’s ability to use and rely upon the High Point Phase I as stated in the ASTM Standard; and

(xxii) all other consents, filings, certificates, documents, instruments and other items required to be delivered by Seller pursuant to this Agreement, and all such other documents, certificates and instruments as Buyer shall reasonably request to give effect to the Contemplated Transactions or to vest in Buyer good, valid, insurable and marketable title in and to the Purchased Assets free and clear of all Encumbrances, except Permitted Encumbrances.

(e) Buyer shall deliver, or cause to be delivered, to Seller the following items (in form and substance reasonably satisfactory to Seller and its counsel, unless otherwise specified below):

- (i) the Bill of Sale, duly executed by Buyer;
- (ii) the Escrow Agreement, duly executed by Buyer and the escrow agent;
- (iii) the Assignment and Assumption Agreement, duly executed by Buyer;
- (iv) the Intellectual Property Assignment, duly executed by Buyer;
- (v) the Employment Agreements, duly executed by Buyer;
- (vi) the Restrictive Covenant Agreement, duly executed by Buyer;
- (vii) the Martinsville Facility Lease, duly executed by Buyer;
- (viii) the Mt. Airy Facility Lease, duly executed by Buyer;
- (ix) the Valdese Facility Lease, duly executed by Buyer;
- (x) the High Point Lease, duly executed by Buyer;

(xi) a certificate, dated as of the Closing Date, executed by Buyer stating that the conditions specified in Section 8.1 and Section 8.2 have been satisfied; and

(xii) a certificate of the Secretary of Buyer, dated as of the Closing Date, certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Buyer and certifying and attaching all requisite resolutions or actions of Buyer's board of directors approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of Buyer executing this Agreement and any other Transaction Document.

## **2.8 Pre-Closing Net Working Capital Estimate**

Prior to three Business Days prior to the Closing, Seller shall deliver to Buyer a written good faith estimate (the "Net Working Capital Estimate") of the Net Working Capital as of the Closing without giving effect to any of the Contemplated Transactions and determined in accordance with the Applicable Accounting Principles, together with supporting calculations and any resulting Estimated Net Working Capital Overage or Estimated Net Working Capital Underage. An "Estimated Net Working Capital Overage" shall exist when (and shall be equal to the amount by which) the Net Working Capital Estimate exceeds the Net Working Capital Target. An "Estimated Net Working Capital Underage" shall exist when (and shall be equal to the amount by which) the Net Working Capital Target exceeds the Net Working Capital Estimate.

## 2.9 Post-Closing Final Net Working Capital Adjustment

(a) As soon as practicable but in no event later than sixty (60) days after the Closing Date, Buyer shall deliver to Seller a statement (the “Net Working Capital Statement”) of the Net Working Capital as of the Closing without giving effect to any of the Contemplated Transactions and determined in accordance with the Applicable Accounting Principles (as may be adjusted pursuant to Section 2.9(f), below, the “Final Net Working Capital”), together with supporting calculations.

(b) For purposes of complying with the terms set forth in this Section 2.9, each Party shall cooperate with and make available to the other Parties and their respective Representatives all information, records, data and working papers, and shall permit reasonable access to its officers, employees, agents, books and records, as may be reasonably required in connection with the preparation and analysis of the Net Working Capital Statement and the Final Net Working Capital reflected in the Net Working Capital Statement and the resolution of any disputes in connection with the Net Working Capital Statement (in any case until the Accounting Expert has made a final determination pursuant to Section 2.9(f) below, if applicable).

(c) If the Final Net Working Capital is less than the Net Working Capital Estimate, then Seller shall cause to be paid to Buyer, as an adjustment to the Cash Consideration, by wire transfer of immediately available funds, an amount in cash equal to the difference between the Net Working Capital Estimate and the Final Net Working Capital, within three (3) Business Days after determination of Final Net Working Capital pursuant to Section 2.9(f).

(d) If the Final Net Working Capital is greater than the Net Working Capital Estimate, then Buyer shall cause to be paid to Seller, as an adjustment to the Cash Consideration, by wire transfer of immediately available funds, an amount in cash equal to the difference between the Net Working Capital Estimate and the Final Net Working Capital, within three (3) Business Days after determination of Final Net Working Capital pursuant to Section 2.9(f).

(e) If the Final Net Working Capital is equal to the Net Working Capital Estimate, there shall be no payment by either Buyer or Seller pursuant to this Section 2.9.

(f) Within forty-five (45) days following receipt by Seller of the Net Working Capital Statement, Seller shall either inform Buyer in writing that the Net Working Capital Statement is acceptable, or deliver written notice (the “Notice of Disagreement”) to Buyer of any dispute Seller has with respect to the preparation or content of the Net Working Capital Statement or the Final Net Working Capital reflected in the Net Working Capital Statement. The Notice of Disagreement must describe in reasonable detail the items contained in the Net Working Capital Statement that Seller disputes and the disputed amount of any such disputes. Any items not identified on the Notice of Disagreement shall be deemed agreed to by Seller and all amounts that are not in dispute shall be paid by the Party owing such payment by wire transfer of immediately available funds no later than three (3) Business Days after the time period in which Seller may deliver the Notice of Disagreement expires. If Seller does not notify Buyer of a dispute with respect to the Net Working Capital Statement within such 45-day period, such Net Working Capital Statement and the Final Net Working Capital reflected in the Net Working Capital Statement will be final, conclusive and binding on the Parties. In the event a Notice of Disagreement is delivered to Buyer, Buyer and

Seller shall negotiate in good faith to resolve such dispute. If Buyer and Seller, notwithstanding such good faith effort, fail to resolve such dispute within ten (10) Business Days after Seller advises Buyer of its objections, then Buyer and Seller jointly shall engage the Accounting Expert to resolve such dispute in accordance with the standards set forth in this Section 2.9(f). The Seller and Buyer shall use reasonable efforts to cause the Accounting Expert to render a written decision resolving the matters submitted to the Accounting Expert within thirty (30) days of the making of such submission. The scope of the disputes to be resolved by the Accounting Expert shall be limited only to the items in dispute that were included in the Notice of Disagreement and if such items were calculated in accordance with Applicable Accounting Principles and the Accounting Expert shall determine, on such basis, whether and to what extent, the Net Working Capital Statement and the Final Net Working Capital reflected in the Net Working Capital Statement, require adjustment. The Final Net Working Capital, as adjusted by the Accounting Expert, shall be deemed the Final Net Working Capital. The Accounting Expert is not to make any other determination, including any determination as to whether the Net Working Capital Estimate or Net Working Capital Target is correct. The Accounting Expert's decision shall be based solely on presentations by Buyer and Seller (and not independent review) and made in strict accordance with the terms of this Agreement, without regard for principles of equity. The Accounting Expert shall apply the relevant provisions of this Agreement to the disputed amounts, and shall have no authority to alter, modify, amend, add to or subtract from any term of provision of this Agreement. The Accounting Expert shall not assign a value to any item in dispute greater than the greatest value for such item assigned to it by Buyer, on the one hand, or Seller, on the other hand, or less than the smallest value for such item assigned to it by Buyer, on the one hand, or Seller, on the other hand. The fees and expenses of the Accounting Expert shall be borne in the same proportion that the aggregate dollar amount of such remaining disputed items so submitted to the Accounting Expert that are unsuccessfully disputed by Buyer, on the one hand, and Seller, on the other hand, as finally determined by the Accounting Expert, bears to the total dollar amount of such remaining disputed items so submitted. All determinations made by the Accounting Expert will be final, conclusive and binding on the Parties.

## **2.10 Consents**

(a) Buyer and Seller shall use their Best Efforts to obtain all permits and Consents of all Third Parties and Governmental Bodies that are necessary or advisable to consummate the transactions contemplated by this Agreement and the other Transaction Documents and are necessary for Buyer to operate the Business in accordance with past practice in all material respects immediately following the Closing. To the extent any consent fees or compensation payments to a Third Party or a Governmental Body in order to obtain such a permit or Consent such cost and expense shall be borne equally by the Buyer and the Seller; provided, however, that (i) Buyer shall pay the costs of any vehicle sticker, license, transfer or sales and use tax assessed against buyers of vehicles under applicable state law and regulations, (ii) Buyer and Seller shall split the costs of all fees and payments due in respect of any software licensors, it being understood that such licensors commonly treat such matters as if buyers are obtaining new licenses, and (iii) Seller shall not be liable for the cost of Buyer obtaining new Governmental Authorizations, it being understood that most Governmental Authorizations do not transfer in an asset transfer. Seller and Buyer shall consult with each other with respect to the obtaining of all such permits, consents, approvals and authorizations, and each party will keep the other apprised of the status of matters relating to

completion of the transactions contemplated by this Agreement and the other Transaction Documents.

(b) If there are any Material Consents that have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, in the case of each Seller Contract as to which such Material Consents were not obtained (or otherwise are not in full force and effect) (the “Restricted Material Contracts”), Buyer may agree to waive the closing conditions as to any such Material Consent in Section 7.3 and either:

(i) agree to have Seller continue its efforts to obtain the Material Consents; or

(ii) agree to have Seller retain that Restricted Material Contract and all Liabilities arising therefrom or relating thereto, in which case it will no longer be deemed to be an Assumed Contract hereunder.

If Buyer and Seller agree to have Seller continue its efforts to obtain any Material Consents and the Closing occurs, notwithstanding Sections 2.1 and 2.4, neither this Agreement nor the Assignment and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment, assumption, transfer, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of the Restricted Material Contracts, and following the Closing, the parties shall use Best Efforts, and cooperate with each other, to obtain the Material Consent relating to each Restricted Material Contract as quickly as practicable. Pending the obtaining of such Material Consents relating to any Restricted Material Contract, the parties shall cooperate with each other in any reasonable and lawful arrangements designed to provide to Buyer the benefits of use of the Restricted Material Contract for its term (or any right or benefit arising thereunder, including the enforcement for the benefit of Buyer of any and all rights of Seller against a third party thereunder). Once a Material Consent for the sale, assignment, assumption, transfer, conveyance and delivery of a Restricted Material Contract is obtained, Seller shall promptly assign, transfer, convey and deliver such Restricted Material Contract to Buyer, and Buyer shall assume the obligations under such Restricted Material Contract assigned to Buyer from and after the date of assignment to Buyer pursuant to a special-purpose assignment and assumption agreement substantially similar in terms to those of the Assignment and Assumption Agreement.

(c) If there are any Consents not listed on Part 7.3 necessary for the assignment and transfer of any Seller Contracts to Buyer (the “Nonmaterial Consents”) which have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, Buyer shall elect at the Closing, in the case of each of the Seller Contracts as to which such Nonmaterial Consents were not obtained (or otherwise are not in full force and effect) (the “Restricted Nonmaterial Contracts”), whether to:

(i) accept the assignment of such Restricted Nonmaterial Contract, in which case, as between Buyer and Seller, such Restricted Nonmaterial Contract shall, to the maximum extent practicable and notwithstanding the failure to obtain the applicable Nonmaterial Consent, be transferred at the Closing pursuant to the Assignment and Assumption Agreement as elsewhere provided under this Agreement; or



(ii) reject the assignment of such Restricted Nonmaterial Contract, in which case it will no longer be deemed to be an Assumed Contract hereunder and, notwithstanding Sections 2.1 and 2.4, (A) neither this Agreement nor the Assignment and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment, assumption, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of such Restricted Nonmaterial Contract, and (B) Seller shall retain such Restricted Nonmaterial Contract and all Liabilities arising therefrom or relating thereto.

## **2.11 Escrow Fund**

The Escrow Amount delivered by Buyer at Closing pursuant to the Escrow Agreement shall be held in an escrow account and shall serve as security for payment of any indemnification obligations of Seller (the “Escrow Fund”). If there are no outstanding claims for indemnification by Buyer as of the date that is eighteen (18) months following the Closing Date (the “Escrow Termination Date”), all amounts remaining in the Escrow Fund shall be distributed by the Escrow Agent in accordance with the terms and conditions of the Escrow Agreement to Seller. If there are outstanding claims for indemnification by the Buyer Indemnified Parties on the Escrow Termination Date, all amounts remaining in the Escrow Fund, less the disputed amount corresponding to each such outstanding claim, shall be distributed by the Escrow Agent in accordance with the terms and conditions of the Escrow Agreement to Seller; provided, that the remaining balance of any amounts withheld with respect to each outstanding claim shall be distributed to Seller upon resolution and final satisfaction of such outstanding claim in accordance with Article 11 and the provisions of the Escrow Agreement. Final distribution of the Escrow Fund shall be made net of any accrued fees and expenses of the Escrow Agent then outstanding.

## **3. Representations and Warranties of Seller**

Seller represents and warrants to Buyer as follows:

### **3.1 Organization and Good Standing**

(a) Part 3.1(a) contains a complete and accurate list of Seller’s jurisdiction of incorporation and any other jurisdictions in which it is qualified to do business as a foreign corporation. Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification.

(b) Seller is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, with full corporate power and authority to conduct its Business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under the Seller Contracts.

(c) Complete and accurate copies of the Governing Documents of Seller, as currently in effect, are attached to Part 3.1(c).

(d) Seller has no Subsidiary and, except as disclosed in Part 3.1(d), does not own any shares of capital stock or other securities of any other Person.

### **3.2 Enforceability; Authority; No Conflict**

(a) This Agreement constitutes the legal, valid and binding obligation of Seller and each Shareholder, enforceable against each of them in accordance with its terms. Upon the execution and delivery by Seller and Shareholders of the Transaction Documents to be executed or delivered by any or all of Seller and Shareholders at the Closing (collectively, the "Seller's Closing Documents"), each of Seller's Closing Documents will constitute the legal, valid and binding obligation of each of Seller and the Shareholders, enforceable against each of them in accordance with its terms, except as such enforcement may be limited by (i) applicable bankruptcy, reorganization, insolvency, liquidation, fraudulent conveyance, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights and remedies generally, (ii) applicable laws, court decisions and general principles of equity (regardless of whether such enforceability is adjudicated in proceeding in equity or at law), (iii) procedural requirements of law applicable to conflicts of laws principles and the exercise of creditors' rights and remedies generally, and (iv) matters of public policy ("Equitable Exceptions"). Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Seller's Closing Documents to which it is a party and to perform its obligations under this Agreement and the Seller's Closing Documents, and such action has been duly authorized by all necessary action by Seller's shareholders and board of directors. Each Shareholder has all necessary legal capacity to enter into this Agreement and the Seller's Closing Documents to which such Shareholder is a party and to perform his or her obligations hereunder and thereunder.

(b) Except as set forth in Part 3.2(b) or except as otherwise expressly contemplated by this Agreement and/or the other Transaction Documents, neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

(i) Breach (A) any provision of any of the Governing Documents of Seller or (B) any resolution adopted by the board of directors or the shareholders of Seller;

(ii) Breach or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Legal Requirement or any Order to which Seller or either Shareholder, or any of the Purchased Assets, may be subject;

(iii) contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by Seller or that otherwise relates to the Purchased Assets or to the Business;

(iv) cause Buyer to become subject to, or to become liable for the payment of, any Tax;

(v) Breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Seller Contract;

(vi) result in the imposition or creation of any Encumbrance upon or with respect to any of the Purchased Assets; or

(vii) result in any shareholder of Seller having the right to exercise dissenters' appraisal rights.

(c) Except as set forth in Part 3.2(c), neither Seller nor either Shareholder is required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

### **3.3 Capitalization**

The authorized capital stock of Seller consists of 25,000 shares of common stock, par value \$1.00 per share, of which 25,000 shares are issued and outstanding, 20,000 shares and 5,000 shares of which are owned by G.C. Huddle and C.H. Payne, respectively. Shareholders are and will be on the Closing Date the record and beneficial owners and holders of the shares owned by each of them, free and clear of all Encumbrances. There are no Contracts relating to the issuance, sale or transfer of any equity securities or other securities of Seller. None of the outstanding equity securities of Seller was issued in violation of the Securities Act of 1933, as amended (the "Securities Act"), or any other Legal Requirement.

### **3.4 Financial Statements**

Seller has delivered to Buyer: (a) the audited balance sheet of Seller as at December 31, 2016 (including the notes thereto, the "Balance Sheet"), and the related audited statement of income for the fiscal year then ended, including the notes thereto, together with the report thereon of Davidson, Holland, Whitesell & Co., PLLC, independent certified public accountants; (b) the audited balance sheet of Seller as at December 31, 2015, and the related audited statement of income for the fiscal year then ended, including in each case the notes thereto, together with the report thereon of Davidson, Holland, Whitesell & Co., PLLC, independent certified public accountants; and (c) an unaudited balance sheet of Seller as at July 31, 2017 (the "Interim Balance Sheet") and the related unaudited statement of income for the seven (7) months then ended, including in each case the notes thereto certified by Seller's chief financial officer (the financial statement described in clauses (a), (b) and (c) above collectively being the "Financial Statements"). Except as set forth in Part 3.4, the Financial Statements fairly present the financial condition and the results of operations of Seller as at the respective dates of and for the periods referred to in the Financial Statements, all in accordance with GAAP; provided that the unaudited financial statements are subject to normal year-end adjustments and do not contain all footnotes required under GAAP. Except as set forth in Part 3.4, the Financial Statements reflect and will reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to the Financial Statements. Except as set forth in Part 3.4, the Financial Statements have been and will be prepared from and are in accordance with the accounting Records

of Seller. Seller has also delivered to Buyer copies of all letters from Seller's auditors to Seller, the Shareholders, Seller's board of directors or any committee thereof during the thirty-six (36) months preceding the execution of this Agreement, together with copies of all responses thereto.

### **3.5 Books and Records**

The books of account and other financial Records of Seller, all of which have been made available to Buyer, are materially complete and correct and represent actual, bona fide transactions and have been maintained in accordance with sound business practices and the requirements of Section 13(b)(2) of the Exchange Act (regardless of whether Seller is subject to that Section or not), including the maintenance of an adequate system of internal controls. The minute books of Seller, all of which have been made available to Buyer, contain accurate and complete Records of all meetings held of, and corporate action taken by, the shareholders, the board of directors and committees of the board of directors of Seller in the past ten (10) years, and no meeting of any such shareholders, board of directors or committee has been held for which minutes have not been prepared or are not contained in such minute books during such period.

### **3.6 Sufficiency of Assets**

Except as set forth in Part 3.6 and the Operating Facilities and the Showroom, the Purchased Assets (a) constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate Seller's Business in the manner presently operated by Seller and (b) include all of the operating assets of Seller.

### **3.7 Description of Owned Real Property**

Part 3.7 contains the correct legal description, street address and tax parcel identification number of all tracts, parcels and subdivided lots in which Seller or the Landlord has a fee simple ownership interest.

### **3.8 Description of Leased Real Property**

Part 3.8 identifies the Real Property in which Seller has a leasehold interest, and the legal description, street address and tax parcel identification number of all tracts, parcels and subdivided lots on which such improvements are located or in which Seller otherwise has a leasehold interest and an accurate description (by location, name of lessor, date of lease (or other instrument) and term expiry date) of all Real Property Leases.

### **3.9 Title to Assets; Encumbrances**

(a) Seller has good and valid title to all of the Purchased Assets (it being understood that some of the Purchased Assets represent leasehold interests or license rights, in which case Seller does not have title to the underlying leased or licensed property). Seller has a good and valid leasehold interest in the leased premises described in the Real Property Leases. Landlord has good and valid fee simple title to the Operating Facilities and the Showroom. All such Purchased Assets (including leasehold interests), the Real Property Leases and the Operating Facilities and the Showroom are free and clear of Encumbrances except for the following (collectively referred to as "Permitted Encumbrances"):

(i) those items set forth in Part 3.9(a);

(ii) liens for Taxes not yet due and payable;

(iii) mechanics', carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business, each Landlord, the Purchased Assets, the leased premises under the Real Property Leases, any Operating Facility or the Showroom;

(iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting any Real Property (including, without limitation, any Operating Facility or the Showroom which are not, individually or in the aggregate, material to the Business, each Landlord or the Purchased Assets, which do not prohibit or interfere with the current operation of such Real Property and which do not render title to such Real Property unmarketable; or

(v) other than with respect to owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the Ordinary Course of Business which are not, individually or in the aggregate, material to the Business, each Landlord, the Operating Facilities, the Showroom or the Purchased Assets.

### **3.10 Condition of Property**

(a) Use of each Real Property (including, without limitation, each Operating Facility and the Showroom) for the various purposes for which it is presently being used is permitted as of right under all applicable zoning legal requirements and is not subject to "permitted nonconforming" use or structure classifications. All Improvements are in compliance with all applicable Legal Requirements, including those pertaining to zoning, building and the disabled, are in good repair and in good condition, ordinary wear and tear excepted. No part of any Improvement encroaches on any real property not included in the Real Property, and there are no buildings, structures, fixtures or other Improvements primarily situated on adjoining property which encroach on any part of the Land. The Land for each owned Facility abuts on and has direct vehicular access to a public road or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting such Land and comprising a part of the Real Property, is supplied with public or quasi-public utilities and other services appropriate for the operation of the Facilities located thereon and is not located within any flood plain or area subject to wetlands regulation or any similar restriction. There is no existing or proposed plan to modify or realign any street or highway or any existing or proposed eminent domain proceeding that would result in the taking of all or any part of any Facility or that would prevent or hinder the continued use of any Facility as heretofore used in the conduct of the Business or Landlord, as applicable. To Seller's Knowledge, each of the foregoing representations in this Section 3.10(a) is also true and correct in all material respects with respect to the leased premises under each Real Property Lease.

(b) Each item of Tangible Personal Property is in good repair and good operating condition, ordinary wear and tear excepted, is suitable for immediate use in the Ordinary Course

of Business and is free from material defects. No item of Tangible Personal Property is in need of repair or replacement other than as part of routine maintenance in the Ordinary Course of Business. Except as disclosed in Part 3.10(b), all Tangible Personal Property used in Seller's Business is in the possession of Seller.

### **3.11 Accounts Receivable**

The Accounts Receivable reflected on the Interim Balance Sheet and the Accounts Receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by Seller involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute only valid, undisputed claims of Seller not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the Ordinary Course of Business of Seller; and (c) subject to a reserve for bad debts shown on the Interim Balance Sheet or, with respect to Accounts Receivable arising after the Interim Balance Sheet Date, on the accounting records of the Business, are, to the Knowledge of Seller, collectible in full in the Ordinary Course of Business of Seller. The reserve for bad debts shown on the Interim Balance Sheet or, with respect to Accounts Receivable arising after the Interim Balance Sheet Date, on the accounting records of the Business have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes. There is no contest, claim, defense or right of setoff, other than returns or warranty claims in the Ordinary Course of Business of Seller, under any Contract with any account debtor of an Account Receivable relating to the amount or validity of such Account Receivable. Part 3.11 contains a complete and accurate list of all Accounts Receivable as of the date of the Interim Balance Sheet, which list sets forth the aging of each such Account Receivable.

### **3.12 Inventories**

All items included in the Inventories consist of a quality and quantity usable and, with respect to finished goods, saleable, in the Ordinary Course of Business of Seller except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value in the Balance Sheet or the Interim Balance Sheet or on the accounting Records of Seller as of the Closing Date, as the case may be. Seller is not in possession of any inventory not owned by Seller, including goods already sold. All of the Inventories have been valued at the lower of cost, on a first in, first out basis, or market. Inventories now on hand that were purchased after the date of the Balance Sheet or the Interim Balance Sheet were purchased in the Ordinary Course of Business of Seller at a cost not exceeding market prices prevailing at the time of purchase. The quantities of each item of Inventories (whether raw materials, work-in-process or finished goods) are not excessive but rather are reasonable in the circumstances of Seller for the previous twelve months. Work-in-process Inventories are now valued, and will be valued on the Closing Date, according to GAAP.

### **3.13 No Undisclosed Liabilities**

Except as set forth in Part 3.13, Seller has no Liability except for Liabilities reflected or reserved against in the Balance Sheet or the Interim Balance Sheet and Current Liabilities incurred in the Ordinary Course of Business of Seller since the date of the Interim Balance Sheet.

