

**EXECUTION COPY**

**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**THE CONNAUGHT GROUP, LTD.,  
LIMITED EDITIONS FOR HER OF NEVADA LLC,  
LIMITED EDITIONS FOR HER OF BRANSON LLC,  
LIMITED EDITIONS FOR HER LLC,  
AND  
WDR RETAIL CORP.,**

**AS SELLER**

**AND**

**FORTY-THREE EIGHTY COMPANY,**

**AS BUYER**

**DATED AS OF April 9, 2012**

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “*Agreement*”) is entered into this 9th day of April, 2012, by and among (a) THE CONNAUGHT GROUP, LTD., a Delaware corporation (“*Seller*”), (b) the subsidiaries of Seller listed on the signature pages hereto (the “*Seller Subsidiaries*” and, together with Seller, the “*Seller Group*”), (c) FORTY-THREE EIGHTY COMPANY, a corporation formed under the laws of the State of Delaware (“*Buyer*”), (d) solely for purposes of ARTICLE XIII hereof, TOM JAMES COMPANY, a corporation formed under the laws of Tennessee (“*Tom James*”), and WELL CHOICE INVESTMENTS LIMITED, a corporation formed under the laws of British Virgin Islands (“*Well Choice*” and, together with Tom James, “*Parent*”), and (e) solely for purposes of Sections 13.6 and 13.7 hereof, ROYAL SPIRIT GROUP, a corporation formed under the laws of Hong Kong and wholly-owned subsidiary of Well Choice (“*Royal Spirit*”). Seller, the Seller Subsidiaries and Buyer are referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

## RECITALS

WHEREAS, the Seller and the Seller Subsidiaries filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “*Bankruptcy Code*”) on February 9, 2012 in the United States Bankruptcy Court for the Southern District of New York (the “*Bankruptcy Court*”), and such bankruptcy cases are hereinafter referred to collectively as the “*Cases*”; and

WHEREAS, the Seller Group wishes to sell, transfer, convey, assign and deliver to Buyer, and Buyer wishes to purchase, assume and acquire, in accordance with Section 363 and the other applicable provisions of the Bankruptcy Code, the Assets (as hereinafter defined) upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, subject to the Bankruptcy Court’s entry of the Sale Order (as hereinafter defined), the Buyer shall purchase from Seller, and Seller shall sell, transfer, convey, assign and deliver to Buyer, the Assets, upon the terms and subject to the conditions set forth in this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

## ARTICLE I DEFINED TERMS

For purposes of this Agreement, the following terms when used herein shall have the respective meanings set forth below:

“*55<sup>th</sup> Street Lease*” shall mean the Seller’s lease of space located at 423 West 55<sup>th</sup> Street, New York, New York.

***“Accounts Receivable”*** shall mean all accounts receivable of the Seller Group determined in accordance with GAAP and all other rights of Seller Group to payment for goods sold or leased or for services rendered, arising in the ordinary course of the operation of the business of the Seller Group, including without limitation those which are not evidenced by instruments or chattel paper, whether or not earned by performance or written off or reserved against as a bad debt or doubtful account in any financial statements; together with all instruments and documents of title representing any of the foregoing, all rights in any merchandise or goods which any of the same represent, and all rights, title, security, and guaranties in favor of the Seller Group with respect to any of the foregoing, including without limitation any right of stoppage in transit.

***“Affiliate”*** shall mean, with respect to any Person, any direct or indirect subsidiary of such Person, and any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such first Person.

***“Agreement”*** shall have the meaning set forth in the Preamble.

***“Applicable Law”*** shall mean, with respect to any Person, any federal, state or local law (including common law), statute, code, ordinance, rule, regulation, or other requirement enacted, promulgated, issued or entered by a Governmental Authority, that is applicable to such Person or its business, properties or assets.

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

***“Assigned Leases and Contracts”*** shall have the meaning set forth in **Section 2.3**.

***“Assumption Notice”*** shall have the meaning set forth in **Section 2.3**.

***“Avoidance Actions”*** shall mean any and all actions which a trustee, debtor-in-possession or other appropriate party in interest may assert on behalf of the Sellers or their estate under applicable state statute or Chapter 5 of the Bankruptcy Code, including actions under one or more provisions of Sections 542, 543, 544, 545, 546, 547, 548, 549, 550, 551 and 553, but excluding Insider Claims..

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

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

***“Bidding Procedures Order”*** shall mean the Order or Orders of the Bankruptcy Court setting forth the procedures under which Seller shall conduct the sale process of Seller’s and the Seller Group’s assets in accordance with Section 363 of the Bankruptcy Code, substantially in the form attached hereto as **Exhibit A**.

***“Business Day”*** shall mean any day other than Saturday, Sunday or any day on which banking institutions in the United States are closed either under Applicable Law or action of any Governmental Authority.

***“Buyer”*** shall have the meaning set forth in the Preamble.

***“Carry Costs”*** shall mean any and all carrying costs payable in order to effectuate, pursuant to the Bankruptcy Code, the assumption by Seller of any Designated Leases and Contracts from the Closing Date through the date on which such Designated Leases and Contracts are rejected by Seller in accordance with the Bankruptcy Code.

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

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

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

***“Contract”*** shall mean any agreement, arrangement, contract, lease, purchase order, sale order or commitment, or any series of related agreements, arrangements, contracts, leases, purchase orders, sale orders, commitments, permits or licenses, including all contracts and agreements with employees, sales representatives and contractors.

***“Cure Amounts”*** shall mean the amounts payable in order to effectuate, pursuant to the Bankruptcy Code, the assumption by Seller and the assignment to Purchaser of any Assigned Leases and Contracts.

***“Customs Drawback Claim”*** shall mean the duty drawback refund request being processed by FedEx for an approximate amount of \$190,000 covering the period from January 2011 through October 2011 and any and all other duty drawback refund requests of the Seller Group outstanding as of the Closing Date.

***“Deposit”*** shall have the meaning set forth in **Section 3.6**.

***“Designated Leases and Contracts”*** shall have the meaning set forth in **Section 2.3**.

***“Escrow Agent”*** shall have the meaning set forth in **Section 3.6**.

***“Escrow Agreement”*** shall have the meaning set forth in **Section 3.6**.

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

***“GAAP”*** shall mean generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), including, without limitation, the FASB Accounting Standards Codification™, which are applicable to the circumstances as of the date of determination, applied on a consistent basis.

***“Governmental Approvals”*** shall mean those approvals, authorizations, confirmations, consents, exemptions and orders from Governmental Authorities and the making of all necessary registrations and filings (including filings with Governmental Authorities) and the taking of all reasonable steps as may be necessary to consummate the transactions contemplated hereby under Applicable Law.

***“Governmental Authority”*** shall mean any national, federal, state, provincial, local or foreign government, or any subdivision, agency, instrumentality, authority, department, commission, board or bureau thereof, or any federal, state, provincial, local or foreign court, tribunal, or arbitrator, including the Bankruptcy Court.

***“Governmental Entity”*** shall mean any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign.

***“Insider Claim”*** shall mean any claim of the Seller Group against any “insider” of the Seller Group as such term is defined in Section 101(31) of the Bankruptcy Code.

***“Insurance Claim”*** shall mean the Seller Group’s Lloyds insurance claim, relating to damage to Neu Reich Fabric Inventory between 2006 and 2011.

***“Inventory”*** shall mean all inventory of Seller and the Seller Group determined in accordance with GAAP, including without limitation all merchandise, fabric, work in process and finished goods intended for sale or use as promotional samples, together with all the containers, packing, packaging, shipping and similar materials related thereto, and including such inventory as is temporarily out of Seller’s or a member of the Seller Group’s custody or possession, including inventory on the premises of others and items in transit.

***“IP Assignments”*** shall have the meaning set forth in **Section 4.2(a)**.

***“Knowledge of the Seller”*** (or ***“Seller’s Knowledge”***) shall mean the actual knowledge of the officers of the Seller listed on **Schedule 1.1**, without independent inquiry.

