IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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| **IN RE:** | ) | **Chapter 11** |
| **BUILDING MATERIALS HOLDING CORPORATION, *et al.*,[1]** | ) | **Case No. 09-12074 (KJC)** |
| **Debtors.** | ) | **Jointly Administered** |
| | ) | **Ref. Docket No. 1052** |

**MEMORANDUM OF LAW IN SUPPORT OF DEBTORS' PROPOSED CURE AMOUNT WITH RESPECT TO ASSUMPTION OF THE PURCHASE AND SALE AGREEMENT BETWEEN CERTAIN DEBTORS AS BUYERS AND SOUTHWEST MANAGEMENT, INC. ET AL. AS SELLERS**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), respectfully submit this Memorandum of Law In Support of Debtors' Proposed Cure Amount With Respect To Assumption of the Purchase and Sale Agreement Between Certain Debtors As Buyers And Southwest Management, Inc. et al. as Sellers. In support thereof, the Debtors respectfully state as follows:

## PRELIMINARY STATEMENT

1. In arguing that the Debtors have outstanding obligations with respect to the APA, Southwest Management seeks to turn its indemnification obligations to the Debtors on their head by transforming those obligations from a shield that was intended to protect the Debtors from Southwest Management's misrepresentations into a sword with which it can saddle the Debtors with liability for Southwest Management's own misrepresentations and failures to satisfy its

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1 The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

obligations. To wit: After unilaterally settling debts which it now alleges belonged to the Debtors, Southwest Management argues that it is entitled to reimbursement from the Debtors by using the Debtors' right to seek indemnification from Southwest Management. The debts Southwest Management agreed to pay belonged to it, not the Debtors. Even if these debts were the Debtors', which they were not, Southwest Management could not use its agreement to reimburse the Debtors for their expenses as a mechanism to force the Debtors to reimburse Southwest Management on account of its decision to pay these debts.

2. In further arguing now that the already rejected Leases and the APA are somehow so related that they constitute one agreement that cannot be assumed or rejected in part, Southwest Management seeks to re-litigate an issue that has already been decided by this Court. Even if the issue had not already been decided, Southwest Management's argument does not hold water because the Leases and the APA were by and between different parties with respect to different obligations in exchange for different consideration and are not integrated.

## BACKGROUND

3. Prior to the Petition Date, the Debtors entered into that certain Purchase and Sale Agreement (the "***APA***") by and among C Construction, Inc., SelectBuild Construction, Inc. f/k/a BMC Construction, Inc. (the "***Purchasing Parties***") and Campbell Concrete of Nevada, Inc., Campbell Concrete of California, Inc., Campbell Concrete of Arizona, Inc., Campbell Concrete, Inc., Campbell Concrete of Northern California, Inc., Sterling Trenching, Inc., SR Campbell Plumbing of California, Inc., SR Campbell Plumbing of Nevada, Inc., SRC Enterprises, Inc., Southwest Management, Inc., and Steven R. Campbell (together, "***Southwest Management***" or the "***Seller Parties***"), dated as of July 29, 2005. A true and correct copy of the APA, including

all exhibits and schedules thereto, is attached as Attachment 1 to the Declaration of Paul S. Street, which is attached hereto as ***Exhibit A***.

4. Pursuant to the APA, the Debtors purchased certain assets of Southwest Management (the "***Business***"). The Debtors also assumed certain liabilities of Southwest Management relating to the Business. Significantly, however, the Debtors did not assume any of the Excluded Liabilities[2] and have no obligations whatsoever with respect to these liabilities. *See* APA Section 3.3(c).

5. According to Southwest Management, National Union Fire Insurance Company ("***National Union***") brought suit against Southwest Management in May 2006, alleging that it "failed to pay certain additional worker's [sic] compensation premiums on insurance provided by National Union prior to the closing of the APA" (the "***National Union Litigation***"). Obj. ¶ 4. Southwest Management apparently paid $550,000 to settle the National Union Litigation sometime in 2007. *Id.* ¶ 9. Southwest Management was responsible for any amounts owed to National Union and had the authority to enter into the settlement agreement because any obligations to National Union were Excluded Liabilities pursuant to Sections 3.3(c)(iv) and 3.3(c)(vii) of the APA. Therefore, any liabilities owed to National Union remained with Southwest Management. Section 3.3(c)(iv) of the APA specifically excludes from the liabilities the Debtors assumed "any liability of Sellers to any person or entity the existence of which constitutes a breach of any covenant, agreement, representation or warranty of Sellers contained in this Agreement...." Among the representations made by the Sellers was an affirmance that "[a]ll insurance policies are in full force and effect and are valid, outstanding and enforceable,

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2 Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the APA.

and all premiums due thereon have been paid in full. ... [Southwest Management] has complied in all material respects with the provisions of all such insurance polices covering [Southwest Management] or any of [Southwest Management]'s assets and properties." APA § 8.20. Because Southwest Management's failure to pay the National Union workers' compensation insurance premiums constituted a breach of Southwest Management's representation that "[a]ll insurance policies are in full force and effect ... and all premiums due thereon have been paid in full", Southwest Management's liability to National Union was an "Excluded Liability" pursuant to Section 3.3(c)(iv) of the APA.

6. Section 3.3(c)(vii) further excludes from the Debtors' Assumed Liabilities "any accrued or other liability of [Southwest Management] under any...plan or other agreement with respect to any of [Southwest Management]'s employees, past or present...." Because National Union provided workers' compensation insurance to Southwest Management, its agreement with Southwest Management was an "agreement with respect to...[Southwest Management]'s employees" within the meaning of Section 3.3(c)(vii) of the APA. Accordingly, Southwest Management's liability on account of its agreement with National Union is an "Excluded Liability" pursuant to Section 3.3(c)(vii) of the APA.

7. On June 16, 2009 (the "***Petition Date***"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "***Chapter 11 Cases***"). On the Petition Date, the Debtors filed their proposed chapter 11 plan (as may be amended, modified, and/or supplemented, the "***Plan***") and accompanying disclosure statement (as may be amended, modified, and/or supplemented, the "***Disclosure Statement***"). Also on the Petition Date, the Debtors filed their *First Omnibus Motion for an Order Authorizing Rejection of Certain Unexpired Leases and Executory Contracts* Nunc Pro Tunc *to the Rejection Effective Date*

[Docket No. 33] (the "***Lease Rejection Motion***"). Pursuant to the Lease Rejection Motion, the Debtors sought to reject several unexpired leases of real property, including (i) that certain Industrial Real Estate Lease by and between SRC Spencer, LLC and Debtor C Construction, Inc., dated as of August 31, 2005, for the use and occupancy of the premises located at 6767 Spencer Street, Las Vegas, NV 89119; (ii) that certain Industrial Real Estate Lease by and between SRC Pellisier, LLC and Debtor C Construction, Inc., dated as of August 31, 2005, for the use and occupancy of the premises located at 1640 W. Pellisier, Colton, CA 92324; (iii) that certain Industrial Real Estate Lease by and between SRC Oates, LLC and Debtor C Construction, Inc., dated as of August 31, 2005, for the use and occupancy of the premises located on Oates Lane in Coachella, California; and (iv) that certain Industrial Real Estate Lease by and between SRC Polaris, LLC and Debtor C Construction, Inc., dated as of August 31, 2005, for the use and occupancy of the premises located at 5201 S. Polaris, Las Vegas, NV 89118 (the "***Leases***"). None of the counterparties to the Leases objected to the Lease Rejection Motion. In fact, the only response of any kind that the Debtors received in connection with the Lease Rejection Motion was a *Reservation of Rights and Limited Response* filed by Gregg Street, LLC, Ralph Road, LLC, and the Restated Robert R. Thomas Trust Dated April 14, 1999 [Docket No. 156] in which those parties stated that they believed that the rejection of certain relevant leases would give rise to defenses under a related securities purchase agreement and asset purchase agreement. Accordingly, on July 16, 2009 this Court entered its *First Order Authorizing the Debtors to Reject Certain Unexpired Leases and Executory Contracts,* Nunc Pro Tunc *to the Rejection Effective Date* [Docket No. 242] (the "***Lease Rejection Order***"). Pursuant to the Lease Rejection Order, each of the Leases was rejected, effective as of June 16, 2009 or June 30, 2009, as applicable.

8. Among other things, the Debtors' Plan contemplates the assumption of various contracts and unexpired leases. Therefore, pursuant to this Court's *Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes To Accept or Reject the Plan, Including (A) Approving the Form and Manner of Distribution of Solicitation Packages, (B) Approving the Form and Manner of Notice of the Confirmation Hearing, (C) Establishing a Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing the Deadline for Receipt of Ballots, and (F) Approving the Procedures for Vote Tabulations; (III) Establishing the Deadline and Procedures for Filing Objections to (A) Confirmation of the Plan, and (B) Proposed Cure Amounts Related to Contracts and Leases Assumed under the Plan; and (IV) Granting Related Relief, dated October 22, 2009* [Docket No. 768] (the "***Solicitation Procedures Order***"), the Debtors mailed each of the counterparties to the contracts and unexpired leases that the Debtors are contemplating assuming pursuant to the Plan a copy of the Debtors' *Notice of (I) Possible Assumption of Executory Contracts and Unexpired Leases, (II) Fixing of Cure Amounts In Connection Therewith, and (III) Deadline to Object Thereto* (the "***Cure Notice***") that was approved by the Court in the Solicitation Procedures Order. Each Cure Notice set forth the amount that the Debtors believe would be required to cure any existing defaults under such contracts and leases.

9. The Debtors mailed a Cure Notice to Southwest Management with respect to the APA. [3] Because Southwest Management's liability to National Union was an "Excluded

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3 Because multiple Debtors are party to the APA, the Cure Notice sent to Southwest Management references a purchase agreement with C Construction, Inc. and a purchase agreement with SelectBuild Construction, Inc. The purchase agreements are one and the same—the APA.

Liability" not assumed under the APA and because the Leases are not part of the APA, the Cure Notice mailed to Southwest Management listed a proposed cure amount of $0.00. Southwest Management has objected to the Debtors' proposed cure amount. *See Objection of Contracting Party Southwest Management, Inc. to Cure Amounts Submitted by Debtors With Respect To Assumption of Purchase and Sale Agreement Between Certain Debtors as Buyers and Southwest Management Inc. et al. as Sellers* [Docket No. 1052] (the "***Objection***"). Without addressing the aforementioned provisions of the APA which plainly exclude the National Union Litigation obligations from the Debtors' Assumed Liabilities, Southwest Management simply asserts that the Debtors assumed its obligations to National Union. Upon this faulty premise, Southwest Management makes a puzzling argument that it is somehow entitled to use a provision in the "Indemnification by Sellers" section of the APA—which gives the Debtors the right to seek reimbursement from Southwest Management if the Debtors are forced to pay certain specified Liabilities and Expenses, not *vice versa*—to force the Debtors to reimburse it for the amounts it unilaterally decided to pay to settle the National Union Litigation.

10. In addition, and despite the fact that it did not object to the Lease Rejection Motion or to entry of the Lease Rejection Order—which ordered the rejection of the Leases separate and apart from the APA—Southwest Management now claims that the Leases are somehow so connected to the APA that the APA cannot be assumed without "curing"[4] the damages which resulted from the Debtors' rejection of the Leases. This argument must be rejected because the Leases have already been rejected. The issue of whether the Leases are part

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4 Southwest Management appears to be advocating a novel proposition that a debtor can assume portions of an executory contract so long as the debtor pays for any damages which result from its rejection of the other potions.

of the APA was before the Court in connection with the Lease Rejection Motion and may not be re-litigated now. Nonetheless, the Leases were separate transactions executed by and between (i) C Construction, Inc. and (ii) SRC Spencer, LLC, SRC Pellisier, LLC, SRC Oates, LLC, and SRC Polaris, LLC, respectively (the "***Lessors***"). The Lessors are not parties to the APA. Contrary to Southwest Management's unsupported claims, the Leases are not exhibits to the APA or otherwise made part of the APA. *See* Decl. of Paul S. Street, Attachment 1. Put simply, the Leases are not part of the APA.

## ARGUMENT

### I. The Debtors Do Not Have Any Liability in Connection with the National Union Litigation and Do Not Have Any Obligations to Indemnify Southwest Management for its Liability

11. Southwest Management avers that the Debtors cannot properly assume the APA without reimbursing it for $300,000 of the $550,000 settlement that Southwest Management unilaterally agreed to pay in connection with the National Union Litigation. This contention must be rejected because the Debtors do not have any liability to Southwest Management or National Union on account of the National Union Litigation. The National Union Litigation was brought against Southwest Management—not the Debtors—for Southwest Management's failure to pay all of the workers' compensation insurance premiums that were owed to National Union prior to the closing of the APA. The Debtors were never added as a third party defendant in the National Union Litigation.

12. Nonetheless, Southwest Management contends that the Debtors assumed Southwest Management's liability for its failure to pay workers' compensation premiums to National Union under Section 3.3 of the APA, pursuant to which the Debtors assumed certain liabilities related to the Business. Obj. ¶ 4. Significantly, however, the Debtors did not assume

any of the Excluded Liabilities set forth in Section 3.3(c) of the APA. Without addressing the clear and specific provisions of Section 3.3(c), Southwest Management arrives at the perfunctory and unsupported conclusion that "[t]he National Union Litigation was not an Excluded Liability under Section 3.3(c) of the APA." *Id.*, footnote 2. Contrary to Southwest Management's baseless assertion, Southwest Management's liability to National Union was an Excluded Liability pursuant to Section 3.3(c) of the APA and the Debtors cannot be forced to reimburse Southwest Management for its expenses on account of this liability.

13. First, the parties agreed to exclude "any liability of [Southwest Management] to any person or entity the existence of which constitutes a breach of any covenant, agreement, representation or warranty of [Southwest Management] contained in this Agreement...." APA § 3.3(c)(iv). Thus, if Southwest Management has any liabilities which it represented in the APA did not exist, those liabilities are Excluded Liabilities which were not assumed by the Debtors pursuant to the APA. Southwest Management represented that it had no liability on account of its failure to pay workers' compensation premiums when it represented in Section 8.20 of the APA that "[a]ll insurance policies are in full force and effect and are valid, outstanding and enforceable, and all premiums due thereon have been paid in full." (emphasis added). Southwest Management also represented that it had no liability on account of its failure to pay workers' compensation premiums when it represented in Section 8.2 of the APA that the National Union insurance policies, which were "Purchased Assets," were "free and clear of any...claims of any kind or nature whatsoever." Accordingly, Southwest Management's liability to National Union for its failure to pay workers' compensation insurance premiums is an "Excluded Liability" under Section 3.3(c)(iv) because its existence constitutes the breach of

Southwest Management's representation that "all premiums...have been paid in full" and that there were no "claims of any kind or nature" outstanding with respect to the policies.[5]

14. The parties also agreed to exclude expenses related to employees of the Business. Specifically, they excluded any liability arising out of "any...plan or agreement with respect to any of [Southwest Management]'s employees, past or present...." APA § 3.3(c)(vii). The central purpose of workers' compensation insurance is to protect employees who become injured within their scope of employment. Accordingly, the National Union workers' compensation insurance policy is a "plan or agreement with respect to...[Southwest Management]'s employees" within the meaning of Section 3.3(c)(vii) of the APA. Therefore, because Southwest Management's liability in the National Union Litigation arose in connection with the National Union workers' compensation insurance policy, it is an "Excluded Liability." As such, the Debtors cannot have any obligations to reimburse Southwest Management's agreement to satisfy such Excluded Liability.

15. Proceeding headstrong on the faulty premise that the Debtors assumed Southwest Management's liability for its failure to pay the Workers' Compensation premiums owed to National Union, Southwest Management constructs a convoluted argument, the apparent upshot

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5 Southwest Management also represented as follows:

> To the knowledge of Sellers, the Business does not have any Liabilities or obligations of a nature required by GAAP to be reflected on or disclosed in the footnotes to a balance sheet of the business except for (i) Liabilities disclosed, reflected or reserved against in the Interim Financial Statements, (ii) Liabilities incurred after the date of this Agreement in the ordinary course of business, (iii) the matters disclosed in or arising out of matters set forth on the Disclosure Schedule or which are the subject of other representations and warranties set forth herein, and (iv) Liabilities and obligations incurred in connection with this Agreement and the transaction contemplated hereby.

*See* APA § 8.17. Southwest Management's failure to disclose its unpaid workers' compensation premiums may have also been a breach of this representation.

of which is that Southwest Management can use a provision in the "Indemnification by Sellers" section of the APA to force the Debtors to reimburse it for the amounts it unilaterally decided to pay to settle the National Union Litigation. Before addressing Southwest Management's befuddling argument, one significant observation should be made. If Southwest Management really believed that the Debtors had assumed the liability to National Union, it should not have agreed to pay National Union on account of this liability. Instead, it should have asserted the Debtors' alleged assumption as a defense in the National Union Litigation and brought the Debtors into that action as a third-party defendant. Based on Southwest Management's position that the Debtors assumed the liability to National Union, Southwest Management's action in paying National Union should be viewed as a gift.

16. Southwest Management's argument is predicated on Section 13.1(a)(i) of the APA. Section 13.1 of the APA—"Indemnification by Sellers"—contains the Debtors' right to seek reimbursement from Southwest Management for expenses the Debtors are forced to pay as a result of, *inter alia*, an inaccuracy in any of the representations made by Southwest Management or Southwest Management's failure to pay an Excluded Liability. Section 13.1(a) contains a mechanism by which the Debtors' right to seek reimbursement under subsection 13.1(a)(i) is limited to amounts exceeding $300,000 if the total Liabilities and Expenses payable thereunder exceed $600,000. According to Southwest Management, this mechanism entitles it to seek a reimbursement from the Debtors in the amount of $300,000 on account of the settlement in the National Union Litigation.

17. Southwest Management's argument is misplaced for several independently sufficient reasons. First, Section 13.1 cannot be used to force the Debtors to pay anything. In relevant part, it states: "Sellers agree, jointly and severally, to indemnify, defend and hold

harmless Buyer and the Buyer Related Parties...from and against any and all Liabilities and Expenses incurred by Buyer...." The rights in this Section belong to the Debtors, as the Buyer, for any Liabilities and Expenses that they have incurred. Southwest Management, as the Seller, has no right to indemnification under this section. The expenses incurred by Southwest Management were not Liabilities or Expenses incurred by the Buyer and accordingly, this section is simply inapplicable. This interpretation is supported by other language in the APA. For instance, Section 13.2 provides that the indemnification under Section 13.1(a)(i) terminates eighteen months after closing and states that "no claim shall be made by Buyer under Section 13.1(a)(i) thereafter...." (emphasis added). No reference is made to claims of the Seller. In addition, there is an entire section (13.3) that governs Southwest Management's rights, as the Seller, to seek indemnification from the Debtors, as the Buyer. Southwest Management has not argued that it is entitled to indemnification pursuant to that provision.

18. Second, even assuming, counterfactually, that Section 13.1 does give the Seller a right to seek reimbursement, the provision cited by Southwest Management to support its claim for $300,000 would be inapplicable to the liability stemming from the National Union Litigation. The reason for this is that, as discussed above, any Liabilities or Expenses that were incurred in connection with the National Union Litigation were "Excluded Liabilities." The Debtors' right to seek reimbursement from Southwest Management for its failures to pay "Excluded Liabilities" is contained in Section 13.1(a)(iii), which is not subject to the $300,000 threshold that is the basis for Southwest Management's alleged claim.

19. Finally, the provision Southwest Management relies upon, Section 13.1(a)(i), has expired. As noted previously, Section 13.1(b) mandates that "[t]he indemnification provided for in Section 13.1(a)(i) shall terminate eighteen (18) months after the Closing Date...." More than

eighteen months have passed since the Closing Date in 2005. Therefore, even if the Court were inclined to agree with Southwest Management's reasoning, Southwest Management's arguments must be rejected because they are based upon a contract provision that is no longer in force.

## II. The Leases Are Not Part of the APA

### A. The Issue of Whether the Leases Are Part of the APA Has Already Been Brought Before the Court and May Not Be Re-Litigated Now

20. Southwest Management is precluded from re-litigating the issue of whether the Leases are part of the APA under the doctrines of res judicata and collateral estoppel because the issue of whether the Leases are part of the APA was already brought before the Court in connection with the Lease Rejection Motion.

21. Res judicata, or claim preclusion, bars a party from re-litigating claims that were or could have been asserted in an earlier proceeding. *In re ANC Rental Corp.*, 277 B.R. 226, 233 (Bankr. D. Del. 2002). The Third Circuit has held that res judicata "requires (1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies; and (3) a subsequent suit based on the same cause of action." *Cortestates Bank v. Huls Am., Inc.*, 176 F.3d 187, 205 (3d Cir. 1999) (citations omitted). In the bankruptcy context, a bankruptcy court order to assume, reject, or assign an executory contract or unexpired lease under section 365 is a final judgment for res judicata purposes. *See, e.g., In re Marlin Hathaway*, 401 B.R. 477, 482 (Bankr. W.D. Wash. 2009). A subsequent proceeding is said to be based on the same cause of action as the first proceeding when "there is 'an essential similarity of the underlying events giving rise to the various legal claims.'" *Cortestates Bank*, 176 F.3d at 200 (quoting *United States v. Athlone Industries, Inc.*, 746 F.2d 977, 984 (3d Cir. 1984)); *see also In re Kmart Corp.*, 362 B.R. 361, 380 (Bankr. N.D. Ill. 2007). Moreover, the concept of a "cause of action" includes possible defenses and, in bankruptcy proceedings, objections that implicate a party's rights in the

bankruptcy estate. *See, e.g.*, *Cortestates Bank*, 176 F.3d at 200, 205 ("claim" for preclusion purposes includes objections); *In re Kmart Corp.*, 362 B.R. at 378 (claim preclusion "applies to defenses as well as claims").

22. This Court's Lease Rejection Order should be given preclusive effect and should bar Southwest Management from raising its current Objection, which is based on the premise that the Leases are part of the APA. The Lease Rejection Order constitutes a final, non-appealable judgment for purposes of res judicata. *See, e.g.*, *In re Marlin Hathaway*, 401 B.R. 477, 482 (Bankr. W.D. Wash. 2009). Although the parties to the APA are different than the parties to the Leases, if Southwest Management's arguments are to be given any consideration at all, it must be presumed that there is privity between Southwest Management and the Lessors. Both (i) the Lease Rejection Motion and Order and (ii) the Cure Notice and Objection involve the same "cause of action" because "there is an essential similarity of the underlying events giving rise to the various legal claims," 176 F.3d at 200 (quotations and citations omitted), namely the existence of and the relationship between the Leases and the APA and whether they can be separately rejected or assumed by the Debtors pursuant to section 365 of the Bankruptcy Code. Southwest Management's objection that the Leases are part of the APA is a "claim" that could have been raised in response to the debtors' original Lease Rejection Motion. As it is black letter law that debtors must either assume an entire contract, *cum onere*, or reject the entre contract, the Court necessarily ruled that the Leases were not part of the APA when it entered the Lease Rejection Order. *See, e.g.*, *ANC Rental Corp.*, 277 B.R. at 238-39. Southwest Management could have raised an objection (or defense) to the Lease Rejection Motion on the

basis that the Leases were part of the APA, but it chose not to do so at the proper time.[6] Precluding Southwest Management's present Objection supports "the principal underlying the rule of claim preclusion [] that a party who one has had a chance to litigate a claim before an appropriate tribunal usually ought not to have another chance to do so." *In re Grossinger's Assocs.*, 184 B.R. 429, 434 (Bankr. S.D.N.Y. 1995) (quoting *Restatement (Second) of Law of Judgments* ch. 1 at 6 (1982)).

23. Furthermore, Southwest Management should be precluded from raising the issue of whether the Leases are a part of the APA under the doctrine of collateral estoppel. The doctrine of collateral estoppel, also referred to as issue preclusion, requires that (1) the issue sought to be precluded be the same as the one involved in the previous proceeding; (2) the issue has been fully litigated; (3) the issue has been decided by a final judgment; and (4) the determination be essential to the prior judgment. *Wolstein v. Docteroff (In re Docteroff)*, 133 F.3d 210, 214 (3d Cir. 1997); *In re Access Beyond Tech., Inc.*, 237 B.R. 32, 40 (Bankr. D. Del. 1999). The touchstone of whether an order should be given preclusive effect is whether the parties had a full and fair opportunity to be heard on the issue. *Wolstein*, 133 F.3d at 215; *In re Access Beyond Tech., Inc.*, 237 B.R. at 40; *Manhattan King David Restaurant, Inc. v. Levine*, 154 B.R. 424, 428 (S.D.N.Y. 1993).

24. The issue of whether the Leases and the APA may be assumed or rejected separate and apart from one another has already been before this Court in connection with the Lease Rejection Motion. The issue was fully litigated in that it was raised before the Court and

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6 Southwest Management apparently agreed at the time that the Leases could be rejected separate and apart from the APA because it filed proofs of claim in connection with the rejected leases that did not include a claim for the alleged breach of the APA described in Part I, *supra*. *See* Claim Nos. 2332, 2333, 2334, 2335, 2336, 2337, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, and 2359.

the parties had every opportunity to object to the entry of the Lease Rejection Order. Other parties who thought that the leases sought to be rejected pursuant to the Lease Rejection Motion were part of larger agreements filed responses. *See Reservation of Rights and Limited Response* filed by Gregg Street, LLC, Ralph Road, LLC, and the Restated Robert R. Thomas Trust Dated April 14, 1999 [Docket No. 156]. The Lease Rejection Order represents a final, non-appealable judgment. The determination that the Leases are not part of the APA was essential to the prior judgment because a debtor cannot partially reject an executory contract as a matter of law. *See, e.g., In re ANC Rental Corp*, 277 B.R. at 238.

25. Precluding the re-litigation of Southwest Management's Objection on the grounds of res judicata or collateral estoppel supports the particular function of a motion to assume or reject an executory contract or unexpired lease under section 365. Such motions "should be considered a summary proceeding, intended to efficiently review the trustee's or debtor's decision to adhere to or reject a particular contract in the course of the swift administration of the bankruptcy estate." *In re Orion Pictures Corp.*, 4 F.3d 1095, 1098 (2d Cir. 1993). As such, fundamental legal questions such as whether unexpired leases or executory contracts should be considered separate agreements or instead part of larger agreements that cannot be rejected or assumed in part, must be raised at the first possible instance. This Court should not allow Southwest Management to subvert the intended functioning of bankruptcy procedure.