### 3.14 Taxes

(a) Seller has filed or caused to be filed on a timely basis all Tax Returns and all reports with respect to Taxes that are or were required to be filed pursuant to applicable Legal Requirements. All Tax Returns and reports filed by Seller are true, correct and complete. Seller has paid, or made provision for the payment of, all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Seller, and are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided in the Balance Sheet and the Interim Balance Sheet. Seller currently is not the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made or is expected to be made by any Governmental Body in a jurisdiction where Seller does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Purchased Assets that arose in connection with any failure (or alleged failure) to pay any Tax, and Seller has no Knowledge of any basis for assertion of any claims attributable to Taxes which, if adversely determined, would result in any such Encumbrance. Seller has (1) withheld all required amounts from its employees, agents, contractors, customers and nonresidents and remitted such amounts to the proper agencies; (2) paid or accrued for all employer contributions and premiums; and (3) filed all federal, state, local and foreign returns and reports with respect to employee income Tax withholding, social security, unemployment Taxes and premiums, all in compliance with the withholding Tax provisions of the Code, as amended, as in effect for the applicable year and other applicable federal, state, local or foreign Legal Requirements. If and to the extent that employer contributions and premiums have been accrued but not paid as of the Closing Date, there shall be an adjustment to the Net Working Capital, as appropriate, in accordance with Sections 2.8 and 2.9.

(b) Seller has delivered or made available to Buyer copies of, and Part 3.14(b) contains a complete and accurate list of, all Tax Returns filed since January 1, 2014. The federal and state income or franchise Tax Returns of Seller have been audited by the IRS or relevant state tax authorities or are closed by the applicable statute of limitations for all taxable years through December 31, 2013. Part 3.14(b) contains a complete and accurate list of all Tax Returns of Seller that have been audited or are currently under audit and accurately describe any deficiencies or other amounts that were paid or are currently being contested. To the Knowledge of Seller, no undisclosed deficiencies are expected to be asserted with respect to any such audit. All deficiencies proposed as a result of such audits have been paid, reserved against, settled or are being contested in good faith by appropriate proceedings as described in Part 3.14(b). Seller has delivered, or made available to Buyer, copies of any examination reports, statements or deficiencies or similar items with respect to such audits. Except as provided in Part 3.14(b), Seller has no Knowledge that any Governmental Body is likely to assess any additional taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Taxes of Seller either (i) claimed or raised by any Governmental Body in writing or (ii) as to which Seller has Knowledge. Part 3.14(b) contains a list of all Tax Returns for which the applicable statute of limitations has not run. Except as described in Part 3.14(b), Seller has not given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of Taxes of Seller or for which Seller may be liable.

(c) The charges, accruals and reserves with respect to Taxes on the Records of Seller are adequate (determined in accordance with GAAP) and are at least equal to Seller's liability for

Taxes. There exists no proposed tax assessment or deficiency against Seller except as disclosed in the Interim Balance Sheet.

(d) All Taxes that Seller is or was required by Legal Requirements to withhold, deduct or collect have been duly withheld, deducted and collected and, to the extent required, have been paid to the proper Governmental Body or other Person.

### **3.15 No Material Adverse Effect**

Since the date of the Balance Sheet, there has not been any Material Adverse Effect, and no event has occurred or circumstance exists that may result in such a Material Adverse Effect.

### **3.16 Employee Benefits**

(a) Set forth in Part 3.16(a) is a complete and correct list of all “employee benefit plans” as defined by Section 3(3) of ERISA, all specified fringe benefit plans as defined in Section 6039D of the Code, and all other bonus, incentive-compensation, deferred-compensation, profit-sharing, stock-option, stock-appreciation-right, stock-bonus, stock-purchase, employee-stock-ownership, savings, severance, change-in-control, supplemental-unemployment, layoff, salary-continuation, retirement, pension, health, life-insurance, disability, accident, group-insurance, vacation, holiday, sick-leave, fringe-benefit or welfare plan, and any other employee compensation or benefit plan, agreement, policy, practice, commitment, contract or understanding (whether qualified or nonqualified, currently effective or terminated, written or unwritten) and any trust, escrow or other agreement related thereto that (i) is maintained or contributed to by Seller or any other corporation or trade or business controlled by, controlling or under common control with Seller (within the meaning of Section 414 of the Code or Section 4001(a)(14) or 4001(b) of ERISA) (“ERISA Affiliate”) or has been maintained or contributed to in the last six (6) years by Seller or any ERISA Affiliate, or with respect to which Seller or any ERISA Affiliate has or may have any liability, and (ii) provides benefits, or describes policies or procedures applicable to any current or former director, officer, employee or service provider of Seller or any ERISA Affiliate, or the dependents of any thereof, regardless of how (or whether) liabilities for the provision of benefits are accrued or assets are acquired or dedicated with respect to the funding thereof (collectively the “Employee Plans”). Part 3.16(a) identifies as such any Employee Plan that is (w) a “Defined Benefit Plan” (as defined in Section 414(l) of the Code); (x) a plan intended to meet the requirements of Section 401(a) of the Code; (y) a “Multiemployer Plan” (as defined in Section 3(37) of ERISA); or (z) a plan subject to Title IV of ERISA, other than a Multiemployer Plan. Also set forth on Part 3.16(a) is a complete and correct list of all ERISA Affiliates of Seller during the last six (6) years.

(b) Seller has delivered to Buyer true, accurate and complete copies of (i) the documents comprising each Employee Plan (or, with respect to any Employee Plan which is unwritten, a detailed written description of eligibility, participation, benefits, funding arrangements, assets and any other matters which relate to the obligations of Seller or any ERISA Affiliate); (ii) all trust agreements, insurance contracts or any other funding instruments related to the Employee Plans; (iii) all rulings, determination letters, no-action letters or advisory opinions from the IRS, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation (“PBGC”) or any other Governmental Body that pertain to each Employee Plan and any open requests therefor; (iv) the most recent actuarial and financial reports (audited and/or unaudited) and the



annual reports filed with any Government Body with respect to the Employee Plans during the current year and each of the three preceding years; (v) all collective bargaining agreements pursuant to which contributions to any Employee Plan(s) have been made or obligations incurred (including both pension and welfare benefits) by Seller or any ERISA Affiliate, and all collective bargaining agreements pursuant to which contributions are being made or obligations are owed by such entities; (vi) all securities registration statements filed with respect to any Employee Plan; (vii) all contracts with third-party administrators, actuaries, investment managers, consultants and other independent contractors that relate to any Employee Plan, (viii) with respect to Employee Plans that are subject to Title IV of ERISA, the Form PBGC-1 filed for each of the three most recent plan years; and (ix) all summary plan descriptions, summaries of material modifications and memoranda, employee handbooks and other written communications regarding the Employee Plans.

(c) Full payment has been made of all amounts that are required under the terms of each Employee Plan to be paid as contributions with respect to all periods prior to and including the last day of the most recent fiscal year of such Employee Plan ended on or before the date of this Agreement and all periods thereafter prior to the Closing Date, and no accumulated funding deficiency or liquidity shortfall (as those terms are defined in Section 302 of ERISA and Section 412 of the Code) has been incurred with respect to any such Employee Plan, whether or not waived. The value of the assets of each Employee Plan exceeds the amount of all benefit liabilities (determined on a plan termination basis using the actuarial assumptions established by the PBGC as of the Closing Date) of such Employee Plan. Seller is not required to provide security to an Employee Plan under Section 401(a)(29) of the Code. Seller has paid in full all required insurance premiums, subject only to normal retrospective adjustments in the ordinary course, with regard to the Employee Plans for all policy years or other applicable policy periods ending on or before the Closing Date.

(d) No Employee Plan, if subject to Title IV of ERISA, has been completely or partially terminated, nor has any event occurred nor does any circumstance exist that could result in the partial termination of such Employee Plan. The PBGC has not instituted or threatened a Proceeding to terminate or to appoint a trustee to administer any of the Employee Plans pursuant to Subtitle 1 of Title IV of ERISA, and no condition or set of circumstances exists that presents a material risk of termination or partial termination of any of the Employee Plans by the PBGC. None of the Employee Plans has been the subject of, and no event has occurred or condition exists that could be deemed, a reportable event (as defined in Section 4043 of ERISA) as to which a notice would be required (without regard to regulatory monetary thresholds) to be filed with the PBGC. Seller has paid in full all insurance premiums due to the PBGC with regard to the Employee Plans for all applicable periods ending on or before the Closing Date.

(e) Neither Seller nor any ERISA Affiliate has any liability or has Knowledge of any facts or circumstances that might give rise to any liability, and the Contemplated Transactions will not result in any liability, (i) for the termination of or withdrawal from any Employee Plan under Sections 4062, 4063 or 4064 of ERISA, (ii) for any lien imposed under Section 302(f) of ERISA or Section 412(n) of the Code, (iii) for any interest payments required under Section 302(e) of ERISA or Section 412(m) of the Code, (iv) for any excise tax imposed by Section 4971 of the Code, (v) for any minimum funding contributions under Section 302(c)(11) of ERISA or Section

412(c)(11) of the Code or (vi) for withdrawal from any Multiemployer Plan under Section 4201 of ERISA.

(f) Seller has, at all times, complied, and currently complies, in all material respects with the applicable continuation requirements for its welfare benefit plans, including (1) Section 4980B of the Code (as well as its predecessor provision, Section 162(k) of the Code) and Sections 601 through 608, inclusive, of ERISA, which provisions are hereinafter referred to collectively as “COBRA” and (2) any applicable state statutes mandating health insurance continuation coverage for employees.

(g) Except as set forth in Part 3.16(g), each Welfare Benefit Plan that is a “group health plan” within the meaning of Section 5000(b)(1) of the Code and Section 607(1) of ERISA has been administered in material compliance with, and Seller has otherwise materially complied with the requirements of the Patient Protection and Affordable Care Act of 2010 and the regulations promulgated thereunder; and (ii) the Medicare Secondary Payor Provisions of Section 1862 of the Social Security Act and the regulations promulgated thereunder.

(h) The form of all Employee Plans is in compliance with the applicable terms of ERISA, the Code, and any other applicable laws, including the Americans with Disabilities Act of 1990, the Family Medical Leave Act of 1993 and the Health Insurance Portability and Accountability Act of 1996 (including in each case, any amendments thereto and any regulations promulgated thereunder), and such plans have been operated in compliance with such laws and the written Employee Plan documents. Neither Seller nor any fiduciary of an Employee Plan has violated the requirements of Section 404 of ERISA. All required reports and descriptions of the Employee Plans (including Internal Revenue Service Form 5500 Annual Reports, Summary Annual Reports and Summary Plan Descriptions and Summaries of Material Modifications) have been (when required) timely filed with the IRS, the U.S. Department of Labor or other Governmental Body and distributed as required, and all notices required by ERISA or the Code or any other Legal Requirement with respect to the Employee Plans have been appropriately given.

(i) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS, and Seller has no Knowledge of any circumstances that will or could result in revocation of any such favorable determination letter. Each trust created under any Employee Plan has been determined to be exempt from taxation under Section 501(a) of the Code, and Seller is not aware of any circumstance that will or could result in a revocation of such exemption. Each Employee Welfare Benefit Plan (as defined in Section 3(1) of ERISA) that utilizes a funding vehicle described in Section 501(c)(9) of the Code or is subject to the provisions of Section 505 of the Code has been the subject of a notification by the IRS that such funding vehicle qualifies for tax-exempt status under Section 501(c)(9) of the Code or that the plan complies with Section 505 of the Code, unless the IRS does not, as a matter of policy, issue such notification with respect to the particular type of plan. With respect to each Employee Plan, no event has occurred or condition exists that will or could give rise to a loss of any intended tax consequence or to any Tax under Section 511 of the Code.

(j) There is no material pending or threatened Proceeding relating to any Employee Plan, nor is there any basis for any such Proceeding. Neither Seller nor any fiduciary of an Employee Plan has engaged in a transaction with respect to any Employee Plan that, assuming the

taxable period of such transaction expired as of the date hereof, could subject Seller or Buyer to a Tax or penalty imposed by either Section 4975 of the Code or Section 502(l) of ERISA or a violation of Section 406 of ERISA. The Contemplated Transactions will not result in the potential assessment of a Tax or penalty under Section 4975 of the Code or Section 502(l) of ERISA nor result in a violation of Section 406 of ERISA.

(k) Seller has maintained workers' compensation coverage as required by applicable state law through purchase of insurance and not by self-insurance or otherwise.

(l) Except as required by Legal Requirements and as provided in Section 10.1(d), the consummation of the Contemplated Transactions will not accelerate the time of vesting or the time of payment, or increase the amount, of compensation due to any director, employee, officer, former employee or former officer of Seller. There are no contracts or arrangements providing for change of control payments that could subject any person to liability for tax under Section 4999 of the Code.

(m) Except for the continuation coverage requirements of COBRA, Seller has no obligations or potential liability for benefits to employees, former employees or their respective dependents following termination of employment or retirement under any of the Employee Plans that are Employee Welfare Benefit Plans.

(n) Except as provided in Section 10.1(d), none of the Contemplated Transactions will result in an amendment, modification or termination of any of the Employee Plans. No written or oral representations have been made to any employee or former employee of Seller promising or guaranteeing any employer payment or funding for the continuation of medical, dental, life or disability coverage for any period of time beyond the end of the current plan year (except to the extent of coverage required under COBRA). No written or oral representations have been made to any employee or former employee of Seller concerning the employee benefits of Buyer.

(o) To the Knowledge of Seller, each plan that is a "non-qualified deferred compensation plan" (as defined in Section 409A(d)(1) of the Code) and any award thereunder, in each case that is subject to Section 409A of the Code, has since January 1, 2005, been, in all material respects, in compliance with Section 409A of the Code, to the extent required by applicable guidance, and Seller has no obligation to indemnify any individual for any taxes imposed under Section 409A of the Code.

(p) With respect to any Employee Plan that is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA ("Multiemployer Plan"), and any other Multiemployer Plan to which Seller has at any time had an obligation to contribute:

(i) all contributions required by the terms of such Multiemployer Plan and any collective bargaining agreement have been made when due; and

(ii) Seller would not be subject to any withdrawal liability under Part 1 of Subtitle E of Title IV of ERISA if, as of the date hereof, Seller were to engage in a "complete withdrawal" (as defined in ERISA Section 4203) or a "partial withdrawal" (as defined in ERISA Section 4205) from such Multiemployer Plan.

### 3.17 Compliance with Legal Requirements; Governmental Authorizations

(a) Except as set forth in Part 3.17(a):

(i) Seller is, and at all times since January 1, 2012, has been, in full compliance in all material respects with each Legal Requirement that is or was applicable to it or to the conduct or operation of the Business or the ownership or use of any of the Purchased Assets;

(ii) To the Knowledge of Seller, no event has occurred or circumstance exists that (with or without notice or after expiration of any applicable cure period) (A) may constitute or result in a violation by Seller of, or a failure on the part of Seller to comply with, any Legal Requirement or (B) may give rise to any obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and

(iii) Seller has not received, at any time since January 1, 2012, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement or (B) any actual, alleged, possible or potential obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(b) Part 3.17(b) contains a complete and accurate list of each Governmental Authorization that is held by Seller or that otherwise is required for and applicable to the Business or the Purchased Assets. Each Governmental Authorization listed or required to be listed in Part 3.17(b) is valid, in full force and effect, final and non-appealable. Except as set forth in Part 3.17(b):

(i) Seller is, and at all times since January 1, 2014, has been, in full compliance with all of the terms and requirements of each Governmental Authorization identified or required to be identified in Part 3.17(b);

(ii) no event has occurred or circumstance exists that may (with or without notice or after expiration of any applicable cure period, but other than expiration of the term or effective period of a Governmental Authorization) (A) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization listed or required to be listed in Part 3.17(b) or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Governmental Authorization listed or required to be listed in Part 3.17(b);

(iii) Seller has not received, at any time since January 1, 2014, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization or (B) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any Governmental Authorization;

(iv) all applications required to have been filed for the renewal of the Governmental Authorizations listed or required to be listed in Part 3.17(b) have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies, and Seller does not believe there is a reason that such renewed Governmental Authorizations will not be issued in a timely manner without any new conditions that could have a material effect on compliance with such renewed Governmental Authorizations or ownership, use or operation of the Purchased Assets; and

(v) Without making a representation or warranty as to whether any Governmental Authorization is transferable to Buyer or whether Buyer will in fact be able obtain any required approval from a Governmental Body, Seller has no specific reason to believe that any required approval from a Governmental Body for the transfer, issuance or reissuance of any Governmental Authorization required to own, operate or use the Purchased Assets and Real Property upon Closing in compliance with the Legal Requirements will not be granted.

The Governmental Authorizations listed in Part 3.17(b), collectively constitute all of the Governmental Authorizations necessary to permit Seller to lawfully conduct and operate the Purchased Assets and its business in the manner in which it currently conducts and operates such business, and has conducted and operated the Purchased Assets such since January 1, 2016, and to permit Seller to own and use its assets in the manner in which it currently owns and uses such assets and has owned and used its assets since January 1, 2016.

### **3.18 Legal Proceedings; Orders**

(a) Except as set forth in Part 3.18(a), there is no pending or, to Seller's Knowledge, threatened Proceeding:

(i) by or against Seller or, to the Knowledge of Seller, involving the Business or the Purchased Assets; or

(ii) that has been commenced against Seller or the Shareholders and that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions.

Seller has delivered to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding listed in Part 3.18(a). There are no Proceedings listed or required to be listed in Part 3.18(a) that could have a Material Adverse Effect.

(b) Except as set forth in Part 3.18(b):

(i) there is no Order to which Seller, its Business or any of the Purchased Assets is subject; and

(ii) to the Knowledge of Seller, no officer, director, agent or employee of Seller is subject to any Order that prohibits such officer, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the Business.

(c) Except as set forth in Part 3.18(c):

(i) Seller is, and, at all times since January 1, 2014, has been in compliance with all of the terms and requirements of each Order to which it or any of the Purchased Assets is or has been subject;

(ii) no event has occurred or circumstance exists that is reasonably likely to constitute or result in (with or without notice or lapse of time) a violation of or failure to comply with any term or requirement of any Order to which Seller or any of the Purchased Assets is subject; and

(iii) Seller has not received, at any time since January 1, 2014, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, any term or requirement of any Order to which Seller or any of the Purchased Assets is or has been subject.

### **3.19 Absence of Certain Changes and Events**

Except as set forth in Part 3.19, since the date of the Interim Balance Sheet, Seller has conducted its Business only in the Ordinary Course of Business and there has not been any:

(a) change in Seller's authorized or issued capital stock, grant of any stock option or right to purchase shares of capital stock of Seller or issuance of any security convertible into such capital stock;

(b) amendment to the Governing Documents of Seller;

(c) payment (except in the Ordinary Course of Business) or increase by Seller of any bonuses, salaries or other compensation to any shareholder, director, officer, employee or independent contractor or entry into any employment, severance or similar Contract with any director, officer, employee or independent contractor;

(d) adoption of, amendment to or increase in the payments to or benefits under, any Employee Plan;

(e) amendment of, or any change to any Contract with any third party governing the administration of any Employee Plan;

(f) material damage to or destruction or loss of any tangible Purchased Asset, whether or not covered by insurance;

(g) entry into, termination of or receipt of notice of termination of (i) any license, distributorship, dealer, sales representative, joint venture, credit or similar Contract to which Seller

is a party, or (ii) any Contract or transaction involving a total remaining commitment by Seller of at least \$250,000;

(h) sale (other than sales of Inventories in the Ordinary Course of Business), lease or other disposition of any Purchased Asset or property of Seller (including the Intellectual Property Assets) or the creation of any Encumbrance on any Purchased Asset;

(i) cancellation or waiver of any claims or rights with a value to Seller in excess of \$250,000;

(j) statement by or notice from any customer or supplier of an intention to discontinue or change the terms of its relationship with Seller;

(k) material change in the accounting methods used by Seller; or

(l) Contract by Seller or any Shareholder to do any of the foregoing.

### **3.20 Contracts; No Defaults**

(a) Part 3.20(a) contains an accurate and complete list, and Seller has delivered to Buyer accurate and complete (as is in its possession) copies, of:

(i) each Seller Contract that involves performance of services or delivery of goods or materials by Seller of an amount or value in excess of \$250,000;

(ii) each Seller Contract that involves performance of services or delivery of goods or materials to Seller of an amount or value in excess of \$500,000;

(iii) each Seller Contract that was not entered into in the Ordinary Course of Business and that involves expenditures or receipts of Seller in excess of \$50,000;

(iv) each Seller Contract affecting the ownership of, leasing of, title to, use of or any leasehold or other interest in any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of less than \$50,000 and with a term of less than one year);

(v) each Seller Contract with any labor union or other employee representative of a group of employees relating to wages, hours and other conditions of employment;

(vi) each Seller Contract with any independent third party relating to the delivery or administration of any employee benefits to Seller's employees;

(vii) each Contract which is in respect of the employment, compensation or indemnification of a director or executive officer of Seller;

(viii) each Seller Contract (however named) involving a sharing of profits, losses, costs or liabilities by Seller with any other Person;

- (ix) each Seller Contract containing covenants that in any way purport to restrict Seller's business activity or limit the freedom of Seller to engage in any line of business or to compete with any Person;
- (x) each Seller Contract providing for payments to or by any Person based on sales, purchases or profits, other than direct payments for goods;
- (xi) each power of attorney of Seller that is currently effective and outstanding;
- (xii) each Seller Contract entered into other than in the Ordinary Course of Business that contains or provides for an express undertaking by Seller to be responsible for consequential damages;
- (xiii) each Seller Contract for capital expenditures in excess of \$100,000;
- (xiv) each Seller Contract not denominated in U.S. dollars in excess of \$100,000;
- (xv) each written warranty, guaranty and/or other similar undertaking with respect to contractual performance extended by Seller other than in the Ordinary Course of Business;
- (xvi) each Contract that provides for the indemnification of any Person or the assumption of any Tax, environmental or other Liability of any Person;
- (xvii) each Contract which involves, as parties thereto, Seller, on the one hand, and any of the directors, officers or other Affiliates of Seller or any Person that owns or controls more than ten percent of any class of capital stock or other equity interest of Seller and each such Person's respective directors, officers or other Affiliates, on the other hand;
- (xviii) each Contract which establishes or relates to a joint venture or partnership involving Seller;
- (xix) each Contract which constitutes a mortgage, indenture, note, installment obligation or other instrument relating to the borrowing of money or under which it has imposed a security interest on any of the Purchased Assets;
- (xx) each Contract which constitutes a guarantee of any obligation of another Person;
- (xxi) each other Contract that is material to the Purchased Assets or the operation of the Business and not previously disclosed pursuant to this Section 3.20(a);
- (xxii) each Real Property Lease (each of which are deemed to constitute a Seller Contract for the purposes of this Agreement); and
- (xxiii) each material amendment, supplement and modification (whether oral or written) in respect of any of the foregoing.



(b) Except as set forth in Part 3.20(b), neither Shareholder has or may acquire any rights under, and neither Shareholder has or may become subject to any obligation or liability under, any Contract that relates to the Business or any of the Purchased Assets.

(c) Except as set forth in Part 3.20(c):

(i) each Assumed Contract is in full force and effect and is valid and enforceable in accordance with its terms;

(ii) each Assumed Contract is assignable by Seller to Buyer without the consent of any other Person; and

(iii) to the Knowledge of Seller, no Assumed Contract will upon completion or performance thereof have a Material Adverse Effect.

(d) (i) Seller is, and has been, in compliance with all applicable terms and requirements of each Assumed Contract;

(ii) to the Knowledge of Seller, each other Person that has or had any obligation or liability under any Assumed Contract is, and has been, in full compliance with all applicable terms and requirements of such Contract;

(iii) to the Knowledge of Seller, no event has occurred or circumstance exists that (with or without notice or after the expiration of any applicable cure period) may contravene, conflict with or result in a Breach of, or give Seller or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Assumed Contract;

(iv) to the Knowledge of Seller, no event has occurred or circumstance exists under or by virtue of any Contract that (with or without notice or after the expiration of any applicable cure period ) would cause the creation of any Encumbrance affecting any of the Purchased Assets; and

(v) Seller has not given to or received from any other Person any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or Breach of, or default under, any Assumed Contract.