***“Letter of Credit”*** shall have the meaning set forth in **Section 13.4**.

***“Liabilities”*** shall mean, as to any Person, all debts, adverse claims, liabilities, commitments, responsibilities and obligations of any kind or nature whatsoever, direct, indirect, absolute or contingent, matured or unmatured of such Person, whether accrued, vested or otherwise, whether known or unknown, foreseen or unforeseen, and whether or not actually reflected, or required to be reflected, in such Person’s balance sheets or other books and records.

***“Liens”*** shall mean any liens (including any inchoate liens and any liens for Taxes, materialmen, laborer, or mechanics’ liens, judgment liens, liens imposed by operation of law, contractual liens, and liens arising out of or resulting from any employment agreements, employee benefits plans or laws, or collective bargaining agreements), encumbrances, burdens, claims, demands, judgments, orders, writs, injunctions, decrees, and arbitral awards, attachments, charges, security interests, mortgages, deeds of trust, pledges, hypothecations, adverse claims of title, preferential rights of purchase and/or first refusal rights, options, contracts for sale, transfer, or other disposition, and any claims or rights of any kind, description or nature whatsoever of or in favor of any creditors, Governmental Entities, or other Persons, whether or not any of the above arose, accrued, or relate to any time periods before or after the filing of the Cases, and whether or not a Chapter 11 or Chapter 7 trustee is hereafter appointed in the Cases for any reason.



**“Order”** shall mean any writ, judgment, decree, injunction or similar order, writ, ruling, directive or other requirement of any Governmental Entity (in each case whether preliminary or final).

**“Party”** and **“Parties”** shall have the meanings set forth in the Preamble.

**“Person”** shall mean any individual, corporation, partnership, joint venture, trust, limited liability company, business association, Governmental Entity or other entity.

**“Proprietary Rights”** shall mean all intellectual property rights or proprietary rights of Seller relating to the Transferred Intellectual Property. Notwithstanding the foregoing, Proprietary Rights do not include an assumption of any Contracts. For the avoidance of doubt, Proprietary Rights do not include the Transferred Intellectual Property.

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

**“Sale Order”** shall mean the Order or Orders of the Bankruptcy Court substantially in the form attached hereto as **Exhibit B** entered pursuant to Bankruptcy Code Sections 363, 365 and other relevant Sections approving the sale of the Assets (including without limiting the foregoing, the assignment of the relevant contracts and leases) to the Buyer pursuant to the terms and conditions of this Agreement and the provisions of the Bankruptcy Code (including Bankruptcy Code Section 363). Notwithstanding the form of the Sale Order attached hereto as **Exhibit B**, the final Sale Order shall find, determine and order, to the Seller’s reasonable satisfaction, at least the following:

(a) The procedures set forth in the Order of the Bankruptcy Court relating to the Seller Group’s sale process were substantively fair to all parties. The Seller conducted such sale process (including an auction) in accordance with the procedures set forth in such Order;

(b) Reasonable notice of the sale of the Assets has been afforded to all interested persons and entities;

(c) Subject only to entry of the Sale Order, the Seller has (i) full power and authority to execute the Agreement, (ii) all of the power and authority necessary to consummate the transactions contemplated by the Agreement, and (iii) taken all company action necessary to authorize and approve such transactions;

(d) The Sale Order and consummation of the transactions contemplated thereby are supported by good business reasons and will serve the best interests of the Seller Group, its estates, and creditors by maximizing the values obtained from the Assets;

(e) This Agreement was negotiated, proposed, and entered into by Buyer without collusion, in good faith, and from an arm’s length bargaining position. There is no insider relationship between affiliates of Buyer and the Seller Group. Seller and the Buyer have not engaged in any conduct that would cause or permit this Agreement to be avoided under Section 363(n) of the Bankruptcy Code;

(f) Buyer is a good faith purchaser under Section 363(m) of the Bankruptcy Code and as such is entitled to all of the protections afforded thereby, and has acted in good faith in all respects in connection with this proceeding, in that: (i) Buyer, in acquiring the Assets, recognized that the Seller Group was free to deal with other parties in interest; (ii) Buyer in no way induced or caused the filing of the Cases by the Seller Group; (iii) all payments to be made by Buyer and other agreements entered into between Buyer and the Seller Group in connection with the transactions contemplated by the Sale Order have been disclosed; (iv) the negotiation and execution of this Agreement and related agreements was in good faith and an arm's length transaction; and (v) the disclosure requirements required by Local Rule 6004-1 have been satisfied;

(g) The consideration to be paid by Buyer to Seller for the Assets is fair and reasonable, is the highest or otherwise best offer for the Assets, and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, and any similar laws of any state or jurisdiction whose law is applicable to the sale;

(h) The consummation of the transactions contemplated by the Sale Order pursuant to this Agreement will be a legal, valid, and effective sale of the Assets to Buyer and will vest Buyer with all of the Seller Group's right, title, and interest in and to the Assets, free and clear of all Liens and claims (as defined in Section 101(5) of the Bankruptcy Code), in accordance with Section 363(f) of the Bankruptcy Code, because one or more of the standards set forth in Sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied;

(i) The automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to and otherwise shall not prevent the exercise or performance by any party of its rights or obligations under this Agreement, including, without limitation, with respect to any cash held in escrow pursuant to the provisions thereof; and

(j) Without limiting the generality of the other provisions of this Sale Order, and to the extent provided by federal law, Buyer, under no circumstances, shall be deemed to be a successor of Seller. Accordingly, Buyer shall have no successor or vicarious liabilities of any kind with respect to the Assets and all Persons shall be enjoined from asserting any such claims against Buyer, including, without limitation, under the WARN Act.

**"Seller"** shall have the meaning set forth in the Preamble.

**"Seller Group"** shall have the meaning set forth in the Preamble.

**"Seller's Disclosure Schedules"** shall have the meaning set forth in the first paragraph of **ARTICLE V**.

**"Senior Lender Claim"** shall mean any and all claims that the Seller Group or its Affiliates may have against JPMorgan Chase Bank, N.A. or Citibank, N.A. in connection with the Seller Group's senior secured credit lines outstanding as of the date of this Agreement.

“**Tax**” or “**Taxes**” shall mean (a) all taxes, charges, fees, levies, penalties or other assessments of any kind whatsoever imposed by an federal, state, local or foreign taxing authority, including, but not limited to, income, excise, property, sales, transfer, franchise, payroll, withholding, social security or other taxes, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalties or additions attributable thereto or (b) liability for the payment of any amounts of the type described in clause (a) above as a result of being a party to any agreement or any express or implied obligation to indemnify or otherwise succeed to the liability of any other Person.

“**Tax Code**” shall mean the Internal Revenue Code of 1986, as it has been and may be amended.

“**Termination Date**” shall have the meaning set forth in **Section 11.1(b)**.

“**Transferred Intellectual Property**” shall have the meaning set forth in **Section 2.1(a)**.

“**Transition Services**” shall have the meaning set forth in **Section 10.1(a)**.

“**Treasury Regulations**” shall mean the federal income Tax regulations promulgated under the Tax Code, as amended, including any temporary and proposed regulations.

“**Wind-Up Activities**” shall have the meaning set forth in **Section 10.1(c)**.

“**Wind-Up Period**” shall mean the period following the Closing Date ending on December 31, 2012.

## **ARTICLE II PURCHASE AND SALE OF ASSETS**

**2.1 Purchase and Sale.** Subject to the terms and conditions set forth in this Agreement, Seller hereby agrees that at the Closing, it shall, and shall cause the Seller Subsidiaries to, sell, transfer, convey and assign to Buyer and Buyer shall purchase, assume and acquire from the Seller Group, all right, title and interest of the Seller Group in, to and under the following (collectively, the “**Assets**”), free and clear of all Liens:

(a) All of the interests of the Seller Group in and to all U.S. federal, state and foreign intellectual property, including without limitation, all trademarks, service marks, trade names, service names, brand names, all trade dress rights, logos and corporate names and general intangibles of a like nature, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof, registered in the name of the Seller Group, including the items set forth on **Schedule 2.1(a)** (the “**Transferred Intellectual Property**”);

(b) All of the interests of the Seller Group in and rights in respect of the following (to the extent owned and transferable by the Seller Group): the social media accounts set forth on **Schedule 2.1(b)**, including related Internet pages, content and contact/subscriber lists, and any related social media assets;

(c) The domain names set forth on **Schedule 2.1(c)** and any related domain names.