**B. The Leases Are Not Part of the APA**

26. Under bankruptcy law and California state law,[7] the Leases are transactions separate and distinct from the APA and may be assumed or rejected separately from the APA.

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7 The APA is governed by California law. *See* APA § 22.10.

"Whether multiple obligations in an agreement or transaction are severable is a question of state law." *In re Pollock*, 139 B.R. 938, 940 (9th Cir. B.A.P. 1992) (citing *In re Café Partners/Washington 1983*, 90 B.R. 1, 6 (Bankr. D.D.C. 1988)); *see also In re Integrated Health Servs.*, 2000 Bankr. LEXIS 1310, at *10 (Bankr. D. Del. July 7, 2000). Under California law "this is a question of the parties' intent based upon the substance and language of the agreement at issue." *Id.* (citing *Keene v. Harling*, 61 Cal. 2d 318, 320 (1964)); *In re Plitt Amusement Co. of Wash., Inc.*, 233 B.R. 837, 845 (Bankr. C.D. Cal. 1999). The *Pollock* court noted three factors that courts should consider when analyzing the severability of obligations under California law: "(1) whether the nature and purpose of the obligations are different; (2) whether the consideration for the obligations is separate and distinct; and (3) whether obligations of the parties are interrelated." *Id.* at 940-41 (citing *In re Gardinier*, 831 F.2d 974, 976 (11th Cir. 1987)). Just because the instruments arise out of a single transaction does not mean that they constitute a single contract for purposes of section 365. *See, e.g., In re Pac. Express, Inc.*, 780 F.2d 1482, 1486 (9th Cir. 1986).

27. It is clear that the Leases represent agreements that are separate and distinct from the APA. In fact, the central case that Southwest Management relies upon in its Objection fully supports this conclusion. In *Pollock*, the Ninth Circuit Bankruptcy Appellate Panel affirmed a bankruptcy court's order permitting the debtors to assume a sublease separate from a related promissory note, without requiring the debtors to cure delinquent note payments. The facts of *Pollock* are remarkably similar to the facts in the instant case. In *Pollock*, the debtors (prior to filing bankruptcy) purchased a campground company for a cash down-payment and a $900,000 promissory note payable to the seller. The transaction included a sublease of the campground property leasehold. *Id.* at 939. When the debtors entered chapter 11, they moved to assume the

sublease but not the promissory note, and the sellers objected that the debtors could not assume the sublease without curing default amounts under the note. The bankruptcy court found that the sublease was severable from the note and that the debtors were not in default under the sublease by being in default under the note. The Ninth Circuit BAP affirmed. In determining that the sublease and note were severable for purposes of assumption, the court found that the sublease and note were separate documents not expressly incorporated into each other, that the sublease was supported by its own consideration, and that the separateness of the lease and note was highlighted by the note payment term of 17 years compared to the 30-year term of the sublease. *See also Plitt Amusement*, 233 B.R. 843 (lease lasted much longer than note payments and did not contain a cross-default clause).

28. Using the three factors set forth in *Pollock* as a guidepost, the APA and the Leases are fully severable. First, the nature and purpose of the two contracts are different: the APA was for the purchase of the Business; the Leases were separate agreements executed more than a month after the effective date of the APA for the use and occupancy of real property. Like *Pollock*, the Leases are not expressly incorporated into the APA, and contrary to Southwest Management's assertions, the Leases were not attached as exhibits to the APA. Nor did the Leases and the APA have cross-default provisions whereby defaulting under the Leases would cause a default under the APA. *Cf. In re T&H Diner, Inc.*, 108 B.R. 448 (D.N.J. 1989) (finding that lease and sale agreements formed one indivisible transaction where a default under the note was a default under the lease). Any alleged breach of the terms of the APA is actionable only

under the terms of the APA and any alleged breach of the terms of the Leases is actionable only under the terms of the respective Lease, which has since been rejected.[8]

29. Second, the consideration under the APA and the Leases was separate and distinct. The consideration described by the APA does not include any mention of the Leases or the execution thereof. *See* APA § 3.1. Likewise, the amounts due and payable under each Lease were separate from the APA and each other and were payable to entities that are not even party to the APA. And because the rents under the Leases were market-rate, the future rent obligations under the Leases cannot otherwise be considered additional consideration under the APA. *See* Decl. of Paul Street ¶ 4.

30. Finally, the obligations of the parties under the Leases and the APA are separate. As noted above, the Lessors are not parties to the APA, and only one of the Purchasing Parties to the APA is the lessee under the Leases. Beyond the fact that the APA and the Leases are between different parties, there is simply no overlap in the obligations under the various agreements. The obligations in the APA relate to the purchase and sale of the Business. The obligations in the Leases relate to the use and occupancy of the real property. Because these various documents involve different consideration and different rights between different parties standing in distinct capacities, the Leases and the APA represent distinct agreements that are severable for the purposes of assumption or rejection under section 365 of the Bankruptcy Code. For this reason, the Court has already properly approved of the Debtors' rejection of the Leases.

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8 Even if the Leases and APA contained cross-default provisions, this alone would not be sufficient to integrate the otherwise separate transactions into one agreement. *See Plitt Amusement*, 233 B.R. at 847 ("It is well-settled that, in the bankruptcy context, cross-default provisions do not integrate otherwise separate transactions or leases.").

## CONCLUSION

31. Each of Southwest Management's arguments must be rejected. The liability to National Union was an Excluded Liability that the Debtors did not assume and cannot be held responsible for. The APA and the Leases are separate agreements that can be, and have been, assumed or rejected independent of one another.

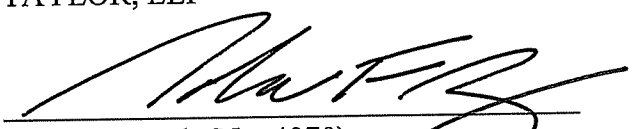
## DEBTORS' RESERVATION OF RIGHTS

32. Just yesterday, Monday December 14, 2009, Southwest Management filed a *Supplemental Objection of Contracting Party Southwest Management, Inc. to Cure Amounts Submitted by Debtors With Respect To Assumption of Purchase and Sale Agreement Between Certain Debtors as Buyers and Southwest Management Inc. et al. as Sellers* [Docket No. 1129] (the "***Supplemental Objection***") in which Southwest Management makes a variety of new arguments and unsupported statements. In its Supplemental Objection, Southwest Management now argues that the APA cannot be assumed because the Debtors have not provided adequate assurance of future performance, as is required by section 365(b)(1). That section only applies "if there has been a default," and accordingly does not apply to the Debtors' request to assume the APA because the Debtors have not defaulted thereunder. Moreover, the Debtors will have access to funds which are abundantly sufficient to satisfy their obligations under the APA due to their access to the Exit Credit Facilities described in the Plan, which will provide the Debtors with at least $90 million in exit financing. Because the Supplemental Objection was filed just yesterday, the Debtors reserve their rights to file an appropriate response to the arguments and allegations contained therein, including at the hearing.

WHEREFORE, the Debtors respectfully request that the Court enter an order determining that its cure obligations in connection with the APA are fixed at $0.00, and grant such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
December 15, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



Sean M. Beach (No. 4070)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
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ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

# EXHIBIT A

**Declaration of Paul S. Street**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|---|---|---|
| IN RE: | ) | Chapter 11 |
| BUILDING MATERIALS HOLDING CORPORATION, *et al.*,[1] | ) | Case No. 09-12074 (KJC) |
| Debtors. | ) | Jointly Administered |

**DECLARATION OF PAUL S. STREET**

I, Paul S. Street, hereby declare under penalty of perjury:

1. I am Senior Vice President, Chief Administrative Officer, General Counsel, and Corporate Secretary of Building Materials Holding Corporation, a corporation organized under the laws of the State of Delaware and one of the above-captioned debtors and debtors in possession (collectively, the "***Debtors***"). In this capacity I am familiar with the Debtors' day-to-day operations, businesses, financial affairs, and books and records.

2. Prior to June 16, 2009, the Debtors entered into that certain Purchase and Sale Agreement (the "***APA***") by and among C Construction, Inc., SelectBuild Construction, Inc. f/k/a BMC Construction, Inc. (the "***Purchasing Parties***") and Campbell Concrete of Nevada, Inc., Campbell Concrete of California, Inc., Campbell Concrete of Arizona, Inc., Campbell Concrete, Inc., Campbell Concrete of Northern California, Inc., Sterling Trenching, Inc., SR Campbell Plumbing of California, Inc., SR Campbell Plumbing of Nevada, Inc., SRC

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1 The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

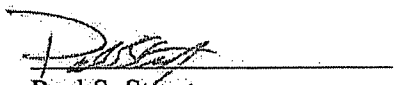
Enterprises, Inc., Southwest Management, Inc., and Steven R. Campbell (together, "***Southwest Management***" or the "***Seller Parties***"), dated as of July 29, 2005. A true and correct copy of the APA, including all exhibits and schedules thereto, is attached as ***Attachment 1*** hereto.

3. Prior to June 16, 2009, the Debtors entered into various leases for the use and occupancy of real property real property, including (i) that certain Industrial Real Estate Lease by and between SRC Spencer, LLC and Debtor C Construction, Inc., dated as of August 31, 2005, for the use and occupancy of the premises located at 6767 Spencer Street, Las Vegas, NV 89119; (ii) that certain Industrial Real Estate Lease by and between SRC Pellisier, LLC and Debtor C Construction, Inc., dated as of August 31, 2005, for the use and occupancy of the premises located at 1640 W. Pellisier, Colton, CA 92324; (iii) that certain Industrial Real Estate Lease by and between SRC Oates, LLC and Debtor C Construction, Inc., dated as of August 31, 2005, for the use and occupancy of the premises located on Oates Lane in Coachella, California; and (iv) that certain Industrial Real Estate Lease by and between SRC Polaris, LLC and Debtor C Construction, Inc., dated as of August 31, 2005, for the use and occupancy of the premises located at 5201 S. Polaris, Las Vegas, NV 89118 (the "***Leases***").

4. Prior to the Debtors' entry into the Leases, I was advised that the rents due under the Leases were market-rate.

5. Pursuant to 28 U.S.C. section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on December 15, 2009.



Paul S. Street

**Attachment 1 to Declaration of Paul S. Street**

*EXECUTION COPY*

# PURCHASE AND SALE AGREEMENT

among

C CONSTRUCTION, INC.

(Buyer)

BMC CONSTRUCTION, INC.

(Parent)

and

CAMPBELL CONCRETE OF NEVADA, INC.
CAMPBELL CONCRETE OF CALIFORNIA, INC.,
CAMPBELL CONCRETE OF ARIZONA, INC.,
CAMPBELL CONCRETE, INC.,
CAMPBELL CONCRETE OF NORTHERN CALIFORNIA, INC.,
STERLING TRENCHING, INC.,
SR CAMPBELL PLUMBING OF CALIFORNIA, INC.,
SR CAMPBELL PLUMBING OF NEVADA, INC.,
SRC ENTERPRISES, INC.,
and
SOUTHWEST MANAGEMENT, INC.,

(collectively, Campbell)

and

Steven R. Campbell

(Shareholder)

Dated as of July 29, 2005

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## EXHIBITS

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Exhibit 2— Equipment

Exhibit 3— Form of Escrow Agreement

Exhibit 4— Shareholder's Licenses

Exhibit 5— Automobiles

Exhibit 6— Other Contracts and Assets to be Excluded Assets

Exhibit 7— Supplier and Vendor Rebates to be Excluded Assets

Exhibit 8— Existing Shareholder Leases

Exhibit 9— Intangible Personal Property

Exhibit 10— Permits

Exhibit 11— Personal Property Leases

Exhibit 12— Calculation of Present Value of Personal Property Leases

Exhibit 13— Real Property Leases

Exhibit 14— Shareholder Consulting Agreement

Exhibit 15— Allocation of Value

Schedule 8— Disclosure Schedules

# PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement"), dated as of July 29, 2005, is among Campbell Concrete of Nevada, Inc., a Nevada corporation, Campbell Concrete of California, Inc., a California corporation, Campbell Concrete of Arizona, Inc., an Arizona corporation, Campbell Concrete, Inc., a California corporation, Campbell Concrete of Northern California, Inc., a California corporation, Sterling Trenching, Inc., a Nevada corporation, SR Campbell Plumbing of California, Inc., a California corporation, SR Campbell Plumbing of Nevada, Inc., a Nevada corporation, SRC Enterprises, Inc., a Nevada corporation, and Southwest Management, Inc., a Nevada corporation (each a "Campbell Entity" and collectively, "Campbell" or the "Company"), Steven R. Campbell, the sole shareholder of each Campbell Entity ("Shareholder" and collectively with Campbell, "Sellers"), C Construction, Inc., a Delaware corporation ("Buyer"), and BMC Construction, Inc., a Delaware corporation ("Parent").

## RECITALS

A. Buyer has negotiated an agreement with Sellers to acquire certain of the assets of Campbell related to the Business (as defined below), including certain existing contracts, certain intangible assets, fixed assets and non-cash net working capital and Buyer has agreed to assume certain liabilities of the Business;

B. Shareholder desires that Campbell sell certain of Campbell's assets to Buyer;

C. Parent is the parent corporation of Buyer and will benefit from the transactions contemplated by this Agreement and therefore desires that the transactions contemplated by this Agreement be consummated; and

C. Buyer and Sellers wish to document the terms and conditions of the transaction.

## AGREEMENT

NOW, THEREFORE, IT IS AGREED among the parties as follows:

### 1. DEFINITIONS

For purposes of this Agreement, the capitalized terms identified in this Section shall have the following meanings:

"Acquisition Proposal" means any bona fide proposal or offer (i) for a merger, share exchange, consolidation or other business combination concerning Campbell, (ii) to Campbell or Shareholder to acquire in any manner, directly or indirectly, any material part of the assets or 10% or more of the equity securities, as outstanding on the date hereof, of any Campbell Entity, (iii) with respect to any recapitalization or restructuring concerning Campbell or (iv) with respect to any other transaction similar to any of the foregoing; provided, however, that any such proposal or offer relating solely to any Excluded Assets or Excluded Liabilities shall not be deemed an Acquisition Proposal.

"Assignable Insurance Products" means those insurance policies (whether from third parties or through Campbell's captive insurance programs), and Contracts and deposits in Campbell's captive insurance programs related to such policies, in each case that are assignable to Buyer.

"Business" means the business of providing trenching services; composition forming and finishing of rapid rate concrete; engineering, forming and stressing post-tension steel; and installation of residential waste, water and gas plumbing systems for homes and other buildings, all as presently conducted by Campbell.

"Buyer Related Party" means any Person who, directly or indirectly, controls or is controlled by, or is under common control with Buyer or Parent.

"Campbell Financial Statements" means the Financial Statements and the Interim Financial Statements.

"Closing" means the exchange of closing documents, the transfer of the Purchased Assets and the payment of the Purchase Price (less the Reserve) to Campbell by Buyer.

"Closing Date" means the date on which the Closing occurs.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended.

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

"Collateral Agreements" means the Escrow Agreement and the Shareholder Consulting Agreement.

"Construction Defect" means any of the following: (i) performance of services which are not of workmanlike quality in conformance with the requirements of the underlying Contract documents or of applicable building codes, industry and professional standards, and/or manufacturers' recommendations, (ii) violation of any standards set forth in California Civil Code sections 895-897, Nevada Revised Statutes section 40.615 or any similar Arizona Law (if any), or (iii) construction which is based on design documents containing errors, omissions, or otherwise falling below the applicable standard of care; provided, however, that in no event shall "Construction Defect" be deemed to include fraud or willful misconduct in the provision of construction services.

"Continued Plans" means the Campbell employee benefit plans which are specifically described in Schedule 8.14 of the Disclosure Schedule as plans to be continued by Buyer through December 31, 2005 with respect to employees who remain employed by Buyer.

"Contracts" means each contract, agreement, commitment, purchase order, or other instrument of any kind, whether written or oral, related to the operation of the Business, including those that are listed on ***Exhibit 1***, which shall be updated as of the Closing Date.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, the Emergency Planning and

Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*, the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. §§ 1251 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 *et seq.*, as in effect from time to time, all rules and regulations promulgated pursuant to any of the above statutes, and any other foreign, federal, state or local law, statute, ordinance, rule or regulation governing Environmental Matters, as in effect from time to time, including any common law cause of action providing any right or remedy relating to Environmental Matters.

"Environmental Matter" means any matter or condition arising out of, relating to, or resulting from pollution, contamination, protection of the environment, human health or safety, health or safety of employees, sanitation, and any matters relating to emissions, discharges, disseminations, releases or threatened releases, of Hazardous Substances into the air (indoor and outdoor), surface water, groundwater, soil, land surface or subsurface, buildings, facilities, real property or fixtures, or otherwise arising out of, relating to, or resulting from the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling, release or threatened release of Hazardous Substances.

"Equipment" means all tools, equipment, rolling stock, office furniture, computers and equipment and other pieces of tangible personal property and fixed assets (and interests in any of the foregoing), including spare parts, supplies, office equipment and products used by Campbell in the Business, including those items described on ***Exhibit 2*** attached hereto.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any corporation that is a member of a controlled group of corporations with Campbell within the meaning of Section 414(b) of the Code, a trade or business (including a sole proprietorship, partnership, trust, estate or corporation) which is under common control with any Campbell Entity within the meaning of Section 414(c) of the Code, or a member of an affiliated service group with Campbell within the meaning of Section 414(m) or (o) of the Code.

"Escrow Agreement" means that certain Escrow Agreement in the form of ***Exhibit 3***.

"Excluded Assets" means the following assets of Sellers:

(i) all cash, cash equivalents and securities,

(ii) all notes, drafts, intercompany accounts, and accounts receivable (excluding Trade Accounts Receivable) and other obligations for the payment of money,

(iii) Shareholder's licenses set forth on ***Exhibit 4,***

(iv) Existing Shareholder Leases and all leasehold improvements located on the real property underlying the Existing Shareholder Leases,

(v) all bank and other depository accounts, corporate records and safe deposit boxes,

(vi) all rights under this Agreement and the Purchase Price,

(vii) the automobiles listed on ***Exhibit 5***,

(viii) all employee benefit plans other than the Continued Plans,

(ix) all causes of action, claims, demands, set-offs, rights and privileges against third parties that relate to any Excluded Assets or Excluded Liabilities (as defined in Section 3.3(c)),

(x) those other contracts or assets of Campbell which are listed on ***Exhibit 6*** attached hereto,

(xi) any and all real property and improvements owned by the Shareholder (whether leased to Campbell or otherwise),

(xii) any and all Tax returns, Tax refunds or Tax loss carryforwards and records related to the foregoing of Campbell relating to the Business or the Purchased Assets for any period or portion thereof ending on or prior to the Closing Date (and any such refunds received by Buyers shall be promptly paid over by Buyer to Campbell),

(xiii) any and all attorney-client privileged information and/or work product related to the Excluded Assets, Excluded Liabilities or prepared in connection with the transactions contemplated hereby,

(xiv) any and all supplier or vendor rebates earned by Campbell through the Closing Date from those parties listed on ***Exhibit 7*** and that are not reflected on the Campbell Financial Statements,

(xv) all assets used primarily in connection with the corporate functions of Campbell (including but not limited to corporate charters, taxpayer and other identification numbers, records, seals, minute books and stock transfer books),

(xvi) all personnel files related to (i) former employees of Campbell, and (ii) current employees of Campbell to the extent that the transfer of such files, in the reasonable judgment of Sellers, is likely to violate any applicable Law, and

(xvii) the Non-Assignable Insurance Products.

"Existing Shareholder Leases" means those leases of real property pursuant to which Campbell leases real property owned by the Shareholder or his affiliates, which are related to the Business. All Existing Shareholder Leases are listed on ***Exhibit 8*** attached hereto.

"Expenses" means any and all reasonable expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against hereunder (including, without limitation, court filing fees, court costs,

arbitration fees or costs, witness fees and fees and disbursements of legal counsel, investigators, expert witnesses, accountants and other professionals).

"Financial Statements" means the unaudited combined financial statements of Campbell, together with all schedules and notes thereto, which are dated as of December 31, 2003 and December 31, 2004, for the respective 12-month periods then ended, copies of which have been delivered to Buyer.

"GAAP" means United States generally accepted accounting principles, consistently applied.

"Governmental Authority" means any foreign, domestic, federal, territorial, state or local Governmental Authority, quasi-Governmental Authority, court, commission, board, bureau, agency or instrumentality, or any regulatory, administrative or other department, agency, or any political or other subdivision, department or branch of any of the foregoing.

"Hazardous Substances" means any pollutants, contaminants, toxic or hazardous or extremely hazardous substances, materials, wastes, constituents, compounds, chemicals, natural or man-made elements or forces that are regulated by, or form the basis of liability under, any Environmental Laws.

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

"Insured Liabilities" means the amount of those claims, demands and Liabilities that are covered by the Non-Assignable Insurance Products, but not including the amounts (i) of any deductible or self-insured retentions associated therewith, or (ii) in excess of such policy limits.

"Intangible Personal Property" means each patent and patent application, copyright, copyright application, trademark, trademark application, service mark, service mark application, trade name and trade name registration (in any such case, whether registered or to be registered in the United States of America or elsewhere) applied for, issued to or owned by Sellers and used in the Business and all processes, inventions, trade secrets, trade names, customer lists, customer contacts and relationships, computer programs, formulae, know how and other intangible personal property owned by Sellers and used in the Business, and all right, title and interest therein and thereto, including without limitation, the names "Campbell Concrete", "Campbell Plumbing", "Sterling Trenching", "SR Campbell Plumbing", "Campbell Companies" and derivations thereof used in the Business, and the internet domain name www.campbellconcrete.com. All Intangible Personal Property is listed on ***Exhibit 9*** attached hereto.

"Interim Financial Statements" means the internally prepared unaudited combined financial statements of Campbell together with all schedules and notes thereto, which are dated as of June 30, 2005 and for the 6-month period then-ended, copies of which have been delivered to Buyer.

"Inventory" means any materials owned by Campbell and used in the Business as of the Closing Date.

"Key Employees" means James Cleven, Paul Braval, Mike Joseph, Charles Conoway Cockey III and Jack Crocker.

"Key Employee Employment, Confidentiality and Noncompetition Agreements" means the agreements to be entered into between each Key Employee and Buyer at the Closing, in a form mutually acceptable to the parties thereto.

"Knowledge of Sellers" means, as to a particular matter, the actual knowledge of Shareholder, James Cleven, Steven Moscrop, Susan Casterton, Susan Beam, Mike Joseph, Paul Braval, Charles Conoway Cockey, III, Jack Crocker and Laura Stewart (without any duty of inquiry)."Law" means any law, statute, treaty, rule, regulation, ordinance, order, decree, consent decree or similar instrument or determination or award of an arbitrator or a court or any other Governmental Authority.

"Liabilities" means all indebtedness, obligations, penalties and other liabilities (or contingencies that have not yet become liabilities), whether absolute, accrued, matured, contingent (or based upon any contingency), known or unknown, fixed or otherwise, or whether due or to become due, including without limitation, any fines, penalties, judgments, awards or settlements respecting any judicial, administrative, arbitration or other proceedings or any damages, losses, claims or demands with respect to any Law or otherwise.

"Material Adverse Effect" means with reference to a business, any state of facts, change, circumstance, condition, development, event or occurrence that has, or reasonably could be expected to have, a material adverse effect on the assets, financial condition or results of operations of such business, provided, however, that Material Adverse Effect shall exclude any adverse changes or conditions as and to the extent such changes or conditions relate to or result from (i) public or industry knowledge of the transactions contemplated by this Agreement (including but not limited to any action or inaction by the business' vendors) or (ii) general economic conditions or other conditions generally affecting the industry in which the business competes (but shall not exclude any significant or substantial event or series of events that materially and adversely affects general economic conditions or conditions generally affecting the business' industry, such as, and by way of example only, a terrorist attack, major earthquake, widespread collapse of financial institutions, unanticipated and significant increase in mortgage rates, or significant change in laws or regulations, etc.); provided, however, that the fact that, between the date hereof and the Closing Date, Sellers become parties to routine lawsuits or other legal proceedings involving construction defects that arise in the ordinary course of Sellers' business and are of a type and scope consistent with Sellers' recent experience will not be deemed a Material Adverse Effect. Notwithstanding the foregoing, the inclusion by Sellers of an item in the Schedules to this Agreement shall not by itself be deemed to be an acknowledgement by Sellers that such item would have a Material Adverse Effect on any business or further define the meaning of such term for the purposes of this Agreement.

"Material Campbell Customer" means the following material customers of the Business: KB Home, Pulte, Pardee, Lennar, John Laing, Forecast, Centex, DR Horton, Beazer and William Lyon.

"Net Assets" means Non-Cash Net Working Capital, exclusive of the current portion of any long term debt, plus the net book value of all property, plant and equipment of the Business.

"New Shareholder Leases" means those leases of real property to be executed and delivered at the Closing by Buyer and Shareholder pursuant to which Buyer will lease the real property owned by Shareholder or his affiliates which is presently leased by Campbell under the Existing Shareholder Leases, each in a form mutually acceptable to the parties thereto

"Non-Assignable Insurance Products" means those insurance policies (whether from third parties or through Campbell's captive insurance programs), and Contracts and deposits in Campbell's captive insurance programs related to such policies, in each case that are not assignable to Buyer.

"Non-Cash Net Working Capital" means an amount equal to (i) the current assets of Campbell, consisting of Trade Accounts Receivable, Inventory, costs in excess of billings and prepaid expenses that are transferable, less (ii) the current Liabilities of Campbell, consisting of Trade Accounts Payable (excluding accrued vacation to the extent not assumed pursuant to Section 3.3(c)(vii), and accrued payroll and payroll taxes) and billings in excess of costs, determined in accordance with GAAP, provided that any and all intercompany accounts shall not be included.

"Permits" means all federal, state and local licenses, permits and other governmental authorizations relating to the Business. All Permits are listed on ***Exhibit 10*** attached hereto.

