

09-04-1998



HEET

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Docket No.:

Tab settings

To the Honorable Commissioner of

100810289

the attached original documents or copy thereof.

1. Name of conveying party(ies):

James River Limestone Company, Inc.

- Individual(s)
- General Partnership
- Corporation-State Virginia
- Other
- Association
- Limited Partnership

Additional names(s) of conveying party(ies) Yes No

3. Nature of conveyance:

MRD 8-31-98

- Assignment
- Security Agreement
- Other Asset Purchase Agreement (see Page 23, Section (19) and Schedule J) and Bill of Sale, Assignment and Assumption Agreement
- Merger
- Change of Name

Execution Date: June 26, 1996 dated June 28, 1996

2. Name and address of receiving party(ies):

Name: Chemstone Corporation

Internal Address:

Street Address: 1696 Oranda Road

City: Strasburg State: VA ZIP: 22657

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Delaware
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes N

(Designations must be a separate document from Additional name(s) & address(es) Yes N

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,713,696

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Mary Dalton Baril, Esq.

Internal Address: McGuire, Woods, Battle & Boothe LLP

Street Address: One James Center, 901 East Cary Street

City: Richmond State: VA ZIP: 23219-4030

6. Total number of applications and registrations involved:.....

1

7. Total fee (37 CFR 3.41):.....\$ \$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

09/03/1998 DWUYEH 00000165 1713696

01 FC:481

40.00 DP

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Mary Dalton Baril

Name of Person Signing

Mary Dalton Baril

Signature

8/28/98

Date

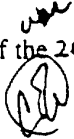
Total number of pages including cover sheet, attachments, and

59

ASSET PURCHASE AGREEMENT

THIS AGREEMENT made as of the 26th day of June, 1996.

BETWEEN :


CHEMSTONE CORPORATION, a corporation incorporated under the laws of the State of Delaware, one of the United States of America,

(the "Purchaser")

- and -

JAMES RIVER LIMESTONE COMPANY, INC., a corporation incorporated under the laws of the State of Virginia, one of the United States of America ("James") and AUSTINVILLE LIMESTONE COMPANY, INC., ("Austinville") a corporation incorporated under the laws of the State of Virginia, one of the United States of America

(each individually called the "Vendor" and together called the "Vendors")

WHEREAS:

- A. The Vendors carry on the business of mining and quarrying limestone;
- B. The Vendors wish to sell, and the Purchaser wishes to purchase, the undertaking and all of the assets of the business carried on by James and certain of the assets of Austinville upon the terms and subject to the conditions hereinafter contained;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained and the sum of \$1.00 of lawful money of The United States of America and other good and valuable consideration paid by each of the parties hereto to each of the other parties hereto (the receipt and sufficiency of which are hereby acknowledged), it is agreed among the parties hereto as follows:

ARTICLE 1 - INTERPRETATION

1.1 Defined Terms.

In this Agreement and in the schedules hereto, unless there is something in the subject matter or context inconsistent therewith, the following terms and expressions will have the following meanings:

- (a) "Act" means the Securities Exchange Act of 1934 as in effect on the date hereof;
- (b) "Affiliate" has the meaning attributed to that term in Rule 12b-2 under the Act;
- (c) "Associate" has the meaning attributed to that term in Rule 12b-2 under the Act;
- (d) "Assumed Contracts" means all contracts, agreements, orders, commitments and other engagements by or with third parties relating to the Business which are included in the Purchased Assets including, without limitation, the Customer Contracts and the Leases;
- (e) "Assumed Liabilities" means the liabilities of James, if any, which are to be assumed by the Purchaser pursuant to section 2.4 hereof;
- (f) "Audited Financial Statements" means the audited consolidated financial statements of James as at and for the fiscal year 1995, consisting of a balance sheet, an income statement, a statement of changes in financial position together with the notes thereto and the opinion of the auditors of James thereon, a copy of which is attached hereto as Schedule A, all prepared in accordance with generally accepted accounting principles consistently applied;
- (g) "Austinville Assets" means those assets listed on Schedule "GG" hereto;
- (h) "Business" means the business currently and heretofore carried on by James which primarily involves mining, quarrying and sale of limestone and the production of limestone powders and fillers and sale of same in and around Buchanan and Rocky Point, Virginia;
- (i) "Business Day" means any day other than a Saturday or a Sunday on which the main branch of Morgan Guaranty Trust in the City of New York, is open for business;
- (j) "Claim" has the meaning set out in Article 8;
- (k) "Closing" means the consummation of the transactions contemplated by this Agreement on the Closing Date.
- (l) "Closing Date" means June 28, 1966, or such other date as the Vendors and Purchaser may agree upon;
- (m) "Closing Time" means 3:00 PM in Virginia on the Closing Date or such other time on the Closing Date as the parties hereto may agree upon;
- (n) "Condition of the Business" means the condition of the assets, liabilities, operations, activities, earnings, prospects, affairs or financial position of the Business;

- (o) "control" means, with respect to any corporation, the ownership of more than 50% of the voting shares of that corporation, including any shares which are voting only upon the occurrence of a contingency where such contingency has occurred and is continuing;
- (p) "Customer Contracts" means any and all agreements entered into between the James and one or more third parties relating to the sale or provision of goods or services by James to such third parties in connection with the Business, including unfilled orders, commitments and other engagements by or with such third parties, all of which are listed in Schedule B attached hereto;
- (q) "Depreciation Expense Report" means the report attached hereto as Schedule FF;
- (r) "Depreciation Expense Report Date" means December, 1995;
- (s) "Employee Plans" has the meaning set out in section 3.1 (31);
- (t) "Encumbrances" means mortgages, charges, pledges, security interests, liens, encumbrances, actions, claims, demands and equities of any nature whatsoever or howsoever arising and any rights or privileges capable of becoming any of the foregoing;
- (u) "Environmental Holdback" has the meaning set out in section 2.8;
- (v) "Environmental Laws" means federal, state and local laws, rules, regulations, codes and ordinances, and any orders, decrees, judgments or injunctions issued, promulgated, approved or entered thereunder, relating to the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act; the Resource Conservation and Recovery Act of 1976, as amended; the Federal Water Pollution Control Act, as amended; the Federal Clean Air Act, as amended; the Toxic Substances Control Act, as amended; the Surface Mining Control and Reclamation Act of 1977, as amended; the Safe Drinking Water Act, as amended; the Pollution Control Act of 1990, as amended; the Federal Insecticide, Fungicide and Rodenticide Act, as amended; the Emergency Planning and Community Right to Know Act of 1986, as amended, National Ambient Quality Standards and comparable state and local laws, in all of the foregoing cases, in effect on the date hereof including the Virginia Air Pollution Control Law, as amended, the Virginia Water Control Law, as amended, and the Virginia Waste Management Act, as amended;
- (w) "Environmental Permits" has the meaning set out in subsection 3.1 (12) (b);
- (x) "ESOP" means the Employee Self Ownership Plan among the Employees of James and its employees.