(d) The website content described in **Schedule 2.1(d)** (to the extent owned and transferable by Seller Group);

(e) The toll-free and other phone numbers of the Seller Group, including without limitation, the phone numbers set forth on **Schedule 2.1(e)** (and together with the items in 2.1(b)-(d), the “**Electronic Assets**”);

(f) All Proprietary Rights in respect of or related to the Transferred Intellectual Property and other Assets;

(g) All of the interests of the Seller Group in any software or source code used for the operation of or related to the websites owned and operated by the Seller Group (to the extent owned and transferable by the Seller Group);

(h) All equipment (including office equipment), machinery, tools, fixtures and other tangible personal property and improvements used or held for use in and associated with the business of the Seller Group (collectively the “**Equipment**”);

(i) All right, title, and interest of Seller in, to, and under all permits, licenses, contracts and agreements relating to, or used in connection with the operation of, the business of the Seller Group or relating to the construction, use, operation, or enjoyment of the Assets or any Assigned Lease and Contract, and all rights (including rights of refund and offset), privileges, deposits, claims, causes of action, and options in favor of Seller relating or pertaining to such contracts and agreements or any thereof, excluding the Senior Lender Claim, any Insider Claim, the Insurance Claim and the Customs Drawback Claim;

(j) All vendor lists and vendor data, supplier lists and supplier data, and sales and promotional material and other sales-related material relating to, or used in connection with the operation of, the business of the Seller Group. All customer lists to the extent able to be provided within the law;

(k) All Accounts Receivable and Inventory of the Seller Group;

(l) All Avoidance Actions; and

(m) The Gerber machine.

**2.2 Excluded Assets.** Notwithstanding anything to the contrary contained herein, expressly excluded from the Assets are all of the right, title and interest of the Seller Group in and to all items not expressly enumerated in **Section 2.1**, including but not limited to the following (collectively, the “**Excluded Assets**”):

(a) All cash held by the Seller Group and its Affiliates;

(b) Claims (including any litigation or arbitration claims and any refunds and deposits), rights, rights of offset or causes of action or choses in action existing now or arising at any time in the future that the Seller Group or their Affiliates may have other than as set forth in section 2.1(i) (to the extent an asset and not a Liability) consisting of the Senior Lender Claim, any Insider Claim, the Insurance Claim and the Customs Drawback Claim.

(c) All of the interests of the Seller Group in and to all executory contracts and unexpired leases that are not assumed by Seller and assigned to Buyer pursuant to **Section 2.3**;

(d) All artwork and antiques owned by the Seller Group; and

(e) All other Assets that Buyer elects to exclude no later than three (3) Business Days before hearing of the Bankruptcy Court to approve the Sale Order, including any executory contracts or unexpired leases so designated at the sole discretion of the Buyer.

### 2.3 Executory Leases and Contracts.

(a) Seller shall, and cause the Seller Subsidiaries to assume such unexpired lease agreements and executory Contracts that have not been previously rejected in the Cases (the “**Designated Leases and Contracts**”) as are identified by Buyer in a written notice to Seller (the “**Assumption Notice**”). Subject to the approval of the Bankruptcy Court, at Closing all Designated Leases and Contracts shall be assigned to Buyer unless and to the extent Buyer instructs Seller by written notice to reject such Designated Leases and Contracts no later three (3) Business Days before the hearing of the Bankruptcy Court to approve the final Sale Order. Designated Leases and Contracts assigned to Buyer in accordance with the preceding sentence are referred to herein as “**Assigned Leases and Contracts**”; *provided, however*, that the Parties hereby acknowledge and agree that (i) the 55<sup>th</sup> Street Lease shall constitute an Assigned Lease and Contract for all purposes hereunder, and (ii) Buyer shall not be entitled to instruct Seller to reject the 55<sup>th</sup> Street Lease. Buyer shall be obligated to pay all Carry Costs relating to any and all Designated Leases and Contracts, whether or not such Designated Leases and Contracts are assigned to Buyer or rejected by Seller at the instruction of Buyer. Buyer shall be obligated to pay all Cure Amounts or otherwise perform all obligations necessary to cure any monetary breach under all Assigned Leases and Contracts. The motion for authority to assume and assign under Section 365 of the Bankruptcy Code shall be in a form reasonably satisfactory to each of Seller and Buyer.

(b) For avoidance of doubt, (i) nothing in this Agreement shall be construed to provide Buyer with any rights (including rights of refund and offset), privileges, deposits, claims, causes of action, and options relating or pertaining to any lease, agreement, contract or other instrument that is not an Assigned Lease and Contract, and (ii) the Seller Group is not making any representations or warranties, whether express or implied, at law or in equity, as to the existence, nature or scope of any rights (including rights of refund and offset), privileges, deposits, claims, causes of action, and options relating or pertaining to any lease, agreement, contract or other instrument that is included among Assigned Lease and Contract.

### ARTICLE III PURCHASE PRICE AND PAYMENT

3.1 **Purchase Price.** The consideration to be paid by Buyer for the sale of the Assets shall be the sum of \$20,000,000 cash ("**Purchase Price**"). The Purchase Price shall be paid to Seller at Closing by wire transfer of immediately available funds in accordance with instructions given by Seller to Buyer.

3.2 **Assumed Obligations and Excluded Liabilities.**

(a) Subject to the terms and conditions set forth herein, at the Closing the Buyer shall assume and agree to pay, honor and discharge when due the following liabilities relating to the Assets and existing at or arising on or after the Closing Date (such liabilities being referred to herein as the "**Assumed Liabilities**"):

(i) all Carry Costs relating to any and all Designated Leases and Contracts remaining outstanding as of the Closing Date, whether or not such Designated Leases and Contracts are assigned to Purchaser;

(ii) all Cure Amounts relating to any and all Assigned Leases and Contracts assigned to Purchaser in connection with the Closing;

(iii) all sales and transfer Taxes payable by Buyer pursuant to **Section 3.4**;

(iv) any and all liabilities, obligations and commitments arising after the Closing under the Assigned Leases and Contracts; and

(v) liabilities in respect of employees of the Seller Group arising out of their employment with Buyer after the Closing.

(b) Notwithstanding any other provision hereof or any schedule or exhibit hereto and regardless of any disclosure to Buyer, it is understood and agreed that Buyer is not assuming any Liabilities, obligations or commitments of any member of the Seller Group arising out of the conduct of the Seller Group's business and operations prior to the Closing Date other than the Assumed Liabilities, including, without limitation any claims under the WARN Act.

3.3 **Non-Assignable Assets.** If any Asset is by its terms or by Applicable Law non-assignable or non-transferable, to the extent such terms are not superseded by the terms of the Sale Order, Seller shall use its commercially reasonable efforts to obtain, or cause to be obtained, on or prior to the Closing, any approvals or consents necessary to convey to Buyer the benefit thereof. Buyer shall cooperate with Seller in such manner as may be reasonably requested in connection therewith. In the event any consent or approval to an assignment contemplated hereby is not obtained on or prior to the Closing Date, Seller shall continue to use commercially reasonable efforts to obtain any such approval or consent after the Closing Date and Seller agrees to enter into any appropriate and commercially reasonable arrangement to provide that Buyer shall receive the Seller Group's interest in the benefits under any such Asset; *provided* that Buyer shall undertake to pay or satisfy the corresponding liabilities for the enjoyment of such

benefit to the extent Buyer would have been responsible therefor if such consent or approval had been obtained.

3.4 **Taxes.** To the extent the transactions contemplated hereby are not exempt under Section 1146 of the Bankruptcy Code, Buyer shall be liable for and pay any sales and transfer Taxes, and Buyer shall pay all filing fees, documentary fees or other Taxes, other than resulting income taxes, payable in connection with the purchase, sale or transfer of the Assets to Buyer pursuant to this Agreement which shall be an obligation of Seller. Buyer and Seller shall use commercially reasonable efforts to minimize the amount of all the foregoing Taxes and shall cooperate in providing each other with any appropriate resale exemption certifications, Tax clearance certificates and other similar documentation. The Party that is required by Applicable Law to make the filings, reports, or returns and to handle any audits or controversies with respect to any of the foregoing Taxes shall do so, and the other Party shall cooperate (and make reimbursement) with respect thereto as necessary.