"Permitted Encumbrances" means (a) liens for Taxes and other governmental charges and assessments which are not yet due and payable, (b) statutory liens of landlords and statutory liens of carriers, warehousemen, mechanics and materialmen and other like statutory liens arising in the ordinary course of business for sums not yet due and payable, (c) other liens or imperfections on property which are not material in amount or do not materially detract from the value of or materially impair the existing use of the property affected by such lien or imperfections, (d) liens relating to deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security or to secure the performance of leases, trade contracts or other similar agreements, (e) purchase money liens on personal property acquired in the ordinary course of business, (f) liens specifically identified in the Financial Statements, (g) liens securing executory obligations under any lease that constitutes a "capital lease" under GAAP, (h) any and all requirements of Law including those affecting the real property assets relating to zoning and land use, (i) any utility company rights, easements and franchises, and (j) the other liens, if any, set forth on Section 8.2 of the Disclosure Schedules.

"Person" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"Personal Property Leases" means those leases of personal property, involving the Business. All Personal Property Leases are listed on ***Exhibit 11*** attached hereto.

"Purchase Price" means (i) $80,000,000, (ii) minus the present value of all long-term operating Personal Property Leases, calculated as set forth on ***Exhibit 12*** attached hereto, (iii) plus or minus, as the case may be, any Estimated Net Asset Adjustment (as defined and calculated in Section 5 below), as such figure may be adjusted pursuant to Section 3.4 and

Section 6, and (iv) minus the amount of accrued vacation specifically assumed by Buyer pursuant to Section 11.5.

"Purchased Assets" means the Contracts, Equipment, Intangible Personal Property, Non-Cash Net Working Capital, Permits, Personal Property Leases, Records, Real Property Leases, Unbilled Retention Amounts, Unbilled Services, the Assignable Insurance Products, and all other assets owned by Campbell and used in the Business, all goodwill of the Business and all rights, claims, credits, causes of action or rights of set-off against third parties relating to the foregoing and the Assumed Liabilities, other than Excluded Assets.

"Real Property Leases" means those leases of real property (other than the Existing Shareholder Leases), involving the Business. All Real Property Leases are listed on ***Exhibit 13*** attached hereto.

"Records" means all customer lists, sales brochures, computer software, books, records, accounts, correspondence, production records, employment records and any confidential information relating to the Business.

"Related Party" means any Person who, prior to the Closing, directly or indirectly, controls or is controlled by, or is under common control with Campbell or Shareholder.

"Reserve" means an amount equal to 10% of the Purchase Price payable at the Closing.

"Shareholder Consulting Agreement" means the agreement to be entered into between Shareholder and Buyer at the Closing, a copy of which is attached hereto as ***Exhibit 14***.

"Tax" (and, with correlative meaning, "Taxes") means any federal, state, local or foreign income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer or excise Tax, or any other Tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, imposed by any Governmental Authority.

"Trade Accounts Payable" means the obligations arising out of the Business to make payment to third parties for goods and services furnished to Campbell in the ordinary course of the Business incurred prior to the Closing.

"Trade Accounts Receivable" means all obligations arising out of the Business to make payment to Campbell, including obligations owed but not yet due, as of the Closing by all third-party purchasers of goods and services from Campbell in the ordinary course of the Business prior to the Closing, but excluding any and all Unbilled Retention Amounts and Unbilled Services.

"Unbilled Retention Amounts" means all obligations arising out of the Business owed by all third-party purchasers of goods and services to make payment to Campbell that are unbilled and retained by Campbell until the completion of work for such third party purchasers pursuant to the terms of applicable Contracts.

"Unbilled Services" means all obligations arising out of the Business through the Closing Date owed by all third-party purchasers of goods and services to make payment to Campbell that are not pursuant to a written contract or change order.

## 2. PURCHASE AND SALE

2.1 Purchase and Sale. At Closing, Campbell agrees to sell and convey to Buyer, and Buyer agrees to purchase and accept from Campbell, the Purchased Assets (and all of Campbell's right, title and interest therein and thereto) for the Purchase Price and Buyer's agreement to assume the Assumed Liabilities, on the covenants, terms and conditions contained herein. The Purchased Assets shall not include the Excluded Assets. To the extent that any of the Purchased Assets are owned by or in the name of Shareholder or any of Shareholder's Related Parties which are not Campbell Entities, Shareholder shall convey all right, title and interest therein to Buyer at the Closing.

## 3. PURCHASE PRICE; LIABILITIES

3.1 Purchase Price. As consideration for the purchase of the Purchased Assets, Buyer shall pay to Campbell, in the aggregate and in the manner set forth in Section 4 hereof, the Purchase Price.

3.2 Allocation of Value. The parties mutually agree that the allocation for tax purposes of the total of the Purchase Price and the value of Assumed Liabilities among the Purchased Assets shall be as set forth on ***Exhibit 15***, and the parties shall file all Tax returns or other Tax reports in a manner that is consistent with such allocation. If such allocation is challenged by a Governmental Authority and a reallocation is required, each party hereto shall be responsible for its own additional Tax Liabilities arising from such reallocation, if any.

3.3 Assumption of Certain Liabilities.

(a) Upon the terms and subject to the conditions set forth herein, at the Closing Buyer shall assume and agree to thereafter pay when due and discharge and indemnify each of Sellers harmless with respect to the Assumed Liabilities (as defined below).

(b) For all purposes of and under this Agreement, the term "Assumed Liabilities" shall mean, refer to and include all Liabilities of Sellers arising out of or relating to the operation of the Business and/or the Purchased Assets, including, without limitation, the Assumed Leases (as defined below), letters of credit, bank overdrafts, accounts payable and any Liabilities or obligations relating to or arising out of a Construction Defect with respect to products sold or services performed by Campbell on or prior to the Closing Date, including but not limited to liabilities or obligations set forth in California Civil Code Sections 895 et. seq. and 1375 et. seq., Arizona Statutes Sections 12-361 et. seq. and 33-2001 et. seq., or Nevada Revised Statutes Sections 40.645 et. seq. and 40.668 et. seq. (the "Construction Defect Liabilities"), whether arising before or after the Closing Date, known or unknown, contingent or mature, but excluding the Excluded Liabilities (as defined below).

(c) Buyer shall not assume, and the term "Assumed Liabilities" shall not mean, refer to or include (and, therefore, the "Excluded Liabilities" shall mean) the following:

(i) Liabilities for Taxes of Sellers, including without limitation, those arising as a result of the transactions contemplated by this Agreement, other than Buyer's portion of the Sales Tax assumed by Buyer pursuant to Section 3.4(e) and all personal property Taxes of Sellers;

(ii) Liabilities of Sellers in respect of expenses payable by them pursuant to Section 3.4 hereof;

(iii) Liabilities of Sellers not arising out of or relating to the Business or the Purchased Assets;

(iv) any liability of Sellers to any person or entity the existence of which constitutes a breach of any covenant, agreement, representation or warranty of Sellers contained in this Agreement subject to the limitations set forth in Section 13;

(v) intercompany accounts;

(vi) the funded indebtedness and capitalized leases of Sellers including the items listed on Schedule 3.3 (the "Indebtedness"), including any principal, interest or other amount owing in respect of any such Indebtedness;

(vii) except as specifically assumed by Buyer pursuant to Section 11.5, any accrued or other liability of Campbell for vacation pay earned by Campbell employees through the Closing Date, any accrued or other liability of Campbell under any employee pension benefit plan, employee welfare benefit plan (except for claims incurred or premiums due with respect to the period following the Closing Date under the Continued Plans), multiemployer plan, collective bargaining agreement, or any other plan or agreement with respect to any of Campbell's employees, past or present, including any liability under the Worker Adjustment and Retraining Notification Act arising as a consequence of employment losses occurring through the Closing Date, and any liabilities arising under ERISA with respect to any employee benefit plan, as defined in Section 3(3) of ERISA, sponsored by any Campbell Entity or any ERISA Affiliate, including the obligation to comply with Section 4980B of the Code and Part 6 of Title I of ERISA with respect to any group health plan, within the meaning of Section 5000(b)(1) of the Code, sponsored by any Campbell Entity as of the Closing Date, but excluding any Liability of Campbell under COBRA;

(viii) any Liabilities under any Environmental Laws with respect to or arising out of occurrences on or prior to the Closing Date or actions by Sellers on or prior to the Closing Date;

(ix) Liabilities of Sellers as set forth in Section 11.2 hereof;

(x) the Insured Liabilities; and

(xi) any Liabilities of Sellers other than the Assumed Liabilities.

3.4 Certain Expenses.

(a) Buyer shall not pay or be liable for any of the following fees, expenses, Taxes or liabilities incurred by Shareholder, Campbell or any of their respective Related Parties, all of which shall be borne and timely paid or caused to be paid by Campbell or Shareholder:

(i) the fees and expenses, if any, of any person retained by Campbell or Shareholder or any of their respective Related Parties for brokerage, financial advisory or investment banking services or services as a finder rendered to Campbell or Shareholder or any of their respective Related Parties in connection with the proposed sale of the Purchased Assets, including without limitation, the transactions contemplated by this Agreement;

(ii) the fees and expenses of legal counsel, auditors and accountants retained or employed by Campbell or Shareholder or any of their respective Related Parties for services rendered to Campbell or Shareholder or any of their respective Related Parties solely in connection with the proposed sale of the Purchased Assets, including without limitation, the transactions contemplated by this Agreement; and

(iii) any income, capital gains or other Tax incurred by Campbell or Shareholder as a result of the consummation of the transactions contemplated by this Agreement.

(b) If Buyer shall pay any fee, expense, Tax or liability described in Section 3.4(a), the sum of all such payments shall be deducted from the Purchase Price provided Buyer receives Sellers' prior written consent. If any such payment is not deducted from the Purchase Price as provided in the preceding sentence, the amount of such payments not so deducted shall be, at Buyer's election, paid to Buyer from the Reserve or paid promptly by Sellers to Buyer upon demand.

(c) Sellers shall not pay or be liable for any of the following fees, expenses or liabilities incurred by Buyer or any Buyer Related Party, all of which shall be borne and timely paid or caused to be paid by Buyer:

(i) the fees and expenses, if any, of any person retained by Buyer or a Buyer Related Party for brokerage, financial advisory or investment banking services or services as a finder rendered to Buyer or any Buyer Related Party in connection with the proposed purchase of the Purchased Assets, including without limitation, the transactions contemplated by this Agreement; and

(ii) the fees and expenses of legal counsel, auditors and accountants retained or employed by Buyer or any Buyer Related Party for services rendered to Buyer or any Buyer Related Party in connection with the proposed purchase of the Purchased Assets, including without limitation, the transactions contemplated by this Agreement.

(d) If Sellers shall pay any fee, expense or liability described in Section 3.4(c), the sum of all such payments shall be added to the Purchase Price. If any such payment is not added to the Purchase Price as provided in the preceding sentence, the amount of such payments not so added shall be paid promptly by Buyer to Sellers upon demand.

(e) Buyer and Campbell shall each bear fifty percent (50%) of any documentary stamp or transfer Taxes or other similar charges, Taxes or expenses arising in connection with the sale of the Purchased Assets to the Buyer (the "Sales Tax"). To the extent permitted by law, Buyer and Sellers shall cooperate fully in minimizing any such Sales Tax. Sellers shall prepare and file any and all documents required to pay the Sales Tax (the "Sales Tax Forms"). Sellers shall first provide a copy of such documents to Buyer for its review and approval (which shall not be unreasonably withheld or delayed) and Buyer shall pay to Seller Buyer's share of the Sales Tax at the time such documentation is to be filed with the appropriate Taxing authorities and the Sales Taxes are to be paid. To the extent a Taxing authority provides notice to a party of an audit of any Sales Tax, such party shall immediately notify the other parties, and Buyer shall assume responsibility for such audit and shall have complete authority to control, settle or defend any proposed adjustment to the Sales Tax on terms reasonably satisfactory to Sellers, and Sellers shall fully cooperate with Buyer in such settlement or defense. Any failure by Campbell to pay any Sales Tax for which it is responsible hereunder shall cause Buyer to deduct such amount from the Purchase Price, be paid such amount from the Reserve or be paid promptly by Sellers upon demand. Any failure by Buyer to pay any Sales Tax for which it is responsible hereunder shall cause Buyer to add such amount to the Purchase Price or be paid promptly by Buyer to Campbell upon demand.

(f) All state, county and local ad valorem taxes on real property shall be apportioned between Buyer and Sellers as of 11:59 P.M. on the Closing Date, computed on the basis of the fiscal year for which the same are levied and all utility charges, gas charges, electric charges, water charges, water rents and sewer rents, if any, shall be apportioned between Buyer and Sellers as of 11:59 P.M. on the Closing Date, computed on the basis of the most recent meter charges or, in the case of annual charges, on the basis of the established fiscal year. All prepaid expenses (including any rent) of Sellers paid prior to the Closing Date in respect of the Business shall be apportioned between Buyer and Sellers as of 11:59 P.M. on the Closing Date computed on the basis of the benefit received by Sellers prior to the Closing Date and the benefit to be received by Buyer subsequent to the Closing Date with respect to any contract or other matter to which the prepaid expense relates. All prorations shall be made and the Purchase Price shall be adjusted insofar as feasible on the Closing Date, except to the extent such prorations are reflected in the Closing Date estimate described in Section 5.1. During the Post-Closing Adjustment Period (as defined in Section 6.1), Sellers shall advise Buyer and Buyer shall advise Sellers of any actual changes to such prorations, and the Purchase Price shall be increased or decreased, as applicable, at the end of the Post-Closing Adjustment Period. In the event Buyer or Sellers shall receive bills after the Closing Date for expenses incurred prior to the Closing Date that were not prorated in accordance with this Section 3.4(f), then Buyer or Sellers, as the case may be, shall promptly notify the other party as to the amount of the expense subject to proration and the responsible party shall promptly pay its portion of such expense (or, in the event such expense has been paid on behalf of the responsible party, reimburse the other party for its portion of such expenses).

## 4. TERMS OF PAYMENT

4.1 Payment Due at Closing. At Closing, Buyer shall pay to Campbell the Purchase Price for the Purchased Assets as set forth in Section 3, less the Reserve described in Section 4.2. Such payment shall consist of immediately available funds delivered by wire transfer in

accordance with payment instructions provided by Sellers to Buyer at least two days prior to the Closing.

4.2 Reserve. Sellers agree that Buyer shall withhold the Reserve from the Purchase Price for the Purchased Assets and deposit the Reserve with City National Bank, as escrow agent ("Escrow Agent"), on the terms and conditions of the Escrow Agreement and this Section 4.2 for a period of one hundred and twenty (120) days following Closing ("Post Closing Adjustment Period") as a reserve to be applied to the satisfaction of: (i) any Liabilities of Sellers that are not Assumed Liabilities and are paid by Buyer or that Buyer determines it wants to pay directly after the Post Closing Adjustment Period, provided Buyer has provided Sellers a detailed list at least fifteen (15) days prior to the end of such period with regard to such items and Sellers have not objected in writing thereto within ten (10) days of receipt thereof (and if Sellers so object in writing, Sellers must also indicate in such written instrument that Sellers shall assume responsibility for all such Liabilities) (ii) subject to the limitations in Section 13, any Liabilities and Expenses for which Buyer is entitled to be indemnified pursuant to Section 13.1(a)(i), (ii) or (iii); and (iii) payment of any amounts, not in dispute, owing by Sellers to Buyer at the end of the Post Closing Adjustment Period. Escrow Fees incurred with respect to the escrow shall be borne by Sellers. Interest shall accrue on the Reserve and be added to the Reserve in accordance with the terms of the Escrow Agreement. Any interest earned on the Reserve shall be distributed proportionally to Sellers and Buyer based upon the proportion of the Reserve paid to them. After deducting all amounts owed to Buyer by Sellers from the Reserve, including all interest accrued thereon, Escrow Agent shall pay to Sellers the net amount of the Reserve within three (3) days of the end of the Post Closing Adjustment Period, or such later time as any disputed matters related thereto shall have been resolved between the parties. If Sellers owe Buyer more than the amount of the Reserve, such additional amount shall be paid by Sellers to Buyer in immediately available funds at the end of the Post Closing Adjustment Period. Buyer's recovery for (i) through (iii) above shall not be limited to the amount of the Reserve.

## 5. CLOSING DATE NET ASSETS ADJUSTMENT

5.1 Estimated Net Assets Adjustment. The Purchase Price will be subject to adjustment on the Closing Date based on a good faith estimate, using the same Methodologies (as defined below) as used by Campbell in the preparation of the Financial Statements, of the amount by which the Net Assets of Campbell (the "Net Assets Estimate") as of the Closing Date is greater than or less than the average month-end Net Assets of Campbell for the twelve months ended June 30, 2005 (the "June 30 Net Assets Average"). This difference will be the "Estimated Net Assets Adjustment" to be applied to the Purchase Price. If the Net Assets Estimate is greater than the June 30 Net Assets Average, then the difference shall be added to the Purchase Price; and if the Net Assets Estimate is less than the June 30 Net Assets Average, then the difference shall be subtracted from the Purchase Price. For purposes of the estimation of the Net Assets (including the June 30 Net Assets Average) of Campbell pursuant to this Section 5.1, (i) Trade Accounts Receivable that are booked by Campbell as of the Closing Date but that are more than ninety (90) days past due as of the Closing Date shall be treated as though written off prior to the Closing Date and (ii) Unbilled Retention Amounts which shall be treated as written off prior to the Closing Date if such Unbilled Retention Amounts are booked by Campbell as of the Closing Date and are more than three hundred sixty-five (365) days old as of the Closing Date.

5.2 Net Assets Estimate. Shareholder, Campbell, and Buyer shall cooperate in good faith to discuss and determine the Net Assets Estimate set forth in Section 5.1 which shall be calculated using the Methodologies no later than two days prior to the Closing Date. Sellers shall provide to Buyer any documentation reasonably requested by Buyer that may assist in making or confirming such estimates.

## 6. POST CLOSING ADJUSTMENT

6.1 Post Closing Adjustment. Prior to the termination of the Post Closing Adjustment Period (defined below), Buyer shall prepare a balance sheet of Campbell as of the Closing Date for the purpose of determining the actual Net Assets of Campbell as of the Closing Date (the "Actual Closing Date Net Assets"). The Actual Closing Date Net Assets (i) shall be prepared using the same accounting methods, policies, practices and procedures, with consistent classifications and estimation methodologies (collectively, "Methodologies") as were used in the preparation of the Financial Statements, (ii) will use the same method to calculate Trade Accounts Receivable as described in Section 5.1 above and (iii) will not include any changes in assets or liabilities as a result of purchase accounting adjustments arising from the transactions contemplated by or resulting from this Agreement or subsequent changes in accounting policy or procedure. Within one hundred five (105) days after the Closing Date (the "Post Closing Adjustment Period"), Buyer shall submit to Sellers all adjustments (together with supporting detail, including the calculations of the Actual Closing Date Net Assets) to be made to the Purchase Price. Sellers shall have thirty (30) days after receipt of such list of adjustments to object in writing to any of the adjustments to Buyer or to request additional supporting detail. In the event Sellers request additional supporting detail, Sellers shall have a single additional period of seven (7) days after receipt of such additional supporting detail to object in writing to any of the adjustments to Buyer. Any adjustments that are not objected to during such thirty (30) day period (or such longer period, as the case may be) shall be deemed to be agreed to by Sellers. Buyer and Sellers agree to negotiate and attempt to resolve in good faith any adjustments to which objections have been raised during the period of ten (10) days following receipt of objections. Each party shall provide the other party and its representatives with reasonable access (without material disruption to the Business) to books and records and relevant personnel during the preparation of the balance sheet from which the Actual Closing Date Net Assets are derived and the resolution of any disputes that may arise under this Section 6.1. Any adjustments to the Purchase Price that Sellers have objected to and not resolved during the ten (10) day period following the objection shall be settled in accordance with the CPA Procedure (as defined in Section 6.4). If the amount of (a) the Actual Closing Date Net Assets as finally determined is greater than (b) the Net Assets Estimate, then the difference shall be deemed added to the Purchase Price and shall be paid within three (3) business days by Buyer to Sellers. If the amount of (y) the Actual Closing Date Net Assets as finally determined is less than (z) the Net Assets Estimate, then the difference shall be deemed subtracted from the Purchase Price and shall be paid within three (3) business days by Sellers to Buyer or, at Buyer's discretion, paid to Buyer from the Reserve. Any payments shall be made by wire transfer of immediately available funds in accordance with the payment instructions provided by the applicable party. Any uncontested amounts shall be paid promptly.

6.2 Accounts Receivable. For purposes of the calculation of Actual Closing Date Net Assets, all Trade Accounts Receivable that are booked by Campbell as of the Closing Date but

that are more than ninety (90) days past due as of the ninetieth (90th) day following the Closing Date shall be treated as though written off prior to the Closing Date. For all calculations under this Agreement, accounts payable and accrued expenses shall be reviewed and valued in a manner consistent with the preparation of the Financial Statements.

6.3 Unbilled Retention Amounts. All Unbilled Retention Amounts that are booked by Campbell as of the Closing date but that are older than three hundred sixty-five (365) days on the one (1) year anniversary of the Closing (the "One Year Uncollected Retention Amounts") shall be treated as though written off prior to the Closing Date and Sellers shall pay the One Year Uncollected Retention Amounts to Buyer in immediately available cash.

6.4 Reporting of Post-Closing Adjustments. Buyer and Sellers agree to treat any adjustments pursuant to this Section 6 as adjustments to the Purchase Price for federal and state income tax purposes.

6.5 CPA Procedure. In the event the parties cannot agree on the adjustments, they shall refer the matter to their respective outside certified public accountants to resolve. The accountants will only consider those items and amounts set forth on the balance sheet from which the Actual Closing Date Net Assets are derived as to which the parties have disagreed within the time periods and on the terms specified above and must resolve the matter in accordance with the terms and provisions of this Agreement. If the accountants cannot agree on the adjustments within fifteen (15) business days of the submission to them of the disputed items, the accountants shall select a third accountant ("CPA") who shall be instructed based solely on the evidence presented by the accountants to determine the appropriate adjustment. The foregoing dispute resolution procedure is referred to as the "CPA Procedure." The CPA Procedure shall not permit the introduction of different Methodologies for purposes of determining the asset and liability balances from those used in the preparation of the Financial Statements. The CPA shall only select as a resolution the position of either Buyer or Sellers for each item of disagreement or a position between the two, and shall not impose any other resolution.

## 7. CONTRACTS AND LEASES

7.1 Contracts. Concurrently with the execution of this Agreement, Campbell shall deliver to Buyer, as ***Exhibit 1***, a schedule setting forth all material Contracts, which shall include, as applicable: the name of parties; location of project and total contract price. Campbell shall deliver an update to ***Exhibit 1*** not less than 3 days prior to the Closing. The update to the Exhibit shall be in a form reasonably acceptable to Buyer, and Buyer shall have the opportunity to verify the information in the update to the Exhibit prior to the Closing.

7.2 Real Property Leases and Personal Property Leases. Buyer shall assume and perform all Real Property Leases and Personal Property Leases as of the Closing Date, to the extent that such Leases can be assigned to Buyer. Campbell agrees to make lease payments through the Closing Date. Buyer and Sellers agree to cooperate in obtaining consent to the assignment of such Leases to Buyer. To the extent that any of such Leases cannot be assigned, Buyer agrees to sublease from Campbell the real property, equipment or other property covered by such Leases for an amount equal to Campbell's total remaining cost under such Leases.

7.3 Existing Shareholder Leases. All Existing Shareholder Leases shall not be assumed by Buyer and shall be terminated as of the Closing Date. At and effective on the Closing, Buyer and Shareholder agree to execute and deliver the New Shareholder Leases.

## 8. REPRESENTATIONS AND WARRANTIES OF CAMPBELL AND SHAREHOLDER

Each Campbell Entity and Shareholder hereby jointly and severally represent to Buyer and Parent, except as specifically disclosed in the disclosure schedules delivered to Buyer (the "Disclosure Schedule") herewith, as follows, and the representations contained in this Section or elsewhere in this Agreement shall be deemed to be made on the date hereof and as of the Closing Date, and shall survive the Closing for the applicable periods set forth in Section 13:

8.1 Good Standing; Authorization. Each Campbell Entity is duly organized, validly existing and in good standing under the laws of the state of its incorporation, with full corporate power to carry on its business as it is now and has since its organization been conducted and to own, lease or operate the Purchased Assets owned, leased or operated by it, and is qualified to do business in the States of California and Nevada and in every other jurisdiction in which the conduct of the Business requires it to qualify, except for such failures to qualify or be in good standing in such other jurisdictions which individually or in the aggregate could not have a Material Adverse Effect with respect to the Business. Each Campbell Entity and Shareholder have all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. This Agreement has been duly executed and delivered by each Campbell Entity and Shareholder, assuming the due authorization and execution of this Agreement by Buyer, is the valid, binding obligation of each Campbell Entity and Shareholder enforceable against each Campbell Entity and Shareholder in accordance with its terms, except that (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights, and (ii) the remedies of specific performance and injunctive and other equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings may be brought.

8.2 Ownership of Purchased Assets. Sellers, or any of them, are the lawful owner of each of the Purchased Assets, and the Purchased Assets are free and clear of any liens, mortgages, pledges, security interests, restrictions, prior assignments, encumbrances, options or claims of any kind or nature whatsoever except for Permitted Encumbrances (collectively, "Liens"). At the Closing, Sellers will transfer to Buyer all of their right, title and interest in the Purchased Assets, free and clear of all Liens. The Purchased Assets include all assets, rights and interests used in the Business as currently conducted other than the Excluded Assets. The Business is an operating business and the transfer of the Purchased Assets to Buyer pursuant to this Agreement will enable Buyer to continue to operate the Business in the manner currently conducted immediately after the Closing, subject to Buyer's engaging the necessary personnel, purchasing necessary insurance policies and continuing the Business in accordance with Sellers' historical practices.

8.3 Tax Matters. Sellers have timely filed all material Tax returns heretofore required to be filed with respect to Taxes imposed on the Business, all such returns were true, complete and correct and Campbell has paid or will have paid all Taxes shown to be due on such returns. There are no liens for Taxes upon the Purchased Assets, except liens for current Taxes not yet

due or delinquent. Campbell has made provision, consistent with its past accounting practices, in its Interim Financial Statements for payment of all Taxes, including without limitation, all federal, state and local Taxes, that have been incurred but are not currently due as of the date of the Interim Financial Statements. No extension of a statute of limitations relating to Taxes with respect to Campbell is in effect. No Campbell Entity has received notice that it is or may be subject to Tax in a jurisdiction in which such entity has not filed, or does not currently file, Tax returns. Each Campbell Entity has withheld for its employees or the employees of the Business any applicable Taxes for all pertinent periods in compliance with the Tax withholding provisions of all applicable Laws. Campbell has delivered to Buyer true copies of every Tax return of each Campbell Entity for the years ended December 31 of 2002, 2003 and 2004.