(e) There are no renegotiations of, attempts to renegotiate or outstanding rights to renegotiate any material amounts paid or payable to Seller under current or completed Contracts with any Person having the contractual or statutory right to demand or require such renegotiation and no such Person has made written demand for such renegotiation.

(f) Each Contract relating to the sale, design, manufacture or provision of products or services by Seller has been entered into in the Ordinary Course of Business of Seller and has been entered into without the commission of any act alone or in concert with any other Person, or any

consideration having been paid or promised, that is or would be in violation of any Legal Requirement.

### **3.21 Insurance**

(a) Part 3.21(a) sets forth (i) a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, fiduciary liability and other casualty and property insurance maintained by Seller or its Affiliates and relating to the Business, the Purchased Assets or the Assumed Liabilities (collectively, the "Insurance Policies"); (ii) any (A) self-insurance arrangement of Seller, including any reserves established thereunder, (B) any Contract or arrangement, other than the Insurance Policies, for the transfer or sharing of any risk of a nature typically covered by insurance to which Seller is a party, and (C) all obligations of Seller to provide insurance coverage to third parties (for example, under Leases or service agreements) and identifies the policy under which such coverage is provided; and (iii) with respect to the Business, the Purchased Assets or the Assumed Liabilities, a list of all pending claims and the claims history for Seller since December 31, 2012. Except as set forth in Part 3.21(a), there are no claims related to the Business, the Purchased Assets or the Assumed Liabilities pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights.

(b) Neither Seller nor any of its Affiliates has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if not yet due, accrued. All such Insurance Policies (i) are in full force and effect and enforceable in accordance with their terms (except as the enforceability of any such Insurance Policy may be limited by the insurer's bankruptcy, insolvency, moratorium and other similar Legal Requirements relating to or affecting creditors' rights generally or by general equitable principles); (ii) are provided by carriers who are financially solvent; and (iii) have not been subject to any lapse in coverage. None of Seller or any of its Affiliates is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. True and complete copies of the Insurance Policies have been made available to Buyer.

### **3.22 Environmental Matters**

Except as disclosed in Part 3.22:

(a) Seller is, and at all times since January 1, 2012, has been, in full compliance in all material respects with, and has not been and is not in material violation of or materially liable under, any Environmental Law or Occupational Safety and Health Law. Seller does not expect, nor has it nor any other Person for whose conduct it may be held to be responsible received, any actual or threatened order, notice or other communication from (i) any Governmental Body or private citizen acting in the public interest or (ii) the current or prior owner or operator of any Facilities, of any actual or potential violation or failure to comply with any Environmental Law or Occupational Safety and Health Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or other property or asset (whether real, personal or mixed) in which Seller has or had an interest, or with

respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by Seller or any other Person for whose conduct it is or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(b) There are no pending or, to the Knowledge of Seller, threatened claims, Encumbrances, or other restrictions of any nature resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any Environmental Law or Occupational Safety and Health Law with respect to or affecting any Facility or any other property or asset (whether real, personal or mixed) in which Seller has or had an interest.

(c) Seller has no Knowledge of and does not expect, nor has it, or any other Person for whose conduct it may be held responsible, received, any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Activity, Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Law or Occupational Safety and Health Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or property or asset (whether real, personal or mixed) in which Seller has or had an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used or processed by Seller or any other Person for whose conduct it is or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(d) Neither Seller nor any other Person for whose conduct it is or may be held responsible has any Environmental, Health and Safety Liabilities with respect to any Facility or, to the Knowledge of Seller, with respect to any other property or asset (whether real, personal or mixed) in which Seller (or any predecessor) has or had an interest or at any property geologically or hydrologically adjoining any Facility or any such other property or asset.

(e) To the Knowledge of Seller, there are no Hazardous Materials present on or in the Environment at any Facility or at any geologically or hydrologically adjoining property, including any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Facility or such adjoining property, or incorporated into any structure therein or thereon. Neither Seller nor any Person for whose conduct it is or may be held responsible, or to the Knowledge of Seller, any other Person, has permitted or conducted, or is aware of, any Hazardous Activity conducted with respect to any Facility or any other property or assets (whether real, personal or mixed) in which Seller has or had an interest except in full compliance in all material respects with all applicable Environmental Laws.

(f) To the Knowledge of Seller, there has been no Release or Threat of Release of any Hazardous Materials at or from any Facility or at any other location where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by any Facility, or from any other property or asset (whether real, personal or mixed) in which Seller has or had an interest, or any geologically or hydrologically adjoining property, whether by Seller or any other Person.

(g) Seller has delivered to Buyer true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by Seller pertaining to Hazardous Materials or Hazardous Activities in, on, or under the Facilities, or concerning compliance, by Seller or any other Person for whose conduct it is or may be held responsible, with Environmental Laws or Occupational Safety and Health Laws.

### **3.23 Employees**

(a) Part 3.23(a) contains a complete and accurate list of the following information for each employee, director, independent contractor, consultant and agent of Seller, including each employee on leave of absence or layoff status: name; job title; date of hiring or engagement; date of commencement of employment or engagement; current compensation paid or payable and any change in compensation since and including January 1, 2017; sick and vacation leave that is accrued but unused; and additional service time credited for purposes of vesting and eligibility to participate under any Employee Plan, or any other employee or director benefit plan.

(b) No retired employee or director of Seller, and none of their dependents, is receiving benefits from Seller or scheduled to receive benefits from Seller in the future.

(c) Part 3.23(c) states the number of employees terminated by Seller since and including January 1, 2017, and contains a complete and accurate list of the following information for each employee of Seller who has been terminated or laid off, or whose hours of work have been reduced by more than fifty percent (50%) by Seller, in the six (6) months prior to the date of this Agreement: (i) the date of such termination, layoff or reduction in hours; (ii) the reason for such termination, layoff or reduction in hours; and (iii) the location to which the employee was assigned.

(d) Seller has not violated the Worker Adjustment and Retraining Notification Act (the "WARN Act") or any similar state or local Legal Requirement. During the ninety (90) day period prior to the date of this Agreement, Seller has terminated no employees.

(e) To the Knowledge of Seller, no officer, director, agent, employee, consultant, or contractor of Seller is bound by any Contract that purports to limit the ability of such officer, director, agent, employee, consultant, or contractor (i) to engage in or continue or perform any conduct, activity, duties or practice relating to the Business or (ii) to assign to Seller or to any other Person any rights to any invention, improvement, or discovery. To the Knowledge of Seller, no former or current employee of Seller is a party to, or is otherwise bound by, any Contract that in any way adversely affected, affects, or will affect the ability of Seller or Buyer to conduct the Business as heretofore carried on by Seller.

(f) To the Knowledge of Seller, as of the date hereof, no executive, key employee, or group of employees (more than 10) has any plans to terminate employment with Seller.

### **3.24 Labor Disputes; Compliance**

(a) Seller has complied in all respects with all Legal Requirements relating to employment practices, including Legal Requirements related to the terms and conditions of employment, equal employment opportunity, nondiscrimination, immigration, wages (including

the Fair Labor Standards Act), hours, worker classification (including the proper classification of workers as independent contractors or consultants), benefits, collective bargaining and other requirements, the payment of social security and similar Taxes and occupational safety and health. Seller is not delinquent in any material payments to, or on behalf of, any current or former employees or other service providers, including temporary employees and independent contractors, for any services or amounts required to be reimbursed or otherwise paid. Seller is not liable for the payment of any Taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

(b) To the Knowledge of the Seller, Seller has properly classified all service providers as either (i) employees or independent contractors for purposes of all tax and wage reporting and withholding Legal Requirements and for the purpose of employee benefit plan participation, and (ii) as “exempt” or “non-exempt” from overtime requirements under the Fair Labor Standards Act and other applicable Legal Requirements. To the Knowledge of the Seller, no consultant or independent contractor retained by the Seller has made a claim for employee benefits from the Seller.

(c) (i) Seller has not been, and is not now, a party to any collective bargaining agreement or other labor contract; (ii) since and including January 1, 2015, there has not been, there is not presently pending or existing, and to Seller’s Knowledge there is not threatened, any strike, slowdown, picketing, work stoppage or employee grievance process involving Seller; (iii) to Seller’s Knowledge no event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute; (iv) there is not pending or, to Seller’s Knowledge, threatened against or affecting Seller any Proceeding relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters, including any charge or complaint filed with the National Labor Relations Board or any comparable Governmental Body, and there is no organizational activity or other labor dispute against or affecting Seller or the Facilities; (v) no application or petition for an election of or for certification of a collective bargaining agent is pending; (vi) no grievance or arbitration Proceeding exists that might have an adverse effect upon Seller or the conduct of its Business; (vii) there is no lockout of any employees by Seller, and no such action is contemplated by Seller; (viii) to Seller’s Knowledge, there are no pending or threatened unresolved claims, charges, or employment-related suits or controversies, complaints or proceedings of any kind against or involving Seller before the Equal Employment Opportunity Commission or other similar Governmental Body or adjudicative entity; (ix) to Seller’s Knowledge, there are no outstanding charges or orders against or involving Seller under occupational health and safety legislation with respect to any employees and all levies and penalties made against Seller pursuant to workers’ compensation or workplace safety insurance that were required to be paid before the date hereof with respect to employees have been paid; and (x) to Seller’s Knowledge, Seller is not subject to any judgments, decrees, conciliation agreements, or settlement agreements concerning employment-related matters.

(d) To the Knowledge of Seller, Seller has not received written or other information to indicate that any of its employment practices is currently being audited or is under threat to be audited by any Governmental Body.

### 3.25 Intellectual Property Assets

(a) The term “Intellectual Property Assets” means all intellectual property owned or used (as licensor or licensee) by Seller in which Seller has a proprietary interest, including:

(i) Seller’s name, all assumed fictional business names, trade names, trade dress, registered and unregistered trademarks, service marks and applications (collectively, “Marks”);

(ii) all patents, patent applications and inventions and discoveries that may be patentable (collectively, “Patents”);

(iii) all registered and unregistered copyrights in both published works and unpublished works, including without limitation Software, subroutines, user interfaces, and all documentation related to any of the foregoing (collectively, “Copyrights”);

(iv) all rights in mask works;

(v) all know-how, trade secrets, confidential or proprietary information, customer lists, technical information, data, process technology, plans, drawings and blue prints, algorithms, apparatus, processes, techniques, formulae, methods, methodologies, business rules, features and functionalities of products, proprietary rules, schematics, technology, data, databases, data sets, data collections, inventions and discoveries, and improvements to any of the foregoing (in each case, whether or not patentable) (collectively, “Trade Secrets”); and

(vi) all rights in internet web sites and internet domain names presently used by Seller (collectively “Net Names”).

(b) Part 3.25(b) contains a complete and accurate list of all currently registered or pending registered Intellectual Property Assets (“Registered IP”), including any royalties paid or received by Seller; and Seller has delivered to Buyer accurate and complete copies, of all Seller Contracts relating to the Intellectual Property Assets, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available Software programs with a value of less than \$15,000 under which Seller is the licensee. There are no outstanding and, to Seller’s Knowledge, no threatened disputes or disagreements with respect to any such Contract, and neither Seller nor any party to any such Contract is in breach thereof (and shall not be in breach thereof due to the Closing).

(c) The Intellectual Property Assets are all those necessary for the operation of the Business as it is currently conducted, and all such Intellectual Property Assets shall be available for Buyer’s use in the same manner after the Closing Date without payment of any additional fee by the Buyer as a result of the Closing, except for any fees associated with the transfer of Net Names. Seller is the owner or licensee of the Registered IP, free and clear of all Encumbrances, and has the right to use without payment to a Person the Registered IP.

(d) (i) All Patents included in Registered IP are currently in compliance with formal legal requirements (including payment of filing, examination and maintenance fees and proofs of working or use.

(ii) No Patent included in Registered IP has been or is now involved in any interference, reissue, reexamination, or opposition Proceeding.

(iii) (A) Seller does not believe any Patent included in Registered IP is infringed has been challenged or threatened in any way and (B) Seller has received no notice that any of the products manufactured or sold, nor any Trade Secrets used, by or on behalf of Seller in the Business infringes or is alleged to infringe any patent or other proprietary right of any other Person.

(iv) All products made, used or sold under the Patents included in the Registered IP are and have been marked with the proper patent notice.

(e) Seller makes no representation and warranty regarding its common-law Mark of “Shenandoah Furniture” other than it has not received any notice from a third party alleging Seller’s use of such Mark infringes upon the rights of such third party and Seller has not sent any notice to a third party alleging such third party infringes upon such Mark.

(f) (i) All Net Names included in the Registered IP are registered in the name of Seller and are in compliance with all formal Legal Requirements.

(ii) No Net Name included in the Registered IP has been or is now involved in any dispute, opposition, invalidation or cancellation Proceeding and, to Seller’s Knowledge, no such action is threatened with respect to any such Net Name.

### **3.26 Data Privacy and Security**

Seller has developed, implemented, maintained and used appropriate administrative, organizational, technical and physical safeguards relating to the Business. Such safeguards (i) meet all applicable requirements imposed by Data Privacy and Security Laws; and (ii) similar to security standards customary in the industry. To Seller’s Knowledge, there has been no unauthorized access to or other misuse of personally identifiable data of Seller’s customers held by Seller. There has been no Proceedings (other than any Proceedings against Seller that have been filed but not yet served and for which Seller has not received any written, or to the Knowledge of Seller, oral notice) have been instituted or, to the Knowledge of Seller, threatened against Seller by any Person alleging a violation of any applicable Data Privacy and Security Laws.

### **3.27 Certain Business Practices**

Neither Seller nor any of its directors, officers, and employees have engaged, directly or indirectly, in any activity in violation of (i) the Foreign Corrupt Practices Act of 1977, as amended or any other similar Legal Requirement which makes unlawful payments to Governmental Authorities or international non-governmental agencies and their employees in exchange for favorable treatment of benefits not otherwise available but for such payments, or (ii) any local anti-corruption and anti-bribery Legal Requirements, in each case, in jurisdictions in which Seller is

operating (collectively, “Anti-Bribery Laws”). Seller has not received any written or, to the Knowledge of Seller, oral notice that alleges that Seller or any of its Representatives, distributors or contractors is in violation of, or has any liability under, the Anti-Bribery Laws. To Knowledge of Seller, Seller has not been or currently is not under any administrative, civil or criminal investigation or indictment and is not party to any Proceeding involving alleged false statements, false claims or other improprieties relating to Seller’s non-compliance with the Anti-Bribery Laws.

### **3.28 Relationships With Related Persons**

Except as disclosed in Part 3.28, neither Seller nor either Shareholder nor any Related Person of any of them has, or since January 1, 2015, has had, any interest in any property (whether real, personal or mixed and whether tangible or intangible) used in or pertaining to Seller’s Business. Neither Seller nor either Shareholder nor any Related Person of any of them owns, or since January 1, 2015, has owned, of record or as a beneficial owner, an equity interest or any other financial or profit interest in any Person that has (a) had business dealings or a material financial interest in any transaction with Seller other than business dealings or transactions disclosed in Part 3.28, each of which has been conducted in the Ordinary Course of Business with Seller at substantially prevailing market prices and on substantially prevailing market terms or (b) engaged in a Competing Business in any market presently served by Seller, except for ownership of less than two percent (2%) of any class of the securities of any Competing Business that is listed on any national or regional securities exchange or has been registered under Section 12(g) of the Exchange Act. Except as set forth in Part 3.28, neither Seller nor either Shareholder nor any Related Person of any of them is a party to any Contract with, or has any claim or right against, Seller.

### **3.29 Brokers or Finders**

Except as set forth in Part 3.29, neither Seller nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders’ fees or agents’ commissions or other similar payments in connection with the sale of the Business or the Purchased Assets or the Contemplated Transactions.

### **3.30 Securities Law Matters**

(a) To the Knowledge of Seller, each Shareholder acquiring the Stock Consideration is acquiring such Buyer Shares for its own account with the present intention of holding such securities for investment purposes and not with a view to, or for sale in connection with, any public distribution of such securities in violation of any federal or state securities Legal Requirements. The Seller acknowledges and will inform each Shareholder to whom Stock Consideration is to be issued that the Stock Consideration has not been registered under the Securities Act or any state securities Legal Requirements and that the Stock Consideration may not be sold, transferred, offered for sale, assigned, pledged, hypothecated or otherwise disposed of unless such transfer, sale, assignment, pledge, hypothecation or other disposition is pursuant to the terms of an effective registration statement under the Securities Act and is registered under any applicable state securities Legal Requirements or pursuant to the provisions of Rule 144 promulgated under the Securities Act or pursuant to an exemption from registration under the Securities Act and any applicable state securities Legal Requirements. In this regard, Seller represents that it and, to the



Knowledge of Seller, each of the Shareholders are familiar with Rule 144 promulgated under the Securities Act, as presently in effect, and understands the resale limitations imposed thereby and under the Securities Act.

(b) Seller represents that Seller and, to the Knowledge of Seller, each Shareholder is an “Accredited Investor” as that term is defined in Rule 501 of Regulation D of the Securities Act.

(c) Seller and, to the Knowledge of Seller, each Shareholder (i) have such knowledge and experience in financial and business matters as are necessary to evaluate the risks and merits of an investment in the Stock Consideration, and are capable of bearing the entire loss of their investment in the Stock Consideration, (ii) confirm that Buyer has made available to Seller and, to the Knowledge of Seller, each Shareholder the Buyer SEC Documents and (iii) have sought such accounting, legal and tax advice as they have considered necessary to make an informed investment decision with respect to their investments in the Stock Consideration; provided that, Seller makes the foregoing representation for securities Legal Requirement purposes only, and the foregoing representation shall not affect any rights and remedies, including any right to indemnification, to which Seller may otherwise be entitled pursuant to this Agreement or otherwise (other than in respect of any claims arising under applicable securities Legal Requirements as to the existence of a valid exemption from registration for the issuance of the Stock Consideration).

(d) The Seller acknowledges, and will inform the Shareholders, that upon the original issuance of the Stock Consideration, and until such time as the same is no longer required under applicable requirements of the Securities Act or state securities Legal Requirements, the book entries representing the Stock Consideration and all book entries made in exchange therefor or in substitution thereof, shall bear the following legend:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) OR UNDER THE SECURITIES LAWS OF ANY STATE. THEY MAY NOT BE SOLD, OFFERED FOR SALE OR HYPOTHECATED IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO THE SECURITIES UNDER SUCH ACT OR PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER AND, IN THE CASE OF A TRANSACTION EXEMPT FROM REGISTRATION, UNLESS SOLD PURSUANT TO RULE 144 UNDER SUCH ACT OR THE ISSUER HAS RECEIVED DOCUMENTATION REASONABLY SATISFACTORY TO IT (WHICH MAY INCLUDE AN OPINION OF COUNSEL) THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS

### **3.31 Solvency**

Immediately after giving effect to the Contemplated Transactions, Seller shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the

Contemplated Transactions with the intent to hinder, delay or defraud either present or future creditors of Seller. In connection with the Contemplated Transactions, Seller has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

### **3.32 Customers**

Part 3.32 sets forth a true, complete and correct list of the ten (10) largest customers of Seller by dollar volume of sales for fiscal years 2014, 2015 and 2016. Except as set forth in Part 3.32, Seller has not received written, or to the Knowledge of Seller, oral, notice from any customer identified in the list for the 2016 fiscal year set forth in Part 3.32 to the effect that any such customer will stop, or materially decrease the rate of, buying products or services from the Seller.

### **3.33 Suppliers**

Part 3.33 sets forth a true, complete and correct list of the ten (10) largest suppliers of the Seller by dollar volume of purchases for fiscal years 2014, 2015 and 2016. Except as set forth in Part 3.33, since December 31, 2016, Seller has not received written, or to the Knowledge of Seller, oral, notice from any supplier identified in the list for the 2016 fiscal year set forth in Part 3.33 to the effect (i) that any such supplier will stop, or materially decrease the rate of, supplying materials, products or services to Seller or increase the price for such materials, products or services by more than five percent (5%) or (ii) that the payment terms applicable to such suppliers as of the date hereof are to be materially and adversely changed.

### **3.34 Product Warranties; Product Liability**

(a) Except as set forth in Part 3.34, there are no written or oral warranties with respect to the products sold and/or services conducted by the Seller within the past three (3) years. Part 3.34 sets forth (i) the aggregate amount of all costs incurred by Seller with respect to warranty claims, product liability claims and recalls that have occurred during each of the 2014, 2015 and 2016 fiscal years, (ii) a list of all warranty claims or product liability and recalls that have resulted in Seller incurring costs in excess of \$50,000 or more during each of the 2014, 2015 and 2016 fiscal years, and (iii) a list of all pending, or, to the Knowledge of Seller, threatened warranty claims or product liability claims, in each case, that assert damages or claims in excess of \$25,000, or any recalls. The warranty reserve for products sold, shipped or delivery by or on behalf of the Seller on or prior to the Closing Date (i) has been established in accordance with GAAP, and (ii) to the Knowledge of Seller, is in an amount adequate and sufficient to cover any liabilities of Seller pursuant to any such warranties provided in connection with any products of Seller shipped, distributed or delivered by or on behalf of Seller on or prior to the Closing Date.

### **3.35 Disclosure**

No representation or warranty or other statement made by Seller or either Shareholder in this Agreement, the Disclosure Letter, any update to the Disclosure Letter or the certificates delivered pursuant to Section 2.7(e), contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

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

Buyer represents and warrants to Seller and Shareholders as follows:

##### **4.1 Organization and Good Standing**

Buyer is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia, with full corporate power and authority to conduct its business as it is now conducted.

##### **4.2 Capitalization**

(a) As of August 25, 2017, the authorized capital stock of Buyer consists of twenty million (20,000,000) Buyer Shares, of which 11,589,563 shares are issued and outstanding. No Buyer Shares are held in treasury. All of the outstanding Buyer Shares have been duly authorized and validly issued and are fully paid, non-assessable and free of preemptive rights.

(b) As of August 25, 2017, Buyer has no Buyer Shares reserved for or otherwise subject to issuance, except for approximately 548,410 Buyer Shares remaining available for future issuance pursuant to incentive or other compensation plans or arrangements for directors, officers and employees of Buyer and its Subsidiaries.

(c) Except for incentive or other compensation plans or arrangements for directors, officers and employees of Buyer and its Subsidiaries, (i) there are no other existing options, warrants, calls, rights (including conversion rights, preemptive rights, co-sale rights, rights of first refusal or other similar rights) or agreements to which Buyer is a party requiring the issuance, sale or transfer by Buyer of any additional shares of capital stock or other equity securities of Buyer or other securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase shares of capital stock of Buyer or other equity securities of Buyer; and (ii) there are no outstanding stock appreciation, phantom stock, profit participation or similar rights issued by or through Buyer with respect to Buyer.

##### **4.3 Authority; No Conflict**

(a) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon the execution and delivery by Buyer of the other Transaction Documents to be executed or delivered by Buyer at Closing (collectively, the "Buyer's Closing Documents"), each of the Buyer's Closing Documents will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its respective terms, except as such enforcement may be limited by Equitable Exceptions. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Buyer's Closing Documents and to perform its obligations under this Agreement and the Buyer's Closing Documents, and such action has been duly authorized by all necessary corporate action.

(b) Neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will give any Person the right to prevent, delay or otherwise interfere with any of the Contemplated Transactions pursuant to:

- (i) any provision of Buyer's Governing Documents;
- (ii) any resolution adopted by the board of directors or the shareholders of Buyer;
- (iii) any Legal Requirement or Order to which Buyer may be subject; or
- (iv) any material Contract to which Buyer is a party or by which Buyer may be bound.

Buyer is not and will not be required to obtain any material Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

#### **4.4 Certain Proceedings**

There is no pending, or to Buyer's Knowledge, threatened Proceeding that has been commenced against Buyer and that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions.

#### **4.5 Brokers or Finders**

Except as set forth in Part 4.5, neither Buyer nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Contemplated Transactions.

#### **4.6 Issuance of Stock Consideration; NASDAQ Listing**

(a) The Stock Consideration, when issued pursuant to the terms of this Agreement, will be duly authorized, validly issued, fully paid and non-assessable and will be free of any and all Liens, claims, restrictions, and preemptive, preferential or similar purchase rights created by statute, Buyer's articles of incorporation, Buyer's bylaws or any Contract to which Buyer is a party or by which it's bound, other than restrictions on transfer under applicable state and federal securities Legal Requirements.