3.5 **Allocation of Purchase Price.** No later than ninety (90) days after the Closing Date, Buyer and Seller shall mutually agree upon a Tax allocation of the Purchase Price and other relevant items among the Assets in accordance with Section 1060 of the Tax Code and the Treasury Regulations and any comparable provision of state or local law. Each of the Parties agrees that it or they shall file a statement (on IRS Form 8594 or other applicable form) setting forth such allocation with its or their federal and applicable state income Tax returns and shall also file such further information or take such further actions as may be necessary to comply with the Treasury Regulations that have been promulgated pursuant to Section 1060 of the Tax Code and similar applicable state laws and regulations.

3.6 **Deposit.** The Buyer shall, upon the execution of this Agreement, deposit an amount equal to \$2,000,000.00 (the “**Deposit**”) in a segregated account of the Seller, pursuant to the terms and conditions of Bidding Procedures Order. If the Closing takes place as provided herein, then the Deposit shall be credited against the Purchase Price pursuant to **Section 3.1**. If this Agreement is terminated in accordance with **ARTICLE XI** for any reason other than pursuant to **Section 11.1(d)**, then the Deposit shall be returned to Buyer within one (1) Business Day of termination. If this Agreement is terminated pursuant to **Section 11.1(d)**, the Deposit shall be retained by Seller. Seller hereby acknowledges receipt of the Deposit.

#### **ARTICLE IV CLOSING**

4.1 **Closing.** Consummation of the transactions contemplated hereby (the “**Closing**”) shall occur as soon as practicable on such date as is specified by Buyer, but in any event not later than two (2) Business Days after the date the conditions to Closing set forth in this Agreement are satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing), but in no event, unless expressly agreed by Buyer in its sole discretion, later than the close of business on April 16, 2012 (*provided that, if the Sale Order shall not have been entered on or before April 12, 2012, the latest date and time for the Closing to occur shall be extended to the close of business on April 19, 2012*), or at such time and place as Buyer and Seller may otherwise agree. The Closing shall take place at the offices of Fulbright & Jaworski L.L.P., New

York, New York. The date on which the Closing actually takes place is referred to in this Agreement as the “**Closing Date**.”

**4.2 Deliveries by the Seller at Closing.** At the Closing, Seller shall execute, acknowledge and deliver to Buyer the following (which events shall occur, each being deemed to have occurred simultaneously with the others):

(a) Trademark, trade name and domain name assignments and other intellectual property assignments in a form reasonably satisfactory to Buyer and its counsel and the Seller and its counsel, suitable for recording in the U.S. Patent and Trademark Office, pursuant to which the Seller Group shall assign the Transferred Intellectual Property to the Buyer, as well as assignment documents for trademark and/or patent rights in other jurisdictions as reasonably requested by Buyer (the “**IP Assignments**”);

(b) A duly executed Bill of Sale in a form reasonably satisfactory to Buyer and the Seller and their respective counsel;

(c) A copy of the final Sale Order;

(d) A certificate of incumbency as to those officers of Seller executing instruments in connection with this Agreement; and

(e) All other documents, certificates, instruments or writings reasonably requested by Buyer in connection herewith, including as necessary or appropriate to convey to Buyer the Assets.

**4.3 Deliveries by the Buyer at Closing.** At the Closing, Buyer shall execute, acknowledge and deliver to Seller the following (which events shall occur, each being deemed to have occurred simultaneously with the others):

(a) A duly executed Bill of Sale and the IP Assignments, if any, that call for a signature by the Buyer;

(b) A duly executed Assignment and Assumption Agreement;

(c) The Purchase Price, by wire transfer in immediately available funds, net of the Deposit;

(d) A copy of the resolutions adopted by Buyer’s Board of Directors authorizing the transactions contemplated hereby and the consummation thereof, certified by a secretary or assistant secretary of Buyer to be a true and correct copy;

(e) A certificate of incumbency as to those officers of the Buyer executing instruments in connection with this Agreement; and

(f) All other documents, certificates, instruments or writings reasonably requested by the Seller in connection herewith.



4.4 **Subsequent Documentation; Further Assurances.** Buyer and Seller shall, at any time and from time to time after the Closing Date, upon the reasonable request of the other, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all such further (a) assignments, transfers and conveyances as may be required for assigning, transferring, granting, conveying, recording and confirming the transactions contemplated hereby, including aiding and assisting Buyer in collecting and reducing to possession any or all of the Assets and (b) documents and instruments as may be reasonably necessary for the further completion of any of the transactions contemplated hereby.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER GROUP**

The Seller Group has delivered to Buyer and attached hereto certain disclosure schedules prepared by the Seller Group with numbered sections corresponding to the relevant sections in this **ARTICLE V** (the “*Seller’s Disclosure Schedules*”), and any exception or qualification set forth in the Seller’s Disclosure Schedules with respect to a particular representation or warranty contained in this **ARTICLE V** shall be deemed to be an exception or qualification with respect to such section of this **ARTICLE V**. Where an exception or qualification would apply to more than one Section of the Seller’s Disclosure Schedules, the Seller Group will cross-reference the exception or qualification in each section of the Seller’s Disclosure Schedules where such reference is necessary to make the representations and warranties true and correct; *provided, however*, that in the absence of an explicit cross-reference such cross-reference will be deemed made into a different section of the Seller’s Disclosure Schedules only to the extent that any exception or qualification made elsewhere in the Seller’s Disclosure Schedules is disclosed in such a way as to make it reasonably apparent from the face of such disclosure that such exception or qualification is applicable to such other section of the Seller’s Disclosure Schedules as it relates to this **ARTICLE V**.

The Seller Group represents and warrants, jointly and severally, that the following statements are true and correct as of the date hereof after giving effect to the Sale Order:

5.1 **Organization and Power.** Seller and each Seller Subsidiary (a) is validly existing and in good standing under the laws of the State of its organization, (b) has all requisite corporate or limited liability company power and authority, as applicable, to carry on its business as currently conducted, and (c) has the requisite corporate or limited liability company power and authority, as applicable, to own, lease, operate or hold the applicable Assets.

5.2 **Authority; No Conflicts.** Seller and each Seller Subsidiary has the authority to enter into and, subject to approval pursuant to the Sale Order, execute and deliver this Agreement, and to consummate the transactions contemplated hereby. Subject to the approval of the Bankruptcy Court pursuant to the Sale Order, the execution, delivery and performance by Seller and each Seller Subsidiary of this Agreement (a) do not and shall not violate or conflict with any provision of the certificate of incorporation, bylaws, certificate of formation or operating agreement of Seller or any Seller Subsidiary, as applicable, (b) do not and shall not violate any provision of any Applicable Law or any order, judgment or decree of any Governmental Entity or any Governmental Authority and (c) shall not result in the creation or imposition of any Lien upon any of the Assets.

**5.3 Execution and Delivery.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by Seller and each Seller Subsidiary have been duly authorized by all necessary corporate or limited liability company action, as applicable. Subject to Bankruptcy Court approval and entry of an Order of the Bankruptcy Court approving the terms of this Agreement, this Agreement constitutes the valid and binding obligations of the Seller Group, enforceable against Seller and each Seller Subsidiary in accordance with its terms.

**5.4 Title; Sale Free and Clear of Liens.** On the Closing Date, after giving effect to the Sale Order, the Assets shall be transferred to Buyer free and clear of all Liens.

**5.5 Litigation.** Except as set forth on **Schedule 5.5**, and except for the Cases, there is no claim, litigation, action, arbitration or legal proceeding pending before a Governmental Entity or, to the Seller's Knowledge, threatened against the Seller Group, relating to the Assets or affecting the Seller Group's ability to perform its obligations hereunder.

**5.6 Third Party Approvals.** Except for entry of the Sale Order the execution, delivery and performance by the Seller Group of this Agreement and the consummation of the transactions contemplated hereby do not require any consent, waiver, authorization or approval of, or filings with, any Person (including any Governmental Authority) that has not been obtained or is not deemed to be superseded by applicable provisions of the Bankruptcy Code.