8.4 Compliance with Laws, Licenses and Permits. To the Knowledge of Sellers, Campbell and Shareholder are not in violation of (i) any applicable order, judgment, injunction, award or decree, or (ii) any Law, statute, ordinance, regulation or other requirement of any governmental entity, relating to the Business. To the Knowledge of Sellers, Campbell and Shareholder have received and maintain, as current, all material Permits and licenses required to conduct the Business, and all such Permits are set forth on ***Exhibit 10***. Each Permit is valid and in full force and effect, and to the Knowledge of Sellers, none of such Permits will be terminated or become terminable or impaired as a result of the transactions contemplated hereby. None of Sellers have received any written notice of any asserted present or past failure by Campbell to comply with any such Laws or, to the Knowledge of Sellers, any oral notice. Sellers have properly and timely remitted to the applicable Governmental Authority any and all unclaimed property as required pursuant to applicable law, and the Financial Statements reflect all Liabilities related to any such unclaimed property.

8.5 Financial Statements. Campbell has delivered to Buyer the Campbell Financial Statements. The Financial Statements: (i) have been prepared in accordance with the books and records of Campbell, (ii) have been prepared in accordance with Campbell's normal practices for the Business (which practices are in accordance with GAAP) consistently applied, and (iii) present fairly, in all material respects, the financial position and the results of operations of Campbell, at and for the fiscal periods then indicated. The Interim Financial Statements: (i) have been prepared in accordance with the books and records of Campbell, (ii) have been prepared in accordance with Campbell's normal practices for the financial statements for periods other than at year-end (which practices are in accordance with GAAP, except for the absence of footnotes and statement of cash flows, as required by GAAP) consistently applied, and (iii) present fairly, in all material respects, the financial position and the results of operations of Campbell, at and for the fiscal periods indicated therein, subject to normal year-end adjustments.

8.6 Absence of Certain Changes. Since the date of the Interim Financial Statements, Campbell has conducted the Business in the ordinary course consistent with past practice, and there has not been:

(a) any event, occurrence, state of circumstances or facts or change in respect of Campbell or the Business that has had or that may be reasonably expected to have, either alone or together, a Material Adverse Effect on Campbell or the Business;

(b) any change in any liabilities of Campbell that has had, or that may be reasonably expected to have, a Material Adverse Effect on the Business or the Purchased Assets;

(c) any (i) payments by Campbell in satisfaction of any liabilities, other than in the ordinary course of business consistent with past practice or (ii) creation, assumption or sufferance of (whether by action or omission) the existence of any lien on any of the Purchased Assets;

(d) any waiver, amendment, termination or cancellation of any Contract or any relinquishment of any material rights thereunder by Campbell, other than, in each such case, actions taken in the ordinary course of business consistent with past practice that are not material with respect to any such Contract;

(e) any change by Campbell in its historical accounting policies, except any such change required by a change in GAAP; or

(f) any (i) capital expenditure commitment by Campbell individually in excess of $100,000 or in excess of $250,000 in the aggregate for additions to property, plant, equipment or intangible capital assets comprising Purchased Assets likely to occur, in whole or in part, after the Closing Date or (ii) sale, assignment, transfer, lease or other disposition of or agreement to sell, assign, transfer, lease or otherwise dispose of any Purchased Asset except in the ordinary course of Business.

8.7 Legal Proceedings. To the Knowledge of Sellers (which Knowledge shall include, without limitation, the results of a public records search by a third party vendor within thirty (30) days of the Closing Date), there are no lawsuits, assertion of claims, charges, hearings, or arbitrations pending, threatened against or involving Campbell, Shareholder, the Business or the Purchased Assets, or that seek to prevent or enjoin, alter or delay the transactions contemplated by this Agreement.

8.8 Contracts and Assumed Leases. The Contracts listed at ***Exhibit 1*** represent each Contract to which Campbell is a party or by which the Purchased Assets are bound other than an agreement, arrangement or Contract involving aggregate payments of less than $10,000, or having a remaining term of less than twelve (12) months and cancelable by the Company (and by Buyer following the Closing) upon no more than sixty (60) days notice. The Personal Property Leases and Real Property Leases listed at ***Exhibits 11*** and ***13*** respectively (the "Assumed Leases") represent each Personal Property Lease and Real Property Lease to which Campbell is a party. Each such Contract and Assumed Lease is a legal, valid and binding obligation of Campbell and, to Sellers' knowledge, each other person who is a party thereto, and is in full force and effect. Campbell has made available to Buyer complete and accurate copies of each of the Contracts and Assumed Leases. Except as disclosed on Schedule 8.8, there are no agreements or arrangements not reflected in the written contracts, other than an agreement or arrangement involving payments of less than $10,000, or having a remaining term of less than twelve (12) months and cancelable by the Company (and by Buyer following the Closing) upon no more than sixty (60) days notice. The Assumed Leases are current and no past due amounts are owing. To the Knowledge of Sellers, there has not occurred any material default under any Contract or Assumed Lease on the part of Campbell or on the part of the other parties thereto, and no event has occurred which, with the giving of notice or the lapse of time, or both, would constitute any default under any Contract or Assumed Lease.

8.9 Agreement Not In Breach of Other Instruments. The execution, delivery and performance of this Agreement by each Campbell Entity and Shareholder and the consummation of the transactions contemplated hereby will not result in a breach of (i) to the Knowledge of Sellers, any of the terms and provisions of, or constitute a default under, or conflict with, or give rise to any right of consent, termination, cancellation, modification or acceleration of, or a loss of any benefit under any Contract, Assumed Lease or any other material agreement, indenture or other instrument to which Campbell or Shareholder are a party or by which Campbell or Shareholder, or the Purchased Assets are bound, (ii) the articles of incorporation or bylaws of any Campbell Entity, or (iii) any judgment, decree, order or award of any court, governmental body or arbitrator, or any Law, rule or regulation applicable to Campbell or Shareholder which breach would not materially adversely affect the Business. The execution and delivery by each of Sellers of this Agreement and each agreement contemplated by this Agreement, and the performance by each of Sellers of its respective obligations hereunder or thereunder, do not and will not require a registration, filing, application, notice, consent, approval, order, qualification or waiver with, to or from any Government Authority, except as required under the HSR Act.

8.10 Accounts Receivable. All Trade Accounts Receivable shown on the Campbell Financial Statements and estimated by Campbell as of the Closing Date represent bona fide transactions made in the ordinary course of the Business.

8.11 Equipment. A complete and accurate list of the material Equipment currently utilized in the operation of the Business is attached as ***Exhibit 2***. Campbell has free and clear title to the Equipment. The Equipment is in good operating condition and repair and is adequate for the uses to which it is put, and none of such Equipment is in need of replacement, maintenance or repair except for routine replacement, maintenance or repair.

8.12 Trade Accounts Payable. All Trade Accounts Payable incurred by Campbell prior to the date hereof and prior to the Closing Date were incurred in the ordinary course of business and the amount of the Trade Accounts Payable reflected in the Interim Financial Statements and estimated by Campbell as of the Closing Date is true and correct.

8.13 Prepaid Expenses. All prepaid expenses transferred to Buyer are true and correct.

8.14 Labor Matters. To the Knowledge of Sellers, there are no material disputes, employee grievances or other disciplinary actions pending or threatened involving any of the present or former employees of the Business. To the Knowledge of Sellers there is no labor strike, dispute, slowdown or stoppage pending or threatened against or affecting the Business likely to result in a Material Adverse Effect on the Business, and the Business has not experienced any work stoppage or material labor difficulty within the past twelve (12) months. Campbell has no material agreement, arrangement or commitment to create any additional plan or arrangement or to modify or amend any existing employee benefit plan of the Business other than as may be necessary for Buyer's continuation of the Continued Plans pursuant hereto. Neither Shareholder nor Campbell is a party to any organized labor contracts nor does Campbell have any liability to any organized labor pension plan.

Campbell has made available to Buyer true, correct and complete copies of all written employee benefit plans, all contracts related thereto, and the most recently available annual report, summary plan descriptions, IRS Form 5500s (or 5500 Cs or 5500 Rs) and favorable

determination letters for such employee benefit plans of the Business. All employee benefit plans of Campbell are set forth on Section 8.14 of the Disclosure Schedule, including specific identification of the Continued Plans.

8.15 Brokers and Finders. Neither Campbell nor Shareholder have agreed to pay, or have taken any action that will result in any third party becoming obligated to pay or be entitled to receive, any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby.

8.16 Environmental Laws. To the Knowledge of Sellers, Campbell has at all times been operated and is in compliance, in all material respects, with all Environmental Laws. To the Knowledge of Sellers, Campbell is in compliance with all permits required by all Environmental Laws ("Environmental Permits"), and the Business has made all required filings for issuance or renewal of such Environmental Permits. There are no claims, notices, civil, criminal or administrative actions, suits, hearings, proceedings or to the Knowledge of Sellers, investigations or inquiries pending against Campbell or, to the Knowledge of Sellers, threatened that are based on or related to any Environmental Matters or the failure of Campbell to have any required Environmental Permits. To the Knowledge of Sellers, there are no past or present conditions, events, circumstances, facts, activities, practices, incidents, actions, omissions or plans that would: (a) interfere with or prevent continued material compliance by Campbell with Environmental Laws and the requirements of Environmental Permits or (b) result in a judgment against Campbell for the violation of any Environmental Law. Sellers have not received (x) any notice or other communication that Campbell is or may be a potentially responsible person or otherwise liable in connection with any waste disposal site used by the Business for the disposal of any Hazardous Substances, or (y) notice of any material failure of the Business to comply with any Environmental Law or the requirements of any Environmental Permit. Campbell has not been at any time requested or required by any Governmental Authority having jurisdiction under any Environmental Laws to perform any investigative or remedial activity or other action in connection with any Environmental Matter in respect of the Business. To the Knowledge of Sellers, the Business has not used any waste disposal site, or otherwise disposed of or transported any Hazardous Substances in violation of Environmental Laws. To the Knowledge of Sellers, Campbell has not arranged for the transportation of any Hazardous Substances to any place or location, in violation of any Environmental Laws. During the period of ownership, lease or control by Campbell, to the Knowledge of Sellers, there has been no release of any Hazardous Substances in violation of Environmental Laws at, on, under, or within any assets or properties currently or formerly owned, leased, or controlled by Campbell (other than pursuant to and in accordance with Environmental Permits held by Campbell). Sellers have made available to Buyer any and all third party environmental reports that are in the possession of or reasonably available to Sellers regarding Environmental Matters pertaining to the Business.

8.17 No Undisclosed Liabilities. To the Knowledge of Sellers, the Business does not have any Liabilities or obligations of a nature required by GAAP to be reflected on or disclosed in the footnotes to a balance sheet of the Business except for (i) Liabilities disclosed, reflected or reserved against in the Interim Financial Statements, (ii) Liabilities incurred after the date of this Agreement in the ordinary course of business, (iii) the matters disclosed in or arising out of matters set forth on the Disclosure Schedule or which are the subject of other representations and

warranties set forth herein, and (iv) Liabilities and obligations incurred in connection with this Agreement and the transactions contemplated hereby.

8.18 Competitive Restrictions. Neither Campbell, the Shareholder nor the Business is subject to any Contract or is bound in any other way that restricts its ability to conduct its or his operations in any material respect or engage in any kind of business or sell any kind of product in any market.

8.19 Intangible Personal Property. Each item of material Intangible Personal Property is set forth on ***Exhibit 9***. Campbell owns all Intangible Personal Property free and clear of all encumbrances and has taken commercially reasonable steps to protect its rights therein. Campbell has not (i) received written notice of any infringement by it of the rights of any Person with respect to such Person's intellectual property, or (ii) to the Knowledge of Sellers, infringed, misappropriated or otherwise violated (and the operation of the Business as currently conducted does not infringe, misappropriate or otherwise violate) any intellectual property rights of any person. To the Knowledge of Sellers, no Person has infringed, misappropriated or otherwise violated any of Campbell's Intangible Personal Property.

8.20 Insurance. Campbell maintains insurance with reputable insurers for the Business against all risks normally insured against. All such insurance policies are in full force and effect and are valid, outstanding and enforceable, and all premiums due thereon have been paid in full. All such insurance policies are listed on Section 8.20 of the Disclosure Schedule, and copies of all such policies have been made available to Buyer. Prior to the Closing, Section 8.20 of the Disclosure Schedule shall be updated to specifically identify the Assignable Insurance Products and the Non-Assignable Insurance Products. Campbell has complied in all material respects with the provisions of all such insurance policies covering Campbell or any of Campbell's assets and properties. No insurer under any insurance policy has canceled or generally disclaimed liability under any such policy or, to the Knowledge of Sellers, indicated any intent to do so or not to renew any such policy. To the Knowledge of Sellers, the consummation of the transactions contemplated by this Agreement will not cause a cancellation or reduction in the coverage of such policies.

8.21 Projections. All written cost estimates, written forecasts, written projections, written business plans or other written projections or written forward-looking information that may have been prepared and provided by Campbell to Buyer prior to the date hereof (the "Projections") were prepared in good faith by the officers of Campbell and based on assumptions that were reasonable to such officers at the time they were made.

## 9. REPRESENTATIONS AND WARRANTIES OF BUYER AND PARENT

Buyer and Parent hereby jointly and severally represent and warrant to Campbell and Shareholder as follows, and the warranties and representations contained in this Section or elsewhere in this Agreement shall be deemed to be made on the date hereof and as of the Closing Date, and shall survive the Closing for the applicable periods set forth in Section 13:

9.1 Corporate Status. Each of Buyer and Parent is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware and, prior to

Closing, is qualified or licensed to do business in the State of California and Buyer is further qualified or licensed to do business in Nevada and Arizona.

9.2 Authority. Each of Buyer and Parent has full power and authority to execute and perform this Agreement. Upon execution hereof, this Agreement shall be a valid and legally binding obligation of Buyer and Parent, enforceable against Buyer and Parent in accordance with its terms, except that (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights, and (ii) the remedies of specific performance and injunctive and other equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings may be brought. Neither the execution nor the performance of this Agreement will violate the terms or any provision of Buyer's or Parent's Certificate of Incorporation or Bylaws or any material note, loan agreement, lease or other material contract or agreement to which Buyer or Parent is a party except that the consent of certain lenders of Parent and its affiliates shall be required to consummate the transactions contemplated hereby.

9.3 Brokers and Finders. Neither Buyer nor Parent has agreed to pay, or has taken any action that will result in any third party becoming obligated to pay or be entitled to receive, any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby.

9.4 No Violation of Law and Agreements. The execution and delivery by Buyer and Parent of this Agreement and each agreement contemplated by this Agreement, and the performance by Buyer and Parent of their respective obligations hereunder or thereunder, do not and will not:

(a) violate any provision of the charter or bylaws of Buyer or Parent;

(b) (i) violate any provision of applicable Law relating to Buyer or Parent; (ii) violate any provision of any order, arbitration award, judgment or decree to which Buyer or Parent is subject; or (iii) except as required under the HSR Act, require a registration, filing, application, notice, consent, approval, order, qualification or waiver with, to or from any Government Authority; or

(c) to the knowledge of Buyer and Parent, (i) require a consent, approval or waiver from, or notice to, any party to any material contract to which Buyer or Parent is a party; or (ii) result in a breach of or cause a default under any provision of a contract to which Buyer or Parent is a party.

9.5 No Litigation or Regulatory Action.

(a) There are no lawsuits, assertion of claims, charges, hearings, arbitrations or proceedings pending or, to the knowledge of Buyer or Parent, threatened against Buyer or Parent or its affiliates which would reasonably be expected to prevent, hinder or delay the consummation of any of the transactions contemplated thereby; and

(b) There are no lawsuits, assertion of claims, charges, hearings, arbitrations pending or, to the knowledge of Buyer or Parent, threatened, that question the legality or

propriety of the transactions contemplated by this Agreement or any agreement contemplated by this Agreement.

9.6 Financial Ability. Buyer has, and will have on the Closing Date, the financial ability to consummate the transactions contemplated by this Agreement.

9.7 Independent Analysis.

(a) Buyer has relied solely on the results of its own independent investigation and the representations and warranties of the Sellers set forth in this Agreement and in the Schedules and Exhibits to this Agreement. Such representations and warranties by the Sellers constitute the sole and exclusive representations and warranties of the Sellers to Buyer in connection with the transactions contemplated hereby, and Buyer acknowledges and agrees that the Sellers are not making any representation or warranty whatsoever, express or implied, beyond those expressly given in this Agreement, any ancillary agreement contemplated hereby or in a Schedule or Exhibit to this Agreement.

(b) Without limiting the foregoing, Buyer acknowledges that neither Campbell nor the Shareholder has made any representation or warranty, express or implied, as to the accuracy or completeness of any memoranda, charts, summaries, presentations or schedules (excluding Schedules to this Agreement) heretofore made available by Campbell or the Shareholder to Buyer or any other information which is not made in this Agreement or in a Schedule or Exhibit to this Agreement. Buyer further acknowledges and agrees that the Projections were prepared for internal planning purposes only and are not representations or warranties of Campbell or Shareholder, and no assurances can be given that any estimated, forecasted, projected or predicted results will be achieved.

9.8 Relationships with Sellers' Material Customers. To the knowledge of Buyer and Parent, (i) there are no outstanding material disputes between Buyer and/or its affiliates with any Material Campbell Customers in the Territory, (ii) none of the Material Campbell Customers have expressly stated to Buyer that such Material Campbell Customer would not do business with Buyer and/or its affiliates in the Territory and (iii) none of such Material Campbell Customers have expressly stated they would withhold their consent to the assignment to Buyer of any contracts with Campbell.

## 10. NONCOMPETITION AGREEMENTS

10.1 Campbell Noncompete. Each Campbell Entity agrees that for a period of five (5) years following the Closing Date, it shall not:

(a) directly or indirectly, as owner, employer, creditor or otherwise, engage in any aspect of the Business in the States of California, Nevada or Arizona (the "Territory");

(b) directly or indirectly, solicit, divert, take away, or attempt to solicit, divert or take away, any of the customers of Buyer or Parent, or the business or patronage of any such customers, either for itself or on behalf of any other person, firm, partnership, limited liability company or corporation within Buyer's market or Parent's market; provided, however, that this

Section 10.1(b) shall not prohibit such entity from soliciting such customers with respect to business that is non-competitive with Buyer's or Parent's business;

(c) directly or indirectly facilitate, encourage, or participate in any way in the solicitation or recruitment of any employee of Buyer or Parent either for itself or on behalf of any other person, firm, partnership, limited liability company or corporation; provided, however, that general advertising by or on behalf of a business that is non-competitive with Buyer's or Parent's business shall not be considered solicitation or recruitment for purposes hereof; and

(d) Campbell shall not, directly or indirectly, hire James Cleven or any Campbell General Manager until one (1) year after such individual's employment with Buyer or Parent has terminated.

As used in this Section 10, the term "directly or indirectly" includes an investment in any partnership, corporation or other business entity and includes, without limitation, the solicitation of any employee of Buyer on behalf of itself or any other person for employment in a business that is competitive with the Business.

10.2 Shareholder Noncompete. Shareholder will not during the term of the Shareholder Consulting Agreement and for a period of two (2) years following expiration of the term of that Agreement or the termination of employment for any reason:

(a) directly or indirectly, as owner, employer, creditor, employee, partner, member, consultant, advisor or otherwise, engage in any aspect of the Business in the Territory; provided, however that Shareholder may engage, directly or indirectly, in the business of designing and installing residential patios (the "Permitted Activity");

(b) directly or indirectly, solicit, divert, take away, or attempt to solicit, divert or take away, any of the customers of Buyer or Parent, or the business or patronage of any such customers, either for himself or on behalf of any other person, firm, partnership, limited liability company or corporation within Buyer's market or Parent's market; provided, however, that this Section 10.1(b) shall not prohibit Shareholder from soliciting such customers with respect to business that is non-competitive with Buyer's or Parent's business with respect to the Permitted Activity;

(c) directly or indirectly facilitate, encourage, or participate in any way in the solicitation or recruitment of any employee of Buyer or Parent either for himself or on behalf of any other person, firm, partnership, limited liability company or corporation; provided, however, that general advertising by or on behalf of a business that is non-competitive with Buyer's or Parent's business shall not be considered solicitation or recruitment for purposes hereof; and

(d) Shareholder shall not, directly or indirectly, hire James Cleven or any Campbell General Manager until one (1) year after such individual's employment with Buyer or Parent has terminated.

The noncompetition agreement of Shareholder set forth in this Section 10.2 is in addition to the Shareholder Consulting Agreement to be delivered by Shareholder at the Closing.

10.3 Reasonableness of Restrictions. Shareholder and Campbell acknowledge that compliance with the provisions of Section 10 is reasonable and necessary to protect the value of the Purchased Assets and Buyer's and its affiliates' legitimate business interests.

10.4 Irreparable Harm and Injunctive Relief. Shareholder and Campbell acknowledge that a breach of their obligations under Section 10 will result in great, irreparable and continuing harm and damage to Buyer for which there is no adequate remedy at law. Shareholder and Campbell agree that in the event Shareholder or Campbell breaches this Agreement, Buyer and Parent shall be entitled to seek, from any court of competent jurisdiction, preliminary and permanent injunctive relief to enforce the terms of this Agreement, in addition to any and all monetary damages allowed by law, against Shareholder and Campbell.

10.5 Extension of Covenants. In the event Shareholder or Campbell violates any one or more of the covenants contained in Section 10, the term of each such covenant so violated shall be automatically extended for a period equal to the period during which Shareholder or Campbell is in violation of such covenants.

10.6 Judicial Modification. The non-competition provisions of this Agreement shall be deemed to consist of a series of separate covenants, one for each line of business carried on by Buyer (and its affiliates, as applicable) and each county included within the Territory. The parties expressly agree that the character, duration and geographical scope of such provisions are reasonable in light of the circumstances as they exist on the date upon which this Agreement has been executed. The parties have attempted to limit Campbell's and Shareholder's right to compete only to the extent necessary to protect the value of the Purchased Assets and Buyer's and its affiliates goodwill and business interests related thereto. The parties recognize, however, that reasonable people may differ in making such a determination. Consequently, the parties hereby agree that a court having jurisdiction over the enforcement of this Agreement shall exercise its power and authority to reform the covenants under Section 10 to the extent necessary to cause the limitations contained therein as to time, geographic area and scope of activity to be restrained to be reasonable and to impose a restraint that is not greater than necessary to protect the value of the Purchased Assets and Buyer's and its affiliates goodwill and business interests related thereto.

## 11. EMPLOYEES

11.1 Definition. Sellers have furnished to Buyer a list as of the date hereof of all persons regularly employed on either a part-time or full-time basis by Campbell in connection with the Business, including their current wages and salary rates. The term "Employees" shall mean all persons included on such list, including employees on leave of absence, as well as those persons who become regularly employed by Campbell between the date hereof and the Closing Date.

11.2 Termination. On the Closing Date, Campbell shall terminate all Employees then employed by the Business. With respect to terminated Employees and any persons who terminated employment, including by notice of termination prior to Closing, Campbell shall be solely responsible for payment, when and if due, of all salaries, wages, bonuses, vacation (subject to Section 11.5) and other obligations (excluding COBRA Liabilities), if any, owed to Employees or past employees of the Business as of the Closing Date.

11.3 Key Employees; Certain Other Employees. Buyer shall offer employment to the Key Employees under the Key Employee Employment, Confidentiality and Noncompetition Agreements which shall provide, among other things, minimum terms of employment and minimum base salaries. Buyer shall offer to Susan Casterton and Steven Moscrop employment under transition and retention agreements in a form to be mutually agreed to by the parties thereto (each, a "Transition and Retention Agreement").

11.4 Buyer's Offer of Employment. Buyer shall offer employment to all terminated Employees, excluding Key Employees, effective immediately following the Closing (except for Shareholder, whose consulting relationship shall be as described in the Shareholder Consulting Agreement) at wages and salary rates of compensation (inclusive of Campbell's bonus or other incentive pay programs through at least December 31, 2005), and with benefits, in each case substantially comparable to those presently offered by Campbell. All offers of employment shall be "at will." Buyer shall include the Employees who accept offers of employment from Buyer in Buyer's employment benefit plans; including group health plan, in accordance with the terms of such plans following the Closing Date, giving each Employee credit for his/her time of employment with Campbell; provided that Buyer shall continue, through December 31, 2005, the Continued Plans for covered employees who remain employed by Buyer.

11.5 Nonassumption of Certain Obligations Owed Employees. Buyer assumes no responsibility whatsoever for obligations and/or benefits owed, on or before, or with respect to the period on or before, the Closing Date, by Shareholder, Campbell or the Business to their current or former employees pursuant to Section 3.3(c)(vii), Section 11.2 or otherwise. Notwithstanding the foregoing, Buyer agrees, subject to applicable Law and Buyer's receipt of any required consent of employees (such employee consent shall be solicited by Buyer), to assume accrued vacation payable by Campbell to its employees through the Closing Date, and the amount of any such accrued vacation payable assumed by Buyer shall be deducted from the Purchase Price.

## 12. FURTHER ASSURANCES

12.1 Further Assurances of Sellers. From time to time after the Closing (as hereinafter defined), Campbell and Shareholder will execute and deliver to Buyer such instruments of sale, transfer, conveyance, assignment and delivery, consents, assurances, powers of attorney and other instruments as may be reasonably requested by Buyer in order to vest in Buyer all right, title and interest of Campbell and Shareholder, and each of them, in and to the Purchased Assets and otherwise in order to carry out the purpose and intent of this Agreement.

12.2 Further Assurances of Buyer. From time to time after the Closing (as hereinafter defined), Buyer will execute and deliver to Sellers such instruments of sale, transfer, conveyance, assignment and assumption, consents, assurances, novation, releases, powers of attorney and other instruments as may be reasonably requested by Sellers in order to vest in Buyer all right, title and interest of Buyer, in and to the Assumed Liabilities and release Sellers therefrom, and otherwise in order to carry out the purpose and intent of this Agreement.