- (y) "Excluded Assets" means those assets of the Business referred to in section 2.3 hereof;
- (z) "generally accepted accounting principles" or "GAAP" refers to United States generally accepted accounting principles consistently applied in accordance with the preparation of audited financial statements;
- (aa) "Hazardous Substances" has the meaning set out in section 3.1 (12);
- (bb) "Indemnity Claim" has the meaning set out in section 8.2;
- (cc) "Interim Financial Statements" means the operating statements of the James as at and for the four month period ended April 30, 1996, a copy of which is attached hereto as Schedule C;
- (dd) "Intellectual Property" has the meaning set out in section 3.1 (20);
- (ee) "Interim Period" means the period from and including the date of this Agreement to and including the Closing Date;
- (ff) "Leased Premises" means all premises leased by James under the Leases;
- (gg) "Leases" means the leases and the agreements to lease under which James leases any real property, as listed in Schedule D attached hereto;
- (hh) "License Rights" means all license and distribution rights relating to the Business described in Schedule E attached hereto;
- (ii) "Losses" means, in respect of any matter, all claims, demands, proceedings, losses, damages, liabilities, Taxes, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly as a consequence of such matter;
- (jj) "Permitted Encumbrances" means:
 - 1. liens for taxes, assessments and governmental charges due and being contested in good faith and diligently by appropriate proceedings (and for the payment of which adequate provision has been made);
 - 2. zoning, servitudes, easements, restrictions, rights-of-way and other similar rights in real property or any interest therein, provided the same are not of such nature, individually or in the aggregate, as to materially detract from the value of the Real Properties or adversely affect the use of the Real Properties by James in the operation of the Business;
 - 3. liens for taxes either not due and payable or due but for which notice of assessment has not been given;

4. undetermined or inchoate liens, charges and privileges incidental to current construction or current operations and statutory liens, charges, adverse claims, security interests or encumbrances of any nature whatsoever claimed or held by any governmental authority that have not at the time been filed or registered against the title to the asset or served upon James pursuant to law or that relate to obligations not due or delinquent;
 5. security given in the ordinary course of the Business to any public utility, municipality or government or to any statutory or public authority in connection with the operations of the Business, other than security for borrowed money; and
 6. the Permitted Encumbrances described in Schedule F;
- (kk) "person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency or political subdivision thereof);
- (ll) "Purchase Price" means the sum of \$5,350,000.00, which is the amount payable by the Purchaser to the Vendors for all of the Purchased Assets except for the Inventory, as provided herein;
- (mm) "Purchased Assets" means the undertaking and assets of the Business and the Austinville Assets which are to be sold by the Vendors to the Purchaser pursuant to section 2.1 hereof;
- (nn) "Real Properties" means the real properties owned by James, which are described in Schedule F attached hereto;
- (oo) "Tax or Taxes" means a Federal, state, local and foreign taxes and assessments, including all interest, penalties and additions imposed with respect to such amounts;
- (pp) "Tax Act" means the Internal Revenue Code of 1986, as amended;
- (qq) "Title Company" means a company satisfactory to the Purchaser in the business of insuring title to real property;
- (rr) "Title Policy" means an owner's title policy issued by the Title Company in the amount of \$750,000.00, insuring that the Purchaser owns fee simple title to the Real Properties subject to no exceptions other than (i) the Permitted Encumbrances; (ii) the exception as to taxes which shall have inserted the year of Closing; (iii) such other exceptions which the Purchaser approves in writing which shall reflect any endorsements or modification requested by the Purchaser pursuant to Section 3.1(15)(l); and

(ss) "Warranty Claim" means a claim made by either the Purchaser or the Vendors based on or with respect to the inaccuracy or non-performance or non-fulfillment or breach of any representation or warranty made by the other party contained in this Agreement or contained in any document or certificate given in order to carry out the transactions contemplated hereby.

1.2 Best of Knowledge.

Any reference herein to "the best of the knowledge" of the Vendors will mean the actual knowledge of the Vendors and the knowledge which they would have had if they had conducted a diligent inquiry into the relevant subject matter.

1.3 Schedules.

The schedules listed in the Table of Contents to this Agreement and which are attached to this Agreement are incorporated into this Agreement by reference and are deemed to be part hereof.

1.4 Currency.

Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful money of The United States of America.

1.5 Choice of Law and Attornment.

This Agreement shall be governed by and construed in accordance with the laws of the State of Virginia and the laws of The United States of America applicable therein. Each of the parties hereto hereby waives any right to a jury trial in the event that any matter among them is submitted to a court of competent jurisdiction for determination.

1.6 Interpretation Not Affected by Headings or Party Drafting.

The division of this Agreement into articles, sections, paragraphs, subparagraphs and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein", "hereunder" and similar expressions refer to this Agreement and the schedules hereto and not to any particular article, section, paragraph, subparagraph, clause or other portion hereof and include any agreement or instrument supplementary or ancillary hereto. Each party hereto acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement, and the parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

1.7 Number and Gender.

In this Agreement, unless there is something in the subject matter or context inconsistent therewith:

- (a) words in the singular number include the plural and such words shall be construed as if the plural had been used;
- (b) words in the plural include the singular and such words shall be construed as if the singular had been used;
- (c) wherever the word Vendors is used, it shall be construed to mean Vendors, or either of them; and
- (d) words importing the use of any gender shall include all genders where the context or party referred to so requires, and the rest of the sentence shall be construed as if the necessary grammatical and terminological changes had been made.

Time shall be of the essence hereof.

ARTICLE 2 - PURCHASE AND SALE

2.1 Purchased Assets.

On the terms and subject to the fulfillment of the conditions hereof, the Vendors hereby agree to sell, transfer and assign to the Purchaser, and the Purchaser hereby agrees to purchase and accept from the Vendors, the Austinville Assets, the undertaking of the Business as a going concern and all properties, assets, rights and interests of James related to the Business of every kind and description and wheresoever situate, except for the Excluded Assets. Without limiting the generality of the foregoing, the Purchased Assets will include all assets of the Business shown or reflected in the Depreciation Expense Report together with any Machinery, Equipment and Furniture acquired since the Depreciation Expense Report Date, other than Excluded Assets and assets which have been disposed of or consumed in the ordinary course of the Business since the Depreciation Expense Report Date, and will include the following assets:

- (a) Inventories: all inventories of or relating to the Business as of the Closing Time, including all raw materials, manufacturing supplies, packaging materials, work in process and finished goods of James which are good and usable or salable;
- (b) Machinery, Equipment and Furniture: all machinery, equipment, tools, furniture, furnishings and other miscellaneous items used in or relating to the Business including, without limitation, all those listed in Schedule G attached hereto;
- (c) Leased Equipment and Vehicles: all right, title and interest of James in and under leases of equipment and vehicles used in or relating to the Business including, without limitation, all leases and other agreements listed in Schedule H attached hereto;
- (d) Computer Equipment: all of James' right, title and interest in all computer hardware used in the Business including, without limitation, that described in Schedule I attached hereto;

- (e) Real Properties: all right, title and interest of James in the Real Properties including any mineral rights attaching to any properties not owned nor leased by James, all of which are described in Schedule F attached hereto;
- (f) Leased Premises and Leasehold Improvements: all right, title and interest of James in and to the Leased Premises and under the Leases (all of which are described in Schedule D attached hereto) including, without limitation, any prepaid rent and security deposits thereunder and all leasehold improvements owned by James and forming part of the Leased Premises;
- (g) Customer Lists and Information: all customer lists, files, data and information relating to customers and prospective customers of the Business as of the Closing Time including, without limitation, the customer list which has been delivered by James to the Purchaser prior to the date hereof;
- (h) Customer Contracts (including purchase orders): all right, title and interest of James in and to all Customer Contracts including the Tolling Agreement between James and Suzorite Mineral Products, Inc., all of which are listed in Schedule B attached hereto;
- (i) Business Records: all books, records, files and documents relating to the Business, including without limitation, books of account, ledgers, journals, sales and purchase records, lists of suppliers, credit information, cost and pricing information, business reports, plans and projections and all other correspondence, data and information, financial or otherwise, in any format and media whatsoever, related to the Business;
- (j) Goodwill, Name, etc.: the goodwill of the Business, together with the exclusive right of the Purchaser to represent itself as carrying on the Business in continuation of and in succession to James, and all rights in and title to the names James River Limestone Company, James River Limestone or James River;
- (k) Technology, Intellectual Property and Software: all trade secrets, research data, designs, proprietary know-how, technical information, specifications and materials in whatever form or media recording or evidencing technology or proprietary information used in or relating to the Business, and all rights and interests in and to all inventions, patents, applications for patents, copyrights, trade marks, trade mark registrations, trade names, logos, industrial designs and other intellectual property used in or relating to the Business, and all computer software used in the Business including all related code, specifications, documentation, revisions, enhancements and modifications thereto, in whatever form and media, all of which is listed in Schedule J attached hereto;
- (l) License Rights: all license and distribution rights relating to the Business granted to James by any third party under all contracts and agreements (written or oral), all of which are listed in Schedule E attached hereto;
- (m) Regulatory Licenses: all licenses, registrations and qualifications of the Business required by any governmental or regulatory authority, to the extent transferable;