**5.7 Transferred Intellectual Property.** The Seller Group has not been notified in writing prior to the date of this Agreement that any of the Transferred Intellectual Property is or may be infringing any trade secrets, trademarks, trade names, service marks, service names or copyrights of any third party and, to the Knowledge of the Seller, there is no continuing infringement of the Transferred Intellectual Property by other Persons. The Seller Group, as of the date of this Agreement, is not bound by any outstanding judgment, injunction, order or decree restricting the use of the Transferred Intellectual Property, and any issued trademark, service mark and copyright registrations and URLs listed on **Schedule 2.1(a)** have not lapsed, expired or been cancelled.

**5.8 Broker or Finder.** Except for Consensus Advisors, no Person assisted in or brought about the negotiation of this Agreement, or the subject matter of the transactions contemplated hereby, in the capacity of broker, agent, or finder or in any similar capacity on behalf of the Seller Group, and no commission or other compensation is or shall be due or owed from the Seller Group to any Person with respect to the purchase and sale of the Assets.

**5.9 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.** THE ASSETS ARE BEING TRANSFERRED IN "AS IS, WHERE IS" CONDITION AND NEITHER THE SELLER, THE SELLER SUBSIDIARIES, NOR ANY OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, MANAGERS, SHAREHOLDERS, MEMBERS OR REPRESENTATIVES MAKE ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, RELATING TO THE SELLER GROUP OR THE ASSETS OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IN CONNECTION WITH THE TRANSACTIONS

CONTEMPLATED BY THIS AGREEMENT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

**5.10 Termination of Representations and Warranties Upon Closing.** The representations and warranties of the Seller Group in this Agreement shall not survive the Closing Date and shall be null and void *ab initio* and of no further force or effect immediately after the Closing Date.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to the Seller Group that the following statements are true and correct as of the date hereof:

**6.1 Organization and Power.** Buyer (a) is validly existing and in good standing in the state of its organization, (b) has all requisite corporate power and authority to carry on the business in which it is now engaged, and (c) has taken all corporate action required by Applicable Law, and the Buyer's organizational documents, to authorize the execution and delivery of this Agreement, and the purchase of the Assets in accordance with this Agreement.

**6.2 Authority; No Conflicts.** Buyer has the requisite corporate power and authority to execute this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Buyer of this Agreement (a) do not and shall not violate or conflict with any provision of the certificate of incorporation or bylaws of Buyer, and (b) do not and shall not violate any provision of any Applicable Law or any order, judgment or decree of any Governmental Entity or any Governmental Authority.

**6.3 Execution and Delivery.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby has been duly authorized by all necessary corporate action on the part of Buyer. This Agreement constitutes the valid and binding obligations of Buyer, enforceable against Buyer in accordance with its terms, except as limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) general equitable principles.

**6.4 Litigation.** There is no claim, litigation, action or legal proceeding before a Governmental Entity or, to Buyer's knowledge, threatened against Buyer, adversely affecting Buyer's ability to perform its obligations hereunder. There are no bankruptcy, reorganization or arrangement proceedings pending, being contemplated by or, to Buyer's knowledge, threatened against Buyer.

**6.5 Condition of Assets.** Buyer acknowledges that it is (a) purchasing the Assets on an "as is, where is" basis, and (b) is relying solely on its own existing knowledge and inspection of the Assets and that it has completed its due diligence inspection in respect of the Assets. Buyer expressly acknowledges that the Seller Group is not making any representations or warranties regarding the Assets (except as specifically provided for in this Agreement).

6.6 **Sufficient Funds.** Buyer has available, and will have available as of the Closing Date, funds sufficient to pay the Purchase Price and to perform its other obligations under this Agreement.

6.7 **No Brokers.** Buyer has not utilized the services of or contracted or dealt with a broker or finder in connection with any of the transactions contemplated by this Agreement, Buyer's purchase of the Assets or any portion thereof, and no commission or other compensation is or shall be due or owed from Buyer to any Person with respect to the purchase and sale of the Assets.

6.8 **Termination of Representations and Warranties Upon Closing.** The representations and warranties of Buyer in this Agreement shall not survive the Closing Date and shall be null and void *ab initio* and of no further force or effect immediately after the Closing Date.

## **ARTICLE VII COVENANTS OF THE SELLER GROUP**

The Seller Group covenants and agrees with Buyer that:

### **7.1 Commercially Reasonable Efforts.**

(a) Seller and each Seller Subsidiary shall use its commercially reasonable efforts to cause, to the extent within such Party's control, the conditions set forth in **ARTICLE IX** to be satisfied and to facilitate and cause the consummation of the transactions contemplated hereby.

(b) Seller and each Seller Subsidiary shall take all actions, including appropriate service and notice of pleadings, in form and substance reasonably satisfactory to Buyer, needed to obtain a Sale Order that authorizes, orders and effects a sale of all of the Assets free and clear of all Excluded Liabilities and Liens and other interests.

7.2 **Notice to Buyer.** Prior to the Closing, Seller agrees to promptly notify Buyer in writing of any information it obtains or becomes aware of that would indicate that a representation and warranty of the Seller Group made herein or in any Seller Disclosure Schedule is not correct in all material respects or that any of the conditions to Closing shall not be satisfied or reasonably likely will not be satisfied.

7.3 **Consents and Approvals.** Seller shall use its commercially reasonable efforts to obtain all consents, authorizations and approvals required, including any required by the Bankruptcy Code or other Applicable Law, to be obtained by the Seller Group to effect the transactions contemplated hereby. Without limiting the foregoing, as soon as practicable after the date of this Agreement, Seller shall make or cause to be made all such further filings and submissions, and take or cause to be taken such further action, as may reasonably be required in connection therewith on a timely basis.

7.4 **Public Statements.** From the date hereof through the date Buyer is designated by Seller as the Buyer pursuant to the bid procedures approved by the Court in the Cases, no public

release or announcement concerning the transactions contemplated by this Agreement shall be issued by the Seller Group or Buyer without the prior consent of the Seller Group or the Buyer, as the case may be (which consent shall not be unreasonably withheld or delayed), except as such release or announcement may be required by Applicable Law, in which case the party required to make the release or announcement shall allow the other reasonable time to comment on such release or announcement in advance of such issuance. Nothing in this **Section 7.4** or elsewhere in this Agreement shall limit or be deemed to limit any member of the Seller Group's right or ability to make disclosures in connection with the Cases or Buyer's right or ability to make disclosures in connection with any regulatory obligation.

## **ARTICLE VIII COVENANTS OF BUYER**

The Buyer covenants and agrees with the Seller Group that:

**8.1 Commercially Reasonable Efforts.** Buyer shall use its commercially reasonable efforts to cause, to the extent within Buyer's control, the conditions set forth in **ARTICLE IX** to be satisfied and to facilitate and cause the consummation of the transactions contemplated hereby.

**8.2 Notice to Seller.** The Buyer agrees to promptly notify Seller in writing of any information Buyer obtains or becomes aware of that would indicate that a representation and warranty of the Buyer made herein is not correct in all material respects.

**8.3 Bankruptcy Court Approval and Related Matters.**

(a) Buyer hereby waives the fourteen (14) day waiting period applicable under the Bankruptcy Code for the Sale Order to become final and non-appealable after the issuance thereof by the Bankruptcy Court subject to the finding that Buyer is a good faith purchaser as more fully set forth in the definition of Sale Order herein. Buyer shall execute and deliver such other documents and instruments as may be necessary or desirable or that Seller may reasonably request in order to give effect to such waiver.

(b) Buyer acknowledges and agrees that the obligations of the Seller under this Agreement and the transactions contemplated hereby are contingent upon the approval and authorization of the Bankruptcy Court.

(c) Buyer shall use commercially reasonable efforts to assist the Seller Group in obtaining any Orders necessary to consummate the transactions contemplated hereby and agrees to provide the Seller Group with information necessary to obtain such Orders.

**8.4 Avoidance Actions.** Buyer hereby, on behalf of itself and its Affiliates, officers, directors, employees agents, representatives, attorneys, successors and assigns, waives and agrees not to at any time assert or pursue any Avoidance Action that is included among the Assets. This **Section 8.4** shall survive the Closing.