(b) The Buyer Common Stock is listed on the NASDAQ Global Select Market, and Buyer has not received any notice of delisting of the Buyer Common Stock. Buyer is in compliance with all of the NASDAQ Global Select Market's continued listing standards and any other applicable NASDAQ requirements and, to Buyer's Knowledge, there exists no event, occurrence, fact, condition or change that is, or could reasonably be expected to become, a violation of such standards or requirements.

#### **4.7 Buyer SEC Documents**

The Buyer has filed or furnished all reports, schedules, forms, registrations, statements, certifications and other documents, together with any amendments required to be made with respect thereto, that were required to be filed or furnished since and including January 1, 2016 under the Exchange Act, and the Securities Act (together with the exhibits and other information incorporated therein, the “Buyer SEC Documents”). No such Buyer SEC Document, at the time filed or furnished, or if amended prior to the date hereof, as of the date of the amendment, (and in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of relevant meetings, respectively) contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements made therein, taken as a whole, in light of the circumstances under which they were made, not misleading, except that information in the Buyer SEC Documents as of a later date (but before the date of this Agreement) shall be deemed to modify information in the Buyer SEC Documents as of an earlier date. As of their respective dates of filing or being furnished with the SEC (or, if amended or superseded by a filing prior to the date hereof, as of the date of such filing), all Buyer SEC Documents complied as to form in all material respects with the applicable requirements of the Exchange Act or the Securities Act, as the case may be, the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), and the applicable rules and regulations of the SEC thereunder. As of the date of this Agreement, Buyer has not received any comments from the SEC with respect to any of the Buyer SEC Documents which remain unresolved, nor has it received any inquiry or information request from the SEC as of the date of this Agreement as to any matters affecting Buyer which has not been adequately addressed.

#### **4.8 Financial Statements**

Each of the financial statements of Buyer included (or incorporated by reference) in the Buyer SEC Documents (including the related notes, where applicable) (i) fairly present in all material respects the results of operations, cash flows, changes in shareholders’ equity and financial position of Buyer for the respective fiscal periods or as of the respective dates therein set forth (subject in the case of unaudited statements to recurring year-end audit adjustments normal in nature and amount), (ii) complied as to form, as of their respective dates of filing with the SEC, in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC), and (iii) have been prepared in accordance with GAAP (except, in the case of unaudited statements, as permitted by the rules and regulations of the SEC) consistently applied during the periods involved, except, in each case, as indicated in such statements or in the notes thereto.

#### **4.9 Internal Controls; Sarbanes-Oxley Act**

Buyer has established and maintains a system of internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Buyer (i) has established and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that material information required to be disclosed by Buyer in the reports

that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to Buyer's management as appropriate to allow timely decisions regarding required disclosure and (ii) to the Knowledge of Buyer, has disclosed to Buyer's auditors and the audit committee of Buyer's board of directors (and made summaries of such disclosures since January 1, 2016 available to Buyer) (A) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting, in each case that are reasonably likely to adversely affect in any material respect to Buyer's ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Buyer's internal controls over financial reporting.

#### **4.10 Absence of Certain Changes**

Except as expressly contemplated by this Agreement, between the date of the Buyer's most recent quarterly report on Form 10-Q required to be filed with the SEC and the date hereof, there has not been any fact, event, change, development, circumstance or effect that has had, individually or in the aggregate, a material adverse effect on the business, operations, assets or condition of Buyer.

#### **4.11 No Undisclosed Liabilities**

Buyer has no liabilities, obligations or commitments of any type required to be reflected on a balance sheet prepared in accordance with GAAP, except for: (i) those which are adequately reflected or reserved against in the Buyer SEC Documents; (ii) those which have been incurred in the ordinary course of business since the date of the Buyer's most recent quarterly report on Form 10-Q required to be filed with the SEC; (iii) those arising out of this Agreement or the Contemplated Transactions; and (iv) those that would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, operations, assets or condition of Buyer.

#### **4.12 Sufficiency of Funds**

As of the date hereof, Buyer has cash available that is sufficient to enable it to make payment of the Cash Consideration at Closing and consummate the Contemplated Transactions.

#### **4.13 Solvency**

Immediately after giving effect to the Contemplated Transactions, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the Contemplated Transactions with the intent to hinder, delay or defraud either present or future creditors of Buyer. In connection with the Contemplated Transactions, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

## **5. COVENANTS OF SELLER PRIOR TO CLOSING**

### **5.1 Access and Investigation; Environmental Matters**

(a) Between the date of this Agreement and the Closing Date, and upon reasonable advance notice received from Buyer, Seller shall (a) afford Buyer and its Representatives and prospective lenders and their Representatives (collectively, "Buyer Group") access to Seller's personnel, properties, Contracts, Governmental Authorizations, books and Records and other documents and data, such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Seller and that minimizes potential disruption among employees, suppliers and customers; (b) furnish Buyer Group with copies of all such Contracts, Governmental Authorizations, books and Records and other existing documents and data as Buyer may reasonably request; (c) furnish Buyer Group with such additional financial, operating and other relevant data and information as Buyer may reasonably request; and (d) otherwise cooperate and assist, to the extent reasonably requested by Buyer, with Buyer's investigation of the properties, assets and financial condition related to Seller.

(b) Without limiting the generality of the foregoing, Buyer shall have the right to have the Real Property (including, without limitation, the Operating Facilities and the Showroom) and Tangible Personal Property inspected by Buyer Group, at Buyer's sole cost and expense, for purposes of determining the physical condition and legal characteristics of the Real Property, leased premises and Tangible Personal Property; provided, however, that Buyer may not (and may not require Seller or Landlord to) conduct a Phase II environmental site assessment or other invasive or intrusive or subsurface testing or investigation without Seller's prior written consent, which may not be unreasonably withheld, conditioned or delayed (it being understood that, so long as reasonable, consent may be withheld without violating this Agreement).

### **5.2 Operation of the Business of Seller**

Between the date of this Agreement and the Closing, Seller shall (and Shareholders shall cause Seller and each Landlord to):

(a) conduct its Business only in the Ordinary Course of Business, except that Seller may take actions necessary or advisable to comply with its obligations under this Agreement and may make payments against any Liabilities that would otherwise be Retained Liabilities after Closing;

(b) except as otherwise requested by Buyer in writing, and without making any commitment on Buyer's behalf, use its Best Efforts in the Ordinary Course of Business to preserve intact its current business organization, keep available the services of its officers, employees and agents and maintain its relations and good will with suppliers, customers, landlords, creditors, employees, agents and others having business relationships with it;

(c) confer with Buyer prior to implementing operational decisions of a material and significant nature, to the extent allowable under law;

(d) otherwise report periodically to Buyer concerning the status of its Business, operations and finances;

- (e) make no material changes in management personnel without prior consultation with Buyer;
- (f) maintain the Purchased Assets, Real Property (including, without limitation, any Operating Facility, the Showroom and all premises leased pursuant to any Real Property Leases) in a state of repair and condition that complies with Legal Requirements (and, as applicable, Real Property Leases) in the Ordinary Course of Business;
- (g) keep in full force and effect, without amendment, all material rights relating to the Business and the Operating Facilities and Showroom;
- (h) comply with all Legal Requirements and contractual obligations applicable to the Business and the Operating Facilities and Showroom;
- (i) continue in full force and effect the insurance coverage under the Insurance Policies or substantially equivalent policies;
- (j) except as required to comply with ERISA or to maintain qualification under Section 401(a) of the Code or except as set forth in this Agreement, not amend, modify or terminate any Employee Plan without the express written consent of Buyer, and except as required under the provisions of any Employee Plan, not make any contributions to or with respect to any Employee Plan without the express written consent of Buyer, provided that Seller shall contribute that amount of cash to each Employee Plan necessary to fully fund all of the benefit liabilities of such Employee Plan on a plan-termination basis as of the Closing Date;
- (k) cooperate with Buyer and assist Buyer in identifying the Governmental Authorizations required by Buyer to operate the Business from and after the Closing Date and either transferring existing Governmental Authorizations of Seller to Buyer, where permissible, or obtaining new Governmental Authorizations for Buyer; and
- (l) maintain all books and Records of Seller relating to Seller's Business in the Ordinary Course of Business.

### **5.3 Negative Covenant**

Except as otherwise expressly permitted or contemplated herein, between the date of this Agreement and the Closing Date, Seller shall not, without the prior written Consent of Buyer, (a) take any affirmative action, or fail to use its Best Efforts in the Ordinary Course of Business to take any reasonable action within its control, as a result of which any of the changes or events listed in Sections 3.15 or 3.19 would be likely to occur; (b) make any modification to any material Contract or Governmental Authorization; (c) fail to use its Best Efforts in the Ordinary Course of Business to not allow the levels of raw materials, supplies or other materials included in the Inventories to vary materially from the levels customarily maintained; or (d) enter into any compromise or settlement of any Proceeding relating to the Purchased Assets, the Business or the Assumed Liabilities.



#### **5.4 Required Approvals**

As promptly as practicable after the date of this Agreement, Seller shall make all filings required by Legal Requirements to be made by it in order to consummate the Contemplated Transactions. Seller also shall cooperate with Buyer and its Representatives with respect to all filings that Buyer elects to make or, pursuant to Legal Requirements, shall be required to make in connection with the Contemplated Transactions. Seller also shall cooperate with Buyer and its Representatives in obtaining all Material Consents.

#### **5.5 Notification**

Between the date of this Agreement and the Closing, Seller shall promptly notify Buyer in writing if it becomes aware of (a) any fact or condition that causes or constitutes a Breach of any of Seller's representations and warranties made as of the date of this Agreement or (b) the occurrence after the date of this Agreement of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this Agreement) cause or constitute a Breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or Seller's discovery of, such fact or condition. Should any such fact or condition require any update to the Disclosure Letter, Seller shall promptly deliver to Buyer an update to the Disclosure Letter reflecting such change. The Disclosure Letter for all purposes shall be treated as thus updated, except that, if Buyer sends written notice objecting to an updated matter within ten (10) days of its receipt of such update stating a reasonable, good faith basis that such update would impair the value of the Business by, or otherwise have Buyer incur expenses in excess of (which, for this purpose, would not include business expenses to purchase or lease or license goods or services used for the benefit of the Business in the Ordinary Course of Business, *e.g.*, lease payments on a copier actually used every day), more than \$5,000, then any objected updates shall not be taken into account for purposes of Section 7.1, the right of Buyer to terminate this Agreement pursuant to Section 9.1(b) or (e) or any rights of Buyer under Section 9.2 and Article 11. Also between the date of this Agreement and the Closing, Seller also shall promptly notify Buyer of the occurrence of any Breach of any covenant of Seller or the Shareholders in this Article 5 or of the occurrence of any event that may make the satisfaction of the conditions in Article 7 impossible or unlikely.

#### **5.6 No Negotiation**

Until such time as this Agreement shall be terminated pursuant to Section 9.1, neither Seller nor either Shareholder shall directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to, consider the merits of any inquiries or proposals from any Person (other than Buyer), or enter into any written or oral agreement or understanding with any Person (other than Buyer) relating to any business combination transaction involving Seller, including the sale by Shareholders of Seller's stock, the merger or consolidation of Seller or the sale of Seller's Business or any of the Purchased Assets (other than in the Ordinary Course of Business), or otherwise enter into any written or oral agreement, arrangement or understanding requiring Seller to abandon, terminate or fail to consummate the Contemplated Transactions. Seller shall notify Buyer of any such inquiry or proposal within twenty-four (24) hours of receipt or awareness of the same by Seller or either Shareholder.

## **5.7 Best Efforts**

Seller shall use its Best Efforts to cause the conditions in Article 7 to be satisfied.

## **5.8 Payment of Liabilities**

Seller shall pay or otherwise satisfy in the Ordinary Course of Business all of its Liabilities and obligations. Buyer and Seller hereby waive compliance with the bulk-transfer provisions of the Uniform Commercial Code (or any similar law) ("Bulk Sales Laws") in connection with the Contemplated Transactions.

## **6. COVENANTS OF BUYER PRIOR TO CLOSING**

### **6.1 Required Approvals**

As promptly as practicable after the date of this Agreement, Buyer shall make, or cause to be made, all filings required by Legal Requirements to be made by it to consummate the Contemplated Transactions. Buyer also shall cooperate, and cause its Related Persons to cooperate, with Seller (a) with respect to all filings Seller shall be required by Legal Requirements to make and (b) in obtaining all Consents identified in Part 3.2(c), provided, however, that Buyer shall not be required to dispose of or make any change to its business, expend any material funds or incur any other burden in order to comply with this Section 6.1.

### **6.2 Best Efforts**

Buyer shall use its Best Efforts to cause the conditions in Article 8 and Section 7.3 to be satisfied.

## **7. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE**

Buyer's obligation to purchase the Purchased Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

### **7.1 Accuracy of Representations**

The representations and warranties of Seller contained in this Agreement and the other Transaction Documents delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

### **7.2 Seller's Performance**

All of the covenants and obligations that Seller and Shareholders are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively),

and each of these covenants and obligations (considered individually), including the deliverables set forth in Section 2.7, shall have been duly performed and complied with in all material respects.

### **7.3 Consents**

Each of the Consents identified in Part 7.3 (the “Material Consents”) shall have been obtained and shall be in full force and effect.

### **7.4 No Injunction**

There shall not be in effect any Legal Requirement or any injunction or other Order that (a) prohibits the consummation of the Contemplated Transactions and (b) has been adopted or issued, or has otherwise become effective, since the date of this Agreement.

### **7.5 No Proceedings**

Since the date of this Agreement, there shall not have been commenced or threatened against Buyer, or against any Related Person of Buyer, any Proceeding (a) involving any challenge to, or seeking Losses or other relief in connection with, any of the Contemplated Transactions or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on or otherwise interfering with any of the Contemplated Transactions.

### **7.6 No Conflict**

Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time), contravene or conflict with or result in a violation of or cause Buyer or any Related Person of Buyer to suffer any adverse consequence under (a) any applicable Legal Requirement or Order or (b) any Legal Requirement or Order that has been published, introduced or otherwise proposed by or before any Governmental Body, excluding Bulk Sales Laws.

### **7.7 Non-Disturbance Agreements**

If at Closing any Operating Facility or the Showroom is encumbered by any mortgage, deed of trust or other instrument made or given by Landlord, Buyer shall have received from the holder of such instrument a commercially reasonable subordination, non-disturbance and attornment agreement (“SNDA”) providing (without limitation) that Buyer’s leasehold interest in such Operating Facility or Showroom under any Operating Lease shall not be disturbed for so long as Buyer is not in default thereunder beyond any applicable notice or cure period, and otherwise in form and substance reasonably acceptable to Buyer.

### **7.8 Governmental Authorizations**

Buyer shall have received such Governmental Authorizations identified in Part 7.8 as are necessary or desirable to allow Buyer to operate the Purchased Assets from and after the Closing.

## **7.9 No Material Adverse Effect**

Since the date of the Balance Sheet, there has not been any Material Adverse Effect, and no event has occurred or circumstance exists that may result in such a Material Adverse Effect.

## **8. CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE**

Seller's obligation to sell the Purchased Assets and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller in whole or in part):

### **8.1 Accuracy of Representations**

The representations and warranties of Buyer contained in this Agreement and the other Transaction Documents delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

### **8.2 Buyer's Performance**

All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), including the deliverables set forth in Section 2.7, shall have been performed and complied with in all material respects.

### **8.3 No Injunction**

There shall not be in effect any Legal Requirement or any injunction or other Order that (a) prohibits the consummation of the Contemplated Transactions and (b) has been adopted or issued, or has otherwise become effective, since the date of this Agreement.

## **9. TERMINATION**

### **9.1 Termination Events**

By notice given at any time prior to the Closing, subject to Section 9.2, this Agreement may be terminated as follows:

(a) by Buyer, if Buyer is not then in material Breach of any provision of this Agreement and a material Breach of any provision of this Agreement (other than Article 3) has been committed by Seller that would give rise to the failure of any of the conditions specified in Article 7 and such Breach has not been cured by Seller within twenty (20) days of Seller's receipt of written notice of such Breach from Buyer;

(b) by Buyer, if Buyer is not then in material Breach of any provision of this Agreement and a material Breach of Article 3 of this Agreement exists that would give rise to the failure of any of the conditions specified in Section 7.1 and such Breach has not been cured by Seller within twenty (20) days of Seller's receipt of written notice of such Breach from Buyer;

(c) by Seller, if neither Seller nor any Shareholder is not then in material Breach of any provision of this Agreement and a material Breach of any provision of this Agreement (other than Article 4) has been committed by Buyer that would give rise to the failure of any of the conditions specified in Article 8 and such Breach has not been cured by Buyer within twenty (20) days of Buyer's receipt of written notice of such Breach from Seller;

(d) by Seller, if neither Seller nor any Shareholder is not then in material Breach of any provision of this Agreement and a material Breach of Article 4 of this Agreement exists that would give rise to the failure of any of the conditions specified in Section 8.1 and such Breach has not been cured by Buyer within twenty (20) days of Buyer's receipt of written notice of such Breach from Seller;

(e) by Buyer, if any of the conditions set forth in Article 7 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by November 5, 2017, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants or agreements hereof to be performed or complied with by it prior to the Closing;

(f) by Seller, if any of the conditions set forth in Article 8 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by November 5, 2017, unless such failure shall be due to the failure of Seller or any Shareholder to perform or comply with any of the covenants or agreements hereof to be performed or complied with by it prior to the Closing; or

(g) by mutual consent of Buyer and Seller.

## **9.2 Effect of Termination**

If this Agreement is terminated pursuant to Section 9.1, all obligations of the parties under this Agreement will terminate, except that the obligations of the parties in this Section 9.2 and Article 12 (the first and second sentences only) and 13 (except for those in Section 13.5) survive. This right to terminate shall be the exclusive remedy of the terminating party, except, the terminating party's right to pursue all legal remedies will survive such termination unimpaired if (X) the termination is pursuant to Section 9.1(a) or (c) or (Y) the termination is pursuant to Section 9.1(b) or (d) and the underlying Breach is due to the non-terminating party's fraud or Willful Breach. "Willful Breach" means a Breach that is the consequence of an act or omission by a party with the actual knowledge that the taking of such act or failure to take such act would cause, or would reasonably be expected to cause, a Breach of this Agreement.

## 10. ADDITIONAL COVENANTS

### 10.1 **Employees and Employee Benefits**

(a) Information on Active Employees. For the purpose of this Agreement, the term “Active Employees” shall mean all employees employed on the Closing Date by Seller for its Business who are employed exclusively in Seller’s Business as currently conducted, including employees on temporary leave of absence, including family medical leave, military leave, temporary disability or sick leave, but excluding employees on long-term disability leave.

(b) Employment of Active Employees by Buyer.

(i) Buyer shall be given reasonable access to Seller’s Key Employees as disclosed on Part 10.1(b) for the purpose of discussing employment terms and shall offer employment effective on the Closing to all or substantially all of the Active Employees of the Seller as of the Closing, except as set forth in Section 10.1(g)(iv). Any such Active Employees of the Seller as of the Closing who accept and continue employment with the Buyer shall be referred to herein as “Transferred Employees”.

(ii) Subject to Legal Requirements, Buyer will have reasonable access to the Facilities and personnel Records (including performance appraisals, disciplinary actions, grievances and medical Records) of Seller. Access will be provided by Seller upon reasonable prior notice during normal business hours. Effective immediately before the Closing, Seller will terminate the employment of all of the Transferred Employees.

(iii) It is understood and agreed that Buyer’s express intent to extend offers of employment as set forth in this Section 10.1 shall not constitute any commitment, Contract or understanding (expressed or implied) of any obligation on the part of Buyer to a post-Closing employment relationship of any fixed term or duration or upon any terms or conditions other than those that Buyer may establish pursuant to individual offers of employment, and any employment offered by Buyer is “at will” and may be terminated by Buyer or by an employee at any time for any reason (subject to any written commitments to the contrary made by Buyer or an employee and Legal Requirements). Nothing in this Agreement shall be deemed to prevent or restrict in any way the right of Buyer to terminate, reassign, promote or demote any of the Transferred Employees after the Closing or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.

(iv) Seller and Buyer agree to cooperate in good faith to determine whether any notification may be required under the WARN Act or any similar state or local Legal Requirement as a result of the Contemplated Transactions and agree to comply with their respective obligations, if any, under the WARN Act and any other similar state or local Legal Requirement.

(c) Salaries and Benefits.

(i) Seller shall be responsible for (A) the payment of all wages and other remuneration due to Active Employees with respect to their services as employees of Seller through the close of business on the Closing Date, including pro rata bonus payments and pro rata vacation pay earned prior to the Closing Date; (B) the payment of any termination or severance payments and the provision of health plan continuation coverage in accordance with the requirements of COBRA and Sections 601 through 608 of ERISA; and any payments that have been accrued but not yet paid will be reflected to adjustments in the Net Working Capital, as appropriate, in accordance with the provisions of Sections 2.8 and 2.9 hereof.

(ii) Seller shall be liable for any claims made or incurred by Active Employees and their beneficiaries through the Closing Date under all Employee Plans. For purposes of the immediately preceding sentence, a charge will be deemed incurred, in the case of hospital, medical or dental benefits, when the services that are the subject of the charge are performed and, in the case of other benefits (such as disability or life insurance), when an event has occurred or when a condition has been diagnosed that entitles the employee to the benefit. Seller agrees to provide Buyer a report of incurred but not reported claims ("IBNR") to ensure that the liabilities under this subsection 10.1(c)(ii) may be reflected in a consistent manner for purpose of the Net Working Capital Target, Net Working Capital Estimate, Net Working Capital Statement and Final Net Working Capital, as appropriate with the provisions of Section 2.8 and 2.9 hereof.

(iii) Buyer shall assume and honor the Assumed Welfare Plans as defined in Section 2.4(a)(vii) in accordance with their terms as in effect immediately prior to the Closing, subject to any amendment or termination thereof that may be permitted by such Assumed Welfare Plans or as may be permitted or required under applicable law. It is anticipated that such Assumed Welfare Plans shall remain in existence for the benefit of Transferred Employees only through December 31, 2017. It is also anticipated that effective January 1, 2018, Transferred Employees will become eligible to participate in Buyer's Employee Plans that are welfare plans during Buyer's annual enrollment period applicable to its welfare plans. Except as otherwise provided for in this Section 10.1, Transferred Employees shall be eligible to participate in Buyer's Employee Plans as soon as practicable following the Closing Effective Time, subject to the terms of such plans.

(iv) For purposes of any of Buyer's Employee Plans other than the Assumed Welfare Plans, each Transferred Employee will be credited with his or her years of service with the Seller prior to the Closing (including predecessor or acquired entities or any other entities for which the Seller has given credit for prior service), to the same extent as such Transferred Employee was entitled, prior to the Closing, to credit for such service under the corresponding Seller Employee Plan or Assumed Welfare Plan, as applicable), except (A) for any purpose where service credit for the applicable period is not provided to participants generally, or (B) to the extent such credit would result in a duplication of benefits.

(d) Seller's 401(k) Savings Plans. The Seller shall (i) terminate the Shenandoah Furniture Inc. 401(k) Plan (the "401(k) Plan") effective immediately prior to the Closing Date, (ii) cause the account balances of all participants in the 401(k) Plan to be fully vested effective immediately prior to the Closing Date; and (iii) take any actions necessary to ensure that the account balances of participants in the 401(k) Plan are distributable from the 401(k) Plan on, or as soon as administratively practicable after, the Closing Date. As of the Closing Date, Buyer shall cover (or cause to be covered) each Transferred Employee under a defined contribution plan qualified under Sections 401(a) and 401(k) of the Code (the "Buyer Plan"). Buyer shall cause each Transferred Employee who (i) was a participant in such 401(k) Plan, (ii) has an account balance under the 401(k) Plan and (iii) who is then an employee of the Buyer to be permitted to roll over such account balance (including any outstanding loan) to the Buyer Plan, provided that such rollover is elected by the eligible Transferred Employee before the first anniversary of the Closing Date.