- (n) Insurance Benefits: any benefits payable under all insurance policies relating to the Business or the other Purchased Assets in respect of claims based on damage to the any of the Purchased Assets or other occurrences which may in any way create a liability for the Purchaser prior to the Closing Time;
- (o) Supply Contracts: the full benefit of all contracts providing for the supply of goods and services to the Business, subject to the Purchaser's review and acceptance of such contracts and agreements prior to the Closing Date;
- (p) Warranty Rights and Maintenance Contracts: the full benefit of all warranties and warranty rights (express and implied) against manufacturers or sellers which apply to any of the Purchased Assets and all maintenance contracts on machinery, equipment and the other Purchased Assets, subject to the Purchaser's review and acceptance of such contracts and agreements prior to the Closing Date;
- (q) the Austinville Assets; and
- (r) Other Agreements: all of James' rights, title and interest to and under all other contracts and agreements (written or oral) relating directly or indirectly to the Business, subject to the Purchaser's review and written acceptance of such contracts and agreements prior to the Closing Date.

2.2 Unassignable Contracts.

If any rights, benefits or remedies (hereinafter, in this section, collectively called the "Rights") under any Assumed Contracts are not assignable by James to the Purchaser without the consent of the other party thereto (hereinafter, in this section, called the "Third Party") and such consent is not obtained, then, unless the Purchaser exercises its rights under section 6.2 hereof:

- (a) James will hold the Rights for the benefit of the Purchaser;
- (b) James will, at the request and expense and under the direction of the Purchaser, in the name of James or otherwise as the Purchaser shall specify, take all such actions and do all such things as shall, in the opinion of the Purchaser, be necessary or desirable in order that the obligations of James under such Assumed Contracts may be performed in a manner such that the value of the Rights shall be preserved and shall enure to the benefit of the Purchaser and such that all moneys receivable under the Assumed Contracts may be received by the Purchaser;
- (c) James will promptly pay over to the Purchaser all such moneys collected by James in respect of such Assumed Contracts, and
- (d) to the extent permitted by the Third Party and provided, in the Purchaser's opinion, it would not be prejudicial to the Purchaser's rights to do so, the Purchaser will perform the obligations under such Assumed Contracts on behalf of James, and will indemnify James against all liabilities, costs and expenses incurred by James in performing such obligations.

2.3 Excluded Assets.

There shall be specifically excluded from the assets being purchased and sold hereunder, the following assets, properties, rights and interests of James related to the Business:

- (a) Cash and Bank Balances: all cash, bank balances, moneys in the possession of banks and other depositories, term or time deposits, guaranteed investment certificates, treasury bills, other securities and other similar cash or cash-equivalent items owned by the James as of the Closing Date;
- (b) Income Tax Refunds: income tax refunds and other tax refunds receivable by the Vendors;
- (c) Limestone Park;
- (d) shares of the subsidiaries of the Vendors; and
- (e) Accounts Receivable and notes receivable of James.

2.4 Assumed Liabilities.

On the terms and subject to the conditions herein contained, at the Closing Time the Purchaser will assume and thereafter pay, perform, discharge and satisfy all liabilities and obligations of James accruing on and after the Closing Date under the Assumed Contracts. In addition to the Purchase Price, the Purchaser will make the two final payments for the dryer upgrade for pelletizing at Plant #1, in the amount of \$37,282.00 plus installation costs of \$20,000.00 (the "Dryer Upgrade Costs")

2.5 Retained Liabilities and Indemnity.

The Purchaser will not assume and will not be liable for, and the Vendors will indemnify the Purchaser from and against, all obligations, commitments and liabilities or and claims against the Vendors (whether absolute, accrued or contingent) relating to the Business, or the Austinville Assets except for the Assumed Liabilities. Without limiting the generality of the foregoing, it is agreed that the Purchaser will have no liability for any of the following obligations or liabilities:

- (a) all liabilities in respect of all indebtedness of the Vendors to all persons existing on the Closing Date and all liabilities arising under the Schedule O litigation;
- (b) all product liability claims and liabilities for warranty or product return claims relating to any product or service of the Business produced, sold, performed or delivered prior to the Closing Date;
- (c) all liabilities for all taxes, duties, levies, assessments and other such charges, including any penalties, interests and fines with respect thereto, payable by the Vendors to any federal, state, local or other government or governmental agency, authority, board, bureau or commission, domestic or foreign, including, without limitation, any taxes in respect of or measured by the sale, consumption or performance by the Vendors of any product or service prior to the Closing Date;

- (d) all liabilities for salary, bonus, vacation pay and other compensation and all liabilities under Employee Plans of the Vendors relating to employment of all persons in the Business prior to the Closing Date;
- (e) all severance payments, damages for wrongful dismissal and all related costs in respect of the termination by James of the employment of any director or officer of James and any employee of the Business who does not accept the Purchaser's offer of employment referred to in paragraph 5.2(2) hereof, and
- (f) all liabilities for claims for injury, disability, death or workers' compensation incurred, arising from or related to employment in the Business prior to the Closing Date.

2.6 Purchase Price.

- (a) The Purchase Price payable by the Purchaser to the Vendors for the Purchased Assets will be the sum of:
 - (i) \$5,350,000.00, and
 - (ii) the value of the Inventory ~~on the day immediately preceding~~ ^{AT THE END OR CLOSING ON} the Closing Date, as hereinafter determined which the parties estimate will be approximately \$1,300,000.00
- (b) For purposes of this section, the value of the Inventory means the lesser of the Vendors' cost and the net realizable value as at the close of business on the day immediately preceding the Closing Date as agreed between the parties.
- (c) The parties will cause the value of the Inventory to be determined on the day immediately preceding the Closing Date and will prepare a list of the Assumed Liabilities as soon as possible and, in any event, no later than June 26, 1996.

2.7 Payment of Purchase Price.

The Purchase Price will be paid and satisfied as follows:

- (a) The Purchaser has paid \$100,000.00 to the Vendors (hereinafter, in this section, called the "Deposit") as a deposit. The Deposit will be dealt with in accordance with the following provisions:
 - (i) If the purchase and sale of the Purchased Assets is completed at the Closing Time, the Deposit plus all interest earned thereon will be released from trust and applied toward satisfaction of the portion of the Purchase Price to be paid 30 days after Closing;
 - (ii) If the purchase and sale of the Purchased Assets is not completed for any reason due to the failure of the Vendor to satisfy any of the conditions set out in section 6.1 hereof, the Deposit plus all interest earned thereon will be returned to the Purchaser;

- (iii) If the purchase and sale of the Purchased Assets is not completed for any reason other than the failure to satisfy any of the conditions set out in section 6.1 hereof, then the Deposit plus all interest thereon will be forfeited to the Vendors in full satisfaction of all damages, losses, costs and expenses incurred by the Vendors, and the Vendors acknowledges that it will not have any other remedy or claim against the Purchaser as a result of the sale of the Purchased Assets not being completed.
- (b) At the Closing Time, the Purchaser will satisfy a portion of the Purchase Price by the assumption of the Assumed Liabilities, if any.
- (c) At the Closing Time, the Purchaser will pay to Chambliss & Bahner in escrow, by certified check or bank draft, the sum of \$300,000.00 to be held on the terms and subject to the conditions of an Escrow Agreement in the form of the draft agreement attached hereto as Schedule K as and for the Environmental Holdback.
- (d) At the Closing Time, the Purchaser will pay to the Vendors, by certified check or bank draft the sum of \$5,050,000.00 less the Assumed Liabilities, if any.
- (e) After the Closing Time the Purchaser will pay the Dryer Upgrade Costs or reimburse the Vendors for the Dryer Upgrade Costs paid by the Vendors immediately prior to Closing.
- (f) After 30 days form the Closing Date, the Purchaser will pay to the Vendors the value of the Inventory less the Deposit.