## 13. INDEMNIFICATION

13.1 Indemnification by Sellers.

(a) Subject to the limitations set forth herein, Sellers agree, jointly and severally, to indemnify, defend and hold harmless Buyer and the Buyer Related Parties (by counsel reasonably satisfactory to Buyer) from and against any and all Liabilities and Expenses incurred by Buyer and the Buyer Related Parties in connection with or arising from: (i) any breach of any warranty or the inaccuracy of any representation of Sellers contained in this Agreement, the Collateral Agreements or any certificate or other document delivered by or on behalf of Sellers pursuant hereto or thereto, (ii) any breach by Sellers of, or failure by Sellers to perform, any of its covenants or obligations contained in this Agreement, the Collateral Agreements or any certificate or other document delivered by or on behalf of Sellers pursuant hereto or thereto, (iii) any failure to pay any Excluded Liability, and (iv) any failure to pay the One Year Uncollected Retention Amounts; provided, however, that Sellers, except as described in Section 13.1(c), shall be required to indemnify and hold harmless under clause (i) of this Section 13.1(a) with respect to Liabilities and Expenses incurred by Buyer only to the extent that the aggregate amount of such Liabilities and Expenses exceeds Six Hundred Thousand Dollars ($600,000) (the "Threshold Amount"), provided, that if the Liabilities and Expenses exceed the Threshold Amount, Buyer and the Buyer Related Parties shall be entitled to indemnification for all Liabilities and Expenses in excess of Three Hundred Thousand Dollars ($300,000), and provided, further, that the aggregate amount required to be paid by Sellers pursuant to Section 13.1(a)(i) shall not exceed twenty percent (20%) of the Purchase Price.

(b) The indemnification provided for in Section 13.1(a)(i) shall terminate eighteen (18) months after the Closing Date (and no claims shall be made by Buyer under Section 13.1(a)(i) thereafter), except that the indemnification by Sellers shall continue as to the representations and warranties of Sellers (i) set forth in Sections 8.3 (Tax Matters), 8.14 (Labor Matters) and 8.16 (Environmental Laws), which shall survive until the expiration of the relevant statutory period of limitations applicable to the underlying claim, giving effect to any waiver, mitigation or extension thereof; (ii) set forth in Section 8.2 (Ownership of Purchased Assets) which shall terminate seven (7) years after the Closing Date; and (iii) set forth in Sections 8.1 (Good Standing; Authorization) and 8.15 (Brokers and Finders) which shall have no termination date. The indemnification provided for in Sections 13.1(a)(ii), (iii) and (iv) shall survive indefinitely.

(c) The foregoing notwithstanding, (i) the Threshold Amount and limitation on liability set forth in Section 13.1(a) above shall not apply to any breach of the representations and warranties made by Sellers in Section 8.1 (Good Standing; Authorization), Section 8.2 (Ownership of Purchased Assets) and Section 8.15 (Brokers and Finders); it being understood, however, that in no event shall the Liability of Sellers (including any Affiliate, agent, representative, officer, director, or shareholder of Sellers) for Liabilities and Expenses incurred by the Buyer in connection with any breach of the foregoing representations and warranties exceed the Purchase Price, and (ii) the Threshold Amount and limitation on liability set forth in Sections 13.1(a) and 13.6 shall not apply to any fraud or intentional misrepresentation by any of Sellers.

13.2 Shareholder. Shareholder shall hold harmless and defend Buyer and the Buyer Related Parties (by counsel reasonably satisfactory to Buyer) from and against any Construction Defect Liability and from and against all reasonable and actual losses, damages, claims, Liabilities, Taxes, penalties, costs and Expenses incurred by Buyer and/or the Buyer Related Parties arising out of, related to, or involving, directly or indirectly, Construction Defect Liabilities caused by Campbell prior to the Closing Date or with respect to which Campbell is alleged to have responsibility to the extent in excess of Sellers' insurance coverage, provided that Buyer shall be responsible for any deductible payments or self-insured retention amounts required thereon (it being acknowledged by all parties that if an insurer fails to pay all or any part of a claim as a result of such insurer's financial insolvency, bankruptcy or the like, that no part of the actual losses, damages, claims, Liabilities, Taxes penalties, costs and Expenses incurred by Buyer and/or the Buyer Related Parties shall be deemed to be a 'deductible payment' for purposes of the foregoing proviso). Buyer shall handle any claims for Construction Defect Liabilities in accordance with Section 15.2 of this Agreement. If any insurer assumes responsibility for the defense of such claim for Construction Defect Liabilities and reimburses Buyer for any and all losses, damages, claims, Liabilities, Taxes, penalties, costs and Expenses relating to such Construction Defect Liabilities, then Buyer and the Buyer Related Parties shall not pursue any claim against Shareholder pursuant to this Section 13.2 with respect to such specific Construction Defect Liabilities. Notwithstanding any provisions of this Section 13.2, Shareholder's indemnity obligations pursuant to this Section 13.2 shall not exceed $5,000,000 in the aggregate and shall terminate ten (10) years after the Closing Date. The Threshold Amount and limitation on liability set forth in Section 13.1(a) above shall not apply to Shareholder's obligations under this Section 13.2.

13.3 Indemnification by Buyer and Parent.

(a) Subject to the limitations set forth herein, Buyer and Parent agree, jointly and severally, to indemnify, defend and hold harmless Campbell and Shareholder (by counsel reasonably satisfactory to Campbell and Shareholder) from and against any and all Liabilities and Expenses incurred by Campbell or Shareholder in connection with or arising from: (i) any breach of any warranty or the inaccuracy of any representation of Buyer or Parent contained in this Agreement, any Collateral Agreement or in any certificate delivered by or on behalf of Buyer or Parent pursuant hereto or thereto, (ii) any breach by Buyer or Parent of, or failure by Buyer or Parent to perform, any of their covenants and obligations contained in this Agreement or any Collateral Agreement, (iii) Buyer's agreement to assume and satisfy the Assumed Liabilities under Section 3.3 of this Agreement, and (iv) Buyer's operation of the Business after the Closing, in the case of clauses (ii) and (iii), subject to the provisions of Section 13.2; provided, however, that Buyer and Parent, except as described in Section 13.3(c), shall be required to indemnify and hold harmless under clause (i) of this Section 13.3(a) with respect to Liabilities and Expenses incurred by Campbell and Shareholder only to the extent that the aggregate amount of such Liabilities and Expenses exceeds the Threshold Amount; provided, that if the Liabilities and Expenses exceed the Threshold Amount, Sellers shall be entitled to indemnification for all Liabilities and Expenses in excess of Three Hundred Thousand Dollars ($300,000), and provided, further, that the aggregate amount required to be paid by Buyer and Parent pursuant to Section 13.3(a)(i) shall not exceed twenty percent (20%) of the Purchase Price.

(b) The indemnification provided for in Section 13.3(a)(i) shall terminate eighteen (18) months after the Closing Date (and no claims shall be made by any Sellers under Section 13.3(a)(i) thereafter). The indemnification provided for in Sections 13.3(a)(ii), (iii) and (iv) shall survive indefinitely.

(c) The foregoing notwithstanding, (i) the Threshold Amount and limitation on liability set forth in Section 13.3(a) above shall not apply to any breach of the representations and warranties made by Buyer in Section 9.1 (Corporate Status), Section 9.2 (Authority) and Section 9.3 (Brokers and Finders); it being understood, however, that in no event shall the Liability of Buyer and Parent (including any Buyer Related Parties) for Liabilities and Expenses incurred by Campbell or Shareholder in connection with any breach of the foregoing representations and warranties exceed the Purchase Price, and (ii) the Threshold Amount and limitation on liability set forth in Sections 13.3(a) and 13.6 shall not apply to any fraud or intentional misrepresentation by Buyer or Parent.

13.4 Indemnification Procedure.

(a) The party seeking indemnification pursuant to this Section 13 (the "Indemnified Party") with respect to any claim, demand, action, proceeding or other matter for which such party is entitled to seek indemnification hereunder (a "Claim") shall notify the indemnifying party(ies) (the "Indemnitor") of the existence of the Claim, setting forth in reasonable detail the facts and circumstances pertaining thereto and the basis for the indemnified party's right to indemnification (a "Notice of Claim"), which Notice of Claim shall contain the following information to the extent it is reasonably available to the indemnified party: (i) an estimate of the amount then reasonably ascertainable of the alleged losses, damage, claims, liabilities, taxes, penalties, costs or expenses against which the indemnified party is indemnified; (ii) a description, in reasonable detail, of the circumstances giving rise to the alleged loss, expense, or liability; and (iii) a statement identifying each party against whom a Claim is asserted.

(b) After the giving of any Notice of Claim pursuant hereto, the amount of indemnification to which an Indemnified Party shall be entitled under this Section 13 shall be determined: (i) by the written agreement between the Indemnified Party and the Indemnitor; (ii) by a final judgment or decree of any court of competent jurisdiction; or (iii) by any other means to which the Indemnified Party and the Indemnitor shall agree. The judgment or decree of a court shall be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined. The Indemnified Party shall have the burden of proof in establishing the amount of Liabilities and Expenses suffered by it. All amounts due to the Indemnified Party as so finally determined shall be paid by wire transfer within ten (10) calendar days after such final determination.

13.5 Third Party Claims.

(a) If any third party shall notify any Indemnified Party with respect to any matter which may give rise to a Claim for indemnification against the Indemnitor under this Agreement, then the Indemnified Party shall notify the Indemnitor thereof, which notice shall set forth the information required in Section 13.4(a) and be furnished promptly after the Indemnified Party's receipt of notice from the third party; provided, however, that no delay on the part of the

Indemnified Party in notifying any Indemnitor shall relieve the Indemnitor from any liability or obligation hereunder unless (and then solely to the extent) the Indemnitor thereby is materially prejudiced by such failure to give notice. If the Indemnitor notifies the Indemnified Party within twenty (20) days of the Indemnified Party's Notice of a Claim that it will assume the defense thereof:

(i) the Indemnitor shall defend the Indemnified Party against the matter with counsel of its choice reasonably satisfactory to the Indemnified Party;

(ii) the Indemnified Party may retain separate counsel at its sole cost and expense (except that the Indemnitor will be responsible for the fees and expenses of the separate counsel to the extent the Indemnified Party reasonably concludes, based upon advice of counsel, that a conflict of interest exists between the Indemnified Party and Indemnitor such that there may be one or more legal defenses available to the Indemnified Party which are not available to the Indemnitor, or available to the Indemnitor, but the assertion of which would be adverse to the interest of the Indemnified Party);

(iii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the matter without the written consent of the Indemnitor (not to be withheld unreasonably); and

(iv) the Indemnitor will not consent to the entry of any judgment or enter into any settlement which does not include a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto, without the written consent of the Indemnified Party (not to be withheld unreasonably).

(b) If the Indemnitor does not notify the Indemnified Party within twenty (20) days of the Indemnified Party's delivery of a Notice of Claim that it will assume the defense thereof, then the Indemnified Party may defend against, or enter into any settlement with respect to, the matter in any manner it reasonably may deem appropriate, without prejudice to any of its rights hereunder; provided, however, the Indemnified Party (i) must disclose to the Indemnitor any material new or materially changed allegations being asserted against the Indemnified Party, (ii) in the case where a lawsuit has been filed, must provide a copy of such lawsuit and all amended complaints to Indemnitor and (iii) upon request of the Indemnitor, provide a written summary of the status of the Claim to the Indemnitor (all the information provided in (i) or (ii), or in (iii) if such summary discloses a change in the status of the Claim that is materially adverse to Indemnitor, shall be referred to as the "New Facts"). Indemnitor may, within twenty (20) days of the delivery by the Indemnified Party of New Facts, notify the Indemnified Party that it will assume the defense of such Claim and proceed in accordance with Section 13.5(a).

(c) The Indemnified Party shall be entitled to reimbursement for Expenses, included in damages with respect to any Claim (including, without limitation, the cost of defense, preparation and investigation relating to such Claim) as such Expenses are incurred by the Indemnified Party.

13.6 Limitations.

(a) Any indemnity payment hereunder shall be treated for Tax purposes as an adjustment of the Purchase Price to the extent such characterization is proper or permissible under relevant Tax Law, including court decisions, statutes, regulations and administrative promulgations. Buyer is responsible for preparing an amended form 8594 which shall be provided to Sellers no later than thirty (30) days after Sellers provide in writing their consent to such Tax treatment.

(b) In calculating any Liability or Expense there shall be deducted (i) any insurance benefits and proceeds received in respect thereof (and no right of subrogation shall accrue hereunder to any insurer), except that in the case of any Liability or Expense relating to a Construction Defect, only insurance benefits and proceeds from Sellers' insurance carriers (and not Buyer's insurance carriers) shall be deducted; (ii) any indemnification, contribution or other similar payment actually recovered by the Indemnified Party from any third party with respect thereto; and (iii) any Tax benefit or refund actually received or enjoyed by, the applicable Indemnified Party as a result of such Liability or Expense. Any such amounts or benefits received by an Indemnified Party with respect to any indemnity claim after it has received an indemnity payment hereunder shall be promptly paid over to the Indemnitor, but not in excess of the amount paid by the Indemnitor to the Indemnified Party with respect to such claim.

(c) Except for (i) remedies that cannot be waived as a matter of Law, (ii) injunctive and provisional relief, and (iii) claims for Liabilities and Expenses or contribution arising under any Environmental Law, if the Closing occurs, this Section 13 shall be the exclusive remedy for breaches of this Agreement (including any covenant, obligation, representation or warranty contained in this Agreement or in any certificate delivered pursuant to this Agreement) or otherwise in respect of the sale of the Purchased Assets contemplated hereby. With respect to claims for which this Section 13 is the exclusive remedy, Buyer and Sellers hereby waive and release on their own behalf and on behalf of each other applicable Indemnified Party, to the fullest extent permitted under applicable Law, any and all rights, claims and causes of action it or they may have against Sellers or Buyer, as the case may be, arising under or based upon common law or any federal, foreign, state or local Law, rule or regulation. Notwithstanding the foregoing, the provisions of this Section 13.6(c) shall not be applicable to any claims for Liabilities or Expenses arising out of or relating to any fraud or intentional misrepresentation by a party.

(d) No party hereto shall have any liability for any incidental, special, exemplary, multiple, punitive or consequential damages (including loss of profit or revenue) or any equitable equivalent thereof or substitute therefor suffered or incurred by Buyer, Parent or Sellers, as the case may be.

13.7 Mitigation. Each of the parties agrees to take all reasonable steps to mitigate their respective Liabilities and expenses upon and after becoming aware of any event or condition which could reasonably be expected to give rise to any Liabilities and expenses that are indemnifiable hereunder.

13.8 Subrogation. Upon making any payment to the Indemnified Party for any indemnification claim pursuant to this Section 13, the Indemnitor shall be subrogated, to the

extent of such payment, to any rights which the Indemnified Party may have against any third-parties with respect to the subject matter underlying such indemnification claim and the Indemnified Party shall assign any such rights to the Indemnitor.

13.9 No Offset. The obligations hereunder of Sellers, on the one hand, and Buyer and Parent, on the other hand, are independent of the obligations of the other hereunder and shall not be subject to any right of offset, counterclaim or deduction.

## 14. CONDUCT OF OPERATIONS PRIOR TO CLOSING

14.1 Interim Operating Covenants.

(a) Ordinary Course of Operations. From the date hereof until Closing, Campbell shall, and Shareholder shall cause Campbell to, conduct its operation of the Business in the ordinary course and consistent with its prior practices. Campbell and Shareholder shall immediately notify Buyer of any material change in the customers of the Business or any known intentions by customers of the Business to materially reduce the volume of their business they have historically done with Campbell.

(b) Affirmative Covenants. From the date hereof until Closing, unless otherwise agreed in writing by Buyer (which consent shall not be unreasonably withheld), Campbell shall, and Shareholder shall cause Campbell to:

(i) maintain and use the Purchased Assets in the ordinary course of business consistent with past practice, reasonable wear and tear, damage by fire and other casualty excepted;

(ii) comply in all material respects with all applicable Laws;

(iii) properly and timely file all Tax returns required to be filed and pay the expenses of preparation therefor, and make timely payment of all applicable Taxes when due;

(iv) take all reasonable actions necessary to be in material compliance with all Contracts and to maintain the effectiveness of all Permits;

(v) notify Buyer of any action, event, condition or circumstance, or group of actions, events, conditions or circumstances, that has resulted in, or could reasonably be expected at the time to result in, a Material Adverse Effect on the Business or the Purchased Assets;

(vi) notify Buyer of the commencement of any material proceeding by or against Sellers or any threatened proceeding of which Sellers become aware that relates to the Business, any of the Purchased Assets or the transactions contemplated by this Agreement;

(vii) pay Trade Accounts Payable and pursue collection of Trade Accounts Receivable in the ordinary course of business consistent with past practice;

(viii) use commercially reasonable efforts to maintain the relations and goodwill with the material suppliers, customers, distributors, licensors, licensees, landlords, trade

creditors, agents, and others having business relationships with Sellers relating to the Business, with the goal of preserving materially unimpaired the goodwill and ongoing business of the Business as of the Closing;

(ix) use commercially reasonable efforts to prevent the occurrence of a Construction Defect occurring with respect to products sold or services performed by Campbell; and

(x) maintain Records on a basis consistent with prior practice, except for any change required by a change in GAAP or applicable Law.

(c) Negative Covenants. From the date hereof until Closing, Campbell will not, and Shareholder shall cause Campbell not to, without the prior written consent of Buyer (which consent shall not be unreasonably withheld):

(i) sell, lease, pledge, subject to Liens or otherwise transfer or dispose of any of the Purchased Assets to any third party, other than in the ordinary course of business consistent with past practice;

(ii) enter into any Contract other than in the ordinary course of business consistent with past practices;

(iii) materially amend or modify, other than in the ordinary course of business, or violate the terms of, any of the Contracts to be assumed hereunder;

(iv) propose to conduct the Business in any new markets or conduct any new lines of business;

(v) permit the corporate existence of any Campbell Entity, or the existence of any Permit to be suspended, lapsed, dissolved, revoked or modified in any material respect;

(vi) except as otherwise contemplated by this Agreement, allow any insurance policy to be amended or terminated without replacing such policy with a policy providing at least equal coverage, insuring comparable risks and issued by an insurance company financially comparable to the prior insurance company;

(vii) except for normal salary adjustments consistent with past practice, or changes made pursuant to existing employment agreements or required by applicable Law, increase any salaries or benefits payable to any employee of the Business;

(viii) incur any Indebtedness relating to the Business or any of the Purchased Assets, except Trade Accounts Payable or other Liabilities incurred in the ordinary course of business, and Expenses incurred in connection with the consummation of the transactions contemplated by this Agreement;

(ix) issue or sell or enter into any agreement (written or oral) to issue or sell any equity securities of any Campbell Entity or any securities convertible into equity securities of any Campbell Entity; or

(x) take any other action that would reasonably be expected to prevent Sellers from performing or cause Sellers not to perform Sellers' covenants hereunder.

14.2 Governmental Approvals. Buyer and Sellers have filed with the United States Federal Trade Commission (the "FTC") and the United States Department of Justice (the "DOJ") the notification and report form pursuant to the HSR Act, if required for the transactions contemplated hereby. Each of Sellers and Buyer shall, as promptly as practicable, substantially comply with any request for additional information and documents pursuant to the HSR Act. Each of Buyer and Sellers shall inform the other promptly of any communication made by or on behalf of such party to, or received from, the FTC or the DOJ and shall furnish to the other such information and assistance as the other may reasonably request in connection with such party's preparation of any filing, submission or other act that is necessary or advisable under the HSR Act. Sellers and Buyer shall keep each other timely apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC or the DOJ, and shall comply promptly with any such inquiry or request. Each of Sellers and Buyer shall use commercially reasonable efforts to promptly obtain any clearance under the HSR Act required for the consummation of the transactions contemplated hereby. All fees associated with filings under the HSR Act pursuant to this Section 14.2 shall be borne by Buyer.

14.3 Access to Information. Between the date hereof and the Closing, Sellers agree to provide to Buyer and Buyer's authorized agents (including attorneys, accountants and auditors) reasonable access to the offices and properties of Campbell and the Records of Campbell upon reasonable prior notice, in order to conduct a review of the Purchased Assets, the Assumed Liabilities, the Assumed Leases and the Business. In no event, however, shall Buyer or its representatives visit Campbell's facilities or job sites or contact Campbell's suppliers, customers, employees or other business relations without the prior specific written (which may be via email) approval of James Cleven in each instance. Sellers shall, and shall cause Campbell's employees, agents and representatives to, reasonably cooperate with such examination. Each of the parties will hold, and will cause each of such party's consultants and advisers to hold, in confidence all documents and information furnished to such consultants and advisors by or on behalf of another party to this Agreement in connection with the transactions contemplated by this Agreement pursuant to the terms of that certain Confidentiality Agreement entered into between Parent and Campbell dated November 16, 2004 (the "2004 NDA") or that certain Confidentiality Agreement dated July 14, 2005 (the "2005 NDA"), whichever is applicable. The parties hereto agree that the 2004 NDA and the 2005 NDA shall be binding upon Buyer and Shareholder.

14.4 Employee Information and Access. Sellers shall provide to Buyer certain general information concerning Campbell's compensation and benefit programs and specific information relating to individual Business employees, subject to any such employee's proper consent, solely for the purpose of Buyer formulating offers to such employees; provided, however, that Sellers will not make personnel records available for inspection or copying prior to the Closing. Sellers shall provide Buyer with reasonable access to the Business employees during normal working hours following the date hereof on mutually agreeable dates, to deliver offers of employment and to provide information to such employees about Buyer.

14.5 Campbell Contractual Consents.

(a) Campbell shall, with the reasonable assistance of Buyer, use commercially reasonable efforts (subject to Section 14.5(d)) to obtain all material contractual consents to the assignment of the Contracts and/or Assumed Leases in form and substance that will not impair the rights or increase the liabilities to be assumed by Buyer under the Contracts to which such contractual consents relate. Between the date hereof and the Closing, Buyer and Sellers shall consult with each other regarding Campbell's customers, vendors and distributors to consider whether Buyer's relationship, or lack of relationship, with any of such customers, vendors or distributors may materially interfere with the assignment of the Contracts.

(b) In the event that any contractual consents or assignments of any of the Contracts or Assumed Leases, or any right or benefit arising thereunder or resulting therefrom, are not obtained prior to the Closing Date, then as of the Closing, this Agreement, to the extent permitted by Law, shall constitute full and equitable assignment by Campbell to Buyer of all right, title and interest of Campbell in and to, and all obligations and Liabilities of Campbell under, such Contracts and Assumed Leases, and Buyer shall be deemed Campbell's agent for purpose of completing, fulfilling and discharging all Liabilities of Campbell from and after the Closing Date under any such Contract or Assumed Lease. The parties shall take all necessary steps and actions to provide Buyer with the benefits of such Contracts or Assumed Leases, and to relieve Campbell of the performance and other obligations thereunder, including entry into subcontracts for the performance thereof. Buyer agrees to pay, perform and discharge, and indemnify Sellers against and hold Sellers harmless from, all obligations and Liabilities of Sellers or Buyer relating to such performance or failure to perform under such Contracts or Assumed Leases.

(c) In the event that Sellers are unable to make the equitable assignment described in Section 14.5(b), or if such attempted assignment would give rise to any right of termination, or would otherwise adversely affect the rights of Campbell or Buyer under any such Contract or Assumed Lease, or would not assign all of the rights of Campbell thereunder at the Closing, Sellers and Buyer shall continue to cooperate and use all reasonable efforts to provide Buyer with all such rights and to relieve Sellers of all such obligations thereunder. To the extent that any such consents and waivers are not obtained, or until the impediments to such assignment are resolved, Sellers shall use all reasonable commercial efforts to (i) provide to Buyer, at the request of Buyer, the benefits of any such Contract or Assumed Lease to the extent related to the Business and to relieve Sellers of all such obligations thereunder, (ii) cooperate in any lawful arrangement designed to provide such benefits to Buyer and to relieve Sellers of all such obligations thereunder and (iii) enforce, at the request of and for the account of Buyer, any rights of Campbell arising from any such Contract or Assumed Lease against any third party (including any Governmental Authority), including the right to elect to terminate in accordance with the terms thereof upon the advice of Buyer. To the extent that Buyer is provided the benefits of any Contract or Assumed Lease referred to herein (whether from Sellers or otherwise), Buyer shall perform at the direction of Sellers and for the benefit of any third party (including any Governmental Authority), and shall assume the liabilities and obligations of Sellers thereunder or in connection therewith. Buyer agrees to pay, perform, discharge and indemnify Sellers against and hold Sellers harmless from, all liabilities and obligations of Sellers relating to such performance or failure to perform. In the event of a failure of such indemnity, Sellers shall cease

to be obligated under this Agreement in respect of the Contract or Assumed Lease which is the subject of such failure.

(d) Except as otherwise specifically provided in this Agreement, the obligations of the parties under this Section 14.5 shall not include any requirement of Sellers or Buyer to expend money or incur any financial or other obligation (other than normal legal and professional fees, transaction costs or filing fees not otherwise required to be incurred by the other party), commence or participate in any litigation or offer or grant any accommodation (financial or otherwise) to any third party.

14.6 Additional Insured. Sellers shall use commercially reasonable efforts to assign to Parent and Buyer, and have each of Parent and Buyer named as additional insured parties under, each of the insurance policies of Campbell set forth at Section 8.20 of the Disclosure Schedule, effective as of the Closing Date, and Campbell, Buyer and Parent shall execute all documents necessary to effect the foregoing.

14.7 Transition. Between the date hereof and the Closing Date, Sellers shall provide, without cost to Buyer, subject to availability and upon reasonable notice, assistance to Buyer in connection with all reasonably requested transition matters arising under the transactions contemplated by this Agreement, including arrangement (at a mutually agreeable time) of personal introductions to vendors and customers of the Business.