(e) No Transfer of Assets. Seller shall not make any transfer of pension or other employee benefit plan assets to Buyer.

(f) Collective Bargaining Matters, Severance. Buyer will set its own initial terms and conditions of employment for the Transferred Employees and others it may hire, including work rules, benefits and salary and wage structure, all as permitted by law. Buyer is not obligated to assume any collective bargaining agreements under this Agreement. Seller shall be solely liable for any severance payment required to be made to its employees due to the Contemplated Transactions.

(g) General Employee Provisions.

(i) Seller and Buyer shall give any notices required by Legal Requirements and take whatever other actions with respect to the plans, programs and policies described in this Section 10.1 as may be necessary to carry out the arrangements described in this Section 10.1.

(ii) Seller and Buyer shall provide each other with such plan documents and summary plan descriptions, employee data or other information as may be reasonably required to carry out the arrangements described in this Section 10.1.

(iii) If any of the arrangements described in this Section 10.1 are determined by the IRS or other Governmental Body to be prohibited by law, Seller and Buyer shall modify such arrangements to as closely as possible reflect their expressed intent and retain the allocation of economic benefits and burdens to the parties contemplated herein in a manner that is not prohibited by law.

(iv) Seller shall provide Buyer with completed I-9 forms and attachments with respect to all Transferred Employees, except for such employees as Seller certifies in writing to Buyer are exempt from such requirement. While Buyer anticipates extending offers of employment to substantially all of Seller's Active Employees subject to applicable Legal Requirements, Buyer shall no responsibility to offer employment to any Active Employee for whom an I-9 form has not been furnished.



(v) Buyer shall not have any responsibility, liability or obligation, whether to Active Employees, former employees, their beneficiaries or to any other Person, with respect to any employee benefit plans, practices, programs or arrangements (including the establishment, operation or termination thereof and the notification and provision of COBRA coverage extension) maintained by Seller.

#### **10.2 Payment of All Taxes Resulting From Sale of Assets by Seller**

Except as otherwise contemplated by this Agreement, Seller shall pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Purchased Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed by Legal Requirements.

#### **10.3 Payment of Other Retained Liabilities**

In addition to payment of Taxes pursuant to Section 10.2, Seller shall pay, or make adequate provision for the payment, in full all of the Retained Liabilities and other Liabilities of Seller under this Agreement.

#### **10.4 Change of Name**

Within 30 days after the Closing Date, Seller shall amend its Governing Documents and take all other actions necessary to change to remove “Shenandoah Furniture” and any and all derivations thereof, including, without limitation, making any and all required filings with Governmental Bodies.

#### **10.5 Restrictions on Seller Dissolution and Distributions**

Seller shall remain in existence and in good standing in the Commonwealth of Virginia for at least twenty-four (24) months following the Closing Date, during which time Seller shall not file for dissolution. Seller shall not be prevented from making dividends or distributions to its shareholders or creditors, including distributions of the Purchase Price; *provided that* such distributions are in accordance with applicable Legal Requirements and this Agreement.

#### **10.6 Removing Excluded Assets**

On or before the Closing Date, Seller shall remove all Excluded Assets from all Facilities and other Real Property (including, without limitation, the Operating Facilities and the Showroom to be occupied by Buyer. Such removal shall be done in such manner as to avoid any damage to the Facilities and other properties to be occupied by Buyer and any disruption of the Business operations to be conducted by Buyer after the Closing. Any damage to the Purchased Assets or to the Facilities resulting from such removal shall be paid by Seller at the Closing. Should Seller fail to remove the Excluded Assets as required by this Section, Buyer shall have the right, but not the obligation, (a) to remove the Excluded Assets at Seller’s sole cost and expense; (b) to store the Excluded Assets and to charge Seller all storage costs associated therewith; (c) to treat the Excluded Assets as unclaimed and to proceed to dispose of the same under the laws governing unclaimed property; or (d) to exercise any other right or remedy conferred by this Agreement or otherwise available at law or in equity. Seller shall promptly reimburse Buyer for all costs and

expenses incurred by Buyer in connection with any Excluded Assets not removed by Seller on or before the Closing Date.

#### **10.7 Assistance in Proceedings**

(a) Seller will cooperate with Buyer and its counsel in the contest or defense of, and make available its personnel and provide any testimony and access to its books and Records in connection with, any Proceeding involving or relating to (a) any Contemplated Transaction or (b) any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving Seller or its Business or either Shareholder.

(b) Seller agrees to assist Buyer, as reasonably requested by Buyer, in the preparation of any required financial statements or other disclosures required by the rules and regulations of the SEC (including Regulation S-X) relating to Seller, including, without limitation, in the preparation of post-Closing financial statements (including pro forma financial statements) and the timely preparation of required Current Reports to be filed or furnished by Buyer. In connection with the foregoing, Seller agrees to provide access to financial and other relevant information, as needed, in order to prepare such required financial statements and make such other disclosures. Further, Seller agrees to obtain from Seller's independent registered accounting firm, at Seller's sole cost and expense, the customary consents to the inclusion of their audit reports and review reports with respect to the audited Financial Statements in any Form 8-K or other required filing by Buyer with the Securities and Exchange Commission or NASDAQ.

#### **10.8 Rule 144**

(a) Seller and the Shareholders have acknowledged that the Buyer Shares being issued as Stock Consideration are "restricted securities" as defined in Rule 144 promulgated under the Securities Act and will be subject to a lock-up period of six (6) months. During such period, Seller and the Shareholders acknowledge that the Buyer Shares may not be transferred, resold, pledged, hypothecated or otherwise disposed of in the absence of a legal opinion of counsel reasonably acceptable to the Buyer that such transfer may be made without registration under the Securities Act and all applicable state securities or blue sky laws.

(b) With a view to making available to the Shareholders the benefits of Rule 144 promulgated under the Securities Act and any other similar rule or regulation of the SEC that may at any time permit the Shareholders to sell securities of Buyer to the public without registration, for a period of 12 months from the date of the Closing, the Buyer agrees to use commercially reasonable efforts to:

(i) make and keep adequate current public information available, as those terms are understood and defined in Rule 144;

(ii) file with the SEC in a timely manner all reports and other documents required of the Buyer under the Securities Act and the Exchange Act, for so long as the

Buyer remains subject to such requirements, and the filing of such reports and other documents as is required for sales under Rule 144;

(iii) submit electronically and post on its corporate web site, if any, every interactive data file required to be submitted and posted pursuant to Rule 405 of Regulation S-T; and

(iv) furnish to the Shareholders, promptly upon written request, (A) to the extent accurate, a written statement by Buyer that it has complied with the reporting requirements of Rule 144, the Securities Act and the Exchange Act and (B) such other information as may be reasonably requested to permit the Shareholders to sell such securities pursuant to Rule 144 without registration.

(c) Provided the requirements of Rule 144 as heretofore referenced are met, Buyer shall promptly, upon a Shareholder's written request, provide a customary letter to its stock transfer agent to remove the restrictive legend from any stock certificate representing the Shareholder's portion of the Stock Consideration. The Shareholders shall provide Buyer with the customary written certificates necessary for Buyer to satisfy the foregoing requirement.

#### **10.9 Noncompetition, Nonsolicitation and Nondisparagement**

(a) Noncompetition. For a period of five (5) years after the Closing Date (the "Restricted Period"), Seller shall not, anywhere in the United States, directly or indirectly invest in, own, manage, operate, finance, control, advise, render services to or guarantee the obligations of any Person engaged in or planning to become engaged in the business of developing, designing, manufacturing, distributing, promoting, importing, selling or providing the same or substantially similar wood, metal or upholstered residential furniture products at the middle to upper price points as in the Business ("Competing Business"), provided, however, that Seller may purchase or otherwise acquire up to (but not more than) two percent (2%) of any class of the securities of any Person (but may not otherwise participate in the activities of such Person) if such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Exchange Act.

(b) Nonsolicitation. During the Restricted Period, Seller shall not, directly or indirectly:

(i) solicit the business of any Person who is a customer of Buyer in a manner competitive with the Business;

(ii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, franchisee, employee, consultant or other business relation of Buyer to cease doing business with Buyer, to deal with any competitor of Buyer or in any way interfere with its relationship with Buyer;

(iii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, franchisee, employee, consultant or other business relation of Seller on the Closing Date or within the year preceding the Closing Date to cease doing business with

Buyer, to deal with any competitor of Buyer or in any way interfere with its relationship with Buyer; or

(iv) hire, retain or attempt to hire or retain any employee or independent contractor of Buyer or in any way interfere with the relationship between Buyer and any of its employees or independent contractors.

(c) Nondisparagement. After the Closing Date, neither Seller nor Buyer will disparage Buyer or any of Buyer's Representatives or Seller or Seller's Representatives, as the case may be.

(d) Modification of Covenant. If a final judgment of a court or tribunal of competent jurisdiction determines that any term or provision contained in Section 10.9(a) through (c) is invalid or unenforceable, then the parties agree that the court or tribunal will have the power to reduce the scope, duration or geographic area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. This Section 10.9 will be enforceable as so modified after the expiration of the time within which the judgment may be appealed. This Section 10.9 is reasonable and necessary to protect and preserve Buyer's legitimate business interests and the value of the Purchased Assets and to prevent any unfair advantage conferred on Seller.

#### **10.10 Customer and Other Business Relationships**

After the Closing, Seller will cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer those business relationships of Seller existing prior to the Closing and relating to the Business, including relationships with lessors, employees, regulatory authorities, licensors, customers, suppliers and others, and Seller will satisfy the Retained Liabilities in a manner that is not detrimental to any of such relationships. Seller will refer to Buyer all business inquiries relating to the Business.

#### **10.11 Retention of and Access to Records**

After the Closing Date, Buyer shall retain for a period consistent with Buyer's record-retention policies and practices those Records of Seller delivered to Buyer. Buyer also shall provide Seller and Shareholders and their Representatives reasonable access thereto, during normal business hours and on at least three days' prior written notice, to enable them to prepare financial statements or tax returns or deal with tax audits. After the Closing Date, Seller shall provide Buyer and its Representatives reasonable access to Records that are Excluded Assets, during normal business hours and on at least three days' prior written notice, for any reasonable business purpose specified by Buyer in such notice.

#### **10.12 Further Assurances**

Subject to the proviso in Section 6.1, the parties shall cooperate reasonably with each other and with their respective Representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and

(c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

### **10.13 Insurance Claims**

After the Closing, Buyer shall have the right to submit to Seller any claims for any Losses related to the Business that are covered by the Insurance Policies arising out of insured incidents to the extent occurring from the date coverage thereunder first commenced until the Closing. With respect to any such claim, Seller shall submit such claim and use its commercially reasonable efforts to administer such claims on behalf of the Buyer and to seek reasonable recovery under the applicable insurance provisions of the Insurance Policies covering Losses related to the Business to the same extent as it would if such Losses were Losses of Seller and to the extent that the terms and conditions of any such policies so allow and Seller shall pay to Buyer the amount of such recovery within thirty (30) days after receipt thereof.

## **11. INDEMNIFICATION; REMEDIES**

### **11.1 Survival**

Subject to the limitations and other provisions of this Agreement, the representations and warranties contained in this Agreement, the other Transaction Documents or in any certificate or instrument delivered by pursuant to this Agreement shall survive the Closing and shall remain in full force and effect until the date that is 18 months from the Closing Date; provided, that the Seller Fundamental Representations and the Buyer Fundamental Representations shall survive the Closing for the duration of the applicable statutes of limitation. All covenants and agreements of the parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

### **11.2 Indemnification by Seller and Shareholders**

Subject to the other terms and conditions of this Article 11, Seller and each Shareholder, jointly and severally, shall indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the "Buyer Indemnified Parties") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees to the extent based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, the other Transaction Documents or in any certificate or instrument delivered by or on behalf of Seller and/or any Shareholder pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); provided, however, that, once there is such a breach or inaccuracy, qualifications

as to material, materiality or similar qualifier contained in such representations and warranties shall not be given effect for the sole purpose of calculating the amount of any Losses

(b) any breach of any covenant, agreement or obligation to be performed by Seller and/or Shareholders pursuant to this Agreement, the other Transaction Documents or any certificate or instrument delivered by or on behalf of Seller and/or any Shareholder pursuant to this Agreement;

(c) any Excluded Asset or any Retained Liability; or

(d) any Third Party Claim to the extent it is based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller or any of its Affiliates (other than the Purchased Assets or Assumed Liabilities) conducted, existing or arising prior to the Closing Effective Time.

### **11.3 Indemnification by Buyer**

Subject to the other terms and conditions of this Article 11, Buyer shall indemnify and defend each of Seller and its Affiliates and their respective Representatives (collectively, the “Seller Indemnified Parties”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnified Parties to the extent based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement;

(c) any Assumed Liability; or

(d) any Third Party Claim to the extent it is based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Buyer or any of its Affiliates conducted, existing or arising after the Closing Date;

### **11.4 Certain Limitations**

The indemnification provided for in Section 11.2 shall be subject to the following limitations:

(a) Seller and Shareholders shall not be liable to the Buyer Indemnified Parties for indemnification under Section 11.2(a) until the aggregate amount of all Losses in respect of indemnification under Section 11.2(a) exceeds \$250,000 (the “Basket”), in which event Seller and

Shareholders shall only be required to pay or be liable for Losses in excess of the Basket. The aggregate amount of all Losses for which Seller and Shareholders shall be liable pursuant to Section 11.2(a) shall not exceed \$4,000,000.

(b) Notwithstanding the foregoing, the limitations set forth in Section 11.4(a) shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in the Seller Fundamental Representations (except for the representations and warranties contained in Section 3.9 (Title to Assets; Encumbrances) and Section 3.16 (Employee Benefits)).

(c) Notwithstanding anything herein to the contrary, the aggregate amount of all Losses for which Shareholders shall be liable pursuant to this Article 11 shall not exceed the Purchase Price.

(d) Notwithstanding anything herein to the contrary, from and after the Closing, any claims or indemnification under Section 11.2 shall, subject to the foregoing provisions of this Section 11.4, be satisfied (i) first, to the extent recovery is available under the Escrow Fund, pursuant to the Escrow Agreement, (ii) second, to the extent recovery is not available under the Escrow Fund, directly by Seller, and (iii) third, to the extent recovery is not available from Seller, directly by Shareholders, jointly and severally.

## **11.5 Indemnification Procedures**

The party making a claim under this Article 11 is referred to as the “Indemnified Party”, and the party against whom such claims are asserted under this Article 11 is referred to as the “Indemnifying Party”.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “Third Party Claim”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, (i) unless the applicable survival period has expired pursuant to Section 11.1 or (ii) except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Business, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party

Claim, subject to Section 11.5(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 11.5(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Article 12) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 11.5(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within 10 days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 11.5(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any Proceeding by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "Direct Claim") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, (i) unless the applicable survival period has expired pursuant to



Section 11.1 or (ii) except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

#### **11.6 Payments**

Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article 11, the Indemnifying Party shall satisfy its obligations within 15 Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such 15-Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a monthly compounded rate equal to three-month LIBOR (or similar successor rate) plus two percentage points (2%) per annum. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed.

#### **11.7 Tax Treatment of Indemnification Payments; Net of Insurance**

All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Legal Requirement. The amount of any Losses for which indemnification is provided under this Article 11 shall be net of any amounts actually recovered by the Indemnified Party under insurance coverage with respect to such Losses (minus the out-of-pocket expenses of pursuing payment of such amounts and any retrospective premium adjustments, as applicable).

#### **11.8 Exclusive Remedies**

Subject to Section 10.9 and Section 13.5, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from actual fraud or intentional wrongful misconduct on the part of a party hereto in connection with the Contemplated Transactions) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article 11. In furtherance of the

foregoing, each party hereby waives, to the fullest extent permitted under Legal Requirement, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Legal Requirement, except pursuant to the indemnification provisions set forth in this Article 11. Nothing in this Section 11.8 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's actual fraud or intentional wrongful misconduct.

## **12. CONFIDENTIALITY**

This Agreement and all information disclosed to a party or its Representatives by another party or its Representatives pursuant to this Agreement or any of the other Transaction Documents shall be governed by the Confidentiality Agreement. The Confidentiality Agreement shall survive any termination of this Agreement. Following the Closing, Buyer's "Evaluation Material" (as defined in the Confidentiality Agreement) shall include any and all confidential information related to the Business, the Purchased Assets and the Assumed Liabilities. For the avoidance of doubt, following the Closing none of the foregoing shall be considered Seller's or any Shareholder's "Evaluation Material" (as defined in the Confidentiality Agreement). Section 2 of the Confidentiality Agreement shall hereby be amended to allow Seller to use the Evaluation Material to evaluate its rights under this Agreement, perform its duties hereunder and the other Transaction Documents and use and disclose Evaluation Material as a part of enforcing, or resolving a dispute involving, its rights thereunder.

## **13. GENERAL PROVISIONS**

### **13.1 Expenses**

Except as otherwise provided in this Agreement, each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expense of its Representatives. Buyer will pay one-half and Seller will pay one-half of the fees and expenses of the escrow agent under the Escrow Agreement. If this Agreement is terminated, the obligation of each party to pay its own fees and expenses will be subject to any rights of such party arising from a Breach of this Agreement by another party.

### **13.2 Public Announcements**

The parties agree that no press release or public announcement, statement or disclosure concerning the Contemplated Transactions by this Agreement shall be issued by any of the parties without the prior written consent of Seller or Buyer, as applicable, except as such release or announcement may be required by applicable Legal Requirement or applicable stock exchange regulation (including Buyer making a public announcement through the filing of a Current Report on Form 8-K upon execution of this Agreement or otherwise), in which case, the party required to make the release or announcement shall use its reasonable best efforts to allow the other party reasonable time to comment on such release or announcement in advance of such issuance. Seller and Buyer will consult with each other concerning the means by which Seller's employees,

customers, suppliers and others having dealings with Seller will be informed of the Contemplated Transactions, and Buyer will have the right to be present for any such communication.

### 13.3 Notices

All notices, Consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other parties):

Seller (before the Closing):

Shenandoah Furniture, Inc.  
225 Beaver Creek Drive  
Martinsville, VA 24112  
Attention: G.C. Huddle  
gchuddle@shenandoahfurniture.com

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

Woods Rogers, PLC  
Wells Fargo Tower, Suite 1400  
10 S. Jefferson Street  
Roanoke, VA 24011  
Attention: Alex I. Saunders  
Fax no.: 540-983-7711  
saunders@woodsrogers.com

Seller (after the Closing):

41 Windy Hill Circle  
Union Hall, VA 24176  
Attention: G.C. Huddle

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

Woods Rogers, PLC  
Wells Fargo Tower, Suite 1400  
10 S. Jefferson Street  
Roanoke, VA 24011  
Attention: Alex I. Saunders  
Fax no.: 540-983-7711  
saunders@woodsrogers.com

Shareholders:

G.C Huddle  
41 Windy Hill Circle  
Union Hall, VA 24176

Candace H. Payne  
1425 6th St. Circle NW  
Hickory, NC 28601  
chpayne11@gmail.com

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

Woods Rogers, PLC  
Wells Fargo Tower, Suite 1400  
10 S. Jefferson Street  
Roanoke, VA 24011  
Attention: Alex I. Saunders  
Fax no.: 540-983-7711  
saunders@woodsrogers.com

Buyer:

Hooker Furniture Corporation  
440 East Commonwealth Boulevard  
Martinsville, VA 24112  
Attention: Paul Toms  
Fax no.: (276) 632-0026  
E-mail: ptoms@hookerfurniture.com

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

McGuireWoods LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, VA 23219  
Attention: James M. Anderson III  
Fax no.: (804) 698-2155  
E-mail address: jmanderson@mcguirewoods.com

#### **13.4 Jurisdiction; Service of Process; Waiver of Jury Trial**

(a) Any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction may be brought in the courts of the Commonwealth of Virginia, Henry County, or, if it has or can acquire jurisdiction, in the United States District Court for the Western District of Virginia, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding, waives any objection it may now or hereafter have to venue or to

convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this section may be served on any party anywhere in the world.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A PROCEEDING, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.4(b).

### **13.5 Enforcement of Agreement**

Each party acknowledges and agrees that the other party would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any Breach of this Agreement by a party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which a party may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent Breaches or threatened Breaches of any of the provisions of this Agreement.

### **13.6 Waiver; Remedies Cumulative**

Subject to Section 9.2 until Closing and subject to Section 11.8 after Closing, the rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be

applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

### **13.7 Entire Agreement and Modification**

This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter (including any letter of intent and any confidentiality agreement between Buyer and Seller) and constitutes (along with the Disclosure Letter, Exhibits and other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

### **13.8 Disclosure Letter**

The information in the Disclosure Letter constitutes (i) exceptions to the particular representations, warranties, covenants and obligations of Seller in this Agreement as referenced therein and to any other of Seller's representations and warranties as is reasonably obvious from the nature of the information should also apply or (ii) descriptions or lists of assets and liabilities and other items referred to in this Agreement.

### **13.9 Assignments, Successors and No Third-Party Rights**

No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties, except that Buyer may assign any of its rights and delegate any of its obligations under this Agreement to any Subsidiary of Buyer and may collaterally assign its rights hereunder to any financial institution providing financing in connection with the Contemplated Transactions. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors, heirs and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section 13.9.

### **13.10 Severability**

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

### **13.11 Construction**

The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Articles," "Sections" and

“Parts” refer to the corresponding Articles, Sections and Parts of this Agreement and the Disclosure Letter.

**13.12 Time of Essence**

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

**13.13 Governing Law**

This Agreement will be governed by and construed under the laws of the Commonwealth of Virginia without regard to conflicts-of-laws principles that would require the application of any other law.

**13.14 Execution of Agreement**

This Agreement may be executed by electronic transmission and in one or more counterparts, 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. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or other electronic transmission shall be deemed to be their original signatures for all purposes.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**BUYER:**

**HOOKER FURNITURE CORPORATION**

By: /s/ Paul B. Toms, Jr.

\_\_\_\_\_  
Name: Paul B. Toms, Jr.

Title: Chairman and Chief Executive Officer

**SELLER:**

**SHENANDOAH FURNITURE, INC.**

By: /s/ Gideon C. Huddle

\_\_\_\_\_  
Name: Gideon C. Huddle

Title: Chief Executive Officer

**SHAREHOLDERS:**

/s/ Gideon C. Huddle

\_\_\_\_\_  
**GIDEON C. HUDDLE**

/s/ Candace H. Payne

\_\_\_\_\_  
**CANDACE H. PAYNE**

Signature Page to Asset Purchase Agreement



## SECOND AMENDED AND RESTATED LOAN AGREEMENT

This Second Amended and Restated Loan Agreement dated as of September 29, 2017, is between:

**Bank of America, N.A.** (the “Bank”)

and

**Hooker Furniture Corporation**, a Virginia corporation,  
**Bradington-Young, LLC**, a Virginia limited liability company,  
**Sam Moore Furniture LLC**, a Virginia limited liability company, and  
**Home Meridian Group, LLC**, a Virginia limited liability company  
(collectively, the “Borrowers,” and individually, a “Borrower”).

In consideration of the mutual benefits to be derived hereunder, the parties agree as follows:

The terms and provisions in the Schedule of Definitions attached to this Agreement are made a part of this Agreement.

The Borrowers and the Bank are parties to an Amended and Restated Loan Agreement dated as of February 1, 2016, as amended (the “Prior Loan Agreement”), pursuant to which the Bank has made the following credit facilities available to the Borrowers: (i) a revolving credit facility in a principal amount not to exceed \$30,000,000, (ii) an acquisition term loan in an original principal amount of \$41,000,000, and (iii) a term loan in an original principal amount of \$19,000,000.

The Borrowers have now requested that the Bank (a) make an additional acquisition term loan to the Borrowers in the original principal amount of \$12,000,000, and (b) make certain other modifications to the Prior Loan Agreement. The Bank is willing to do so upon the terms and subject to the conditions set forth herein.