2.8 Environmental Holdback

- (a) The sum of \$300,000.00 (the "Environmental Holdback") shall be subtracted from the Purchase Price payable on Closing. The Environmental Holdback shall be held in escrow by the Escrow Agent pursuant to the Escrow Agreement for a period ending two years after the Closing Date (the "Holdback Period").
- (b) The Purchaser shall perform such environmental remedial work during the Holdback Period: (1) as is identified in the Phase I environmental site assessment prepared by Geoscience Consultants Ltd. dated March 1, 1996; or (2) as is required in the way of reclamation works in respect of the Quarry No. 1 high face as may be determined by the Department of Mines, Minerals and Energy as a consequence of the Vendors' request for amendment to Permit No. 05749AA dated April 8, 1996 (the "Environmental Work").
- (c) The Escrow Agent shall pay all costs, fines, penalties, fees or other expenses (the "Environmental Expenses") incurred or ordered to be incurred for the Environmental Work from the Environmental Holdback to the extent of the escrow funds. Upon the expiry of the Holdback Period the Escrow Agent shall pay the balance of the Environmental Holdback, less all Environmental Expenses incurred or ordered to be incurred and any estimate of Environmental Expenses for any Environmental Work pending or in process to the Vendors pursuant to section 2.7 herein.

2.9 Allocation of Purchase Price.

The Purchase Price shall be allocated among the Purchased Assets in the manner provided by Schedule L attached hereto. The Vendors and the Purchaser shall file their respective tax returns prepared in accordance with such allocation.

2.10 Austinville Assets.

It is agreed by the Vendors and the Purchaser that the Austinville Assets are being bought in place and that they are presently on lands and premises owned or leased by Austinville. It is acknowledged that these assets will be moved from such premises by the Purchaser over a period of time defined by a further agreement made between the Purchaser and Austinville.

2.11 Use, and Stamp Taxes and Basic Prorations

The cost of the preparation of a deed of conveyance and the payment of the Grantor's (Vendor's) tax for recording such deed shall be borne by the Vendor. The costs of recordation and all county and state recording taxes other than the Grantor's tax shall be borne by the Purchaser. All real and personal property taxes on the Purchased Assets shall be prorated between the Purchaser and Vendors by allocating to the Vendors that percentage of any such taxes attributable to 1996 which equals that percentage of the days in calendar 1996 which have elapsed immediately prior to Closing and allocating the balance of such taxes to Purchaser. The parties shall settle the amounts owed between them as the result of the above allocations as soon as is reasonably practical following the ultimate determination of such tax liabilities.

2.12 Accounts Receivable and Accounts Payable.

The Purchaser will use reasonable commercial efforts to collect James' accounts receivable of the Business and pay James' accounts payable of the Business out of the collected accounts receivable. Such efforts shall not require the Purchaser to expend any monies nor take any legal action to recover James' accounts receivable. The Purchaser will co-operate with James in the collection of such Accounts Receivable without charge to James: (i) for the time and effort of its employees; and (ii) for any portion of the Purchaser's overhead costs. Accounts receivable that are paid to the Purchaser will after payment of accounts payable be paid over to James at the end of each month after the Closing Date. In the event that there are accounts receivable of James and payments are made to the Purchaser which commingle payments due to the Purchaser and the accounts receivable of the James, for 90 days after the Closing Date the oldest account receivable shall be deemed to be paid by the commingled payments unless otherwise directed by the payor and thereafter the such payments shall be first applied to the Purchaser's accounts receivable.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties by the Vendors.

The Vendors hereby jointly and severally represent and warrant to the Purchaser as follows, and confirm that the Purchaser is relying upon the accuracy of each of such representations and warranties in connection with the purchase of the Purchased Assets and the completion of the other transactions hereunder:

(1) **Corporate Authority and Binding Obligation.** The Vendors have good right, full corporate power and absolute authority to enter into this Agreement and to sell, assign and transfer the Purchased Assets to the Purchaser in the manner contemplated herein and to perform all of the Vendors' obligations under this Agreement. The Vendors and their shareholders and board of directors will take all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, this Agreement and the sale and transfer of the Purchased Assets by the Vendors to the Purchaser. This Agreement is a legal, valid and binding obligation of the Vendors, enforceable against each of them in accordance with its terms subject to (i) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally, and (ii) the fact that equitable remedies, including the remedies of specific performance and injunction, may only be granted in the discretion of a court.

(2) **No Other Purchase Agreements.** No person has any agreement, option, understanding or commitment, or any right or privilege (whether by law, preemptive or contractual) capable of becoming an agreement, option or commitment, for the purchase or other acquisition from the Vendors of any of the Purchased Assets, or any rights or interest therein, other than in the ordinary course of the Business.

(3) **Contractual and Regulatory Approvals.** Except as specified in Schedule M attached hereto, the Vendors are not under any obligation, contractual or otherwise, to request or obtain the consent of any person, and no permits, licenses, certifications, authorizations or approvals of, or notifications to, any federal, provincial, municipal or local government or governmental agency, board, commission or authority are required to be obtained by the Vendors:

- (a) in connection with the execution, delivery or performance by the Vendors of this Agreement or the completion of any of the transactions contemplated herein;
- (b) to avoid the loss of any permit, license, certification or other authorization relating to the Business, or
- (c) in order that the authority of the Purchaser to carry on the Business in the ordinary course and in the same manner as presently conducted remains in good standing and in full force and effect as of and following the closing of the transactions contemplated hereunder.

Complete and correct copies of any agreements under which the Vendors are obligated to request or obtain any such consent have been provided to the Purchaser.

(4) **Status and Governmental Licenses.**

- (a) The Vendors are corporations duly incorporated and validly subsisting in all respects under the laws of their jurisdiction of incorporation. The Vendors have all

necessary corporate power to own their properties and to carry on their business as it is now being conducted.

- (b) The Vendors holds all necessary licenses, registrations and qualifications in each jurisdiction in which:
- (i) it owns or leases any of the Purchased Assets, or
 - (ii) the nature or conduct of the business or any part thereof, or the nature of the Purchased Assets or any part thereof, makes such qualification necessary or desirable to enable the Business to be carried on as now conducted or to enable the Purchased Assets to be owned, leased and operated.

All of the Vendors' licenses, registrations and qualifications are listed in Schedule N attached hereto and are valid and subsisting. Complete and correct copies of the licenses, registrations and qualifications have been delivered to the Purchaser. The Vendors are in compliance with all terms and conditions of the licenses, registrations and qualifications. There are no proceedings in progress, pending or, to the best of the knowledge of the Vendors, threatened, which could result in the revocation, cancellation or suspension of any of the licenses, registrations or qualifications.