## **ARTICLE IX CONDITIONS TO CLOSING**

**9.1 Seller Group's Conditions to Closing.** The obligations of the Seller Group at the Closing are subject, at the option of Seller, to the satisfaction at or prior to the Closing of the following conditions:

(a) Buyer shall have performed and satisfied all material obligations in all material respects required by this Agreement to be performed and satisfied by Buyer at or prior to the Closing. Buyer shall have provided the Seller with certificates executed by a responsible officer of Buyer to such effect; and

(b) Buyer shall have executed and delivered all documents and instruments necessary or advisable to evidence its waiver pursuant to **Section 8.3(a)** of the 14-day period applicable under the Bankruptcy Code for the Sale Order to become final and non-appealable.

**9.2 Buyer's Conditions to Closing.** The obligations of Buyer to consummate the transactions contemplated hereby at the Closing are subject, at the option of the Buyer, to the satisfaction at or prior to the Closing of the following conditions:

(a) The Seller Group shall have performed and satisfied in all material respects all obligations required by this Agreement to be performed and satisfied by the Seller Group at or prior to the Closing. The Seller shall have provided the Buyer with certificates executed by a responsible officer of Seller to such effect;

(b) The Seller Group shall be able to deliver possession of the Assets free and clear of all Liens;

(c) The Seller Group shall have executed and delivered the documents required to be executed and delivered pursuant to **Section 4.2**;

(d) The Seller Group shall have obtained Bankruptcy Court approval and the Sale Order shall not impose any material additional requirement on Buyer not otherwise required by the terms of this Agreement; and such order shall include a finding that Buyer is a good faith purchaser, as more fully set forth in the definition of Sale of Order herein; and

(e) The Debtors shall not have effected any (i) discounted sales of inventory other than in the normal course through its outlet stores or (ii) factoring or sale of receivables from the date hereof through the Closing Date.

**9.3 Conditions of the Parties to Closing.** The obligations of the Parties to consummate the transactions contemplated hereby at the Closing are further subject to the satisfaction at or prior to the Closing of the following conditions, which conditions are not subject to waiver:

(a) No stay or injunction shall have been obtained by a court of competent jurisdiction restraining, prohibiting or declaring illegal the purchase and sale contemplated by this Agreement; and

(b) The Bankruptcy Court shall have entered the Sale Order with the required findings and determinations identified in the definition thereof and any other Orders necessary to permit and consummate the transactions contemplated by this Agreement, each such other Order to be in form and substance reasonably satisfactory to the Parties.

## **ARTICLE X ADDITIONAL OBLIGATIONS AFTER CLOSING**

The Parties shall have the following additional obligations after the Closing:

### **10.1 Transition Services.**

(a) Buyer shall reasonably cooperate with Seller and any successor to Seller with respect to Wind-Up Activities as defined below.

(b) Through the end of the Wind-Up Period, Buyer shall, at Buyer's expense, provide the Seller Group with the following services (the "***Transition Services***") in connection with the Wind-Up Activities (as defined below):

(i) Buyer shall grant to the Seller Group, access to such information technology systems as may be reasonably requested by the Seller Group in connection with the Wind-Up Activities. Buyer will provide the Seller Group a reasonable amount of support and maintenance with respect to such systems consistent with past practices of the Seller Group. If Buyer seeks to terminate a software license that is necessary for the provision to the Seller Group of use of and access to a system, Buyer shall not terminate such license unless and until it has given Seller thirty (30) days' prior notice. If Buyer provides such notice, the Seller Group shall be free to negotiate its own replacement license with the software vendor and shall have no obligation hereunder to provide access to or use of such replaced system to Buyer.

(ii) Buyer shall (i) take all commercially reasonable efforts to preserve all records and documents (including any electronic records or documents) related to the Assets until the Cases are closed or, if any adversary proceedings or other actions with respect to any of the Cases are then pending, until the Seller Group, the official committee of unsecured creditors in the Cases or any successor thereto (including, but not limited to, a chapter 11 or chapter 7 trustee, or a liquidating trustee under a plan) notifies Buyer that such records are no longer needed, and (ii) provide the Seller Group (solely for purposes complying with the Seller Group's obligations in connection with the Cases under the Bankruptcy Code or Applicable Law), the official committee of unsecured creditors in the Cases or any successor thereto (including, but not limited to, a chapter 11 or chapter 7 trustee, or a liquidating trustee under a plan) and their respective counsel, agents and advisors, with reasonable access to such records and documents including a reasonable time and location.

(iii) Buyer shall operate, support and maintain a new email domain for the Seller Group's use following the Closing. Buyer shall use commercially reasonable efforts to undertake reasonable backups and security measures, such that only the Seller Group's authorized users have access to the information in such system. Buyer shall be responsible for licensing the necessary software (including email server software, operating system software and backup software).

(iv) Buyer shall provide the Seller Group with reasonable access to Purchaser's personnel for the purpose of assisting the Sellers with the performance of the Wind-Up Activities. Buyer, as it deems necessary or appropriate in its reasonable discretion, may (i) use its own personnel; or (ii) employ the services of third parties to the extent such third-party services are utilized in the ordinary course of business to provide similar services to the business of Buyer or are reasonably necessary for the efficient performance of any such Wind-Up Activities. Unless otherwise agreed in writing, none of the individuals providing services to the Seller Group in accordance with this **Section 10.1(b)(iv)** to the Seller Group will be deemed to be employees of any member of the Seller Group for any purpose.

(c) For purposes of this **Section 10.1**, "**Wind-up Activities**" shall mean the discharge of Seller's obligations as a debtor-in-possession and of any successor to Seller, including, without limitation, a trustee of a creditors' trust.

(d) This **Section 10.1** shall become effective on the Closing Date and shall remain in force and effect until the entry of a final decree in the Cases; *provided* that if the Case is resolved by the institution of a post-effective trust for the benefit of creditors, then this **Section 10.1** shall remain in force and effect until the termination date of such trust. This **Section 10.1** may be extended by mutual agreement of the Seller Group and Buyer in writing, either in whole or with respect to one or more of the Transition Services. This **Section 10.1** may be terminated early in whole or in part (i) by the Seller Group in their sole discretion at any time as to all of the Transition Services by providing ten (10) days' prior written notice of such termination to the Purchaser, or (ii) by mutual written agreement of the Seller Group and Buyer. The Seller Group shall not have any obligation to continue to use any Transition Service. The Seller Group may elect to stop receiving any particular Transition Service at any time by giving Buyer not less than ten (10) days' advance written notice. In the event of any termination with respect to one or more, but less than all Transition Services, this **Section 10.1** shall continue in full force and effect with respect to any Transition Services not terminated thereby.

**10.2 Execution; Delivery of Instruments and Assistance.** The Seller Group and Buyer shall each execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such instruments and take such other actions as may be necessary or advisable to carry out their obligations under this Agreement and under any document, certificate or other instrument delivered pursuant hereto or thereto or required by Applicable Law.

## **ARTICLE XI TERMINATION**

**11.1 Termination.** This Agreement may be terminated as follows:

- (a) At any time by the mutual written agreement of the Seller and the Buyer;
- (b) By either Party, at its sole election, in the event that the Closing shall not have occurred on or before April 16, 2012, *provided* that, if the Sale Order shall not have been entered on or before April 12, 2012, such date shall be extended to April 19, 2012 (such applicable date, the "**Termination Date**"); *provided* that neither Party shall be entitled to terminate this Agreement pursuant to this **Section 11.1(b)** if the failure of the Closing to occur



on or prior to such date results primarily from such Party's materially breaching any covenant contained in this Agreement;

(c) By the Buyer, at its sole election, in the event of a material breach of this Agreement by the Seller Group that has not been cured by the Termination Date; and

(d) By the Seller, at its sole election, in the event of a material breach of this Agreement by the Buyer that has not been cured by the Termination Date.

**11.2 Effect of Termination.** Upon the termination of this Agreement in accordance with **Section 11.1**:

(a) The Parties shall be relieved of any further obligations or liability under this Agreement other than (i) any obligations for breach of this Agreement occurring prior to such termination; (ii) the Buyer's right to refund of and the Seller's obligation to refund the Deposit to the Buyer, or the Seller's right to retain the Deposit, in each case as described in **Section 3.6**; or (iii) Buyer's obligation to pay Carrying Costs pursuant to **Section 11.2(b)**;

(b) The Buyer shall be obligated to promptly pay to Seller all Carry Costs relating to any and all Designated Leases and Contracts remaining outstanding as of the date of termination.