This Agreement amends and restates the Prior Loan Agreement in its entirety, and any indebtedness outstanding under the Prior Loan Agreement shall be deemed to be outstanding under this Agreement. Nothing in this Agreement shall be deemed to be a repayment or novation of the indebtedness, or to release or otherwise adversely affect any lien, mortgage or security interest securing such indebtedness or any rights of the Bank against any guarantor, surety or other party primarily or secondarily liable for such indebtedness. All references to the Prior Loan Agreement in any document or instrument that survives the execution and delivery of this Agreement shall be deemed to be references to this Agreement. Each Borrower, for itself and for its successors and assigns, hereby waives and releases the Bank and the Bank’s successors and assigns, from any claim, cause of action, defense, counterclaim, setoff or recoupment of any kind or nature that it may now or hereafter assert against the Bank arising from or in connection with the Prior Loan Agreement or the transactions contemplated thereby that exist on the date hereof or arise from facts or actions occurring prior hereto or on the date

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hereof. For purposes of the preceding sentence, the term "Bank" shall include the Bank's former, present and future officers, directors, employees, agents and attorneys.

## **1. FACILITY NO. 1: LINE OF CREDIT**

### **1.1 Amount.**

(a) During the availability period described below, the Bank will continue to provide a line of credit to the Borrowers upon the terms and conditions set forth in this Agreement ("Facility No. 1"). The maximum amount of Facility No. 1 shall be \$30,000,000 (the "Facility No. 1 Commitment").

(b) Facility No. 1 is a revolving line of credit. During the availability period, the Borrowers may repay principal amounts and reborrow them.

(c) The Borrowers shall not permit the principal balance of Facility No. 1 outstanding to exceed the Facility No. 1 Commitment at any time. If the principal balance of Facility No. 1 exceeds this limit, the Borrowers will promptly pay the excess to the Bank upon the Bank's demand.

### **1.2 Availability Period and Method of Borrowing.**

(a) Facility No. 1 is available between the date of this Agreement and February 1, 2021, or such earlier date as the availability may terminate as provided in this Agreement or such later date as the Bank may from time to time in its sole discretion designate in any "Extension Notice," as defined hereafter (the "Facility No. 1 Expiration Date"). The availability period for Facility No. 1 will be considered extended for an additional time period if and only if the Bank has sent to the Borrowers a written notice of extension specifying such additional time period for Facility No. 1 (the "Extension Notice"). If Facility No. 1 is extended, it will continue to be subject to all the terms and conditions set forth in this Agreement except as mutually agreed in writing by the parties and modified by the Extension Notice. If Facility No. 1 is extended, the term "Facility No. 1 Expiration Date" shall mean the date set forth in the Extension Notice as the Facility No. 1 Expiration Date, and the same process for extension will apply to any subsequent extension of Facility No. 1. The Borrowers may, upon notice to the Bank, terminate the Facility No. 1 Commitment, or from time to time permanently reduce the Facility No. 1 Commitment; provided that (i) any such notice shall be received by the Bank not later than 11:00 a.m. two business days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$500,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce the Facility No. 1 Commitment if, after giving effect thereto and to any concurrent prepayments hereunder, the principal balance of Facility No. 1 would exceed the Facility No. 1 Commitment, and (iv) if, after giving effect to any reduction of the Facility No. 1 Commitment, the letter of credit sublimit under Section 1.5(a) of this Agreement exceeds the amount of the Facility No. 1 Commitment, such sublimit shall be automatically reduced by the amount of such excess. Any unused commitment fee accrued until the effective date of any termination of the Facility No. 1 Commitment shall be paid on the effective date of such termination. The Facility No. 1 Expiration Date will occur on the effective date of the termination of the Facility No. 1 Commitment.

(b) An Authorized Individual may request advances under Facility No. 1 by giving the Bank notice of each proposed borrowing specifying the date (which shall be a business day) and the amount of the advance. On the date specified, if such date is after the date the notice of borrowing is received by the Bank, or on the day the notice of borrowing is received by the Bank if it is received before 1:30 p.m., Richmond, Virginia time, or the following business day if the notice of borrowing is received by the Bank after such time, the Bank will make the advance available to the Borrowers in immediately available United States funds by crediting the amount of the advance to a Borrower's demand deposit account with the Bank. All notices given under this Section 1.2(b) will be considered irrevocable unless the Bank agrees otherwise.

### 1.3 Repayment Terms of Facility No. 1.

(a) The Borrowers will continue to pay the amount of interest accrued on the outstanding principal balance of Facility No. 1 on the first banking day of each month, commencing October 1, 2017, until payment in full of all principal outstanding under Facility No. 1. Any accrued interest on Facility No. 1 under the Prior Loan Agreement that remains unpaid on the date of this Agreement shall be due and payable on October 1, 2017.

(b) On the Facility No. 1 Expiration Date, the Borrowers will repay the remaining principal balance plus any interest then due.

(c) The Borrowers may prepay the outstanding principal of Facility No. 1 in full or in part at any time without premium or penalty; provided that (i) any such prepayment shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; or, if less, the entire principal amount thereof then outstanding and (ii) any prepayment shall be accompanied by all accrued interest thereon.

### 1.4 Interest Rate on Facility No. 1.

(a) The outstanding principal amount of Facility No. 1 will bear interest at a rate per year equal to the LIBOR Rate (Adjusted Periodically) plus 1.50%.

(b) The interest rate will be adjusted on the first day of every month (the "Adjustment Date") and remain fixed until the next Adjustment Date. If the Adjustment Date in any particular month would otherwise fall on a day that is not a banking day then, at the Bank's option, the Adjustment Date for that particular month will be the first banking day immediately following thereafter.

(c) "LIBOR Rate (Adjusted Periodically)" means a rate of interest equal to the London Interbank Offered Rate (or a comparable or successor rate which is approved by the Bank), as published by Bloomberg (or other commercially available source providing quotations of such rate as selected by the Bank from time to time) as determined for each Adjustment Date at approximately 11:00 a.m. London time two (2) London Banking Days prior to the Adjustment Date, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a term of one month, as adjusted from time to time in the Bank's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the rate for that interest period will be determined by such alternate method as reasonably selected by the Bank. A "London Banking Day" is a day on

which banks in London are open for business and dealing in offshore dollars. If at any time the LIBOR Rate (Adjusted Periodically) is less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

1.5 Letters of Credit under Facility No. 1.

(a) As a subfeature under Facility No. 1, the Bank may from time to time up to and including the Facility No. 1 Expiration Date, issue letters of credit for the account of the Borrowers; provided, however, that the form and substance of each application for a letter of credit and each letter of credit shall be subject to approval by the Bank, which approval shall not be unreasonably withheld or delayed; and provided further that the aggregate undrawn amount of all outstanding letters of credit shall not at any time exceed \$4,000,000. Issuance of workers' compensation letters of credit shall be subject to validation and approval of modifier and loss reserve by the Bank. Each letter of credit shall be issued for a term not to exceed 366 days, as designated by the Borrowers, provided, however, that the Bank shall not be obligated to issue a letter of credit that would have an expiration date subsequent to the Facility No. 1 Expiration Date. Each draft or other demand for payment paid by the Bank under a letter of credit shall be deemed an advance under the line of credit and shall be repaid in accordance with the terms of the line of credit; provided however, that if the line of credit is not available for any reason whatsoever, at the time any draft or demand is paid by the Bank, or if advances are not available under the line of credit in such amount due to any limitation of borrowing set forth herein, then the full amount of such drafts or demand shall be immediately due and payable, together with interest thereon from the date such amount is paid by the Bank to the date such amount is fully repaid by the Borrowers at the rate of interest applicable to advances under Facility No. 1. In such event, the Bank, in its sole discretion, may debit any account maintained by the Borrowers with the Bank for the amount of any such drawing. The Borrowers agree to deposit in a cash collateral account with the Bank an amount equal to the aggregate outstanding undrawn face amount of all letters of credit which remain outstanding on the Facility No. 1 Expiration Date. The Borrowers grant a security interest in such cash collateral account to the Bank to secure the Obligations of the Borrowers. Amounts held in such cash collateral account shall be applied by the Bank to the payment of drafts drawn under such letters of credit and to the obligations and liabilities of the Borrowers to the Bank, in such order of application as the Bank may in its sole discretion elect.

(b) The amount of any letters of credit outstanding under Facility No. 1 at any one time (including the drawn and unreimbursed amounts of the letters of credit) may not exceed \$4,000,000 in the aggregate.

(c) In calculating the principal amount outstanding under the Facility No. 1 Commitment, the calculation shall include the amount of any letters of credit outstanding, including amounts drawn on any letters of credit and not yet reimbursed.

(d) The Borrowers agree:

(i) If there is an Event of Default under this Agreement, the Borrowers shall, at the Bank's demand, either, at the election of the Borrowers, immediately provide cash

collateral in the amount of any outstanding letters of credit or cause such letters of credit to be released and returned to the Bank.

(ii) The issuance of any letter of credit and any amendment to a letter of credit is subject to the Bank's written approval, such approval not to be unreasonably withheld or delayed, and must be in form and content reasonably satisfactory to the Bank and in favor of a beneficiary reasonably acceptable to the Bank.

(iii) To sign the Bank's form Application and Agreement for Commercial Letter of Credit or Application and Agreement for Standby Letter of Credit, as applicable.

(iv) To pay any issuance and/or other fees that the Bank notifies the Borrowers will be charged for issuing and processing letters of credit for the Borrowers.

(v) To allow the Bank to automatically charge the Borrowers' checking accounts for applicable fees, discounts, and other charges.

(vi) To pay the Bank in connection with letters of credit, (i) a fee payable quarterly in arrears on October 1, 2017, and the first day of each quarter thereafter, which fee shall equal the average of the daily amount of the undrawn amounts of the letters of credit during the specified period times a per annum rate equal to 1.50% (calculated on the basis of a 360-day year for the actual number days elapsed) and (ii) the Bank's then customary fees and charges in connection with all amendments, extensions, draws and other actions regarding letters of credit. Any accrued letter of credit fee under the Prior Loan Agreement that remains unpaid on the date of this Agreement shall be due and payable on October 1, 2017.

(e) The following letters of credit are outstanding from the Bank for the account of Hooker Furniture Corporation:

<b>Letter of Credit Number</b>	<b>Beneficiary</b>	<b>Outstanding Amount</b>
0000003084309	International Fidelity	\$200,000.00
0000003096488	Bond Safeguard Insurance	\$400,000.00
00000068096452	Bond Safeguard Insurance	\$200,000.00
00000068106964	Navigators Insurance	\$600,000.00
00000068124182	Avalon Risk Management Insurance	\$70,000.00

As of the date of this Agreement, these letters of credit shall be deemed to be outstanding under this Agreement, and shall be subject to all the terms and conditions stated in this Agreement.

## **2. FACILITY NO. 2: ACQUISITION TERM LOAN**

2.1 Amount. The Bank has made a term loan to the Borrowers upon the terms and conditions set forth in the Prior Loan Agreement in the original principal amount of \$41,000,000. The outstanding principal balance of such term loan as of the date of this Agreement is \$26,726,190.44. As of the date of this Agreement, the term loan shall be deemed to be

outstanding as "Facility No. 2" under this Agreement, and shall be subject to all the terms and conditions stated in this Agreement.

2.2 [Intentionally Omitted].

2.3 Repayment Terms of Facility No. 2.

(a) The Borrowers will continue to pay installments of principal in the amount of \$488,095.24, plus the amount of interest accrued on the outstanding principal balance of Facility No. 2, on the first banking day of each month, commencing October 1, 2017, until payment in full of all principal of and interest on Facility No. 2. Any accrued interest on Facility No. 2 under the Prior Loan Agreement that remains unpaid on the date of this Agreement shall be due and payable on October 1, 2017.

(b) On February 1, 2021, the entire indebtedness under Facility No. 2, including all outstanding principal and accrued but unpaid interest, shall be due and payable.

2.4 Interest Rate on Facility No. 2.

(a) Facility No. 2 will bear interest at a rate per year equal to the LIBOR Rate (Adjusted Periodically) plus 1.50%.

(b) The interest rate will be adjusted on each Adjustment Date and remain fixed until the next Adjustment Date.

(c) The Borrowers may prepay the outstanding principal of Facility No. 2 in full or in part at any time, without premium or penalty except as described below; provided that any prepayment shall be accompanied by all accrued interest thereon.

(d) Any prepayment of the principal of Facility No. 2, whether voluntary, by reason of acceleration or otherwise, on a date other than an Adjustment Date, will be accompanied by a prepayment fee in an amount sufficient to compensate the Bank for any loss, cost or expense incurred by it as a result of prepayment on such date, including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain the amount prepaid or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by the Bank in connection with the foregoing. For purposes of this Section, the Bank shall be deemed to have funded each prepaid amount by a matching deposit or other borrowing in the applicable interbank market, whether or not the amount was in fact so funded.

### **3. FACILITY NO. 3: TERM LOAN**

3.1 Amount. The Bank has made a term loan to the Borrowers upon the terms and conditions set forth in the Prior Loan Agreement in the original principal amount of \$19,000,000. The outstanding principal balance of such term loan as of the date of this Agreement is \$17,079,417.60. As of the date of this Agreement, the term loan shall be deemed to be

outstanding as “Facility No. 3” under this Agreement, and shall be subject to all the terms and conditions stated in this Agreement.

3.2 [Intentionally Omitted].

3.3 Repayment Terms of Facility No. 3.

(a) The Borrowers will continue to pay the amount of interest accrued on the outstanding principal balance of Facility No. 3 on the first banking day of each month, commencing October 1, 2017, until payment in full of all principal of Facility No. 3. Any accrued interest on Facility No. 3 under the Prior Loan Agreement that remains unpaid on the date of this Agreement shall be due and payable on October 1, 2017.

(b) On February 1, 2021, the entire indebtedness under Facility No. 3, including all outstanding principal and accrued but unpaid interest, shall be due and payable.

3.4 Interest Rate on Facility No. 3.

(a) Facility No. 3 will bear interest at a rate per year equal to the LIBOR Rate (Adjusted Periodically) plus 0.50%.

(b) The interest rate will be adjusted on each Adjustment Date and remain fixed until the next Adjustment Date.

(c) The Borrowers may prepay the outstanding principal of Facility No. 3 in full or in part at any time, without premium or penalty except as described below; provided that any prepayment shall be accompanied by all accrued interest thereon.

(d) Any prepayment of the principal of Facility No. 3, whether voluntary, by reason of acceleration or otherwise, on a date other than an Adjustment Date, will be accompanied by a prepayment fee in an amount sufficient to compensate the Bank for any loss, cost or expense incurred by it as a result of prepayment on such date, including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain the amount prepaid or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by the Bank in connection with the foregoing. For purposes of this Section, the Bank shall be deemed to have funded each prepaid amount by a matching deposit or other borrowing in the applicable interbank market, whether or not the amount was in fact so funded.

### **3.A FACILITY NO. 4: ACQUISITION TERM LOAN**

3.A.1 Amount. The Bank will provide a term loan to the Borrowers upon the terms and conditions set forth in this Agreement (“Facility No. 4”, and together with Facility No. 1, Facility No. 2 and Facility No. 3, each a “Facility” and collectively the “Facilities”) in the original principal amount of \$12,000,000 (the “Facility No. 4 Commitment”).

3.A.2 Availability Period. Facility No. 4 is available in a single disbursement between the date of this Agreement and November 5, 2017, unless a Default or Event of Default has occurred.

3.A.3 Repayment Terms of Facility No. 4.

(a) The Borrowers will pay installments of principal in the amount of \$142,857.14, plus the amount of interest accrued on the outstanding principal balance of Facility No. 4, on the first banking day of each month, commencing November 1, 2017 or, if the principal amount of Facility No. 4 is advanced by the Lender on or after November 1, 2017, commencing December 1, 2017, until payment in full of all principal of and interest on Facility No. 4.

(b) On the earlier of (i) September 30, 2022, and (ii) the Facility No. 1 Expiration Date (as the same may be extended from time to time in accordance with Section 1.2(a)), the entire indebtedness under Facility No. 4, including all outstanding principal and accrued but unpaid interest, shall be due and payable.

3.A.4 Interest Rate on Facility No. 4.

(a) Facility No. 4 will bear interest at a rate per year equal to the LIBOR Rate (Adjusted Periodically) plus 1.50%.

(b) The interest rate will be adjusted on each Adjustment Date and remain fixed until the next Adjustment Date.

(c) The Borrowers may prepay the outstanding principal of Facility No. 4 in full or in part at any time, without premium or penalty except as described below; provided that any prepayment shall be accompanied by all accrued interest thereon.

(d) Any prepayment of the principal of Facility No. 4, whether voluntary, by reason of acceleration or otherwise, on a date other than an Adjustment Date, will be accompanied by a prepayment fee in an amount sufficient to compensate the Bank for any loss, cost or expense incurred by it as a result of prepayment on such date, including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain the amount prepaid or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by the Bank in connection with the foregoing. For purposes of this Section, the Bank shall be deemed to have funded each prepaid amount by a matching deposit or other borrowing in the applicable interbank market, whether or not the amount was in fact so funded.

**4. COLLATERAL FOR FACILITY NO. 3**

Facility No. 3 will be secured by collateral assignments of life insurance policies having a cash value of at least \$20,000,000.00 (subject to Section 9.17), which policies must be acceptable to the Bank (collectively, the "Life Insurance Policies" and each, individually, a "Life Insurance Policy").

**5. FEES AND LOAN ADMINISTRATION**

5.1 Fees.



(a) Loan Fee. A commitment fee of \$12,000.00 is due and payable by the Borrowers to the Bank on the date that this Agreement is executed by the parties.

(b) Modification Fee. If the Bank, at its discretion, agrees to modify or amend any terms of this Agreement, the Borrowers will, at the Bank's option, pay the Bank a fee for each Borrower-initiated amendment or modification in an amount advised by the Bank at the time the Borrowers request such amendment or modification. Nothing in this Section shall imply that the Bank is obligated to agree to any modification or amendment requested by the Borrowers. The Bank may impose additional requirements as a condition to any modification or amendment.

(c) Late Fee. To the extent permitted by law, the Borrowers agree to pay a late fee in an amount not to exceed four percent (4%) of any monthly payment of principal or interest that is more than fifteen (15) days late. The imposition and payment of a late fee shall not constitute a waiver of the Bank's rights with respect to any Default or Event of Default hereunder.

(d) Unused Commitment Fee. The Borrowers shall pay a quarterly fee on any difference between the Facility No. 1 Commitment and the amount of credit it actually uses under Facility No. 1, determined by the average of the daily amount of credit outstanding during the specified period. The fee will be equal to such difference multiplied by a percentage in accordance with the following:

<b>Utilization</b>	<b>Unused Fee Percentage</b>
< 25%	0.25%
≥ 25% but <50%	0.20%
≥ 50% but <75%	0.15%
≥ 75%	0.10%

This fee is due on October 1, 2017, and on the first day of each following calendar quarter, with respect to the immediately preceding calendar quarter, and on the Facility No. 1 Expiration Date with respect to the period ending on that date. Any accrued unused commitment fee under the Prior Loan Agreement that remains unpaid on the date of this Agreement shall be due and payable on October 1, 2017.

5.2 Expenses. The Borrowers shall promptly repay the Bank for expenses reasonably incurred by the Bank in connection with execution and delivery of this Agreement and any agreement or instrument required by this Agreement that include, but are not limited to, filing, recording and search fees, appraisal fees, title report fees, reasonable out-of-pocket attorneys' fees, and documentation fees.

5.3 Collection of Payments.

(a) Payments will be made by debit to a deposit account, if direct debit is provided for in this Agreement or is otherwise authorized by the Borrowers. For payments not made by direct debit, payments will be made by mail to the address shown on the Borrowers' statement, or by such other method as may be permitted by the Bank.

(b) Each disbursement by the Bank and each payment by the Borrowers will be evidenced by records kept by the Bank which will, absent manifest error, be conclusively presumed to be correct and accurate and constitute an account stated between the Borrowers and the Bank.

5.4 Requests for Credit Equal Access by all Borrowers. Any Borrower (or a person or persons authorized by any one of the Borrowers), acting alone, can borrow up to the full amount of credit provided under this Agreement. Each Borrower will be liable for all extensions of credit made under this Agreement to any other Borrower.

5.5 Borrowers' Instructions. Subject to the terms, conditions and procedures stated elsewhere in this Agreement, the Bank may honor instructions for advances or repayments and any other instructions under this Agreement given by any one of the individuals the Bank reasonably believes is authorized to sign loan agreements on behalf of any Borrower, or any other individual(s) designated by any one of such authorized signers (each an "Authorized Individual"). The Bank may honor any such instructions made by any one of the Authorized Individuals, whether such instructions are given in writing or by telephone, telefax or Internet and intranet websites designated by the Bank with respect to separate products or services offered by the Bank.

5.6 Direct Debit. Each Borrower agrees that on the due date of any amount due under this Agreement, the Bank will debit the amount due from deposit account number 000010067279 owned by any Borrower, or such other of the Borrowers' accounts with the Bank as designated in writing by the Borrowers (the "Designated Account"). Should there be insufficient funds in the Designated Account to pay all such sums when due, the full amount of such deficiency shall be immediately due and payable by the Borrowers.

5.7 Banking Days. Unless otherwise provided in this Agreement, a banking day is a day other than a Saturday, Sunday or other day on which commercial banks are authorized to close, or are in fact closed, in the state where the Bank's lending office is located, and, if such day relates to amounts bearing interest at an offshore rate (if any), means any such day on which dealings in dollar deposits are conducted among banks in the offshore dollar interbank market. All payments and disbursements which would be due or which are received on a day which is not a banking day will be due or applied, as applicable, on the next banking day.

5.8 Interest Calculation. Except as otherwise stated in this Agreement, all interest and fees, if any, will be computed on the basis of a 360-day year and the actual number of days elapsed. This method results in more interest or a higher fee than if a 365-day year were used. Installments of principal which are not paid when due under this Agreement shall continue to bear interest until paid. To the extent that any calculation of interest or any fee required to be paid under this Agreement shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

5.9 Default Rate. Upon the occurrence and during the continuance of any Event of Default under this Agreement, all amounts outstanding under this Agreement, including any unpaid interest, fees, or costs, will at the option of the Bank bear interest at a rate which is 4.00 percentage point(s) higher than the rate of interest otherwise provided under this Agreement.

This may result in compounding of interest. This provision will not constitute a waiver of any Event of Default.

5.10 Additional Costs. The Borrowers will pay the Bank, on demand, for the Bank's costs or losses arising from any Change in Law which are allocated to this Agreement or any credit outstanding under this Agreement. The allocation will be made as determined by the Bank, using any reasonable method. The costs include, without limitation, the following:

- (a) any reserve or deposit requirements (excluding any reserve requirement already reflected in the calculation of the interest rate in this Agreement); and
- (b) any capital requirements relating to the Bank's assets and commitments for credit.

"Change in Law" means the occurrence, after the date of this Agreement, of the adoption or taking effect of any new or changed law, rule, regulation or treaty, or the issuance of any request, rule, guideline or directive (whether or not having the force of law) by any governmental authority; provided that (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives issued in connection with that Act, and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

## 6. CONDITIONS TO DISBURSEMENT OF FACILITY 4

Subject to Section 7, before the Bank is required to make the disbursement under Facility 4 to the Borrowers under this Agreement, the following conditions precedent must be satisfied:

6.1 Authorizations. The Bank shall have received evidence that the execution, delivery and performance by the Borrowers of this Agreement and any instrument or agreement required under this Agreement have been duly authorized.

6.2 Governing Documents. The Bank shall have received copies of each Borrower's organizational documents.

6.3 Payment of Fees. The Bank shall have received payment of all fees and other amounts due and owing to the Bank, including without limitation payment of all accrued and unpaid expenses incurred by the Bank as required by this Agreement.

6.4 Good Standing. The Bank shall have received a certificate of good standing or certificate of fact, as applicable, for each Borrower from its state of formation and from any other state in which such Borrower is required to qualify to conduct its business.

6.5 Insurance. The Bank shall have received evidence of insurance coverage, as required in Section 9.17(a) of this Agreement.

6.6 [Intentionally Omitted].

6.7 [Intentionally Omitted].

6.8 [Intentionally Omitted].

6.9 Purchase Agreement. The Bank shall have received a copy of the signed Purchase Agreement, including all schedules and exhibits which are a part of the Purchase Agreement, and any amendments to it.