(5) **Compliance with Constatng Documents, Agreements and Laws.** The execution, delivery and performance of this Agreement and each of the other agreements contemplated or referred to herein by the Vendors, and the completion of the transactions contemplated hereby, will not constitute or result in a violation, breach or default, or cause the acceleration of any obligations which are included in the Assumed Liabilities:

- (a) under any term or provision of any of the articles, by-laws or other constating documents of the Vendors;
- (b) subject to obtaining the contractual consents referred to in Schedule M hereof, the terms of any indenture, agreement (written or oral), instrument or understanding or other obligation or restriction to which the Vendors are a party or by which it is bound including, without limitation, under any of the Assumed Contracts, or
- (c) subject to obtaining the regulatory consents referred to in Schedule M hereof, under any term or provision of any of the Licenses or any order of any court, governmental authority or regulatory body or any law or regulation of any jurisdiction in which the Business is carried on.

(6) **Financial Statements.**

- (a) The Audited Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a basis consistent with that of the previous fiscal year of James, are true, correct and complete in all material respects and present fairly the consolidated financial condition of James as of December 31, 1995, including the consolidated assets and liabilities of James as of December 31, 1995, and the consolidated revenues, expenses and results of the operations of James for the fiscal year ended on of December 31, 1995.
- (b) The Interim Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a basis consistent with the Audited

Financial Statements, are true, correct and complete in all material respects and present fairly in all material respects the consolidated financial condition of James as of April 30, 1996, including the consolidated assets and liabilities of James as of April 30, 1996, and the consolidated revenues, expenses and results of the operations of James for the four month period ended on of April 30, 1996.

- (c) The financial condition of the Business is now at least as good as the financial condition reflected in the Interim Financial Statements except for the loss of the Certainteed Corp. account.

(7) **Financial Records.** All material financial transactions of the Business have been recorded in the financial books and records of James in accordance with good business practice, and such financial books and records:

- (a) accurately reflect in all material respects the basis for the financial condition and the revenues, expenses and results of operations of the Business shown in the Audited Financial Statements and the Interim Financial Statements, and
- (b) together with all disclosures made in this Agreement or in the schedules hereto, present fairly in all material respects the financial condition and the revenues, expenses and results of the operations of the Business as of and to the date hereof.

No information, records or systems pertaining to the operation or administration of the Business are in the possession of, recorded, stored, maintained by or otherwise dependent upon any other person.

(8) **Liabilities.** There are no liabilities (contingent or otherwise), of the Vendors, other than as disclosed to the Purchaser, of any kind whatsoever in respect of which the Purchaser may become liable on or after the consummation of the transactions contemplated by this Agreement, except the Assumed Liabilities.

(9) **Absence of Certain Changes or Events.** Since the Audited Statements Date, James has not:

- (a) except to the extent disclosed to the Purchaser, incurred any obligation or liability (fixed or contingent), except normal trade or business obligations incurred in the ordinary course of the Business, none of which is materially adverse to the Business;
- (b) created any Encumbrance upon any of the Purchased Assets, except as described in this Agreement or in the schedules hereto;
- (c) sold, assigned, transferred, leased or otherwise disposed of any properties or assets relating to the Business, except in the ordinary course of the Business;
- (d) purchased, leased or otherwise acquired any properties or assets relating to the Business, except in the ordinary course of the Business;
- (e) waived, canceled or written-off any rights, claims, accounts receivable or any amounts payable to James relating to the Business, except in the ordinary course of the Business;

- (f) entered into any transaction, contract, agreement or commitment relating to the Business, except in the ordinary course of the Business;
- (g) terminated, discontinued, closed or disposed of any plant, facility or operation relating to the Business;
- (h) had any supplier of the Business terminate, or communicate to James the intention or threat to terminate, its relationship with the Business, or the intention to substantially reduce the quantity of products or services it sells to the Business, except in the case of suppliers whose sales to the Business are not, in the aggregate, material to the Condition of the Business;
- (i) had any customer of the Business terminate, or communicate to James the intention or threat to terminate, its relationship with the Business, or the intention to substantially reduce the quantity of products or services it purchases from the Business, or its dissatisfaction with the products or services sold by the Business, except in the case of customers whose purchases from the Business are not, in the aggregate, material to the Condition of the Business except the loss of the Certainteed account;
- (j) made any material change in the method of billing customers or the credit terms made available by the Business to customers;
- (k) made any material change with respect to any method of management, operation or accounting in respect of the Business;
- (l) suffered any damage, destruction or loss (whether or not covered by insurance) relating to the Business which has materially adversely affected or could materially adversely affect the Condition of the Business;
- (m) increased any form of compensation or other benefits payable or to become payable to any of the employees of the Business except those made know to the Purchaser in writing;
- (n) suffered any extraordinary loss relating to the Business;
- (o) made or incurred any material change in, or become aware of any event or condition which is likely to result in a material change in, the Condition of the Business or its relationships with its customers, suppliers or employees, except for the loss of the Certainteed Corp. account; or
- (p) authorized, agreed or otherwise become committed to do any of the foregoing.

(10) **Tax Matters.**

The Vendors and any Affiliate or affiliated group, within the meaning of Section 1504 of the Tax Act, of which the Vendors are or have been a member, have duly filed on a timely basis all tax returns required to be filed by it and have paid all Taxes that are due and payable, and all assessments, reassessments, governmental charges, penalties, interest and fines due and payable by it. The Vendors have made adequate provision for Taxes payable by it for the current period and any previous period for which tax returns are not yet required to be filed. There are no actions, suits, proceedings, investigations or claims pending or, to the knowledge

of the Vendors, threatened against, the Vendors in respect of Taxes, governmental charges or assessments, nor are any material matters under discussion with any governmental authority relating to Taxes, governmental charges or assessments asserted by any such authority. The Vendors have withheld from each payment made to any of their past or present employees, officers or directors, and to any non-resident of the United States, the amount of all Taxes and other deductions required to be withheld therefrom and have paid the same to the proper tax or other receiving officers within the time required under any applicable legislation. The Vendors have remitted to the appropriate taxing authority when required by law to do so all amounts collected by it. The Tax liability of the Vendors have been assessed by the Internal Revenue Service and the relevant state and local taxing authorities for all fiscal years up to and including the fiscal year ended December 31, 1994 and there are no agreements, waivers or other arrangements providing for an extension of time with respect to the filing of any tax return by, or payment of any tax, governmental charge or deficiency against, the Vendors. The Vendors have provided to the Purchaser a true copy of all Tax returns filed by the Vendors in respect of the two last completed fiscal years of the Vendors.

(11) **Litigation.** Except for the matters referred to in Schedule O attached hereto, there are no actions, suits or proceedings, judicial or administrative (whether or not purportedly on behalf of the Vendors) pending or, to the best of the knowledge of the Vendors, threatened, by or against or affecting the Vendors which relate to the Business or the Austinville Assets, at law or in equity, or before or by any court or any federal, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign. Except for the matters referred to in Schedule O there are no grounds on which any such action, suit or proceeding might be commenced with any reasonable likelihood of success.

(12) Environmental Matters.