14.8 Obligation to Update Exhibits and Schedules. Sellers shall update all Exhibits and Schedules, where appropriate, to be prepared by Sellers hereunder, prior to the Closing Date; provided, that any such update or supplement shall not cure any breach of any representation or warranty of the Sellers made in this Agreement (and Sellers shall, for all purposes of this Agreement, therefore, be in breach of any representation or warranty with respect to any previously undisclosed information required to be disclosed in order that such representation or warranty be true and correct as of the date hereof) unless, and to the extent that, (a) such update or supplement contains or discloses facts or information which arose after the date hereof, or (b) such update or supplement contains or discloses facts or information which arose prior to the date hereof but of which Sellers first acquired Knowledge after the date hereof; provided that an update or supplement provided under this subsection (b) shall not cure a breach of a representation or warranty of the Sellers that is not qualified by Sellers' Knowledge. If the information disclosed in any such update or supplement would constitute a Material Adverse Effect on the Business, then Buyer shall have the right to either accept the update and proceed with the Closing or to terminate this Agreement in accordance with the provisions of Section 21, and to the extent that such update or supplement cured a breach of any representation or warranty of the Sellers pursuant to the foregoing sentence, neither Buyer nor any Buyer Related Party would be eligible to make any Claim for indemnification under Section 13.1(a)(i) with respect to the information so disclosed.

14.9 No Solicitation. From and after the date hereof, and until the earlier of the Closing or the termination of this Agreement pursuant to Section 21 hereof (the "Non-Solicitation Period"), except as expressly contemplated by this Agreement, each Campbell Entity and Shareholder shall not, directly or indirectly, and none of their respective directors, officers, agents or representatives shall, directly or indirectly (a) initiate, solicit, seek, support or encourage any action that constitutes or is reasonably likely to lead to an Acquisition Proposal;

(b) provide information with respect to the Business to any Person relating to, or otherwise cooperate with, facilitate or encourage any effort or attempt by any Person or entity with regard to any Acquisition Proposal; or (c) enter into any agreement with respect to any Acquisition Proposal. Sellers shall notify Buyer promptly, but in any event within two (2) business days, if any Acquisition Proposal, or any inquiry or other contact with any Person with respect thereto, is made during the Non-Solicitation Period. Any such notice to Buyer shall indicate in reasonable detail the identity of the Person making such Acquisition Proposal, inquiry or other contact and the terms and conditions of such Acquisition Proposal, inquiry or other contact. Sellers agree that any such discussions or negotiations in progress with any other Person as of the date hereof will be suspended or terminated during the Non-Solicitation Period.

## 15. CONDUCT OF BUSINESS FOLLOWING CLOSING

15.1 Collection of Trade Accounts Receivable and Unbilled Retention Amounts.

(a) During the ninety (90) day period following the Closing, Buyer shall use commercially reasonable efforts in the ordinary course of business and consistent with Campbell's past practices to collect the Trade Accounts Receivable. During such 90-day period, Buyer shall (i) provide Sellers with periodic collection reports every thirty (30) days and provide Sellers with reasonable access to all other available records, documents and information relating to Trade Accounts Receivable, and the opportunity to monitor and assist Buyer's efforts to collect the Trade Accounts Receivable and (ii) apply all payments received from customers on and after the Closing Date to the respective customer's oldest accounts first, unless a debtor indicates the specific account it is paying in which event payment shall be applied to that account. Buyer and Sellers agree that they will not influence account specification pursuant to the preceding sentence. To the extent any of the Trade Accounts Receivable are aged greater than ninety (90) days and remain uncollected ninety (90) days after the Closing, such Trade Accounts Receivable shall be deducted from the calculation of Campbell's Actual Closing Date Net Assets and Buyer shall irrevocably assign such uncollected Trade Accounts Receivable to Shareholder free and clear of all liens and encumbrances. Thereafter, Shareholder may use any means reasonably necessary to collect the uncollected Trade Accounts Receivable and Buyer shall provide Shareholder with all records relating to such uncollected Trade Accounts Receivable and all other available information. Buyer shall promptly remit to Shareholder any amounts subsequently received by Buyer with respect to the uncollected Trade Accounts Receivable assigned to Sellers hereunder.

(b) During the one (1) year period following the Closing, Buyer shall use commercially reasonable efforts in the ordinary course of business and consistent with Campbell's past practices to collect the Unbilled Retention Amounts. During such one (1)-year period, Buyer shall (i) provide Sellers with periodic collection reports every thirty (30) days and provide Sellers with reasonable access to all other available records, documents and information relating to Unbilled Retention Amounts, and the opportunity to monitor and assist Buyer's efforts to collect the Unbilled Retention Amounts and (ii) apply all payments received from customers on and after the Closing Date to the respective customer's oldest accounts first, unless a debtor indicates the specific account it is paying in which event payment shall be applied to that account. Buyer and Sellers agree that they will not influence account specification pursuant to the preceding sentence. Provided Sellers have paid to Buyer the One Year Uncollected Retention Amounts as set forth in Section 6.3, Buyer shall irrevocably assign such One Year

Uncollected Retention Amounts to Shareholder free and clear of all liens and encumbrances. Thereafter, Shareholder may use any means reasonably necessary to collect the One Year Uncollected Retention Amounts and Buyer shall provide Shareholder with all records relating to such Unbilled Retention Amounts and all other available information. Buyer shall promptly remit to Shareholder any amounts subsequently received by Buyer with respect to the One Year Uncollected Retention Amounts assigned to Sellers hereunder.

15.2 Construction Defect Liabilities and Non-Assignable Insurance Products Claims Handling Procedures. Following the Closing, Buyer and Parent, on behalf of the Sellers, agree to manage, in a commercially reasonable manner, all aspects of any and all claims (i) for Construction Defect Liabilities made against Campbell and (ii) under the Non-Assignable Insurance Products. Such claims are to be handled consistent with the claims handling procedures used by Parent in administering its own similar third party claims. Buyer shall provide Sellers with copies of all regularly generated written status reports of Buyer or Parent with respect to such claims, which reports shall be generated not less frequently than quarterly. Sellers shall have the right to review all such claims tendered pursuant to this Section and such other information as Sellers may reasonably request from time to time. Without limiting the generality of the foregoing, Buyer shall provide Sellers with reasonable access to records and correspondences related to all such claims for Construction Defect Liabilities or under the Non-Assignable Insurance Products.

15.3 Use of Campbell Names. Sellers agree that following the Closing they will not utilize any of the trade names, corporate names or, dba names of any Campbell Entity or other name that is confusingly similar to such names outside of any use thereof by Buyer or Parent (the "Campbell Names"), other than (i) in connection with any insurer under any of the Non-Assignable Insurance Products or Assignable Insurance Products, and (ii) commencing on the fifth anniversary of the Closing Date, Shareholder may use the names "Campbell Companies" and "Campbell Concrete" except for the purpose of engaging in any aspect of the Business. Buyer and Parent agree that they will not so utilize the Campbell Names following the third anniversary of the Closing.

15.4 Insurance Proceeds. Following the Closing, Sellers covenant to use reasonable efforts to diligently pursue the collection of any insurance proceeds under all applicable insurance policies of Sellers with respect to any claim related to a Purchased Asset or Assumed Liability. Sellers shall forward to Buyer, immediately upon payment thereof, any insurance proceeds received by Sellers which relate to a Purchased Asset or an Assumed Liability. Buyer shall forward to Campbell, immediately upon payment thereof, any insurance proceeds received by Buyer or a Buyer Related Party which relate to an Excluded Asset or an Excluded Liability.

15.5 Administrative Support. Following the Closing, Buyer, on behalf of Sellers and at Sellers' direction, shall manage the process of the wind down of Campbell in a reasonable manner and shall provide Sellers with such assistance and any information with respect thereto as Campbell may reasonably request, which shall include, without limitation, payroll, insurance and tax assistance. As may be reasonably requested by Buyer in order for Buyer to manage the wind down process, Sellers shall cooperate with and assist Buyer and shall execute any documentation and provide any information required or advisable in connection with the wind down activities.

15.6 Assignment of Non-Assignable Insurance Products. Following the Closing, Shareholder, Campbell, Buyer and Parent shall use commercially reasonable efforts to obtain consent to the assignment to Buyer of the Non-Assignable Insurance Products. If the consent to the assignment to Buyer of a Non-Assignable Insurance Product is obtained following the Closing, then such Non-Assignable Insurance Product shall be deemed automatically assigned to Buyer upon the receipt of such consent, and, from and after the date of such assignment such Non-Assignable Insurance Product shall be deemed to be an Assignable Insurance Product for all purposes under this Agreement.

## 16. CLOSING

16.1 Closing. Closing shall occur on the second business day following the satisfaction or waiver of all conditions precedent set forth below in Sections 17 and 18, in San Francisco, California, or at such other time or place as the parties may agree upon. For purposes herein, the Closing shall be deemed to occur at 11:59 P.M. on the Closing Date.

16.2 Time is of the Essence. Time is of the essence for the Closing of this transaction.

## 17. CONDITIONS PRECEDENT TO BUYER'S DUTY TO CLOSE

Buyer shall have no duty to close unless and until each and every one of the following conditions precedent have been fully and completely satisfied:

17.1 No Misrepresentation or Breach of Covenants and Warranties. The representations and warranties of Sellers made in this Agreement (i) that are qualified by materiality or Material Adverse Effect shall be true and correct as of the date hereof and on and as of the Closing Date, as though made on the Closing Date, (ii) that are not qualified by materiality or Material Adverse Effect shall be true and correct in all material respects as of the date hereof and on and as of the Closing Date, as though made on the Closing Date; provided, in each case, (x) except for those representations and warranties which refer to facts existing at a specific date, and (y) except as specifically contemplated by this Agreement.

17.2 Performance of Obligations. Campbell and Shareholder shall have substantially performed or tendered performance of each and every one of their obligations hereunder which by their terms are capable of being performed before Closing.

17.3 Delivery of Closing Documents. Campbell and Shareholder shall have tendered delivery to Buyer of all the documents required to be delivered to Buyer by Campbell and Shareholder prior to or at Closing pursuant to this Agreement.

17.4 Litigation. No lawsuit, administrative proceedings or other legal action shall have been filed which seeks to restrain or enjoin the acquisition of the Purchased Assets or the operation of the Business in any material respect.

17.5 Material Adverse Effect. Except as disclosed to Buyer in this Agreement or on an Exhibit or a Schedule hereto (subject to the provisions of Section 14.8 regarding updates or supplements to the Schedules and Exhibits), there shall have been no Material Adverse Effect on the Business or the Purchased Assets subsequent to the date of this Agreement.

17.6 Key Employee Employment, Confidentiality and Noncompetition Agreements, Etc. Each of the Key Employees shall have executed and delivered a Key Employee Employment, Confidentiality and Noncompetition Agreement, and each of Susan Casterton and Steven Moscrop shall have executed and delivered a Transition and Retention Agreement.

17.7 Shareholder Consulting Agreement. The Shareholder shall have executed and delivered the Shareholder Consulting Agreement.

17.8 New Shareholder Leases. The Shareholder shall have executed and delivered the New Shareholder Leases.

17.9 HSR Waiting Period. The waiting period, if any, under the HSR Act applicable to the transactions contemplated by this Agreement shall have expired or otherwise been terminated.

17.10 Legal Opinion. Buyer shall have received a legal opinion from counsel to Campbell, in a form reasonably acceptable to Buyer.

17.11 Due Diligence. Prior to August 23, 2005, Buyer shall have performed and completed such due diligence on Campbell and the Business as it should reasonably deem appropriate, including, without limitation, business, contractual and financial reviews and audit, customer inquiries, review of employee matters, inspections, and environmental assessments to its satisfaction. On and after August 23, 2005, Buyer shall have no right to terminate this Agreement as a result of its due diligence investigation.

17.12 Approval of BMHC Board and Lenders. The Board of Directors of Building Materials Holding Corporation, and certain lenders of Building Materials Holding Corporation from whom consent is required to consummate the transactions contemplated hereby, shall have approved this Agreement and the transactions contemplated hereby.

17.13 Certificate. Campbell and Shareholder shall have delivered a certificate, dated as of the Closing, signed by an authorized officer of each Campbell Entity, certifying that the conditions set forth in Sections 17.1, 17.2, 17.4 and 17.5 have been satisfied.

## 18. CONDITIONS PRECEDENT TO CAMPBELL'S AND SHAREHOLDER'S DUTY TO CLOSE

Campbell and Shareholder shall have no duty to close this transaction unless and until each and every one of the following conditions precedent have been fully and completely satisfied:

18.1 No Misrepresentation or Breach of Covenants and Warranties. The representations and warranties of Buyer and Parent made in this Agreement (i) that are qualified by materiality or Material Adverse Effect shall be true and correct as of the date hereof and on and as of the Closing Date, as though made on the Closing Date, (ii) that are not qualified by materiality or Material Adverse Effect shall be true and correct in all material respects as of the date hereof and on and as of the Closing Date, as though made on the Closing Date; provided, in

each case, (x) except for those representations and warranties which refer to facts existing at a specific date, and (y) except as specifically contemplated by this Agreement.

18.2 Performance of Obligations. Buyer and Parent shall have substantially performed or tendered substantial performance of each and every one of their obligations hereunder which by their terms is capable of being performed before Closing.

18.3 Payment of Purchase Price and Delivery of Closing Documents. Buyer shall have paid the Purchase Price to Sellers and paid the Reserve to the Escrow Agent and Buyer shall have tendered delivery to Campbell and Shareholder all the documents required to be delivered to Campbell and Shareholder by Buyer and Parent at Closing pursuant to this Agreement.

18.4 Litigation. No lawsuit, administrative proceedings or other legal action shall be pending or threatened against Campbell which seeks to restrain or enjoin Campbell's sale, or Buyer's acquisition of, the Purchased Assets.

18.5 New Shareholder Leases. Buyer shall have executed and delivered the New Shareholder Leases.

18.6 Shareholder Consulting Agreement. The Buyer shall have executed and delivered the Shareholder Consulting Agreement.

18.7 HSR Waiting Period. The waiting period under the HSR Act applicable to the transactions contemplated by this Agreement shall have expired or otherwise been terminated.

18.8 Legal Opinions. Sellers shall have received legal opinions from in-house counsel and outside counsel to Buyer and Parent, in a form reasonably acceptable to Sellers.

18.9 Substitute Letters of Credit; Captive Insurance. Buyer shall have posted substitute letters of credit, in an acceptable form, in favor of the beneficiaries for whom Campbell has existing letters of credit for purposes of the Assignable Insurance Products, and the deposits related to the Assignable Insurance Products in Campbell's captive insurance company shall have been transferred to Buyer's captive insurance company.

18.10 Escrow Agreement. Sellers shall have received a fully executed Escrow Agreement.

18.11 Certificate. Buyer and Parent shall have delivered a certificate, dated as of the Closing, and signed by an authorized officer of each of Buyer and Parent, certifying that the conditions set forth in Sections 18.1, 18.2, and 18.4 have been satisfied.

## 19. ITEMS TO BE DELIVERED AT CLOSING BY CAMPBELL AND SHAREHOLDER

At Closing, Campbell and Shareholder shall, unless waived by Buyer, deliver the following items to Buyer:

19.1 Bill of Sale. A duly executed warranty bill of sale (in a form reasonably acceptable to Buyer) conveying the Purchased Assets to Buyer;

19.2 Assignment and Assumption Agreements. Agreements (in a form reasonably acceptable to Sellers) duly executed by each of the Shareholder and Campbell under which Campbell assigns, and Buyer assumes and agrees to fully and faithfully perform, the Contracts, Personal Property Leases and Real Property Leases;

19.3 Certified Resolutions. A copy of the resolutions of the Board of Directors and the shareholders of each Campbell Entity authorizing the execution and performance of this Agreement, certified by the secretary of Campbell;

19.4 Automobile Titles. Campbell shall have delivered to Buyer duly executed titles to the vehicles and other rolling stock included in the Equipment;

19.5 Legal Opinion. The legal opinion described in Section 17.10;

19.6 UCC Termination Statements. All Uniform Commercial Code termination or release statements necessary to transfer the Purchased Assets free and clear of all Liens;

19.7 Key Employee Employment, Confidentiality and Noncompetition Agreements, Etc. A fully executed Key Employee Employment, Confidentiality and Noncompetition Agreement from each Key Employee, and a fully executed Transition and Retention Agreement from each of Susan Casterton and Steven Moscrop;

19.8 Shareholder Consulting Agreement. Fully executed Shareholder Consulting Agreement from the Shareholder;

19.9 New Shareholder Leases. Fully executed New Shareholder Leases from the Shareholder; and

19.10 Escrow Agreement. A fully executed Escrow Agreement from Sellers.

## 20. ITEMS TO BE DELIVERED AT CLOSING BY BUYER AND PARENT

At Closing, Buyer shall, unless waived by Sellers, deliver the following items to Sellers:

20.1 Certified Resolutions. A copy of the resolutions of the Board of Directors of Buyer and Parent authorizing the execution and performance of this Agreement, certified by the secretary of Buyer and Parent, respectively;

20.2 New Shareholder Leases. Fully Executed New Shareholder Leases from Buyer;

20.3 Shareholder Consulting Agreement. Fully executed Shareholder Consulting Agreement from Buyer;

20.4 Assignment and Assumption Agreements. Agreements duly executed by Buyer and Sellers, providing, among other things, for the assignment of the Assumed Liabilities of Sellers to Buyer and the assumption of same by Buyer, executed by a duly authorized officer of Buyer, and all other instruments and certificates of assumption, novation and release as Sellers may reasonably request in order to effectively make Buyer responsible for all Assumed Liabilities and release Sellers therefrom to the fullest extent permitted under applicable law;

20.5 Charter Documents of Buyer and Parent. (a) A copy of Buyer's and Parent's Certificate of Incorporation certified as of a recent date by the Secretary of State of Delaware; and (b) a certificate of good standing of Buyer and Parent issued as of a recent date by the Secretary of State of Delaware;

20.6 Buyer's and Parent's Legal Opinions. Buyer shall deliver the legal opinions described in Section 18.8;

20.7 Purchase Price. The Purchase Price (less the Reserve) to be paid in accordance with Section 3.1;

20.8 Substitute Letters of Credit. The substitute letters of credit described in Section 18.9 shall be posted; and

20.9 Escrow Agreement. A fully executed Escrow Agreement from Buyer.

## 21. TERMINATION

21.1 Grounds for Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written agreement of all of the parties;

(b) by Buyer or Sellers if the Closing has not been effected on or prior to the close of business on September 30, 2005; provided, however, that the right to terminate this Agreement pursuant to this Section 21.1(b) shall not be available to any party whose willful failure to fulfill any of such party's obligations contained in this Agreement has been the cause of, or resulted in, the failure of the Closing to have occurred on or prior to the aforesaid date;

(c) by Buyer at any time upon written notice to Sellers of any one or more inaccuracies or misrepresentations in or breaches of the representations or warranties made by Sellers contained herein that have had, or if not cured prior to the Closing could be reasonably expected to have, a Material Adverse Effect on the Business, the Purchased Assets or the Assumed Liabilities, considering in the aggregate all such inaccuracies, misrepresentations and breaches which are specified in such notice; provided, however, that a termination pursuant to this Section 21.1(c) shall become effective ten (10) business days after such notice is given and only if Sellers have not cured such inaccuracies, misrepresentations and breaches so specified in such notice within such ten (10) business day period; provided, further, that, if such breach is curable within 30 days from notice to Sellers through the exercise of Sellers' commercially reasonable efforts, Buyer may not terminate this Agreement under this Section 21.1(c) until the expiration of such period without such breach having been cured (but in no event shall the preceding proviso be deemed to extend the date set forth in Section 21.1(b));

(d) by Buyer at any time upon written notice to Sellers of the failure by Sellers to materially perform and satisfy any of Sellers' obligations under this Agreement required to be performed and satisfied by Sellers on or prior to the Closing; provided, however, that a termination pursuant to this Section 21.1(d) shall become effective ten (10) business days after such notice is given and only if Sellers have not cured the failures so specified in such

notice within such ten (10) business day period; provided that there shall be no cure period for any material breach of Section 14.9; provided, further, that, if such breach is curable within 30 days from notice to Sellers through the exercise of Sellers' commercially reasonable efforts, Buyer may not terminate this Agreement under this Section 21.1(d) until the expiration of such period without such breach having been cured (but in no event shall the preceding proviso be deemed to extend the date set forth in Section 21.1(b));

(e) by Sellers at any time upon written notice to Buyer of any one or more inaccuracies or misrepresentations in or breaches of the representations or warranties made by Buyer herein that have had or, if not cured prior to the Closing could be reasonably expected to have, a Material Adverse Effect on Buyer's ability to consummate the transactions contemplated by this Agreement, considering in the aggregate all such inaccuracies, misrepresentations and breaches which are specified in such notice; provided, however, that a termination pursuant to this Section 21.1(e) shall become effective ten (10) business days after such notice is given and only if Buyer has not cured such inaccuracies, misrepresentations and breaches so specified in such notice within such ten (10) business day period; provided, further, that, if such breach is curable within 30 days from notice to Buyer through the exercise of Buyer's commercially reasonable efforts, Sellers may not terminate this Agreement under this Section 21.1(e) until the expiration of such period without such breach having been cured (but in no event shall the preceding proviso be deemed to extend the date set forth in Section 21.1(b));

(f) by Sellers at any time upon written notice to Buyer of Buyer's material failure to perform and satisfy any of Buyer's obligations under this Agreement required to be performed and satisfied by Buyer on or prior to the Closing; provided, however, that a termination pursuant to this Section 21.1(f) shall become effective ten (10) business days after such notice is given and only if Buyer has not cured the failures so specified in such notice within such ten (10) business day period; provided, further, that, if such breach is curable within 30 days from notice to Buyer through the exercise of Buyer's commercially reasonable efforts, Sellers may not terminate this Agreement under this Section 21.1(f) until the expiration of such period without such breach having been cured (but in no event shall the preceding proviso be deemed to extend the date set forth in Section 21.1(b)); and/or

(g) by Sellers or Buyer if any applicable law shall be enacted or become applicable that makes the transactions contemplated hereby or the consummation of the Closing illegal or otherwise prohibited, or if any judgment, injunction, order or decree enjoining any party from consummating the transactions contemplated hereby is entered, and such judgment, injunction, order or decree shall become final and nonappealable; provided, however, that the right to terminate this Agreement pursuant to this Section 21.1(g) shall not be available to any party who has failed to fulfill any of such party's obligations contained in Section 14.2 of this Agreement.

21.2 Effect of Termination.

(a) Limit of Liability. If this Agreement is terminated pursuant to Section 21.1(a)-(g), all obligations of the parties hereunder shall terminate without liability of any Party to any other Party, except as provided in this Section 21.2 and Section 22.6. The representations and warranties made herein shall not survive beyond a termination of this Agreement and no party shall have any liability for breach of any representation or warranty

upon a termination of this Agreement prior to the Closing, except as provided in this Section 21.2.

(b) Alternative Transaction Payment and Buyer Termination Expenses. If, prior to the Closing, this Agreement is terminated by the mutual written agreement of all of the parties pursuant to Section 21.1(a), by Buyer pursuant to Section 21.1(b), 21.1(c) or 21.1(d) or by Sellers pursuant to Section 21.1(b), and, if at the time of such termination any of the Sellers shall have received an Acquisition Proposal, whether or not any of Sellers shall have been in breach of Section 14.9, and within six (6) months after such termination any of the Sellers shall have consummated or entered into an agreement with respect to any Acquisition Proposal, then Sellers, jointly and severally, shall be obligated to pay to Parent (by wire transfer of immediately available funds), concurrently with the consummation of such transaction, a total amount equal to $1,000,000, plus 100% of the Expenses incurred by Buyer or the Buyer Related Parties in connection with this Agreement and all related agreements and the transactions contemplated hereby and thereby, up to a maximum amount of $100,000 (the "Alternative Transaction Payment"). If this Agreement is terminated by Buyer pursuant to Sections 21.1(c) or 21.1(d) and the foregoing sentence is not applicable and the Alternative Transaction Payment is not payable, then upon such termination Sellers, jointly and severally, shall also be obligated to reimburse Parent (by wire transfer of immediately available funds), no later than five business days after such termination, for 100% of the Expenses incurred by Buyer or the Buyer Related Parties in connection with this Agreement and all related agreements and the transactions contemplated thereby, up to a maximum amount of $100,000 (the "Buyer Termination Expenses").

(c) Sellers acknowledge that the agreements in Section 21.2(b) are an integral part of the transactions contemplated by this Agreement and that, without these agreements, Buyer would not enter into this Agreement. Accordingly, if Campbell or Shareholder fail promptly to pay any amount due to Parent pursuant to Section 21.2(b), Sellers also shall pay any and all Expenses incurred by Buyer or a Buyer Related Party in connection with a legal action to enforce this Agreement that results in a judgment against any of Sellers for the Alternative Transaction Payment or the Buyer Termination Expenses. Buyer and Parent acknowledge and agrees that, except for (i) any willful breaches of any of the agreements or other provisions of this Agreement prior to the termination hereof, (ii) breaches of obligations of confidentiality under this Agreement, or (iii) fraud by any of Sellers, Sellers shall not have any liability or further obligation to Buyer or the Buyer Related Parties except for the Alternative Transaction Payment or Buyer Termination Expenses (as applicable), which payment is liquidated damages to Buyer and the Buyer Related Parties, and such parties shall not be entitled to any monetary damages or injunctive relief (including specific performance) as a result of such termination, or any indemnification under Section 13.

(d) If this Agreement is terminated by Sellers pursuant to Sections 21.1(e) or 21.1(f), then upon such termination Buyer and Parent, jointly and severally, shall be obligated to reimburse Campbell (by wire transfer of immediately available funds), no later than five business days after such termination, for 100% of the Expenses incurred by Sellers or their Related Parties in connection with this Agreement and all related agreements and the transactions contemplated thereby, up to a maximum amount of $100,000 (the "Sellers Termination Expenses"). Buyer and Parent acknowledge that the agreements in this Section 21.2(d) are an integral part of the transactions contemplated by this Agreement and that, without these agreements, Sellers would

not enter into this Agreement. Accordingly, if Buyer or Parent fails promptly to pay any amount due to Campbell pursuant to this Section 21.2(d), Sellers also shall pay any costs and expenses incurred by Sellers in connection with a legal action to enforce this Agreement that results in a judgment against Buyer for the Seller Termination Expenses. Sellers acknowledge and agree that, except for (i) any willful breaches of any of the agreements or other provisions of this Agreement prior to the termination hereof, (ii) breaches of obligations of confidentiality under this Agreement, or (iii) fraud by Buyer or Parent, Buyer and Parent shall not have any liability or further obligation to Sellers or their respective Related Parties except for the Seller Termination Expenses, which payment is liquidated damages to Sellers, and such parties shall not be entitled to any monetary damages or injunctive relief (including specific performance) as a result of such termination, or any indemnification under Section 13.