6.10 Accuracy of Representations. The Purchase Agreement Representations and the Specified Representations must be accurate as of the date of this Agreement.

6.11 No Litigation. No action, suit, investigation, litigation or proceeding shall be pending or threatened in any court or before any arbitrator or governmental instrumentality that in the Bank's judgment (a) would reasonably be expected to have a Material Adverse Effect or (b) would reasonably be expected to materially and adversely affect the Acquisition or the transactions contemplated thereby.

6.12 Financials. The Bank shall have received, in form and substance satisfactory to it, of (a) a pro forma, consolidated balance sheet of the Borrowers dated as of the date of this Agreement and giving effect to the Acquisition, which balance sheet shall reflect no material adverse changes from the most recent pro forma balance sheet of the Borrowers previously delivered to the Bank, (b) financial projections of the Borrowers, giving effect to the Acquisition, evidencing the Borrowers' ability to comply with the financial covenants set forth in the Loan Documents, and (c) interim consolidated financial statements for the Borrowers as set forth in the Parent's Form 10-Q report for the quarter ended July 30, 2017.

6.13 Solvency. After giving effect to the Acquisition and other transactions contemplated on the date of this Agreement, the Borrowers and their subsidiaries on a consolidated basis shall not be insolvent or become insolvent as a result thereof and the Bank shall have received a certificate from the Borrowers that the Borrowers satisfy the foregoing.

6.14 Acquisition. The Acquisition shall have been consummated on terms acceptable to the Bank, including (i) satisfactory legal documentation, (ii) no changes to any Borrower's corporate, capital and ownership structures after giving effect to the Acquisition from those as disclosed to the Bank prior to the date of this Agreement unless approved by the Bank, and (iii) receipt by the Borrowers of all government (including any applicable exchange or securities commission), shareholder and third party consents, deemed necessary or appropriate by the Bank.

6.15 No Material Adverse Change. No change, occurrence or development shall have occurred or become known to the Bank since July 30, 2017, that has had or would reasonably be expected to have a Material Adverse Effect.

In its sole discretion, the Bank may waive, which waiver must be in writing, any or all of the foregoing items as a condition precedent to the Bank's obligation to make the advance under Facility 4, in which case (i) any such waived item must be satisfied before the Bank has any obligation to make subsequent advances under this Agreement and (ii) the Borrowers will satisfy such item or items within thirty (30) days after the date of such waiver and, if required by the

Bank, before requesting any subsequent advance under this Agreement. The failure to comply with foregoing covenant shall, at the option of the Bank, constitute an Event of Default under this Agreement.

## **7. CERTAIN FUNDS PROVISION FOR ACQUISITION ADVANCE**

Despite anything contained in this Agreement to the contrary, the only representations and warranties, the accuracy of which shall be a condition to the availability of the Acquisition Advance, shall be:

- (a) such of the representations made by or on behalf of the Seller in the Purchase Agreement as are material to the interests of the Bank, but only to the extent that any Borrower has the right to terminate its obligations under the Purchase Agreement or decline to consummate the Acquisition as a result of a breach of such representations in the Purchase Agreement (the "Purchase Agreement Representations"); and
- (b) representations and warranties of the Borrowers set forth in this Agreement relating to the following: corporate existence; power and authority, due authorization, execution and delivery, in each case as they relate to the entering into and performance of the Loan Documents; the enforceability of the Loan Documents; Federal Reserve margin regulations; the PATRIOT Act; laws applicable to sanctioned persons, including persons sanctioned by the U.S. Department of Treasury's Office of Foreign Assets Control, and the Foreign Corrupt Practices Act (as to use of proceeds); the Investment Company Act; no conflicts between the Loan Documents and each Borrower's organizational documents or material applicable law; no conflicts with the Purchase Agreement; and solvency (the "Specified Representations").

## **8. REPRESENTATIONS AND WARRANTIES**

Each Borrower makes the following representations and warranties as of the date of this Agreement. Each request for an extension of credit constitutes a renewal of these representations and warranties as of the date of the request (except that the representations and warranties contained in Sections 8.6(a) and (b) shall be deemed to refer to the most recent financial statements furnished pursuant to Sections 9.2(a) and (b)):

8.1 Formation. Such Borrower is duly formed and validly existing under the laws of the Commonwealth of Virginia. Bradington-Young, LLC, Sam Moore Furniture LLC and Home Meridian Group, LLC constitute all of the subsidiaries of the Parent. There has been no change to the articles of organization/incorporation, bylaws, operating agreement and/or any other applicable organizational documents for such Borrower provided to Bank in connection with the Prior Loan Agreement.

8.2 Authorization. This Agreement, and any other instrument or agreement delivered by such Borrower hereunder, are within such Borrower's corporate or limited liability company, as applicable, powers, have been duly authorized, and do not conflict with any of its organizational documents.

8.3 Enforceable Agreement. This Agreement is a legal, valid and binding agreement of such Borrower, enforceable against such Borrower in accordance with its terms, and any note or other agreement required hereunder, when executed and delivered by any Borrower, will be similarly legal, valid, binding and enforceable against such Borrower in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforceability of creditors' rights generally and by equitable principles of general applicability (regardless of whether such enforceability is considered in a proceeding in equity or at law).

8.4 Good Standing. Such Borrower is duly qualified and is licensed and (if applicable) in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or licenses, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

8.5 No Conflicts. To such Borrower's knowledge, the execution, delivery and performance by such Borrower of this Agreement do not and will not (a) conflict with or result in any breach or contravention of any contractual obligation to which such Borrower is a party or (ii) any order, injunction, writ or decree of any governmental authority or any arbitral award to which such Borrower or its property is subject; or (b) violate any law, except in each case referred to in clause (a) or (b), to the extent such conflict, breach, contravention, or violation would not reasonably be expected to have a Material Adverse Effect.

8.6 Financial Information.

(a) The most recent consolidated, annual audited financial statements of the Borrowers as of, and for the fiscal year ended January 29, 2017, (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Borrowers and their consolidated subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material Indebtedness and other liabilities, direct or contingent, of the Borrowers and their consolidated subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness to the extent required under GAAP.

(b) The unaudited consolidated balance sheet of the Borrowers and their subsidiaries dated July 30, 2017, and the related consolidated statements of income or operations and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and; (ii) fairly present in all material respects the financial condition of the Borrowers and their subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) No report, financial statement, certificate or other written information furnished by or on behalf of any Borrower in connection with this Agreement to the Bank in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder

(as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) Since the date of the most recent financial statements provided to the Bank, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

8.7 Lawsuits. There is no lawsuit, tax claim or other dispute pending, or to the knowledge of such Borrower threatened, against such Borrower which, if adversely determined, would reasonably be expected to have a Material Adverse Effect.

8.8 Permits, Franchises. Such Borrower possesses all governmental licenses, authorizations, consents and approvals required, and all trademark rights, trade name rights, patent rights, copyrights, and fictitious name rights necessary, to conduct the business in which it is now engaged, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

8.9 Other Obligations. To such Borrower's knowledge, such Borrower is not in default on any material obligation for borrowed money, any material purchase money obligation or any other material lease, commitment, contract, instrument or obligation.

8.10 Tax Matters. Such Borrower has paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon it or its properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. To the knowledge of such Borrower, there is no proposed tax assessment against such Borrower that would, if made, have a Material Adverse Effect.

8.11 No Event of Default. No event has occurred and is continuing which is, or with notice or lapse of time or both would be, an Event of Default under this Agreement.

8.12 Insurance. Such Borrower has obtained the insurance coverage required in Section 9.17 of this Agreement and such insurance is currently in effect.

8.13 ERISA Plans.

(a) Each Plan (other than a multiemployer plan) of such Borrower is in compliance in all material respects with ERISA, the Code and other federal or state law, including all applicable minimum funding standards, and there have been no prohibited transactions with respect to any Plan (other than a multiemployer plan), which has resulted or would reasonably be expected to result in a Material Adverse Effect.

(b) With respect to any Plan subject to Title IV of ERISA:

(i) No reportable event has occurred under Section 4043(c) of ERISA which requires notice.

(ii) No action by any Borrower or any ERISA Affiliate to terminate or withdraw from any Plan has been taken and no notice of intent to terminate a Plan has been filed under Section 4041 or 4042 of ERISA.

8.14 Government Sanctions.

(a) Neither such Borrower nor any of its Affiliates, including subsidiaries, nor, to the knowledge of such Borrower, any director, officer or employee of such Borrowers, or any agent, Affiliate or representative that will act in any capacity on behalf of or at the direction of such Borrower, is an individual or entity (“Person”) currently subject to or the target of any economic or financial sanctions or trade embargoes administered or enforced by: the United States Government, including, without limitation, the U.S. Department of Treasury’s Office of Foreign Assets Control; the United Nations Security Council; the European Union; Her Majesty’s Treasury; or, to the knowledge of such Borrower, any other relevant sanctions authority (collectively, “Sanctions”). Further, such Borrower is not organized or resident in a country or territory that is subject to or the target of comprehensive country-wide Sanctions (at the time of this Agreement but subject to change over time, the Crimea Region of Ukraine, Cuba, Iran, North Korea, Sudan and Syria).

(b) Each Borrower represents and covenants that it will not, directly or knowingly indirectly, use the proceeds of the credit provided under this Agreement, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, to fund any activities of or business with any Person or in any country or territory, that, at the time of such funding, is subject to or the target of Sanctions, in violation of applicable law, or in any other manner that will cause a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of applicable Sanctions.

8.15 No Plan Assets. Such Borrower is not (1) an employee benefit plan subject to Title I of ERISA, (2) a plan or account subject to Section 4975 of the Code, (3) an entity deemed to hold “plan assets” of any such plans or accounts for purposes of ERISA or the Code, or (4) a “governmental plan” within the meaning of ERISA.

**9. COVENANTS**

Each Borrower agrees so long as credit is available under this Agreement and until the Bank is repaid in full:

9.1 Use of Proceeds. (a) To use the proceeds of Facility No. 1 to issue standby or commercial letters of credit, and for general corporate purposes not in contravention of any law or of any Loan Document., and (b) to use the proceeds of Facility No. 4 to pay a portion of the purchase price for the Acquisition.

9.2 Financial Information. To provide the following financial information and statements in form and content reasonably acceptable to the Bank, and such additional information as reasonably requested by the Bank from time to time:



(a) Within 45 days after the period's end (excluding the last period in each fiscal year), quarterly financial statements of the Borrowers, certified and dated by an authorized financial officer of the Borrowers. These financial statements may be company-prepared. The statements shall be prepared on a consolidated basis.

(b) Within 120 days following each fiscal year end, the annual financial statements of the Borrowers, certified and dated by an authorized financial officer of the Borrowers. These financial statements must be audited by an independent registered public accounting firm reasonably acceptable to the Bank. The statements shall be prepared on a consolidated basis.

The financial statements required above shall be accompanied by a certificate of a Responsible Officer of the Borrowers (i) setting forth computations of the financial covenants required under Section 9.4 of this Agreement based on such statements and (ii) to the effect that such Responsible Officer has reviewed this Agreement and to such Responsible Officer's knowledge no Default or Event of Default has occurred and is continuing, or stating the nature of the Default or Event of Default.

9.3 Preservation of Existence, Etc. To (a) preserve, renew and maintain in full force and effect its legal existence and (as applicable) good standing under the laws of the Commonwealth of Virginia; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

9.4 Financial Covenants. To maintain the following financial covenants and ratios, each on a consolidated basis with the other Borrowers and their subsidiaries:

(a) [Intentionally Omitted].

(b) A Funded Debt to EBITDA ratio not greater than the ratios indicated for each period specified below:

<b>Period</b>	<b>Ratio</b>
Through August 31, 2018	2.50 to 1.00
September 1, 2018 through August 31, 2019	2.25 to 1.00
September 1, 2019 and thereafter	2.00 to 1.00

The Funded Debt to EBITDA ratio will be calculated at the end of each reporting period for which the Bank requires financial statements, using the results of the twelve-month period ending with that reporting period. The results of any twelve--month period that includes time before the Acquisition shall be based on pro forma calculations of EBITDA, sufficiently explained, including to the extent appropriate results from the Seller for such time.

- (c) A Basic Fixed Charge Coverage Ratio of at least 1.25 to 1.00.

The Basic Fixed Charge Coverage ratio will be calculated at the end of each reporting period for which the Bank requires financial statements, using the results of the twelve-month period ending with that reporting period. For purposes of such calculation, the current portion of long-term liabilities will be measured as of the last day of the calculation period. The results of any twelve-month period that includes time before the Acquisition shall be based on pro forma calculations of EBITDA, sufficiently explained, including to the extent appropriate results from the Seller for such time.

9.5 Capital Expenditures. Not to spend or incur obligations to spend, on a consolidated basis, to acquire fixed assets (including the total amount of any capital leases) during any fiscal year more than \$15,000,000, with expenditures to acquire fixed assets pursuant to the Acquisition being excluded for the fiscal year in which the Acquisition occurs.

9.6 Investments. Not to make any Investments, except:

- (a) Investments held by such Borrower or one of its subsidiaries in the form of cash equivalents or short-term marketable debt securities;
- (b) Investments of such Borrower in any wholly-owned subsidiary;
- (c) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;
- (d) guarantees permitted by Section 9.9;
- (e) bank deposits in the ordinary course of business;
- (f) Investments in securities of any account debtor received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy of insolvency of such account debtor;
- (g) Investments in addition to the Investments described above, provided that the aggregate amount of such additional Investments at any one time outstanding does not exceed \$5,000,000; and
- (h) the Acquisition.

“Investment” means, as to any person, any direct or indirect acquisition or investment by such person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another person, (b) a loan, advance or capital contribution to, guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another person, including any partnership or joint venture interest in such other person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of

assets of another person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

9.7 Payment of Obligations. To pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by such Borrower; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, unless, in each case, (i) the failure to pay or discharge such obligations or liabilities would not reasonably be expected to have a Material Adverse Effect or (ii) such obligations or liabilities are being contested in good faith by appropriate proceedings diligently conducted, adequate reserves in accordance with GAAP are being maintained by such Borrower and the failure to pay or discharge such obligations or liabilities pending resolution of such contest would not reasonably be expected to have a Material Adverse Effect.

9.8 Inspection Rights. To permit representatives and independent contractors of the Bank to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent registered public accounting firm, all at the expense of such Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to such Borrower; provided however, that, so long as there has been no material change in the economic profile of such Borrower, such Borrower shall be responsible for the expense of only the first two such examinations in each 12-month period; provided further however, that when an Event of Default exists the Bank (or its representatives or independent contractors) may do any of the foregoing at the expense of such Borrower at any time during normal business hours and without advance notice.

9.9 Other Debts. Not to create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness under this Agreement;
- (b) Indebtedness outstanding on the date hereof and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;
- (c) Guarantees of such Borrower in respect of Indebtedness otherwise permitted hereunder of such Borrower;

(d) obligations (contingent or otherwise and including any Swap Termination Value) of such Borrower existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Borrower in the ordinary course of business for the purpose of directly managing risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Borrower, or changes in the value of securities issued by such Borrower and not for purposes of speculation or taking a “market view;” and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make the swap termination value payment, if any, on outstanding transactions to the defaulting party; and

(e) Indebtedness in addition to the Indebtedness described above, provided that the aggregate amount of such additional Indebtedness at any one time outstanding does not exceed \$10,000,000.

9.10 Other Liens. Not to create, incur, assume or suffer to exist, any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to this Agreement;

(b) Liens existing on the date hereof and any renewals or extensions thereof, provided that the property covered thereby is not increased and any renewal or extension of the obligations secured or benefited thereby is permitted by Section 9.9(b);

(c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable person in accordance with GAAP;

(d) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable person in accordance with GAAP;

(e) pledges or deposits in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which do not materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable person;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 10.7 or securing appeal or other surety bonds relating to such judgments;

(i) Liens securing Indebtedness permitted under Section 9.9(e); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition; and

(j) Liens in addition to the Liens described above, provided that the aggregate amount of Indebtedness secured by such Liens at any one time outstanding does not exceed \$5,000,000.

For purposes of this Agreement, "Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing.

9.11 Fundamental Changes. Not to merge, dissolve, liquidate or consolidate with or into, another person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any person, except that, so long as no Default exists or would result therefrom:

(a) any person (other than such Borrower) may merge with (i) such Borrower, provided that such Borrower shall be the continuing or surviving person, or (ii) any one or more subsidiaries of such Borrower, provided that a wholly-owned subsidiary of such Borrower shall be the continuing or surviving person;

(b) such Borrower may merge with any wholly owned subsidiary of such Borrower or with any other Borrower or any wholly-owned subsidiary of any other Borrower, and any other Borrower and any subsidiary of any other Borrower may merge with such Borrower or any of its wholly owned subsidiaries;

(c) any subsidiary of such Borrower may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise), to such Borrower, any other Borrower, another subsidiary of such Borrower or any subsidiary of any other Borrower; provided that if the transferor in such a transaction is a wholly-owned subsidiary of such Borrower, then the transferee must also be a wholly-owned subsidiary of such Borrower or any other Borrower; and

(d) any subsidiary of such Borrower may merge into or consolidate with another person, or may dissolve or liquidate, if such Borrower determines in good faith that such merger, consolidation, dissolution or liquidation is in the best interests of such Borrower and would not reasonably be expected to have a Material Adverse Effect.

9.12 Dispositions. Not to make any Disposition or enter into any agreement to make any Disposition, except:

- (a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;
- (b) Dispositions of inventory in the ordinary course of business;
- (c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property, (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property or (iii) such equipment or property is in the judgment of such Borrower no longer required for the conduct of the business of such Borrower or any of its subsidiaries;
- (d) Dispositions of property (i) by any subsidiary of such Borrower to such Borrower or to any other Borrower, (ii) by such Borrower to a wholly-owned subsidiary of such Borrower or of any other Borrower and (iii) by such Borrower to any other Borrower; and
- (e) Dispositions permitted by Section 9.11.

provided, however, that any Disposition pursuant to this Section 9.12 shall be for fair market value (as determined in good faith by the chief financial officer of the Borrowers).

9.13 Restricted Payments. Not to declare or make, directly or indirectly, any restricted payment, which means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other equity interest of such Borrower or any of its subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other equity interest or of any option, warrant or other right to acquire any such capital stock or other equity interest (“Restricted Payment”), or incur any obligation (contingent or otherwise) to do so, except that:

- (a) each of such Borrower’s subsidiaries may make Restricted Payments to such Borrower and to wholly-owned subsidiaries of such Borrower (and, in the case of a Restricted Payment by a non-wholly-owned subsidiary of such Borrower, to such Borrower and any subsidiary of such Borrower and to each other owner of capital stock or other equity interests of such subsidiary of such Borrower on a pro rata basis based on their relative ownership interests);
- (b) in the case of any Borrower that is a subsidiary of another Borrower, such Borrower may make Restricted Payments to such other Borrower;
- (c) such Borrower and each of its subsidiaries may declare and make dividend payments or other distributions payable solely in the common stock or other common equity interests of the entity making such payment or distribution;

(d) such Borrower and each of its subsidiaries may purchase, redeem or otherwise acquire shares of its common stock or other common equity interests or warrants or options to acquire any such shares with the proceeds received from the substantially concurrent issue of new shares or its common stock or other common equity interests;

(e) such Borrower may, unless a Default or Event of Default has occurred and is continuing, declare and make dividend payments or other distributions to its shareholders, provided that such Borrower is in pro forma compliance with the financial covenants set forth in Section 9.4 after giving effect to such dividend payment or other distribution;

(f) such Borrower or any of its subsidiaries may, unless a Default or Event of Default has occurred and is continuing, purchase or redeem any of its common stock or any warrants, options or other rights in respect thereof from (i) employees, officers and directors of such Borrower or such subsidiary (or their estates) upon the death, permanent disability, retirement or termination of employment of any such person or otherwise in accordance with any stock incentive plan, employee stock purchase plan or other similar employee benefit plan maintained by such Borrower or such subsidiary of such Borrower or (ii) in the case of such Borrower, other shareholders of such Borrower so long as the purpose of such purchase or redemption is to acquire common stock in accordance with any such stock incentive plan, employee stock purchase plan or other similar employee benefit plan or for reissuance to new employees, officers or directors (or their estates) of such Borrower or any of its subsidiaries and such common stock is reissued within twelve (12) months of such purchase or redemption, provided, in each case, that such Borrower is in pro forma compliance with the financial covenants set forth in Section 9.4 after giving effect to such purchase or redemption; and

(g) such Borrower may, unless a Default or Event of Default has occurred and is continuing, purchase shares of its common stock pursuant to a share repurchase plan or agreement approved by such Borrower's board of directors, provided that the Borrowers are in pro forma compliance with the financial covenants set forth in Section 9.4 after giving effect to such purchase.

9.14 Maintenance of Properties.

(a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, except for ordinary wear and tear and except as to worn out or obsolete properties and equipment;

(b) Make all necessary repairs thereto and renewals and replacements thereof; and

(c) Use the standard of care typical in the industry in the operation and maintenance of its facilities except in each case referred to in clause (a), (b) or (c) above, to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

9.15 Change in Nature of Business. Engage to any material extent in any material line of business substantially different from those lines of business conducted by the Borrowers and their subsidiaries or the Seller on the date hereof and businesses reasonably related thereto.

9.16 Notices to Bank. To promptly notify the Bank in writing of:

- (a) The occurrence of any Default or Event of Default;
- (b) Any matter that has resulted or would reasonably be expected to result in a Material Adverse Effect; or
- (c) Any material change in accounting policies or financial reporting practices by such Borrower or any of its subsidiaries.

9.17 Insurance.

(a) To maintain with financially sound and reputable insurance companies not affiliated with such Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other persons and providing for not less than 30 days' prior notice to the Bank of termination, lapse or cancellation of such insurance.

(b) To maintain the Duly Assigned Policies as security for Facility No. 3 in full force and effect.

(c) To cause the aggregate cash value of the Duly Assigned Policies to equal or exceed 105.263% of the principal balance of Facility No. 3 outstanding at any time.

9.18 Compliance with Laws. To comply in all material respects with the laws (including any fictitious or trade name statute), regulations, and orders of any government body with authority over such Borrower's business, except in such instances in which (a) any such law, regulation or order is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect.

9.19 Books and Records. To maintain adequate books and records in material conformity with applicable laws or regulatory requirements.

9.20 Audits. To allow the Bank and its agents to inspect such Borrower's properties and examine, audit, and make copies of such Borrower's books and records during normal business hours after reasonable advance notice after an Event of Default has occurred and is continuing. If any of such Borrower's properties, books or records are in the possession of a third party, such Borrower authorizes that third party to permit the Bank or its agents to have access, during normal business hours after reasonable advance notice, to perform such inspections or audits and to respond to the Bank's reasonable requests for information concerning such properties, books and records.

9.21 Bank as Depository. To maintain with the Bank its primary depository accounts and relationships, including operating, cash management and collection/lockbox account services.



9.22 New Subsidiaries. To notify the Bank at the time that any entity becomes a subsidiary of such Borrower, and promptly thereafter (and in any event within 30 days), cause such entity to (a) become a “Borrower” under this Agreement by executing and delivering to the Bank a joinder agreement or such other documents as the Bank deems appropriate for such purpose, and (b) deliver to the Bank documents of the types referred to in Sections 6.2 and 6.4 and a favorable opinion of counsel to such entity (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), all in form, content and scope reasonably satisfactory to the Bank.

9.23 Loans to Affiliates of any Borrower. Not to make any loans, advances or other extensions of credit (including extensions of credit in the nature of accounts receivable or notes receivable arising from the sale or lease of goods or services) in an amount greater than \$500,000 in the aggregate to any Affiliate of any Borrower other than another Borrower.

## 10. DEFAULT AND REMEDIES

If any of the following events of default occurs (each an “Event of Default”), the Bank may do one or more of the following: declare the Borrowers in default, stop making any additional credit available to the Borrowers, and require the Borrowers to repay the entire debt outstanding under this Agreement immediately and without prior notice. If an event which, with notice or the passage of time, or both, will constitute an Event of Default has occurred and is continuing (each a “Default”), the Bank has no obligation to make advances or extend additional credit under this Agreement. In addition, if any Event of Default occurs, the Bank shall have all rights, powers and remedies available under any instruments and agreements executed in connection with this Agreement, as well as all rights and remedies available at law or in equity. If an Event of Default occurs under the Section entitled “Bankruptcy,” below, with respect to any Borrower, then the entire debt outstanding under this Agreement will automatically be due immediately.