- (a) Except as described in Schedule P and except for those matters dealt with in Section 2.8 (b) and 2.8 (c), the Vendors have been and are in compliance with all applicable federal, state, municipal and local laws, statutes, ordinances, by-laws and regulations and orders, directives and decisions rendered by any department or administrative or regulatory agency relating to the protection of the environment, mining or occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, discharge, transport or handling of any pollutants, contaminants, chemicals or industrial, toxic or hazardous wastes or substances ("Hazardous Substances");
- (b) James has obtained all licenses, permits, approvals, consents, certificates, registrations and other authorizations under Environmental Laws (the "Environmental Permits") required for the operation of the Business, all of which are described in Schedule P. Each Environmental Permit is valid, subsisting and in good standing and James is not in default or breach of any Environmental Permit and no proceeding is pending, or threatened, to revoke or limit any Environmental Permit;
- (c) James has not used or permitted to be used, except in compliance with all Environmental Laws, any of its property or facilities or any property or facility that it previously owned or leased, to generate, manufacture, process, distribute, use, treat, store, dispose of, transport or handle any Hazardous Substance;
- (d) Except as disclosed on Schedule P, James has never received any notice of, nor been prosecuted for an offense alleging, non-compliance with any Environmental Laws, and James has not settled any allegation of non-compliance short of prosecution. Except as disclosed on Schedule P, there are no orders or directions relating to environmental matters requiring remediation or any work, repairs, construction or capital expenditures with respect to the Business or any property of James, nor has James received notice of any of the same;
- (e) Except as disclosed in Schedule P, there are no pending or proposed changes to Environmental Laws that would render illegal or restrict the manufacture or sale of any product manufactured or sold or service provided by James or have a material and adverse effect upon James or its prospects;
- (f) James has not caused or permitted, nor does it have any knowledge of, the release, in any manner whatsoever, of any Hazardous Substance on or from any of its properties or assets or any property or facility that it previously owned or leased, or any such release on or from a facility owned or operated by third parties but with respect to which James is or may be alleged to have liability. All Hazardous Substances and all other wastes and other materials and substances used in whole or in part by James or resulting from the Business have been disposed of, treated and stored in compliance with all Environmental Laws. Schedule P identifies all of the locations where Hazardous Substances used in whole or in part by James has been or are being stored or disposed of;

- (g) James has not received any notice that it is potentially responsible for a federal, state, municipal or local clean-up site or corrective action under any Environmental Laws. James has not received any request for information in connection with any federal, state, municipal or local inquiries as to disposal sites;
- (h) James has delivered to the Purchaser a true and complete copy of all environmental audits, evaluations, assessments, studies or tests relating to the Vendors of which they are aware.
- (i) James has never been the owner of real property, whereby the results of such ownership could create a liability on James for violation of Environmental Laws whether by James or by others.

(13) **Title to Assets.** The Vendors are the owners of and have good and marketable title to all of the Purchased Assets, including, without limitation, all Purchased Assets reflected in the Depreciation Expense Report and all Purchased Assets acquired by the Vendors after the date of the Depreciation Expense Report Date, save and except for:

- (a) the properties and assets disposed of, utilized or consumed since the Depreciation Expense Report Date in the ordinary course of the Business, and
- (b) the Encumbrances described in Schedule Q attached hereto, all of which will be discharged prior to the conveyance of the Purchased Assets to the Purchaser at the Closing Time.

No other person owns any assets which are being used in the Business, except for the Leased Premises and personal property leased by the Vendors.

(14) **Inventory.** The inventory included in the Purchased Assets, subject to a reasonable allowance for obsolete inventory (consistent with the allowances reflected in the Audited Financial Statements and the Interim Financial Statements), is good and usable and is capable of being processed and sold in the ordinary course of the Business at normal profit margins. The inventories of James do not include any material items that are slow moving, below standard quality or of a quality or quantity not usable or salable in the normal course of business, the value of which has not been written down on its books of account to net realizable market value. The inventory levels of James have been maintained at such amounts as are required for the operation of the Business as previously conducted and as proposed to be conducted, and such inventory levels are adequate therefor.

(15) **Real Properties.**

- (a) Schedule F attached hereto lists all real properties included in the Purchased Assets and sets forth the legal description thereof. There are no agreements, options, contracts or commitments to sell, transfer or otherwise dispose of the Real Properties or which would restrict the ability of James to transfer the Real Properties. There are no leases, tenancies, licenses or other rights of occupancy or use for any portion of the Real Properties, and no person other than James occupies or uses any portion of the Real Properties save as disclosed in Schedule F.

(b) James is the absolute beneficial owner of, and has good and marketable title in fee simple to, the Real Properties, free and clear of any and all Encumbrances, except for:

(i) the Encumbrances described in Schedule F attached hereto;

(ii) liens for current taxes not yet due, and

(iii) rights of parties in possession, zoning restrictions, easements, encroachments, rights-of-way, reservations and restrictions of record that run with the land and minor title defects (if any) which do not, in the aggregate, materially adversely affect the validity of title to or the value or marketability of the Real Properties or materially adversely affect the use of the Real Properties as they are presently used by James in connection with the Business.

Complete and correct copies of all documents creating the Encumbrances described in Schedule F attached hereto have been provided to the Purchaser.

(c) The Real Properties described in Schedule F and all buildings and structures located thereon and the conduct of the Business as presently conducted do not violate, and the use thereof in the manner in which presently used is not adversely affected by, any zoning or building laws, ordinances, regulations, covenants or official plans. James have not received any notification alleging any such violation. Such buildings and structures do not encroach upon any lands not owned by James. There are no expropriation, condemnation or similar proceedings pending or, to the best of the knowledge of James, threatened, with respect to any of the Real Properties or any part thereof.

(d) All buildings, structures, improvements and appurtenances situated on the Real Properties are adequate and suitable for the purposes for which they are currently being used and James have adequate rights of ingress and egress for the operation of the Business in the ordinary course. None of such buildings, structures, improvements or appurtenances (or any equipment therein), nor the operation or maintenance thereof, violates any restrictive covenant or any provision of any federal, state or local law, ordinance, rule or regulation, that would have any material effect on the Real Properties, or encroaches on any property owned by others.

(e) no alteration, repair, improvement or other work has been ordered, directed or requested in writing to be done or performed to or in respect of the Real Properties, or to any of the plumbing, heating, elevating, water, drainage or electrical systems, fixtures or works by any municipal, state or other competent authority, which alteration, repair, improvement or other work has not been completed;

(f) all accounts for work and services performed and materials placed or furnished upon or in respect of the Real Properties have been fully paid and satisfied, and no person is entitled to claim a lien against the Real Properties, or any part thereof, other than current accounts in respect of which the payment due date has not yet passed;

- (g) there is nothing owing in respect of the Real Properties to any municipal or other corporation, commission, agency or entity owning or operating a public utility for water, gas, electrical power or energy, steam or hot water, or for the use thereof, other than current accounts in respect of which the payment due date has not yet passed;
- (h) no part of the Real Properties have been taken or condemned by any federal, state, municipal or other competent authority nor has any notice or proceeding in respect thereof been given or commenced;
- (i) the Real Properties are fully serviced and have suitable access to public roads, and there are no outstanding levies, charges or fees assessed against the Real Properties or by any public authority (including development or improvement levies, charges or fees);
- (j) the Real Properties (including all buildings, improvements and fixtures) are fit for their present use; and
- (k) the mineral rights owned by James and listed on Schedule F are all in good standing, assignable to the Purchaser and no consent and no monetary payments are required in order to assign of such mineral rights to the Purchaser, except for the Plant 2 and Quarry Lease from Brown heirs as described in Schedule D hereto.

(16) **Leased Premises.** Schedule D attached hereto describes all leases or agreements to lease under which James leases any real property relating to the Business. Complete and correct copies of the Leases have been provided to the Purchaser. James is entitled to all rights and benefits as lessee under the Leases and James has not sublet, assigned, licensed or otherwise conveyed any rights in the Leased Premises or the Leases to any other person, except as set forth on Schedule D. The names of the other parties to the Leases, the description of the Leased Premises, the term, rent and other amounts payable under the Leases and all renewal options available under the Leases are accurately described in Schedule D. All rental and other payments and other obligations required to be paid and performed by James pursuant to the Leases have been duly paid and performed; James' not in default of any of their obligations under the Leases; and, to the best of the knowledge of James, none of the landlords or other parties to the Leases are in default of any of their obligations under the Leases. James is entitled to assign all of their rights and interest under the Leases and in and to the Leased Premises to the Purchaser subject to obtaining the consents referred to in Schedule M attached hereto. Subject to obtaining such consents, the terms and conditions of the Leases will not be affected by, nor will any of the Leases be in default as a result of, the completion of the transactions contemplated hereunder. The use by James of the Leased Premises is not in breach of any building, zoning or other statute, by-law, ordinance, regulation, covenant, restriction or official plan. James has adequate rights of ingress to and egress from the Leased Premises for the operation of the Business in the ordinary course.