## **ARTICLE XII GENERAL PROVISIONS**

**12.1 Notice.** All notices hereunder shall be in writing, dated and signed by the Party giving the same. Each notice shall be either (a) delivered in person to the address of the Party for whom it is intended at the address of such Party as shown below, (b) delivered to the United States Postal Service in a secure and sealed envelope or other suitable wrapper addressed to the Party for whom it is intended at the address of such Party as provided below, with sufficient postage affixed, certified or registered mail, return receipt requested, (c) sent by facsimile with a confirmation sheet or by e-mail, or (d) delivered to a nationally recognized overnight courier service that traces any such notice. The effective date of such notice shall be the date of delivery in the event of delivery in accordance with (a) or (c) and five (5) days after deposit in the U.S. Mail in the event of delivery in accordance with (b). The address at which any Party hereto is to receive notice may be changed from time to time by such Party by giving notice of the new address to all other parties hereto. The addresses of the Parties, until changed in accordance with the foregoing, are:

The Seller:

The Connaught Group, Ltd.  
423 W. 55th Street  
New York, NY 10019  
Attention: Maury Satin ([maurysatin@zygoteassociates.com](mailto:maurysatin@zygoteassociates.com))

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

Fulbright & Jaworski L.L.P.

666 Fifth Avenue  
New York, NY 10103-3198  
Facsimile: (212) 318-3400  
Attention: Paul Jacobs, Esq. (pjacobs@fulbright.com)  
Warren J. Nimetz, Esq. (wnimetz@fulbright.com)  
David L. Barrack, Esq. (dbarrack@fulbright.com)

The Buyer:

Forty-Three Eighty Company  
263 Seaboard Lane  
Franklin, TN 37067  
Attention: James R. Brubaker, Director and CFO  
([j.brubaker@tomjames.com](mailto:j.brubaker@tomjames.com))  
with a copy (which shall not constitute notice) to:

Thompson & Knight LLP  
900 Third Avenue, 20th Floor  
New York, NY 10022-4728  
Attention: Ira L. Herman, Esq. (Ira.Herman@tklaw.com)  
Jennifer A. Christian, Esq.  
([Jennifer.Christian@tklaw.com](mailto:Jennifer.Christian@tklaw.com))

and

NEIGER LLP  
151 West 46<sup>th</sup> Street, 41st Floor  
New York, NY 10036  
Attention: Edward E. Neiger, Esq. [eneiger@neigerllp.com](mailto:eneiger@neigerllp.com)

**12.2 Amendment.** This Agreement may not be amended nor any rights hereunder waived except by an instrument in writing signed by the Parties and, if required by Applicable Law, by the Official Committee of Unsecured Creditors appointed in the Seller's Cases.

**12.3 Payment of Costs.** Except as otherwise set forth herein, the Parties shall each pay their own costs incurred in negotiating this Agreement and in consummating the transactions contemplated hereby, including any fees or commission payable to any party representing them in connection with arranging or negotiating this Agreement and transactions contemplated hereby.

**12.4 Headings.** The headings of the sections of this Agreement are for convenience or reference only and shall not affect any of the provisions of this Agreement.

**12.5 Governing Law; Jurisdiction.** This Agreement shall in all aspects be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York (other than Section 5-1401 of the New York general obligations law). For so

long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties hereto irrevocably elect as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement or the transactions contemplated hereby, and consent to the exclusive jurisdiction of, the Bankruptcy Court. After the Seller Group is no longer subject to the jurisdiction of the Bankruptcy Court, any legal action or proceeding with respect to this Agreement or the transactions contemplated hereby shall be brought in the courts of the State of New York sitting in Manhattan or of the United States for the Southern District of New York, and by execution and delivery of this Agreement, each of the parties hereto consents to the exclusive jurisdiction of those courts. Each of the parties hereto irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement or the transactions contemplated hereby.

**12.6 Entire Agreement.** This Agreement and the Schedules attached hereto (in each case incorporated herein by this reference) contain the entire agreement and understanding of the Parties hereto with respect to the transactions contemplated hereby, and supersede any and all prior agreement, arrangements, and understandings, whether oral or written, between the Parties.

**12.7 Assignment.** No Party may assign all or any portion of its respective rights or delegate any portion of its duties hereunder without (a) the approval of the Bankruptcy Court and (b) the written consent of the other Parties and the Official Committee of Unsecured Creditors appointed in the Cases; *provided* that the Buyer may assign this Agreement in whole or in part to any direct or indirect subsidiary of Buyer so long as Buyer retains its obligations under this Agreement, subject to the terms and conditions hereof, to effect the consummation of the transactions contemplated hereby. All of the terms, provisions and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

**12.8 Severability.** If a court of competent jurisdiction determines that any provision of this Agreement is void, illegal or unenforceable, the other provisions of this Agreement shall remain in full force and effect and the provisions that are determined to be void, illegal or unenforceable shall be limited so that they shall remain in effect to the extent permissible by Applicable Law.

**12.9 Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute shall be deemed to refer to such statute as amended and to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "include" or "including" means include or including, without limitation. References made in this Agreement, including use of a pronoun, shall be deemed to include, where applicable, masculine, feminine, singular or plural, individuals, partnerships or corporations. All references in this Agreement to Sections and Schedules shall be deemed references to Sections of, and Schedules to, this Agreement unless the context shall otherwise require.

**12.10 Specific Performance.** Each Party acknowledges that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by such Party in accordance with their specific terms or were otherwise breached by such Party. Each Party accordingly agrees that, prior to the termination of this Agreement pursuant to **ARTICLE XI**, in addition to any other remedy to which the other Parties are entitled at law or in equity, the other Parties are entitled to injunctive relief to prevent breaches of this Agreement by such Party and otherwise to enforce specifically the provisions of this Agreement against such Party. Each Party expressly waives any requirement that any other Party obtain any bond or provide any indemnity in connection with any action seeking injunctive relief or specific enforcement of the provisions of this Agreement.

### **ARTICLE XIII PARENT GUARANTEE; WAIVER OF CLAIMS**

**13.1 Guarantee.** To induce the Seller Group to enter into this Agreement, Parent hereby absolutely, unconditionally and irrevocably guarantees to the Seller Group the due and punctual payment and performance of all outstanding obligations of Buyer under this Agreement, as and when due (collectively, the “*Obligations*”).

**13.2 Guarantee Absolute.** The liability of Parent under this **ARTICLE XIII** shall be absolute, unconditional, present and continuing until the Obligations have been indefeasibly paid and performed in full. The Seller Group shall not be obligated to file any claim relating to the Obligations in the event that Buyer becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of the Seller Group to so file shall not affect any of Parent’s obligations under this **ARTICLE XIII**. In the event that any payment to the Seller Group hereunder is rescinded or must otherwise be returned for any reason whatsoever, Parent shall remain liable hereunder as if such payment had not been made (subject to the terms hereof). This **ARTICLE XIII** is an unconditional guarantee of payment and not of collectability, and a separate action may be brought and prosecuted against Parent to enforce this **ARTICLE XIII**, regardless of whether any action is brought against Buyer, or whether Buyer is joined in any such action. In the event of any default by Buyer in the performance of any of the Obligations, the Seller Group shall have the right in their sole discretion to proceed first and directly against Parent under this **ARTICLE XIII** without proceeding against Buyer.