10.1 Failure to Pay. The Borrowers fail to make a payment under this Agreement when due and such failure continues for a period of ten (10) days after written notice thereof is sent by the Bank to the Borrowers; provided, however, that if notice of such failure is sent twice in any twelve (12) month period, any subsequent failure to make a payment under this Agreement when due shall be an immediate Event of Default without the need for any notice and opportunity to cure.

10.2 Other Bank Agreements. Any default occurs and continues after any applicable grace or cure period under any other agreement between any Borrower and the Bank or any Affiliate of the Bank, which default results in the Bank or such Affiliate accelerating the obligations thereunder in an amount exceeding \$4,000,000.

10.3 Cross-default. Any default occurs and continues after any applicable grace or cure period under any agreement for borrowed money between a Borrower and any third party or under which a Borrower has provided a guarantee to a third party, which default results in such third party accelerating the obligations thereunder in an amount exceeding \$6,000,000.

10.4 Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of a Borrower herein, or in any document

delivered in connection herewith, shall be incorrect in any material respect when made or deemed made.

10.5 Bankruptcy. Any Borrower files a bankruptcy petition, a bankruptcy petition is filed against any Borrower and is not dismissed or stayed within sixty (60) days after such filing, or any Borrower makes a general assignment of all or any material part of its property for the benefit of creditors.

10.6 Receivers. A receiver or similar official is appointed for all or any material part of a Borrower's business.

10.7 Judgments. There is entered against a Borrower or any of its subsidiaries (i) a final judgment or order for the payment of money in an aggregate amount exceeding \$6,000,000 (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect.

10.8 ERISA Plans. Any one or more of the following events occurs with respect to a Plan provided such event or events could reasonably be expected, in the judgment of the Bank, to subject a Borrower to any tax, penalty or liability (or any combination of the foregoing) which, in the aggregate, exceeds \$8,000,000.00:

(a) A reportable event shall occur under Section 4043(c) of ERISA with respect to a Plan.

(b) Any Plan termination (or commencement of proceedings to terminate a Plan) or the full or partial withdrawal from a Plan by a Borrower or any ERISA Affiliate.

10.9 Other Breach Under Agreement or Breach Under Other Loan Document. A breach occurs under any other term or condition of this Agreement not specifically referred to in this Article or under another Loan Document and, if such breach is capable of being cured within thirty (30) days after the earlier of (a) any Responsible Officer of a Borrower obtains knowledge of such breach or (b) notice of such breach is given to the Borrowers by the Bank, it is not cured within such period; provided that in the event the breach cannot be reasonably cured within thirty (30) days and the Borrowers diligently proceed to cure the same within sixty (60) days after the earlier of (a) any Responsible Officer of any Borrower obtains knowledge of such breach or (b) notice of such breach is given to the Borrowers by the Bank, an Event of Default shall not be deemed to have occurred hereunder. This includes any failure by the Borrowers to comply with any financial covenants set forth in this Agreement.

10.10 Lien Priority. The Bank fails to have an enforceable first lien (except for any prior liens to which the Bank has consented in writing) on or security interest in any property given as security for this Agreement (or any guaranty).

10.11 **Forfeiture.** A judicial or nonjudicial forfeiture or seizure proceeding is commenced by a government authority and remains pending with respect to any property of any Borrower or any part thereof, on the grounds that the property or any part thereof had been used to commit or facilitate the commission of a criminal offense by any person, including any tenant, pursuant to any law, including under the Controlled Substances Act or the Civil Asset Forfeiture Reform Act, regardless of whether or not the property shall become subject to forfeiture or seizure in connection therewith, unless any such proceeding is dismissed, stayed or bonded or such property is released therefrom within 90 days after such Borrower receives written notice of any such proceeding.

## **11. ENFORCING THIS AGREEMENT; MISCELLANEOUS**

11.1 **GAAP.** Except as otherwise stated in this Agreement, all financial statements provided to the Bank by the Borrowers hereunder will be prepared in accordance with generally accepted accounting principles, consistently applied (“GAAP”) and all financial covenants will be calculated using such financial statements.

11.2 **Governing Law.** Except to the extent that any law of the United States may apply, this Agreement shall be governed and interpreted according to the laws the Governing Law State, without regard to any choice of law, rules or principles to the contrary. Nothing in this paragraph shall be construed to limit or otherwise affect any rights or remedies of the Bank under federal law.

11.3 **Venue and Jurisdiction.** Any action or suit against the Bank arising out of or relating to this Agreement shall be filed in federal court or state court located in the Governing Law State. The Bank shall not be deemed to have waived its rights to enforce this section by filing an action or suit against the Borrowers in a venue outside of the Governing Law State. If the Bank does commence an action or suit arising out of or relating to this Agreement, the case may be filed in federal court or state court in the Governing Law State. The Bank reserves the right to commence an action or suit in any other jurisdiction where the Borrowers, any guarantor, or any collateral has any presence or is located. Each Borrower consents to personal jurisdiction and venue in such forum selected by the Bank and waives any right to contest jurisdiction and venue and the convenience of any such forum. The provisions of this section are material inducements to the Bank’s acceptance of this Agreement.

11.4 **Successors and Assigns.** This Agreement is binding on each Borrower’s and the Bank’s successors and assignees. The Borrowers shall not assign this Agreement without the Bank’s prior consent. The Bank may sell participations in the Facilities, and may exchange financial information about the Borrowers (including, without limitation, any information regarding any hazardous substances) with actual or potential participants; however, despite any such participation, the Bank will continue to administer the Facilities and the Borrowers will be entitled to deal solely with the Bank in all matters arising under this Agreement. The Bank shall not assign this Agreement or any interest in the Facilities, other than one or more participations, without the prior consent of the Borrowers. The Borrowers shall not unreasonably withhold or delay such consent. If the Borrowers make no response to the Bank’s request for such consent within five business days after such request they shall be deemed to have given consent to the assignment. Despite anything contained in this Section 11.4 to the contrary, the Borrowers shall

not have the right to consent to any assignment by the Bank of this Agreement or any interest in the Facilities (a) to Bank of America Corporation (or any successor company) or any of its subsidiaries and Affiliates, including, but not limited to, any of the Bank of America Companies or (b) to any person if an Event of Default has occurred and is continuing. If any of the Facilities are assigned, the assignee will have the right of set-off against the Borrowers. "Bank of America Companies" means the following:

Banc of America,  
U.S. Trust,  
LandSafe,  
Merrill Lynch,  
Managed Account Advisors LLC,  
General Fidelity Life Insurance Company,  
NationsCredit Financial Services Corporation,  
BAL Corporate Aviation, LLC,  
BAL Energy Holding, LLC,  
BAL Energy Management II, LLC, and  
BAL Investment & Advisory, Inc.,

**11.5 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER DOCUMENTS CONTEMPLATED HEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION AND (c) CERTIFIES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE.**

**11.6 Waiver of Class Actions. The terms "Claim" or "Claims" refer to any disputes, controversies, claims, counterclaims, allegations of liability, theories of damage, or defenses between Bank of America, N.A., its subsidiaries and Affiliates, on the one hand, and the other parties to this Agreement, on the other hand (all of the foregoing each being referred to as a "Party" and collectively as the "Parties") with respect to a matter arising under this Agreement. Whether in state court, federal court, or any other venue, jurisdiction, or before any tribunal, the Parties agree that all aspects of litigation and trial of any Claim will take place without resort to any form of class or representative action. Thus the Parties may only bring Claims against each other in an individual capacity and waive any right they may have to do so as a class representative or a class member in a class or representative action. THIS CLASS ACTION WAIVER PRECLUDES ANY PARTY FROM PARTICIPATING IN OR BEING**

11.7 Severability; Waivers. If any part of this Agreement is not enforceable, the rest of the Agreement may be enforced. The Bank retains all rights, even if it makes an advance after an Event of Default. If the Bank waives an Event of Default, it may enforce a later Event of Default. Any consent or waiver under this Agreement must be in writing.

11.8 Attorneys' Fees. The Borrowers shall reimburse the Bank for any reasonable costs and reasonable attorneys' fees incurred by the Bank in connection with the enforcement or preservation of any rights or remedies under this Agreement and any note or other agreements executed in connection with this Agreement, and in connection with any amendment, waiver, "workout" or restructuring under this Agreement. In the event of a lawsuit or arbitration proceeding between the Bank and any Borrower, the prevailing party is entitled to recover costs and reasonable attorneys' fees incurred in connection with the lawsuit or arbitration proceeding, as determined by the court or arbitrator. In the event that any case is commenced by or against a Borrower under the Bankruptcy Code (Title 11, United States Code) or any similar or successor statute, the Bank is entitled to recover costs and reasonable attorneys' fees incurred by the Bank related to the preservation, protection, or enforcement of any rights of the Bank in such a case.

11.9 One Agreement. This Agreement and any other Loan Document and other agreements required by this Agreement:

- (a) represent the sum of the understandings and agreements between the Bank and the Borrowers concerning the Facilities; and
- (b) are intended by the Bank and the Borrowers as the final, complete and exclusive statement of the terms agreed to by them.

In the event of any conflict between this Agreement and any other agreements required by this Agreement, this Agreement will prevail. Any reference in any related document to a "promissory note" or a "note" executed by the Borrowers and dated as of the date of this Agreement shall be deemed to refer to this Agreement, as now in effect or as hereafter amended, renewed, or restated.

11.10 Indemnification. The Borrowers will indemnify and hold the Bank harmless from any loss, liability, damages, judgments, and costs of any kind to third parties relating to or arising directly or indirectly out of (a) this Agreement or any document required hereunder, (b) any credit extended or committed by the Bank to the Borrowers hereunder, and (c) any litigation or proceeding related to or arising out of this Agreement, any such document, or any such credit, except to the extent that any such loss, liability, damages, judgments or costs were caused by the Bank's negligence or willful wrongdoing, or by the Bank's breach of any term of this Agreement. This indemnity includes but is not limited to reasonable attorneys' fees. This indemnity extends to the Bank, its parent, subsidiaries and all of their respective directors, officers, employees, agents, successors, attorneys, and assigns. This indemnity will survive repayment of the Borrowers' other obligations to the Bank. All sums due to the Bank under this

Section shall be obligations of the Borrowers, due and payable within ten banking days after demand therefor.

11.11 Set-Off. Upon and after the occurrence of an event of default under this Agreement, (a) each Borrower hereby authorizes the Bank, at any time and from time to time, without notice, which is hereby expressly waived by such Borrower, and whether or not the Bank shall have declared any credit subject hereto to be due and payable in accordance with the terms hereof, to set off against, and to appropriate and apply to the payment of, such Borrower's Obligations (whether matured or unmatured, fixed or contingent, liquidated or unliquidated), any and all amounts owing by the Bank to such Borrower (whether payable in U.S. dollars or any other currency, whether matured or unmatured, and in the case of deposits, whether general or special (except trust and escrow accounts), time or demand and however evidenced), and (b) pending any such action, to the extent necessary, to hold such amounts as collateral to secure such Obligations and to return as unpaid for insufficient funds any and all checks and other items drawn against any deposits so held as the Bank, in its sole discretion, may elect. Each Borrower hereby grants to the Bank a security interest in all deposits and accounts maintained with the Bank to secure the payment of all Obligations of such Borrower. As used in this Agreement, "Obligations" means all obligations, now or hereafter existing, of each Borrower to the Bank under this Agreement and under any other agreement or instrument executed in connection with this Agreement.

11.12 Notices. Unless otherwise provided in this Agreement, all notices required under this Agreement shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses on the signature page of this Agreement, or sent by facsimile to the fax numbers listed on the signature page, or to such other addresses as the Bank and the Borrowers may specify from time to time in writing. Notices and other communications shall be effective (i) if mailed, upon the earlier of receipt or five (5) days after deposit in the U.S. mail, first class, postage prepaid, (ii) if telecopied, when transmitted, or (iii) if hand-delivered, by courier or otherwise (including telegram, lettergram or mailgram), when delivered.

11.13 Headings. Article, section and paragraph headings are for reference only and shall not affect the interpretation or meaning of any provisions of this Agreement.

11.14 Joint and Several Liability.

(a) Each Borrower agrees that it is jointly and severally liable to the Bank for the payment of all obligations arising under this Agreement, and that such liability is independent of the obligations of the other Borrower(s). Each obligation, promise, covenant, representation and warranty in this Agreement shall be deemed to have been made by, and be binding upon, each Borrower, unless this Agreement expressly provides otherwise. The Bank may bring an action against any Borrower, whether an action is brought against the other Borrower(s).

(b) Each Borrower agrees that any release which may be given by the Bank to the other Borrower(s) or any guarantor will not release such Borrower from its obligations under this Agreement.

(c) Each Borrower waives any right to assert against the Bank any defense, setoff, counterclaim, or claims which such Borrower may have against the other Borrower(s) or any other party liable to the Bank for the obligations of the Borrowers under this Agreement.

(d) Each Borrower waives any defense by reason of any other Borrower's or any other person's defense, disability, or release from liability. The Bank can exercise its rights against each Borrower even if any other Borrower or any other person no longer is liable because of a statute of limitations or for other reasons.

(e) Each Borrower agrees that it is solely responsible for keeping itself informed as to the financial condition of the other Borrower(s) and of all circumstances which bear upon the risk of nonpayment. Each Borrower waives any right it may have to require the Bank to disclose to such Borrower any information which the Bank may now or hereafter acquire concerning the financial condition of the other Borrower(s).

(f) Each Borrower waives all rights to notices of default or nonperformance by any other Borrower under this Agreement. Each Borrower further waives all rights to notices of the existence or the creation of new indebtedness by any other Borrower and all rights to any other notices to any party liable on any of the credit extended under this Agreement.

(g) Each Borrower represents and warrants to the Bank that such Borrower will derive benefit, directly and indirectly, from the collective administration and availability of credit under this Agreement. The Bank will not be required to inquire as to the disposition by any Borrower of funds disbursed in accordance with the terms of this Agreement.

(h) Until all obligations of the Borrowers to the Bank under this Agreement have been paid in full and any commitments of the Bank or the Facilities provided by the Bank under this Agreement have been terminated, each Borrower waives any right of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), which such Borrower may now or hereafter have against any other Borrower with respect to the indebtedness incurred under this Agreement.

(i) Each Borrower waives any right to require the Bank to proceed against any other Borrower or any other person; proceed against or exhaust any security; or pursue any other remedy. Further, each Borrower consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of the Borrowers under this Agreement or which, but for this provision, might operate as a discharge of the Borrowers.

11.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and all of which when taken together shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement (or of any agreement or document required by this Agreement and any amendment to this Agreement) by telecopy or other electronic imaging means shall be as effective as delivery of a manually executed counterpart of this Agreement; provided, however, that the telecopy or other electronic image shall be promptly followed by an original if required by the Bank.

11.16 Borrower Information; Reporting to Credit Bureaus. Each Borrower authorizes the Bank at any time to verify or check any information given by such Borrower to the Bank, check such Borrower's credit references, verify employment, and obtain credit reports and other credit bureau information from time to time in connection with the administration, servicing and collection of the loans under this Agreement. Each Borrower agrees that the Bank shall have the right at all times to disclose and report to credit reporting agencies and credit rating agencies such information pertaining to such Borrower as is consistent with the Bank's policies and practices from time to time in effect.

11.17 Amendments. This Agreement may be amended or modified only in writing signed by each party hereto.

*[Remainder of page intentionally left blank. Signature page follows.]*



Bank:	Borrowers:
<p><b>Bank of America, N.A.</b></p> <p>By: <u>/s/ Colleen Landau</u> Name: Colleen Landau Title: Vice President</p> <p>Address where notices to The Bank are to be sent:</p> <p>Bank of America, N.A. 11810 Grand Park Avenue North Bethesda, MD 20852 Facsimile: 704-719-8913 Attn: Vice President</p> <p>With a copy to:</p> <p>Doc Retention – GCF CT2-515-BB-03 70 Batterson Park Road Farmington, CT 06032</p>	<p><b>Hooker Furniture Corporation</b></p> <p>By: <u>/s/ Paul B. Toms, Jr.</u> (Seal) Name: <u>Paul B. Toms, Jr.</u> Title: <u>Chief Executive Officer</u></p> <p><b>Bradington-Young, LLC</b></p> <p>By: <u>/s/ Paul B. Toms, Jr.</u> (Seal) Name: <u>Paul B. Toms, Jr.</u> Title: <u>Chief Executive Officer</u></p> <p><b>Sam Moore Furniture LLC</b></p> <p>By: <u>/s/ Paul B. Toms, Jr.</u> (Seal) Name: <u>Paul B. Toms, Jr.</u> Title: <u>Chief Executive Officer</u></p> <p><b>Home Meridian Group, LLC</b></p> <p>By: <u>/s/ Paul B. Toms, Jr.</u> (Seal) Name: <u>Paul B. Toms, Jr.</u> Title: <u>Chief Executive Officer</u></p> <p>Address where notices to Borrowers are to be sent:</p> <p>c/o Hooker Furniture Corporation 440 East Commonwealth Blvd. Martinsville, Virginia 24112 Facsimile: 276-632-0026 Attn: Paul A. Huckfeldt</p>

USA Patriot Act Notice. Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account or obtains a loan. The Bank will ask for each Borrower's legal name, address, tax ID number or social security number and other identifying information. The Bank may also ask for additional information or documentation or take other actions reasonably necessary to verify the identity of each Borrower or related persons.

[Signature page to Second Amended and Restated Loan Agreement]

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## Schedule of Definitions

“Acquisition” means the acquisition by any Borrower of certain assets pursuant to the Purchase Agreement.

“Acquisition Advance” means the single advance under Facility No. 4 as applied by the Borrowers to pay any portion of the purchase price of the Acquisition.

“Adjustment Date” has the meaning given such term in Section 1.4(b).

“Agreement” means this Second Amended and Restated Loan Agreement dated as of September 29, 2017, between the Bank and the Borrowers, as amended or supplemented from time to time.

“Affiliate” of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For purposes of this definition, “control” when used with respect to any specified person means the power to direct or cause the direction of the management or policies of such person, directly or indirectly, whether through the ability to exercise voting power, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative thereto.

“Attributable Indebtedness” means, on any date, (a) in respect of any capital lease of any person, the capitalized amount thereof that would appear on a balance sheet of such person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

“Authorized Individual” has the meaning given such term in Section 5.5.

“Bank of America Companies” has the meaning given such term in Section 11.4.

“Basic Fixed Charge Coverage Ratio” means the ratio of (a) the sum of EBITDA plus lease expense and rent expense, minus income tax, minus dividends, withdrawals, and other distributions, to (b) the sum of interest expense, lease expense, rent expense, the current portion of long term debt and the current portion of capitalized lease obligations.

“Claim” has the meaning given such term in Section 11.6.

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

“Default” has the meaning given such term in Section 10.

“Designated Account” has the meaning given such term in Section 5.5.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any person, including any sale,

assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Duly Assigned Policies” means Life Insurance Policies, the originals of which have been provided to the Bank together with evidence that collateral assignments of such Life Insurance Policies in favor of the Bank have been filed of record with the issuers of such Life Insurance Policies.

“EBITDA” means net income, less income or plus loss from discontinued operations and extraordinary items, plus income taxes, plus interest expense, plus depreciation, depletion, and amortization.

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with a Borrower within the meaning of Section 414(b) or (c) of the Code.

“Event of Default” has the meaning given such term in Section 10.

“Extension Notice” has the meaning given such term in Section 1.2.

“Facility No. 1 Commitment” has the meaning given such term in Section 1.1(a).

“Facility No. 1 Expiration Date” has the meaning given such term in Section 1.2.

“Facility No. 4 Commitment” has the meaning given such term in Section 3.A.1.

“Funded Debt” means all outstanding liabilities for borrowed money and other interest-bearing liabilities, including current and long term debt, less the non-current portion of Subordinated Liabilities.

“GAAP” has the meaning given such term in Section 11.1.

“Governing Law State” means the Commonwealth of Virginia.

“Indebtedness” means, as to any person at a particular time, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (i) all obligations of such person for borrowed money and all obligations of such person evidenced by bonds, debentures, notes or other similar instruments;
- (ii) all direct or contingent obligations of such person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (iii) the obligation, if any, of such person to pay the Swap Termination Value;

- (iv) all obligations of such person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);
- (v) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such person or is limited in recourse, provided that the amount of such indebtedness for purposes of this Agreement shall not exceed the greater of the book value and the fair market value of the property subject to such Lien;
- (v) capital leases and Synthetic Lease Obligations;
- (vi) all purchase money indebtedness;
- (vii) the principal portion of all obligations under conditional sale or other title retention agreements relating to property purchased by a Borrower or any subsidiary (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);
- (viii) all preferred stock or other equity interests providing for mandatory redemptions, sinking fund or like payments (“Redeemable Stock”); provided that Redeemable Stock shall not include any preferred stock or other equity interest subject to mandatory redemption if such mandatory redemption may be satisfied by delivering common stock or some other equity interest not subject to mandatory redemption; and
- (ix) all guarantees of such person in respect of any of the foregoing;

For all purposes hereof, Indebtedness of any person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such person. The amount of any capital lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“Investment” has the meaning given such term in Section 9.6.

“LIBOR Rate (Adjusted Periodically)” has the meaning given such term in Section 1.4(c).

“Lien” has the meaning given such term in Section 9.10.

“Life Insurance Policies” has the meaning given such term in Section 4.

“Loan Document” means this Agreement and any assignment, security agreement or other agreement executed by a Borrower in connection with this Agreement, as amended or supplemented from time to time.

“London Banking Day” has the meaning given such term in Section 1.4(c).

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual and contingent), condition (financial or otherwise) or prospects of the Borrowers and their subsidiaries taken as a whole; (b) a material impairment of the ability of any Borrower to perform its obligations under this Agreement; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Borrower of this Agreement.

“Obligations” has the meaning given such term in Section 11.11.

“Parent” means Hooker Furniture Corporation, a Virginia corporation.

“Party” has the meaning given such term in Section 11.6.

“Person” has the meaning given such term in Section 8.14(a).

“Plan” means a plan within the meaning of Section 3(2) of ERISA maintained or contributed to by any Borrower or any ERISA Affiliate, including any multiemployer plan within the meaning of Section 4001(a)(3) of ERISA.

“Purchase Agreement” means the Asset Purchase Agreement dated as of September 6, 2017, between Hooker Furniture Corporation, the Seller, Gideon C. Huddle and Candace H. Payne.

“Purchase Agreement Representations” has the meaning given such term in Section 7(a).

“Responsible Officer” means, with respect to any Borrower, the chief executive officer, chief financial officer or chief accounting officer of such Borrower.

“Restricted Payment” has the meaning given such term in Section 9.13.

“Sanctions” has the meaning given such term in Section 8.14(a).

“Seller” means Shenandoah Furniture, Inc.

“Specified Representations” has the meaning given such term in Section 7(b).

“Subordinated Liabilities” means liabilities subordinated to the Obligations in a manner acceptable to the Bank in its sole discretion.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such

transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement with respect to transactions described in clause (a) above (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided in good faith and in a commercially reasonable manner by any recognized dealer in such Swap Contracts (which may include the Bank or any Affiliate of the Bank),

“Synthetic Lease Obligation” means the monetary obligation of a person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such person but which, upon the insolvency or bankruptcy of such person, would be characterized as the indebtedness of such person (without regard to accounting treatment).

“Tangible Net Worth” means, as of any date, the value of the Borrowers’ total assets (including leaseholds and leasehold improvements and reserves against assets but excluding goodwill, patents, trademarks, trade names, organization expense, unamortized debt discount and expense, capitalized or deferred research and development costs, and other like intangibles, and monies due from Affiliates, officers, directors, employees, shareholders, members or managers of the Borrowers) less total liabilities, including but not limited to accrued and deferred income taxes, but excluding the non-current portion of Subordinated Liabilities, in each case as of such date.