## 22. MISCELLANEOUS

22.1 No Other Agreements. This Agreement and all schedules and Exhibits hereto, the Escrow Agreement, the Key Employee Employment, Confidentiality and Noncompetition Agreements, the Shareholder Consulting Agreement, the New Shareholder Leases, the 2004 NDA and the 2005 NDA constitute the entire agreement between the parties with respect to its subject matter. All prior and contemporaneous negotiations, proposals and agreements between the parties are included in, and superseded by, this Agreement. Any changes to this Agreement must be agreed to in writing signed by an authorized representative of Buyer and an authorized representative of Campbell.

22.2 Waiver. Either Buyer or Sellers may waive the performance of any obligation owed to it by another party hereunder for the satisfaction of any condition precedent to the waiving party's duty to perform any of its covenants, including its obligations to close. Any such waiver shall be valid only if contained in writing signed by an authorized representative of Buyer and an authorized representative of Campbell.

22.3 Public Announcements. No public announcements of this Agreement shall be made unless Buyer and Sellers have mutually agreed on the timing, distribution and contents of such announcements, except as may be required by applicable securities laws or regulations or the requirements of any securities exchange or market.

22.4 Notices. All notices, requests, demands and other communications called for or contemplated hereunder shall be in writing and shall be deemed to have been duly given when delivered to the party to whom addressed or when received by a party if sent by telecopy (or 3 days after mailing if sent by registered or certified mail, return receipt requested, prepaid and addressed) at the following addresses, or at such other addresses as the parties may designate by written notice in the manner aforesaid:

To Campbell and Shareholder: Steven R. Campbell
9435 W Tropicana #102-230
Las Vegas, Nevada 89147

| | |
|---|---|
| Copies to: | Lawrence M. Braun, Esq.<br>Sheppard Mullin, Richter & Hampton LLP<br>333 S. Hope St., 48th Floor<br>Los Angeles, CA 90071<br>Facsimile: (213) 443-2814 |
| To Buyer and Parent: | c/o Building Materials Holding Corporation<br>720 Park Boulevard, Suite 200<br>Boise, ID 83712-7714<br>Attn: Paul Street, Senior VP and General Counsel |
| Copies to: | Gregory T. Davidson<br>Gibson, Dunn & Crutcher LLP<br>1881 Page Mill Road<br>Palo Alto, CA 94304<br>Facsimile: (650) 849-5333 |

22.5 No Third Party Beneficiary. Nothing contained herein shall create or give rise to any third-party beneficiary rights for any individual as a result of the terms and provisions of this Agreement.

22.6 Confidential Information. The parties agree that all information acquired from the other in connection with the negotiation, execution and consummation of this Agreement is confidential and shall not be disclosed to any other party (other than attorneys, accountants and agents of the party) without the written consent of the other; provided that following the Closing Buyer may disclose information relating to the Business as it may deem necessary or advisable. Notwithstanding anything herein to the contrary, any party to this Agreement (and their employees, representatives, or other agents) may disclose to any and all persons, without limitation of any kind, the Tax treatment and Tax structure of the transactions contemplated by this Agreement (the "Transactions") and all materials of any kind (including opinions or other Tax analyses) that are provided to it relating to such Tax treatment and Tax structure; provided, however, that this sentence shall not permit any disclosure that otherwise is prohibited by this Agreement (i) until the earlier of (x) the date of the public announcement of discussion relating to the Transactions, and (v) the date of the public announcement of the Transactions; or (ii) if such disclosure would result in a violation of federal or state securities laws; or (iii) to the extent not related to the Tax aspects of the transaction. Moreover, nothing in this Agreement shall be construed to limit in any way any party's ability to consult any Tax advisor regarding the Tax treatment or Tax structure of the Transactions.

22.7 Assignment. The parties shall not assign this Agreement without the prior written consent of the other parties. Any attempt to assign this Agreement without prior written consent shall be void.

22.8 Records after Closing.

(a) Access. For a period of ten (10) years after the Closing Date and to the extent of claims pending so long as claims are still pending, Sellers and their representatives shall have reasonable access to all of the books and records of the Business (including any books and records relating to Taxes and Tax Returns of the Business), to the extent that such access

may reasonably be required by Sellers in connection with matters relating to or affected by the operations of the Business prior to the Closing Date, including Excluded Liabilities and/or Excluded Assets, the preparation of Sellers' financial reports or Tax returns, any Tax audits, the defense or prosecution of litigation (including arbitration or mediation), and any other reasonable need of Sellers to consult such books and records. Such access shall be afforded by Buyer upon receipt of reasonable advance notice and during normal business hours in a manner so as to not unreasonably interfere with the conduct of the Business. Sellers shall be exclusively responsible for any costs or expenses incurred by them pursuant to this Section 22.8(a). If any such books or records, or any other documents relating to the Business prior to the Closing Date which Sellers have the right to have access to pursuant to this Section 22.8(a) are produced by Buyer to an actual or potentially adverse party (e.g., in litigation or in connection with a government investigation), Buyer shall endeavor to make all such books, records and/or documents produced available for inspection and copying by Sellers concurrently with the production of such books, records and/or documents. In addition, if Buyer shall desire to dispose of any of such books or records prior to the expiration of such ten (10) year period, Buyer shall, prior to such disposition, give Sellers a reasonable opportunity, at Sellers' expense, to segregate and remove such books and records as Sellers may select. Buyer shall provide Sellers with reasonable assistance, at Sellers' actual expense, by providing employees to act as witnesses and preparing documents, reports and other information requested by Sellers in support of the activities described in this Section 22.8(a).

(b) Retention. Buyer agrees that Sellers may retain (i) copies of all materials made available to Buyer in the course of its investigation of the Business, together with a copy of all documents referred to in such materials, (ii) all books and records prepared in connection with the transactions contemplated by this Agreement, including bids received from others and information relating to such bids, (iii) copies of any books and records which may be relevant in connection with the defense of (A) the matters referred to in Section 13 or (B) disputes or proceedings arising under the transactions contemplated by this Agreement, with Governmental Authorities or with other third Persons, and (iv) all financial information and all other accounting books and records prepared or used in connection with the preparation of financial statements of Sellers. Any such information retained by Sellers shall be subject to the provisions of Section 22.6.

(c) Tax Audits. Buyer and Sellers shall provide reasonable assistance to each other with any tax audits or other administrative or judicial proceedings involving the Business at no cost to the other. Neither party shall, without the prior written consent of the other, unless required by applicable law, initiate any contact or voluntarily enter into any agreement with, or volunteer any information to, any taxing authorities with regard to Tax Returns or declarations of the other party. A change by either party in the method of tax reporting or the contents of Tax Returns shall not be considered a voluntary disclosure of information regarding Tax Returns or declarations of the other party.

(d) Tax Return Information. Buyer and Sellers shall furnish, at no cost to the other, such data relating to the Purchased Assets as the other party may reasonably require to prepare Tax Returns. Such data shall be made available to support the allocation made under this Agreement; provided, however, that if additional data is reasonably required by Sellers or Buyer for preparation of Tax returns or tax examinations, such additional information (including

reproduction of tax assessments and records) shall be furnished, at no cost within a reasonable time after requested in writing.

22.9 Bulk Sales Laws. The parties hereby waive compliance with the bulk sales laws of any state in which the Purchased Assets are located or in which operations relating to the Business are conducted.

22.10 Choice of Law; Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY, AND ANY DISPUTES OR CONTROVERSIES RELATED HERETO, SHALL BE INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS THAT WOULD APPLY THE LAWS OF ANY OTHER JURISDICTION. IN THE EVENT OF ANY LEGAL ACTION TO ENFORCE THE TERMS OF THIS AGREEMENT, THE LEGAL ACTION SHALL BE CONDUCTED ONLY IN LOS ANGELES COUNTY, CALIFORNIA. EACH PARTY HEREBY IRREVOCABLY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF AND VENUE IN COURTS OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, OR, IF IT HAS OR CAN ACQUIRE JURISDICTION, IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, IN ANY ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT. IN ANY LEGAL ACTION PURSUANT TO THIS AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES AND COSTS.

22.11 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

22.12 Paragraph Headings. The Section and Section paragraph headings contained herein are for convenience only and shall have no substantive bearing on the interpretation of this Agreement.

22.13 Rules of Interpretation. The following rules of interpretation shall apply to this Agreement, the Exhibits hereto, and any certificates, reports or other documents or instruments made or delivered pursuant to or in connection with this Agreement, unless otherwise expressly provided herein or therein, and unless the context hereof or thereof clearly requires otherwise:

(a) A reference to any document or agreement shall include such document or agreement as amended, modified or supplemented from time to time in accordance with its terms, and if a term is said to have the meaning assigned to such term in another document or agreement and the meaning of such terms therein is amended, modified or supplemented, then the meaning of such term herein shall be deemed automatically amended, modified or supplemented in a like manner.

(b) References to the plural include the singular, the singular the plural and the part the whole.

(c) The words "include," "includes," and "including" are not limiting.

(d) A reference to any law includes any amendment or modification to such law which is in effect on the relevant date.

(e) A reference to any person or entity includes its successors, heirs and permitted assigns.

(f) Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for purposes of this Agreement or any Exhibit hereto or certificate, report or other document or instrument made or delivered pursuant to or in connection with this Agreement, such determination or computation shall be done in accordance with GAAP at the time in effect, to the extent applicable, except where such principles are inconsistent with the express requirements hereof or of such exhibit, certificate, report, document or instrument.

(g) The words "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

(h) All Schedules and Exhibits to this Agreement constitute material terms of this Agreement and are incorporated fully into the terms of this Agreement. All information disclosed in a Schedule or Exhibit shall be deemed disclosed under and incorporated into any other Schedule or Exhibit to which it is expressly cross-referenced and to the extent a matter in such Schedule or Exhibit is disclosed in such a way as to make its relevance readily apparent.

22.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, but which shall together constitute but one agreement.

The parties have executed this Purchase and Sale Agreement on the day and year first written above.

**CAMPBELL:**

CAMPBELL CONCRETE OF NEVADA, INC.

By: _____

Name: Steven R. Campbell

Title: Pres.

CAMPBELL CONCRETE OF CALIFORNIA, INC.

By: _____

Name: Steven R. Campbell

Title: Pres.

CAMPBELL CONCRETE OF ARIZONA, INC.

By: _____

Name: Steven R. Campbell

Title: Pres

CAMPBELL CONCRETE, INC.

By: _____

Name: Steven R Campbell

Title: Pres.

CAMPBELL CONCRETE OF NORTHERN CALIFORNIA, INC.

By: _____

Name: Steven R Campbell

Title: Pres.

STERLING TRENCHING, INC.

By: _____

Name: Steven R. Campbell

Title: Pres.

SR CAMPBELL PLUMBING OF CALIFORNIA, INC.

By: _____

Name: Steven R. Campbell

Title: Pres.

SR CAMPBELL PLUMBING OF NEVADA, INC.

By: _____

Name: Steven R. Campbell

Title: Pres.

SRC ENTERPRISES, INC.

By: _____

Name: Steven R. Campbell

Title: Pres.

SOUTHWEST MANAGEMENT, INC.

By: _____

Name: Steven R. Campbell

Title: Pres.

**SHAREHOLDER:**

_____

Steven R. Campbell

**BUYER:**

C CONSTRUCTION, INC.

By: Michael Mahre
Name: Michael Mahre
Title: President

**PARENT:**

BMC CONSTRUCTION, INC.

By: Michael Mahre
Name: Michael Mahre
Title: CEO

# EXHIBITS

Note that the inclusion of any item or matter in an Exhibit does not constitute a determination that such item or matter is material.

Exhibit List

| | |
|---|---|
| Exhibit 1 | Contracts |
| Exhibit 2 | Equipment |
| Exhibit 3 | Escrow Agreement |
| Exhibit 4 | Shareholder's Licenses |
| Exhibit 5 | Automobiles |
| Exhibit 6 | Other Contracts and Assets |
| Exhibit 7 | Supplier and Vendor Rebate Parties |
| Exhibit 8 | Existing Shareholder Leases |
| Exhibit 9 | Intangible Personal Property |
| Exhibit 10 | Permits |
| Exhibit 11 | Personal Property Leases |
| Exhibit 12 | Purchase Price |
| Exhibit 13 | Real Property Leases |
| Exhibit 14 | Shareholder Consulting Agreement |
| Exhibit 15 | Allocation of Value |

## Exhibit 1

## Contracts

See the attached list of Contracts, which list is hereby incorporated into this Exhibit in its entirety by this reference. The attached list includes Contracts that are both material and not material to the Business.

Exhibit 13, Personal Property Leases, and Exhibit 15, Real Property Leases, are hereby incorporated into this Exhibit in their entirety by this reference.

Contracts relating to construction projects generally do not have a fixed price, and consequently, definitive pricing information cannot be provided.

## Exhibit 2

## Equipment

See the attached list of Equipment, which list is hereby incorporated into this Exhibit in its entirety by this reference. The attached list includes Equipment that is both material and not material to the Business. Equipment that appears on the attached list and which also appears on Exhibit 5 or Exhibit 6 shall be deemed to an Excluded Asset, notwithstanding the fact that such Equipment appears on the attached list. In the case of any conflict between Exhibit 5 or Exhibit 6 on the one hand, and Exhibit 2 on the other, Exhibit 5 or Exhibit 6 (as applicable) shall control.

## Exhibit 3

## Escrow Agreement

See attached.

## Exhibit 4

## Shareholder's Licenses

None.

## Exhibit 5

## Automobiles

Any item listed in this Exhibit 5 and that also appears on Exhibit 2 shall be deemed to be Excluded Assets, notwithstanding the fact that such item appears on Exhibit 2. In the case of any conflict between Exhibit 5 and Exhibit 2, Exhibit 5 shall control.

The following automobiles are included among the Excluded Assets:

| Vehicle | Year | License Plate # | VIN # | Owner |
|---|---|---|---|---|
| Mercedes | 2003 | 975HHR | WDBNG70J13A332478 | Auto is leased, payments are made by Campbell Concrete of Nevada, Inc. |
| Ford F350 | 2003 | 950PSC | 1FTSW31P33EB92302 | SRC Enterprises, Inc. |
| 2003 Range Rover | 2003 | 691PNT | SALME11443A122202 | SRC Enterprises, Inc. |
| Haulmark Ind Ut | 2000 | 49615S | 16HGB2025YV016955 | Campbell Concrete of Nevada, Inc. |

## Exhibit 6

## Other Contracts and Assets

Any item listed in this Exhibit 6 and that also appears on Exhibit 2 shall be deemed to be Excluded Assets, notwithstanding the fact that such item appears on Exhibit 2. In the case of any conflict between Exhibit 6 and Exhibit 2, Exhibit 6 shall control.

The following are Excluded Assets:

- Laptop Computer:
  Dell Latitude D600, SN: 3MM2D31
  Includes Docking Station with external mouse and keyboard, Dell Flat Panel Monitor, and Speakers

- Printer:
  HP Color Laserjet 3550N, SN: CNBR502372

- Fax:
  Brother Intellifax 2800, SN: U56577D4J459745

- Multipurpose Fax/Scan/Copy/Print:
  HP PSC 950, SN: MY1AVB1061

- Microwave:
  Sharp R360EZ, SN: 46693

- Radio/CD:
  Bose AWRC-1G, SN: 022373C1145 6554A

- TV Set:
  Make: JVC
  Model: AV27230
  SN: 10619684R

- Fujitsu Scanner, Model # F14530C, s/n 003448

- Docuxplorer 4 software, Registration # 5C9DB3F4EDEB70F2

- FireKing two 2-drawer lateral filing cabinets

- FireKing two 4-drawer lateral filing cabinets

- Red Rock Country Club membership

- University of Nevada – Las Vegas season football and basketball tickets

- Two retention deposits with Pardee in the aggregate amount of $60,000. Campbell made two retention deposits in accordance with two separate retention agreements with Pardee Homes. The effect of the retention deposits is that Pardee does not withhold the 10% retention on contract billings. Campbell Concrete of California, Inc., deposited $25,000 on April 2004. Campbell Concrete, Inc., deposited (for the benefit of its then Nevada division) $35,000 on May 1998. Note that this $35,000 deposit was later "sold" to Campbell Concrete of Nevada, Inc., in order to get the retention off the books of Campbell Concrete, Inc., and onto the books of Campbell Concrete of Nevada, Inc.

## Exhibit 7

## Supplier and Vendor Rebate Parties

Rinker Materials – Las Vegas, NV. Concrete rebate paid approximately monthly in arrears.

Silver State Materials - Las Vegas, NV. Concrete rebate paid approximately monthly in arrears.

Robertsons Ready Mix – Corona, CA. Concrete Rebate for July and August to be received in September.

## Exhibit 8

## Existing Shareholder Leases

Commercial Lease Agreement dated January 1, 2004 by and between SRC, Sole Proprietorship, The Campbell Family Trust, Steven R. Campbell, Trustee, as lessor, and Campbell Concrete of California, Inc., a California corporation, as lessee.

Commercial Lease Agreement dated January 1, 2003 by and between SRC, Sole Proprietorship, The Campbell Family Trust, Steven R. Campbell, Trustee, as lessor, and Campbell Concrete of Nevada, Inc., a Nevada corporation, as lessee.

## Exhibit 9

## Intangible Personal Property

Campbell uses the following names in the Business:

- Campbell Concrete of Arizona, Inc.
- Campbell Concrete of California, Inc.
- Campbell Concrete of Nevada, Inc.
- Campbell Concrete of Northern California, Inc.
- Campbell Concrete, Inc.
- S.R. Campbell Plumbing of California, Inc.
- S.R. Campbell Plumbing of Nevada, Inc.
- Southwest Management, Inc.
- SRC Enterprises, Inc.
- Sterling Trenching, Inc.
- CTC Management, LLC

Sellers also attempted to register "Campbell Companies" on the Principal Register with the United States Patent & Trademark Office (the "USPTO"). By letter dated July 18, 2005, Brady, Vowerck, Ryder & Caspino informed Sellers that the USPTO had rejected the application to register "Campbell Companies".

Campbell owns the following domain names:

- CampbellConcrete.com
- CampbellCompanies.com
- Ccofnca.com
- Ccofnv.com
- Ccofca.com

Campbell has a web site hosted by Verio. All of the following URL's are directed to the same web site:

- http://www.campbellconcrete.com
- http://www.campbellcompanies.com
- http://www.ccofnv.com
- http://www.ccofca.com
- http://www.ccofnca.com

## Exhibit 10

## Permits

### CAMPBELL CONCRETE OF NEVADA BUSINESS LICENSES

| CITY | LICENSE NUMBER | EXPIRATION DATE |
|---|---|---|
| State of Nevada | 325444556 | 03/31/06 |
| Clark County | 1007258-240 | 01/31/06 |
| City of North Las Vegas | 65460 | 08/31/05 |
| City of Las Vegas | C12-01990-2-081932 | 01/31/06 |
| City of Henderson | 131X-Contractor/1998039602 | 08/31/05 |
| City of Boulder City | 3-6-99-8362-0 | 06/30/05 |
| State Contractors Board | 004722547225 | 08/31/05 |

### CAMPBELL CONCRETE OF CALIFORNIA BUSINESS LICENSES:

| CITY | LICENSE NUMBER | EXPIRATION DATE |
|---|---|---|
| State of California | 791670 | 02/28/07 |
| Adelanto | 013386 | 03/31/06 |
| Anaheim | BUS-2003-03959 | 09/30/05 |
| Apple Valley | 00006045 | 12/31/05 |
| Banning | 018462 | 11/05/05 |
| Beaumont | 01445 | 06/30/06 |
| Coachella | B-040232 | 12/31/05 |
| Colton | 44003 | 12/31/05 |
| Chino | 26607 | 12/31/05 |
| Chino Hills | 05-06528 | 12/31/05 |

| | | |
|---|---|---|
| Corona | 616053 | 11/30/05 |
| Desert Hot Springs | 3053 | 02/28/06 |
| Fontana | 026085 | 12/31/05 |
| Hemet | 24565 | 12/31/05 |
| Hesperia | 05-06766 | 01/31/06 |
| Irvine | 99047659 | 11/30/05 |
| Indio | 06-05646 | 01/29/06 |
| La Quinta | 3013 | 03/31/06 |
| Lake Elsinore | 05-09641 | 01/31/06 |
| Loma Linda | 13702 | 12/31/05 |
| Mira Loma (Corona) | See Corona | N/A |
| Montclair | 23659 | 06/23/06 |
| Moreno Valley | 07961 | 12/31/05 |
| Murrieta | 05959 | 11/15/05 |
| Norco | 010273 | 06/30/06 |
| Palm Desert | 04-25984 | 12/31/05 |
| Perris | 24844 | 12/31/05 |
| Palm Springs | 20002475 | 12/01/05 |
| Pomona | B96672 | 09/30/05 |
| Rancho Cucamonga | 040709 | 02/27/06 |
| Redlands | 160503 | 12/31/05 |
| Riverside | 106032 | 12/18/05 |
| San | 10010 | 12/31/05 |

| | | |
|---|---|---|
| Bernardino | | |
| San Jacinto | 03517 | 12/31/06 |
| Temecula | 018054 | 01/31/06 |
| Victorville | 069241 | 12/31/05 |
| West Covina | 11980 | 06/30/06 |
| Yorba Linda | 12613 | 06/30/06 |
| Yucaipa | 005148 | 11/30/05 |
| | | |

**CAMPBELL CONCRETE OF CALIFORNIA, INC.: ANNUAL PERMIT FROM THE COUNTY OF SAN BERNARDINO CERTIFIED UNIFIED PROGRAM AGENCY**

| Permit # | Program Element | Related ID | Expiration |
|---|---|---|---|
| PT0007889 | 4210 Special Handler | PR0008759 | 5/31/2006 |
| PT0007890 | 4420 Special Generator | PR0008760 | 5/31/2006 |

**CAMPBELL CONCRETE OF CALIFORNIA- SAN DIEGO, BUSINESS LICENSES**

| CITY | LICENSE NUMBER | EXPIRATION DATE |
|---|---|---|
| Bonsall | x | |
| Carlsbad | 1218664 | 5/31/2006 |
| Chula Vista | | |
| Encinitas | 18003 | 6/30/2005 |
| Escondido | 153908 | 7/31/2006 |
| Fallbrook | x | |
| Hemet | **Just applied** | |
| San Diego | B2004003039 | 2/28/2006 |
| San Marcos | 29209 | 8/31/2005 |
| Spring Valley | x | |
| Valley Center | x | |

"X" = Unincorporated: Cities do not require a business license

## SRC PLUMBING OF CALIFORNIA BUSINESS LICENSES

| CITY | LICENSE NUMBER | EXPIRATION DATE |
|---|---|---|
| Alpine | x | |
| Bonsall | x | |
| Cardiff by the Sea | uses San Diego business license | |
| Carlsbad | 1217412 | 10/31/05 |
| Carmel Valley | uses San Diego business license | |
| Encinitas | 17997 | 06/30/06 |
| Hemet | **Just applied** | |
| La Costa | uses Carlsbad business license | |
| Lake Elsinore | 10420 | 06/30/06 |
| La Jolla | uses San Diego business license | |
| Menifee | x | |
| Mira Mesa | uses San Diego business license | |
| Moreno Valley | 12361 | 12/31/05 |
| Murrieta | 9393 | 05/17/06 |
| Otay Mesa | x | |
| Poway | x | |
| Rancho Bernardo | uses San Diego business license | |
| San Diego | B2004003033 | 02/28/06 |
| San Jacinto | 3516 | 12/31/05 |
| San Marcos | 28411 | 02/28/06 |
| Santee | 12700 | 12/31/05 |
| Scripps Ranch | uses San Diego business license | |
| Temecula | | |
| Valley Center | x | |
| Winchester | x | |

("X")= Unincorporated: Cities do not require a business license

| NAME OF ENTITY | CONTRACTOR LICENSE INFORMATION |
|---|---|

| | CONTRACTOR BOARD # | STATUS | RENEWAL DATE |
|---|---|---|---|
| Campbell Concrete of Arizona, Inc. | ROC188167 (AZ) | ACTIVE | 8/31/2005 |
| Campbell Concrete of California, Inc. | 791670 / C-8 Concrete (CA) | ACTIVE | 2/28/2007 |
| | 791670 / C-50 Steel Reinforcing (CA) | ACTIVE | 2/28/2007 |
| Campbell Concrete of Nevada, Inc. | 0047225 C-5 Concrete (NV) | ACTIVE | 8/31/2005 |
| Campbell Concrete of Northern California, Inc. | 822700 Concrete (CA) | ACTIVE | 8/31/2005 |
| S.R. Campbell Plumbing of California, Inc. | 819965 / C-36 (CA) | ACTIVE | 5/31/2007 |
| S.R. Campbell Plumbing of Nevada, Inc. | 58014 / C-1 (NV) | ACTIVE | 8/31/2005 |
| Sterling Trenching, Inc. | APPLIED FOR IN NV | | |
| | 858041 (CA) | ACTIVE | 4/30/2007 |

## Exhibit 11

## Personal Property Leases

See attached list of Personal Property Leases, which list is hereby incorporated into this Exhibit in its entirety by this reference.

## Exhibit 12

## Calculation of Present Value of Personal Property Leases

See attached spreadsheet showing the calculation of the present value of the Personal Property Leases, which spreadsheet is hereby incorporated in its entirety into this Exhibit by this reference.

## Exhibit 13

## Real Property Leases

| Description of Agreement | Date |
|---|---|
| Rental Agreement ("Lease") between Campbell Concrete of Nevada, Inc. (a Nevada Corporation) and SSS Properties LLC<br><br>Premises: 4040 W. Russell Road, Las Vegas, Nevada 89118 | January 4, 2005<br><br>commencement date: 1/15/2005<br><br>execution date: 1/14/2005 |
| Standard Industrial/Commercial Multi-Tenant Lease – Gross American Industrial Real Estate Association – between San Marcos Plaza/JVP, LLC a California limited liability company and Campbell Concrete of California, Inc. a California corporation<br><br>Premises: 340 Rancheros Drive, Suite 172 and 182/B, San Marcos, California 92069 | November 1, 2004<br><br>commencement date: 12/1/2004 |
| American Industrial Real Estate Association Standard Sublease between Altman Specialty Plants, Inc., a California Corporation, dba The Mud Hut as sublessor and Campbell Concrete of California, Inc. San Diego Division as sublessee, with consent to sublease given by the master lessor, Mission Road, LLC a California Limited Liability Company.<br><br>Premises: 1028 West Mission Avenue, Suite C, San Diego, California<br><br>Master Lease attached to the above sublease entitled Standard Industrial/Commercial Multi-Tenant Lease – Gross American Industrial Real Estate Association – between Mission Road, LLC a California Limited Liability Company, and Altman Specialty Plants, Inc., a California Corporation, dba The Mud Hut | July 23, 2003<br><br>commencement date: 8/22/2003<br><br>August 19, 2000<br><br>commencement date: 9/15/2000 |

| | |
|---|---|
| Industrial Real Estate Lease between U.S. National Leasing, LLC an Alaskan limited liability company and Campbell Concrete of Northern California Inc. a California corporation<br><br>Premises: Building 7, Bay 5 at 8311 Demetre Avenue, located in the Depot Park, Sacramento, California | February 4, 2004<br><br>commencement date: 4/1/2004 |

## Exhibit 14

## Shareholder Consulting Agreement

See attached.