(17) **Work Orders and Deficiencies.** Except for environmental matters covered by Sections 2.8(a) and 2.8(b) of this agreement, there are no outstanding work orders, non-compliance orders, deficiency notices or other such notices relative to the Real Properties, the Leased Premises, the other Purchased Assets or the Business which have been issued by any regulatory authority, police or fire department, sanitation, environment, labour, health or other

governmental authorities or agencies. There are no matters under discussion with any such department or authority relating to work orders, non-compliance orders, deficiency notices or other such notices. The Business is not being carried on, and none of the Real Properties, the Leased Premises or the other Purchased Assets are being operated, in a manner which is in contravention of any statute, regulation, rule, code, standard or policy. No amounts are owing by James in respect of the Real Properties or the Leased Premises to any governmental authority or public utility, other than current accounts which are not in arrears.

(18) **Leases of Personal Property.** Schedule H attached hereto describes all leases of equipment and vehicles used in or relating to the Business. Complete and correct copies of those leases have been provided to the Purchaser. James is entitled to all rights and benefits as lessee under those leases, and James has not sublet, assigned, licensed or otherwise conveyed any rights in those licenses or in the property leased thereunder to any other person. All payments and other obligations required to be paid and performed by James under those leases have been duly paid and performed. James is not in default of any of their obligations under those leases; and, to the best of the knowledge of James, none of the lessors or any other parties to those leases are in default of any of their obligations under those leases. James is entitled to assign all of its right and interest under those leases and in and to the property leased thereunder to the Purchaser subject to obtaining the consents referred to in Schedule M attached hereto. Subject to obtaining such consents, the terms and conditions of those leases will not be affected by, nor will any of those leases be in default as a result of, the completion of the transaction contemplated hereunder.

(19) **Intellectual Property.**

(a) Schedule J attached hereto lists and contains a description of:

- (i) all patents, patent applications and registrations, trade marks, trade mark applications and registrations, copyrights, copyright applications and registrations, trade names and industrial designs, domestic or foreign, owned or used by James relating to the operation of the Business;
- (ii) all trade secrets, know-how, inventions and other intellectual property owned or used by James relating to the Business, and
- (iii) all computer systems and application software, including without limitation all documentation relating thereto and the latest revisions of all related object and source codes therefor, owned or used by James relating to the Business,

(all of the foregoing being hereinafter collectively called the "Intellectual Property").

(b) James has good and valid title to all of the Intellectual Property, free and clear of any and all Encumbrances, except in the case of any Intellectual Property licensed to James as disclosed in Schedule J. Complete and correct copies of all agreements whereby any rights in any of the Intellectual Property have been granted or licensed to James have been provided to the Purchaser. No royalty or other fee is required to be paid by James to any other person in respect of the use of any of the Intellectual Property except as provided in such agreements delivered to the

Purchaser. James has protected their rights in the Intellectual Property in the manner and to the extent described in Schedule J. Except as indicated in Schedule J, James has the exclusive right to use all of the Intellectual Property and has not granted any license or other rights to any other person in respect of the Intellectual Property. Complete and correct copies of all agreements whereby any rights in any of the Intellectual Property have been granted or licensed by James to any other person have been provided to the Purchaser. James is entitled to assign all of their rights and interest in and to the Intellectual Property to the Purchaser subject to obtaining the consents referred to in Schedule M attached hereto.

- (c) Subject to obtaining the aforesaid consents, and except as disclosed in Schedule J there are no restrictions on the ability of James or any successor to or assignee from James to use and exploit all rights in the Intellectual Property. All statements contained in all applications for registration of the Intellectual Property were true and correct as of the date of such applications. Each of the trade marks and trade names included in the Intellectual Property is in use.
- (d) The conduct of the Business and the use of the Intellectual Property does not infringe, and James has not received any notice, complaint, threat or claim alleging infringement of, any patent, trade mark, trade name, copyright, industrial design, trade secret or other Intellectual Property or proprietary right of any other person, and the conduct of the Business does not include any activity which may constitute passing off.
- (e) The computer systems, including hardware and software are free from viruses and James has taken, and will continue to take, all steps and implement all procedures necessary to ensure, so far as reasonably possible, that such systems are free from viruses and will remain so until the Closing Time.

(20) **Affiliates.** No part of the Business and none of the Purchased Assets are owned or operated by any Affiliate of the Vendors.

(21) **Partnerships or Joint Ventures.** The Vendors are not, in relation to any part of the Business or the Purchased Assets, a partner or participant in any partnership, joint venture, profit-sharing arrangement or other association of any kind and are not party to any agreement under which the Vendors agree to carry on any part of the Business or in any manner or by which the Vendors agrees to share any revenue or profit of the Business or the operations of the Austinville Assets with any other person.

(22) **Customers.** James has previously delivered to the Purchaser a true and complete list of all customers of the Business as of the date hereof. James is the sole and exclusive owner of, and has the unrestricted right to use, such customer list. Neither of the Vendors have any knowledge of any facts which could reasonably be expected to result in the loss of any customers or sources of revenue of the Business which, in the aggregate, would be material to the Condition of the Business.

(23) **Restrictions on Doing Business.** Except for the Tolling Agreement between James and Suzorite Mineral Products, Inc., the Vendors are not a party to or bound by any agreement in relation to the Business or the Austinville Assets which would restrict or limit their right to carry on any activity or to solicit business from any person or in any geographical area or

otherwise to conduct the Business or operate the Austinville Assets as the Vendors may determine. The Vendors are not subject to any judgment, order or requirement of any court or governmental authority in relation to the Business which is not of general application to persons carrying on a business similar to the Business. To the best of the knowledge of the Vendors, there are no facts or circumstances in relation to the Business or the Austinville Assets which could materially adversely affect the ability of the Purchaser to continue to operate the Business or the Austinville Assets as presently conducted following the completion of the transactions contemplated by this Agreement.

(24) **Warranties and Discounts.** Except as described in Schedule R attached hereto:

- (a) James has not given any guarantee or warranty in respect of any of the products sold or the services provided as part of the Business, except warranties made in the ordinary course of the Business and in the form of the standard written warranty, a copy of which has been provided to the Purchaser, and except for warranties implied by law;
- (b) during each of the three fiscal years of the Vendors ended immediately preceding the date hereof, no claims have been made against the Vendors for breach of warranty or contract requirement or negligence or for a price adjustment or other concession in respect of any defect in or failure to perform or deliver any products, services or work in connection with the Business which had, in any such year, an aggregate cost exceeding \$5,000.00;
- (c) there are no repair contracts or maintenance obligations in favour of the customers or users of products of the Business except obligations incurred in the ordinary course of the Business and in accordance with the standard terms, a copy of which has been provided to the Purchaser;
- (d) the Vendors are not now subject to any agreement or commitment, and the Vendors have not, within three years prior to the date hereof, entered into any agreement with or made any commitment to any customer of the Business which would require the repurchase of any products sold to such customers or adjustment of any price or the granting of any refund, discount or other concession to such customer, and
- (e) the Vendors are not required to provide any letters of credit, bonds or other financial security arrangements in connection with any transactions with any suppliers or customers of the Business.