#### **13.3 Changes in Obligations, Certain Waivers.**

(a) Parent agrees that the obligations of Parent under this **ARTICLE XIII** shall not be released or discharged, in whole or in part, or otherwise affected by (1) the failure of the Seller Group to assert any claim or demand or to enforce any right or remedy against, or to join Buyer to any suit arising under this **ARTICLE XIII** or the Obligation of Buyer or any other Person interested in the transactions contemplated by this Agreement; (2) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Buyer or any other Person interested in the transactions contemplated by this Agreement; (3) the existence of any claim, set-off or other right which Parent may have at any time against Buyer, whether in connection with the Obligations or otherwise; (4) the invalidity, illegality or unenforceability of all or any part of the Obligations or any document or agreement executed in connection with the Obligations, for any reason whatsoever, including without limitation the fact that the act of

creating the Obligation or any part thereof is *ultra vires*, the officers or representatives executing the documentation or otherwise creating the Obligations acted in excess of their authority, or Buyer has valid defenses, claims or offsets which render the Obligations wholly or partially uncollectible from the Company; (5) any renewal, extension, modification, increase, decrease or alteration of all or any part of the Obligations or any contract or understanding (including this Agreement) between Buyer and the Seller Group, or any other Person, relating to the Obligations; or (6) the adequacy of any other means Seller may have of obtaining repayment or performance of any of the Obligations.

(b) To the fullest extent permitted by law, Parent hereby expressly waives any and all rights or defenses arising by reason of any law which would otherwise require any election of remedies by the Seller Group and the Seller Group shall not be required to mitigate damages or take action to reduce, collect or enforce the Obligations. Buyer waives promptness, diligence, notice of the acceptance of this ARTICLE XIII and of the Obligations, presentment, demand for payment, notice of non-performance, default, dishonor and protest, notice of the Obligations incurred and all other notices of any kind, all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar law now or hereafter in effect, any right to require the marshalling of assets of Buyer or any other person interested in the transactions contemplated by this Agreement, and all suretyship defenses generally (other than fraud or willful misconduct by the Seller Group or defenses to the payment of the Obligations under this Agreement that are available to Buyer).

(c) Parent acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated by this Agreement and that the waivers set forth in this **ARTICLE XIII** are knowingly made in contemplation of such benefits. Parent hereby covenants and agrees that it shall not institute any proceeding asserting that this **ARTICLE XIII** is illegal, invalid or unenforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting creditors' rights generally.

**13.4 Security.** As security for its obligations under this **ARTICLE XIII**, Buyer agrees to deposit the amount of \$18,000,000.00 in a segregated account of the Seller by 5:00 p.m. (New York time), Wednesday, April 11, 2012. Evidence that one or more wire transfers has been initiated for the \$18,000,000.00 shall be sufficient evidence of such security. If the Closing takes place as provided herein, then the Security shall be credited against the Purchase Price (which, with the Deposit, constitutes the entire Purchase Price). If this Agreement is terminated in accordance with **ARTICLE XI** for any reason, then the Security shall be returned to Buyer within one (1) Business Day of termination.

**13.5 No Waiver; Remedies.** No failure on the part of the Seller Group to exercise, and no delay in exercising any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Seller Group of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. The rights and remedies provided in this **ARTICLE XIII** are cumulative and nonexclusive of any rights or remedies provided by law.

**13.6 Representations and Warranties.** Each of Parent and Royal Spirit, severally and not jointly, represents and warrants to the Seller Group that the following statements are true and correct as of the date hereof:

(a) Such party (a) is validly existing and in good standing in the state of its organization, (b) has all requisite corporate power and authority to carry on the business in which it is now engaged, and (c) has taken all corporate action required by Applicable Law, and such party's organizational documents, to authorize the execution and delivery of this Agreement, and to perform its obligations under this **ARTICLE XIII**.

(b) Such party has the requisite corporate power and authority to execute this Agreement and to perform its obligations under this **ARTICLE XIII**. The execution, delivery and performance by such party of this Agreement (a) do not and shall not violate or conflict with any provision of the certificate of incorporation or bylaws of such party, and (b) do not and shall not violate any provision of any Applicable Law or any order, judgment or decree of any Governmental Entity or any Governmental Authority.

(c) The execution and delivery of this Agreement and the performance by such party of its obligations under this **ARTICLE XIII** has been duly authorized by all necessary corporate action on the part of such party. This **ARTICLE XIII** constitutes the valid and binding obligations of such party, enforceable against such party in accordance with its terms, except as limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) general equitable principles.


**13.7 Waiver of Claims.** Royal Spirit, on behalf of itself, Well Choice and its other Affiliates, officers, directors, employees agents, representatives, attorneys, successors and assigns (collectively the "**Royal Spirit Parties**"), hereby REMISES, RELEASES AND FOREVER DISCHARGES the Seller Group, the Seller Group's bankruptcy estate, the Seller Group's Affiliates and their respective officers, directors, shareholders, members, and managers, and its and their respective successors and assigns, heirs, executors, and administrators from all causes of action, suits, debts, claims and demands whatsoever in law or in equity arising in connection with any allowed general pre-petition unsecured claim of any Royal Spirit Party under the Cases; *provided, however*, that nothing in this **Section 13.7** shall constitute a waiver of any allowed claim of any Royal Spirit Party under the Cases other than an allowed general pre-petition unsecured claim.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been signed on behalf of each of the parties hereto as of the date first written above.

SELLER GROUP:

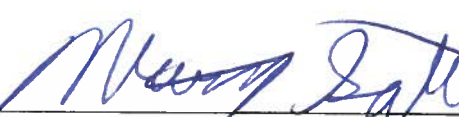
THE CONNAUGHT GROUP, LTD.

By:   
Name: Maury Satin  
Title: Chief Restructuring Officer


LIMITED EDITIONS FOR HER OF  
NEVADA LLC

By:   
Name: Maury Satin  
Title: Chief Restructuring Officer

LIMITED EDITIONS FOR HER OF  
BRANSON LLC

By:   
Name: Maury Satin  
Title: Chief Restructuring Officer

LIMITED EDITIONS FOR HER LLC

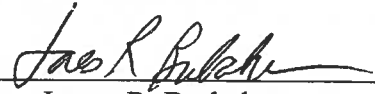
By:   
Name:  
Title:

WDR RETAIL CORP.

By:   
Name: Maury Satin  
Title: Chief Restructuring Officer

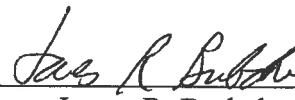
BUYER:

FORTY-THREE EIGHTY COMPANY

By:   
Name: James R. Brubaker  
Title: Director and CFO

AND

TOM JAMES COMPANY, solely for  
purposes of ARTICLE XIII hereof

By:   
Name: James R. Brubaker  
Title: Vice President

WELL CHOICE INVESTMENTS  
LIMITED, solely for purposes of ARTICLE  
XIII hereof

By: \_\_\_\_\_  
Name: L. Thomas Sperry  
Title: Attorney-in-Fact


ROYAL SPIRIT GROUP, solely for  
purposes of Section 13.7 hereof

By: \_\_\_\_\_  
Name: L. Thomas Sperry  
Title: Attorney-in-Fact




BUYER:

FORTY-THREE EIGHTY COMPANY

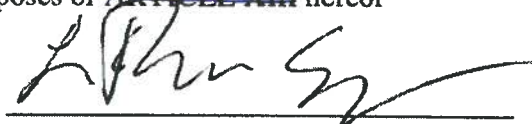
By:   
Name: James R. Brubaker  
Title: Director and CFO

AND

TOM JAMES COMPANY, solely for  
purposes of ARTICLE XIII hereof

By:   
Name: James R. Brubaker  
Title: Vice President

ROYAL SPIRIT GROUP, <sup>Sections 13.6 and 13.7</sup> solely for  
purposes of ~~ARTICLE XIII~~ hereof

By:   
Name: L. Thomas Sperry  
Title: Attorney-in-Fact

BUYER:

FORTY-THREE EIGHTY COMPANY

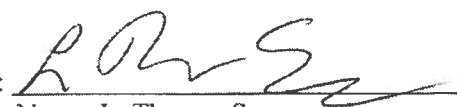
By: \_\_\_\_\_  
Name: James R. Brubaker  
Title: Director and CFO

AND

TOM JAMES COMPANY, solely for  
purposes of ARTICLE XIII hereof

By: \_\_\_\_\_  
Name: James R. Brubaker  
Title: Vice President

WELL CHOICE INVESTMENTS  
LIMITED, solely for purposes of ARTICLE  
XIII hereof

By:  \_\_\_\_\_  
Name: L. Thomas Sperry  
Title: Attorney-in-Fact

**Schedules and Exhibits to Be Filed Separately**