## Exhibit 15

## Allocation of Value

See the attached spreadsheet, which spreadsheet is hereby incorporated into this Exhibit in its entirety by this reference.

**DISCLOSURE SCHEDULE**

**TO**

**PURCHASE AND SALE AGREEMENT ("AGREEMENT")**

This Disclosure Schedule is hereby delivered by Campbell Concrete of Nevada, Inc., a Nevada corporation, Campbell Concrete of California, Inc., a California corporation, Campbell Concrete of Arizona, Inc., an Arizona corporation, Campbell Concrete, Inc., a dissolved California corporation, Campbell Concrete of Northern California, Inc., a California corporation, Sterling Trenching, Inc., a Nevada corporation, S.R. Campbell Plumbing of California, Inc., a California corporation, S.R. Campbell Plumbing of Nevada, Inc., a Nevada corporation, SRC Enterprises, Inc., a Nevada corporation, and Southwest Management, Inc., a Nevada corporation (each a "Campbell Entity" and collectively, "Campbell" or the "Company"), Steven R. Campbell, the sole shareholder of each Campbell Entity ("Shareholder" and collectively with Campbell, "Sellers"), to C Construction, Inc., a Delaware corporation ("Buyer"), and BMC Construction, Inc., a Delaware corporation ("Parent").

Any capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Agreement. Where any representation or warranty contained in the Agreement is limited or qualified materially as to the matters to which the representation or warranty is given, the inclusion of any matter in these Disclosure Schedules does not constitute a determination that such matters are material.

All information disclosed in a Schedule shall be deemed disclosed under and incorporated into any other Schedule to which it is expressly cross-referenced and to the extent a matter in such Schedule is disclosed in such a way as to make its relevance readily apparent. Headings have been inserted on the separate disclosure schedules for convenience of reference only and shall not have the effect of amending or changing the content or meaning of any section of the Agreement.

## Schedule 8.1

## Good Standing; Authorization

Southwest Management, Inc., is qualified to conduct business in California as " Southwest Management, Inc., which will do business in California as California Southwest Management, Inc."

The following Campbell Entities are not qualified to conduct business in California, but do not require qualification because they do not conduct any business there:

- Campbell Concrete of Nevada, Inc., a Nevada corporation
- Campbell Concrete of Arizona, Inc., an Arizona corporation
- S.R. Campbell Plumbing of Nevada, Inc., a Nevada corporation

The following Campbell Entities are not qualified to conduct business in Nevada, but do not require qualification because they do not conduct any business there:

- Campbell Concrete of California, Inc., a California corporation
- Campbell Concrete of Arizona, Inc., an Arizona corporation
- Campbell Concrete of Northern California, Inc., a California corporation
- S.R. Campbell Plumbing of California, Inc., a California corporation

Campbell Concrete, Inc., a California corporation, filed Articles of Dissolution with the Secretary of State of the State of California on May 6, 2004 and no longer conducts any business. Campbell Concrete, Inc., is not qualified to conduct business in either California or Nevada.

## Schedule 8.2

## Ownership of Purchased Assets

Exhibit 11, Personal Property Leases, which is hereby incorporated in its entirety by this reference, sets forth certain assets that are leased.

Sellers entered into a Second Amendment to Amended and Restated Credit Agreement dated June 8, 2005 by and between Southwest Management, Inc., and City National Bank that granted a blanket security interest in substantially all of the Assets owned by Campbell. The current amount outstanding of approximately $ 2,537,050 will be paid off on or before the Closing.

See the attached UCC search results dated June 10, 2005, a true and complete copy of which has been provided to Buyer, listing certain liens on the Purchased Assets, which results are hereby incorporated into this Schedule in their entirety by this reference.

See the attached UCC search results dated July 28, 2005, a true and complete copy of which has been provided to Buyer, listing certain liens existing on the Purchased Assets as of July 28, 2005 that were not reported in the UCC search results dated June 10, 2005. The UCC search results dated July 28, 2005 are hereby incorporated into this Schedule in their entirety by this reference.

See the attached UCC search results dated August 23, 2005, a true and complete copy of which has been provided to Buyer, listing certain liens existing on the Purchased Assets as of July 28, 2005 that were not reported in the UCC search results dated June 10, 2005 or July 28, 2005. The UCC search results dated August 23, 2005 are hereby incorporated into this Schedule in their entirety by this reference.

## Schedule 8.3

## Tax Matters

Business property tax returns were not filed in California for (1) Sterling Trenching, Inc., a Nevada corporation, (2) Campbell Concrete of Northern California, Inc., a California corporation, (3) SRC Enterprises, Inc., a Nevada corporation, and (4) Southwest Management, Inc., a Nevada corporation. The foregoing companies may have been, and may in the future be, required in to file business property tax returns in California. Sterling Trenching, Inc., was incorporated in Nevada on February 12, 1998, so it may have been required to file California business property tax returns for each year since 1998. Campbell Concrete of Northern California, Inc., was incorporated in California on November 15, 2002, so it may have been required to file California business property tax returns for each year since 2002. SRC Enterprises, Inc., was incorporated in Nevada on April 8, 1998, so it may have been required to file California business property tax returns for each year since 1998. Southwest Management, Inc., was incorporated in Nevada on February 12, 1998, so it may have been required to file California business property tax returns for each year since 1998.

Campbell Concrete of Arizona, Inc., an Arizona corporation, did not file a 2003 federal or state tax return.

Campbell's historical policy has been to book estimated tax installments to the balance sheet as a prepaid expense and to book any tax liability only in the last month of Campbell's fiscal year (December). No provision for the payment of Taxes has been made for any federal or state income taxes through June 30, 2005. The State of California charges a nominal income tax on any corporation that has taxable income in California. No provisions have been made for this income tax liability in California.

The anticipated sales tax and transfer fee liability for the transactions contemplated by the Purchase Agreement is estimated to be $500,000. It is estimated that about $370,000 of this relates to sales tax and transfer fees with respect to the registered vehicles and trailers. The $130,000 balance is a rough estimate of the sales tax applicable to the other assets being sold and a cushion for unknown tax liabilities associated with the transaction contemplated by the Purchase Agreement. Buyer and Campbell have agreed to share equally in the payment of the sales tax and transfer fees associated with the consummation of the transaction.

## Schedule 8.4

## Compliance with Laws, Licenses and Permits

See Schedule 8.1, which is hereby incorporated in its entirety by this reference.

A fire suppression system may be needed at Sellers' facilities at 1640 W. Pellisier Road, Colton, CA 92324. In 2004, an official from the Colton fire department informed an employee of Campbell that a fire suppression system was needed in certain facilities at 1640 W. Pellisier Road, Colton, CA 92324.

Sellers' facilities at 1640 W. Pellisier Road, Colton, CA 92324, 340 Rancheros Drive, San Marcos, California 92069 and 5201 S. Polaris Avenue, Las Vegas, NV 89118 may not be compliant with certain requirements of the Americans with Disabilities Act.

Since 2002, the following facilities have undergone capital improvements without applicable building permits, and such facilities may not be in compliance with applicable building codes: (1) 1640 W. Pellisier Road, Colton, CA 92324, (2) 340 Rancheros Drive, Suite 172 and 182/B, San Marcos, California 92069, (3) 1028 West Mission Avenue, Suite C, San Diego, California, and (4) 5201 S. Polaris Avenue, Las Vegas, NV 89118.

For payroll checks that have been unclaimed through the end of the fiscal year, Sellers' historical practice has been to void such checks. To account for any Liabilities in connection with the foregoing sentence, Campbell Concrete of Nevada, Inc., and Campbell Concrete of California, Inc., have each accrued $5,000 for unclaimed property.

Campbell Concrete of California, Inc., does not have a Motor Carrier of Property Permit. Such a permit (CA# 0110918) exists in the name of Campbell Concrete, Inc. Campbell never requested a voluntary withdrawal from the program when Campbell Concrete, Inc., was dissolved. Consequently, an application for a Motor Carrier of Property Permit for Campbell Concrete of California, Inc., which took the place of Campbell Concrete, Inc., was never filed.

## Schedule 8.5

## Financial Statements

The Interim Financial Statements have not been compiled, reviewed or audited by the Seller's Certified Public Accountant. The Interim Financial Statements do not include footnote disclosures or the financial statement "Statement of Cash Flows".

Campbell's historical policy has been to book estimated tax installments to the balance sheet as a prepaid expense and to book any tax liability only in the last month of Campbell's fiscal year (December). No provision for the payment of Taxes has been made for any federal or state income taxes through June 30, 2005. The State of California charges a nominal income tax on any corporation that has taxable income in California. No provisions have been made for this income tax liability in California.

For payroll checks that have been unclaimed through the end of the fiscal year, Sellers' historical practice has been to void such checks. To account for any Liabilities in connection with the foregoing sentence, Campbell Concrete of Nevada, Inc., and Campbell Concrete of California, Inc., have each accrued $5,000 for unclaimed property.

Campbell's financial statements are not in compliance with GAAP in the following respect: Campbell's historical practice has been to expense the values for sales tax and freight, rather than capitalizing such amounts to inventory.

## Schedule 8.6

## Absence of Certain Changes

SR Campbell Plumbing of California, Inc., intends to make the following capital expenditures in order to handle warranty matters and customer service:

| | | |
|---|---|---|
| 2- Service type vans | approx. $30,000 each | $60,000 total |
| 2- Large Drain Snakes | approx.$ 5,000 each | $10,000 total |
| 2- Small Drain Snakes | approx.$ 3,000 each | $ 6,000 total |
| 2 -Drain Cameras | approx. $12,000 each | $24,000 total |

TOTAL: $100,000

The above capital expenditures will allow SR Campbell Plumbing of California, Inc., to move its customer service and warranty responsibilities in-house. SR Campbell Plumbing of California, Inc., had been using a small company called Quality Plumbing for these services, but a recent decline in Quality Plumbing's services has led to the decision to handle customer service and warranty matters in-house. Sellers do not believe that the decline in Quality Plumbing's services constitute a Material Adverse Effect.

On August 26, 2005, $12,000 worth of equipment (tools, generators, etc.) was stolen from Campbell's Las Vegas facility. The loss is not covered by Campbell's insurance due to the deductible.

Since July 29, 2005:

- SRC Enterprises, Inc., purchased a truck for $33,000 and will rent the truck to SR Campbell Plumbing of California, Inc.
- Campbell Concrete of Nevada, Inc., purchased two (2) air compressors for $11,000 each
- Campbell Concrete of California, Inc., made leasehold acquisitions of $36,000 for the new Post Tension "Yard"
- Campbell Concrete of Nevada, Inc., purchased 98 Nextel phones, obligating it to pay monthly charges of $29.99 each ( $2,939.02 in the aggregate per month) for a term of 24 months

## Schedule 8.7

## Legal Proceedings

See the attached spreadsheet of construction defect litigation matters, which spreadsheet is hereby incorporated into this Schedule its entirety by this reference.

See the attached list of worker's compensation matters, which list is hereby incorporated into this Schedule in its entirety by this reference.

See the attached list of SB800 matters, which list is hereby incorporated into this Schedule in its entirety by this reference.

See the attached lists of insurance loss runs from the following insurance carriers, which lists are hereby incorporated into this Schedule in their entirety by this reference:

1. St. Paul Travelers, from April 1, 2004 to April 1, 2005
2. Hartford, as of April 29, 2005
3. Kemper Insurance Companies, as of July 7, 2005
4. Reliance, as of November 13, 2003
5. Zurich, as of June 30, 2005 and updated as if August 22, 2005
6. Superior National Insurance Companies, as of March 17, 2003
7. Mt. Hawley, as of August 28, 2005
8. AIG, as of July 31, 2005

The following litigation matters have been reported:

**CAMPBELL CONCRETE OF NEVADA, INC.**

- Campbell Concrete of Nevada, Inc. v. American Int'l Group, US District of Central California (W.D. – LA) #2:03-cv-09309-R-JTL, filed December 19, 2003; transferred to the US District Court of Nevada, Southern Division, #CV-S-04-1049-JCM-RJJ (Campbell Concrete of California, Inc., also listed as plaintiff). Campbell sued AIG claiming that AIG failed to properly refund to Campbell all unearned premiums on the policies that AIG had issued for the years 2002 and 2003. This case has been conditionally settled and AIG has returned $240,000 to Campbell, which money went directly to A.I. Credit Corporation (see below). A copy of the executed Settlement Agreement and Mutual Release by and between Campbell Concrete of Nevada, Inc., and Campbell Concrete of California, Inc., on the one hand, and American International Specialty Lines Insurance Company, National Union Fire Insurance Company of

Pittsburg, Pennsylvania, Lexington Insurance Company, American Home Assurance Company, and American International Group, Inc., on the other hand, has been provided to Buyer and is hereby incorporated into this Schedule in its entirety by this reference.

- A.I. Credit Corporation v. Campbell Concrete of Nevada, Inc., US District of Nevada #CV-S-04-0097-JCM-RJJ, filed January 26, 2004 (Campbell Concrete, Inc. also listed as defendant). A.I. Credit sued Campbell claiming that Campbell owes approximately $450,000 in connection with the financing of the 2003 policies provided by AIG. In the interim, $240,000 has been paid to A.I. Credit Corporation, leaving an outstanding claim of $210,000.

- Campbell Concrete of Nevada, Inc., a Nevada corporation, and Campbell Concrete of California, Inc., a California corporation, Plaintiffs-Appellants, vs. Premium Finance Specialists, Inc., a Missouri corporation ("PFSI"), Defendant - Appellee. The number of the Appeal is 04-57140. The Appeal was filed on December 8, 2004. This case is a dispute over fees related to PFSI's financing of certain insurance policies for Campbell. The trial court awarded a judgment against Campbell Concrete of Nevada, Inc., in the approximate amount of $210,000.

- Campbell Concrete of Nevada, Inc. v. Willis (this case was filed in state court in Riverside, CA, case # RIC434137). Campbell Concrete of Nevada, Inc. and Campbell Concrete of California, Inc. are suing Willis for failing to procure proper insurance coverage for Campbell and failing to provide other promised services.

**CAMPBELL CONCRETE, INC.**

- American Motorists Insurance Company ("AMICO") v. Campbell Concrete, Inc., US District of Central California (S.D. – Santa Ana) #8:03-cv-00007-AHS-AN, filed 1/02/03. AMICO sued to recover deductibles for various claims. Campbell is appealing a judgment against it in the amount of $119,849.07.

- Campbell Concrete, Inc. v. American Motorists Insurance Company, US District of Central California (E.D. – Riverside) #5:05-cv-00327-VAP-SGL, filed 4/22/05. Campbell is suing to recover post-tender fees and costs that Campbell incurred to defend approximately 100 different matters.

## Schedule 8.8

## Contracts and Assumed Leases

In the ordinary course of business, Sellers pay certain bills on a pay-when-get-paid basis; consequently, some accounts payable may become past due from time to time in amounts and for durations that are not material.

Campbell is currently disputing in good faith a past due amount of $13,000 in charges for cellular phone services with Nextel.

Campbell is currently disputing in good faith an alleged amount due of $9,000 for terminating a service agreement with Aramark regarding uniform services.

## Schedule 8.9

## Agreement Not In Breach of Other Instruments

Substantially all form industry Contracts that the Campbell Entities utilize require consent to assign or transfer, and the Campbell Entities have historically requested consent to assign or transfer any Contracts.

Substantially all Assumed Leases and those listed on Exhibits 11 and 13 require consent to assign or transfer and the Campbell Entities have historically requested consent to assign or transfer any Assumed Lease.

## Schedule 8.10

## Accounts Receivable

None.

## Schedule 8.11

## Equipment

Sellers entered into a Second Amendment to Amended and Restated Credit Agreement dated June 8, 2005 by and between Southwest Management, Inc., and City National Bank that granted a blanket security interest in substantially all of the Assets owned by Campbell, including Equipment.

See the UCC search results dated June 10, 2005 attached to Schedule 8.2, a true and complete copy of which has been provided to Buyer, setting forth certain liens on Equipment, which results are hereby incorporated into this Schedule 8.11 in their entirety by this reference.

See the UCC search results dated July 28, 2005 attached to Schedule 8.2, a true and complete copy of which has been provided to Buyer, setting forth certain liens on Equipment, which results are hereby incorporated into this Schedule 8.11 in their entirety by this reference.

See the UCC search results dated August 23, 2005 attached to Schedule 8.2, a true and complete copy of which has been provided to Buyer, listing certain liens on Equipment, which results are hereby incorporated into this Schedule 8.11 in their entirety by this reference.

## Schedule 8.12

## Trade Accounts Payable

None.

## Schedule 8.13

## Prepaid Expenses

None.

## Schedule 8.14

## Labor Matters

Campbell Concrete of Nevada, Inc., is a party to that certain consent decree dated May 18, 2004 between Campbell Concrete of Nevada, Inc., U.S. Equal Employment Opportunity Commission and Belina Garcia, a copy of which has been provided to Buyer and the contents of which is hereby incorporated into this Schedule in its entirety by this reference.

Below is a list of all the employee benefit plans of the Sellers, true and correct copies of which have been made available to Buyer:

| CARRIER | GROUP NAME | CONTACT | COVERAGE | POLICY # |
|---|---|---|---|---|
| Health Plan Of Nevada/Sierra Health Services | Campbell Concrete | 2724 N Tenaya Way, Las Vegas, NV 89128,<br>Kim Lundvall<br>Ph: (702) 562-8055<br>Fax: (702) 242-7973 | NV: Medical - HMO/POS | 50500805 |
| PacifiCare | Southwest Management, Inc. | Dept. 2150, Los Angeles, CA 90084<br>Jennifer Remis<br>Ph: (714) 226-5386<br>Fax: (714) 226-5622 | CA: Medical - HMO/POS | 10148520 & 121360005 |
| Guardian | Southwest Management, Inc. | PO Box 51505, Los Angeles, CA 90051<br>Lucia Jansen<br>Ph: (800) 678-5982<br>Fax: (509) 465-3430 | NV & CA: Dental - DMO/PPO<br><br>(CA offers both DMO and PPO; NV only offers PPO) | 326578 |
| The Standard | Southwest Management, Inc. | 500 N State College Blvd. #1000, Orange, CA 92868<br>Kimberly Bailey<br>Ph: (714) 940-0561<br>Fax: (800) 378-4576 | NV & CA: Basic Life and AD&D, Supplemental Life, Long Term and Short Disability for Management Staff | 138739 |
| Anthem | Southwest Management, Inc. | Dept. L-8111, Columbus, OH 43268<br>Courtney Trout<br>Ph: (614) 880-3562 | NV: Voluntary Long Term and Short Term Disability | 499350 |

| | | | | |
|---|---|---|---|---|
| | | Fax: (614) 880-3553 | | |
| VSP | Southwest Management, Inc. | 111 W Ocean Blvd. #1625, Long Beach, CA 90802<br>Barbara VandenBrane<br>Ph: (800) 367-9618<br>Fax: (562) 495-2032 | NV & CA: Vision Plan | 12259937 |
| John Hancock | The Campbell Concrete Retirement Plan | PO Box 894109, Los Angeles, CA 90189<br>MaryAnn Ritchie<br>Ph: (800) 333-0963<br>Fax: (416) 926-3337 | NV & CA: 401(k) | 14762 |

Pursuant to Section 11.4 of the Purchase Agreement, Buyer shall continue through 12/31/05 the following employee benefit plans with respect to employees who remain employed by Buyer:

| **CARRIER** | **GROUP NAME** | **CONTACT** | **COVERAGE** | **POLICY #** |
|---|---|---|---|---|
| Health Plan Of Nevada/Sierra Health Services | Campbell Concrete | 2724 N Tenaya Way, Las Vegas, NV 89128,<br>Kim Lundvall, Ph: 702.562.8055<br>Fax: (702) 242-7973 | NV: Medical - HMO/POS | 50500805 |
| PacifiCare | Southwest Management, Inc. | Dept. 2150, Los Angeles, CA 90084<br>Jennifer Remis<br>Ph: (714) 226-5386<br>Fax: (714) 226-5622 | CA: Medical - HMO/POS | 10148520 & 121360005 |
| Guardian | Southwest Management, Inc. | PO Box 51505, Los Angeles, CA 90051<br>Lucia Jansen<br>Ph: (800) 678-5982<br>Fax: (509) 465-3430 | NV & CA: Dental - DMO/PPO<br><br>(CA offers both DMO and PPO, NV only offers PPO) | 326578 |
| VSP | Southwest Management, Inc. | 111 W Ocean Blvd. #1625, Long Beach, CA 90802<br>Barbara VandenBrane<br>Ph: (800) 367-9618<br>Fax: (562) 495-2032 | NV & CA: Vision Plan | 12259937 |
| John Hancock | The Campbell Concrete Retirement Plan | PO Box 894109, Los Angeles, CA 90189<br>MaryAnn Ritchie<br>(800) 333-0963 | NV & CA: 401(k) | 14762 |

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|---|---|---|---|---|
| | | (416) 926-3337 | | |

## Schedule 8.15

## Brokers and Finders

In connection with the consummation of the transactions contemplated by the Purchase Agreement, Sellers will pay Jim Cleven $1,000,000.00.

## Schedule 8.16

## Environmental Laws

Sellers have provided to Buyer the Phase I Environmental Site Assessment prepared by Hart Crowser, Inc., dated December 19, 2003 covering the vacant property with the San Bernardino County Assessor's Parcel Number (APN) 277-022-092 and located on Placentia Lane in the City of Colton, San Bernardino County, California, and the information set forth therein is hereby incorporated in its entirety by this reference.

Sellers have provided to Buyer the Phase I Environmental Site Assessment prepared by GEO SEC, Inc., dated December 21, 2004 covering the property located at 1640 West Pellisier Road, Colton, California 92324 (APN'S 0277-022-079 and 0277-022-084), and the information set forth therein is hereby incorporated in its entirety by this reference.

Sellers have provided to Buyer the Phase I Environmental Site Assessment prepared by Property Profiles, Inc., dated April 11, 2005 covering the vacant lot (APN 603-300-011) along Oates Lane in Coachella, California, and the information set forth therein is hereby incorporated in its entirety by this reference.

Sellers have provided to Buyer the Phase II Environmental Site Assessment prepared by Community Development Associates dated May 26, 2005 covering the vacant lot (APN 603-300-011) along Oates Lane in Coachella, California, and the information set forth therein is hereby incorporated in its entirety by this reference.

Sellers have provided to Buyer the results of the limited baseline soil sampling performed by Kleinfelder on October 31, 2003 covering the property located at 1021 West Mission Avenue in Escondido, California, and the information set forth therein is hereby incorporated in its entirety by this reference.

Sellers have provided to Buyer the Baseline Site Investigation prepared by Cameron-Cole dated August 30, 2005 covering the property located at 1640 W. Pellisier Road, Colton, CA 92324, and the information set forth therein is hereby incorporated in its entirety by this reference.

Sellers have provided to Buyer the Baseline Site Investigation prepared by Cameron-Cole dated August 30, 2005 covering the property located at 5201 S. Polaris Avenue, Las Vegas, NV 89118 (the "Polaris Report"), and the information set forth therein is hereby incorporated in its entirety by this reference. The Polaris Report, among other things, identifies one soil sample that contains contaminated soil levels that exceed Nevada Department of Environmental Protection State regulations and will require notification to the State of Nevada.

## Schedule 8.17

## No Undisclosed Liabilities

None.

## Schedule 8.18

## Competitive Restrictions

None.

## Schedule 8.19

## Intangible Personal Property

Sellers entered into a Second Amendment to Amended and Restated Credit Agreement dated June 8, 2005 by and between Southwest Management, Inc., and City National Bank that granted a blanket security interest in substantially all of the Assets owned by Campbell, including Intangible Personal Property.

See the UCC search results dated June 10, 2005 attached to Schedule 8.2, a true and complete copy of which has been provided to Buyer, setting forth certain liens on Intangible Personal Property, which results are hereby incorporated into this Schedule 8.19 in their entirety by this reference.

See the UCC search results dated July 28, 2005 attached to Schedule 8.2, a true and complete copy of which has been provided to Buyer, setting forth certain liens on Intangible Personal Property, which results are hereby incorporated into this Schedule 8.19 in their entirety by this reference.

See the UCC search results dated August 23, 2005 attached to Schedule 8.2, a true and complete copy of which has been provided to Buyer, listing certain liens on Intangible Personal Property, which results are hereby incorporated into this Schedule 8.19 in their entirety by this reference.

## Schedule 8.20

## Insurance

Sellers generally make installment payments on their yearly insurance policy premiums. Sellers currently use Cananwill, Inc., a premium finance company, for the financing of various insurance policy premiums within Sellers' current insurance portfolio. All amounts due and owing under the financing contract dated on or about April 11, 2005 by and between Sellers and Cananwill, Inc., have been paid in full to date. Certain policy premiums are not financed through a finance company; rather, they are financed at zero percent through the insurer itself without a contract.

It is general industry practice that insurers accept construction defect claims with a full reservation of rights, which has been the case for the claims referenced in Schedule 8.7.

See the attached spreadsheet listing all insurance policies of Campbell, which spreadsheet is hereby incorporated in its entirety by this reference.

See the attached spreadsheet listing all WRAP insurance policies involving Campbell, which spreadsheet is hereby incorporated in its entirety by this reference.

See the attached spreadsheet listing which insurance policies of Campbell can be assigned (thereby indicating which are the Assignable Insurance Products), which spreadsheet is hereby incorporated in its entirety by this reference.

## Schedule 8.21

## Projections

None.