(25) **Licenses, Agency and Distributorship Agreements.** Schedule E attached hereto lists all agreements to which James is a party or by which it is bound under which the right to manufacture, use or market any product, service, technology, information, data, computer hardware or software or other property used in or produced or sold by the Business has been granted, licensed or otherwise provided to James or by James to any other person, or under which James has been appointed or any person has been appointed by James as an agent, distributor, licensee or franchisee for any of the foregoing. Complete and correct copies of all of the agreements relating to the License Rights have been provided to the Purchaser. James is entitled to assign all of its interest in the License Rights to the Purchaser subject to obtaining the consents referred to in Schedule M attached hereto. None of the agreements relating to the

License Rights grant to any person any authority to incur any liability or obligation or to enter into any agreement on behalf of James.

(26) **Outstanding Agreements.** The Vendors are not a party to or bound by any outstanding or executory agreement, contract or commitment, whether written or oral, relating to the Business, except for:

- (a) any contract, lease or agreement described or referred to in this Agreement or in the schedules hereto;
- (b) any contract, lease or agreement made in the ordinary course of the routine daily affairs of business under which the Vendors have a financial obligation of less than \$25,000.00 per annum and which can be terminated by the Vendors without payment of any damages, penalty or other amount by giving not more than 10 days' notice, and
- (c) the contracts, leases and agreements described in Schedule S attached hereto.

Complete and correct copies of each of the contracts, leases and agreements described in Schedule S have been provided to the Purchaser.

(27) **Good Standing of Agreements.** The Vendors are not in default or breach of any of their obligations under any one or more contracts, agreements (written or oral), commitments, indentures or other instruments to which they are a party or by which they are bound relating to the Business, and there exists no state of facts which, after notice or lapse of time or both, would constitute such a default or breach. All such contracts, agreements, commitments, indentures and other instruments are now in good standing and in full force and effect without amendment thereto, the Vendors are entitled to all benefits thereunder and, to the best of the knowledge of the Vendors, the other parties to such contracts, agreements, commitments, indentures and other instruments are not in default or breach of any of their obligations thereunder. There are no contracts, agreements, commitments, indentures or other instruments relating to the Business under which the Vendors' rights or the performance of their obligations are dependent upon or supported by the guarantee of or any security provided by any other person.

(28) **Employees.** Schedule T attached hereto sets forth the name, job title, duration of employment, vacation entitlement, employee benefit entitlement and rate of remuneration (including bonus and commission entitlement) of each employee or sales or other agent or representative of the Business. Schedule T also sets forth the names of all employees employee or sales or other agent or representative of the Business who are now on disability, maternity, military or other authorized leave or who are receiving workers' compensation or short-term or long-term disability benefits.

(29) **Employment Agreements.** Except with respect to an agreement with the President of James and for a mine consulting agreement with Walter Paulson, both of which James is responsible for, the Vendors are not a party to any written or oral employment, service or consulting agreement relating to any one or more persons working in the Business, except for oral employment agreements which are terminable at will and without any special arrangements or commitments with respect to the continuation of employment or payment of any particular amount upon termination of employment. There are no employees of the Business who cannot

be dismissed upon such period of notice as is required by law in respect of a contract of hire for an employee at will.

(30) Labour Matters and Employment Standards.

The Vendors have not made any Contracts with any labor union or employee association nor made commitments to or conducted negotiations with any labor union or employee association with respect to any future agreements and the Vendors are not aware of any current attempts to organize or establish any labor union or employee association with respect to any employees of the Vendors, nor are there any certification of any such union with regard to a bargaining unit.

No notice has been received by the Vendors of any complaints filed by any of the employees against the Vendors claiming that the Vendors have violated any applicable employee or human rights or similar legislation in the jurisdiction in which the Business is conducted or the Vendors operates or of any complaints or proceedings of any kind involving the Vendors or, to the Vendors' knowledge, after due inquiry, any of the employees of the Vendors before any labor relations board. There are no outstanding orders or charges against the Vendors under any applicable health and safety legislation in the jurisdiction in which the Business is conducted. All levies, assessments and penalties made against the Vendors pursuant to any applicable workers' compensation legislation in the jurisdiction in which the Business is conducted have been paid by the Vendors and the Vendors have not been reassessed under any such legislation during the past three years.

(31) Employee Benefit and Pension Plans.

Schedule U identifies each retirement, pension, bonus, stock purchase, profit sharing, stock option, deferred compensation, severance pay, termination pay, insurance, medical, hospital, dental, vision care, drug, sick leave, disability, salary continuation, legal benefits, unemployment benefits, vacation, incentive, fringe benefit or other plan or arrangement and any other employee benefit including "Employee Pension Benefit Plans" and "Employee Welfare Benefit Plans" of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), that is maintained by or contributed to, or required to be contributed to, by the Vendors for the benefit of employees or former employees of the Vendors (the "Employee Plans") and a true and complete copy of each Employee Plan has been furnished to the Purchaser or in the event that such plan is unwritten a detailed description thereof has been furnished to the Purchaser. Each Employee Plan has been maintained in compliance with their terms and with the requirements prescribed by any and all statutes, orders, rules and regulations that are or have been applicable to such Employee Plan. The Vendors have delivered to the Purchaser the actuarial valuations, if any, prepared for each Employee Plan during the past 6 years. Except as described in Schedule U:

- (a) all contributions to, and payments from, each Employee Plan that may have been required to be made in accordance with the terms of any such Employee Plan, or with the recommendation of the actuary for such Employee Plan, and, where applicable, the laws or regulations of the jurisdictions that govern such Employee Plan, have been made in a timely manner;
- (b) all determination letters concerning the qualified status of any Employee Plan and all reports, returns and similar documents (including applications for approval of contributions) with respect to any Employee Plan required to be filed with any

governmental agency or distributed to any Employee Plan participant, former participant, beneficiary and alternate payee have been duly filed on a timely basis and distributed;

- (c) there are no pending investigations by any governmental or regulatory agency or authority involving or relating to an Employee Plan, no threatened or pending claims (except for claims for benefits payable in the normal operation of the Employee Plans), suits or proceedings against any Employee Plan or asserting any rights or claims to benefits under any Employee Plan that could give rise to a liability nor, to the knowledge of the Vendors, are there any facts, circumstances, omissions or breaches that could give rise to any liability in the event of such investigation, claim, suit or proceeding;
- (d) the Vendors do not maintain any Employee Plan which is subject to the provisions of Title IV of ERISA of 1974;
- (e) no notice has been received by the Vendors of any complaints or other proceedings of any kind involving the Vendors, any Employee Plan Fiduciary, any Employee Plan agent or advisor, or, to the Vendors or the Vendors' knowledge, any of the employees agents or advisors of the Vendors before any pension board or committee relating to any Employee Plan or to the Vendors;
- (f) the assets of each Employee Plan are at least equal to the liabilities of each such Employee Plan based on legally permissible actuarial assumptions as of the most recent quarterly valuation to be performed by the actuary for each such Employee Plan, and neither the Purchaser nor any of its Associates or Affiliates (other than the Vendors) will incur any liability with respect to any Employee Plan as a result of the transactions contemplated by this Agreement; and
- (g) No Employee Plan has been or is the subject of any Prohibited Transaction or Reportable Event, and there are no facts or circumstances that have or could give rise to a Prohibited Transaction or Reportable Event for any Employee Plan.

(32) **Employee Accruals.** All accruals required under GAAP for unpaid vacation pay, premiums for unemployment insurance, health premiums, pension plan premiums, or other social security premiums payable by an employer, accrued wages, salaries and commissions and employee benefit plan payments have been reflected in the books and records of James.

(33) **Insurance** Schedule V attached hereto contains a true and complete list of all insurance policies maintained by the Vendors or under which the Vendors are covered in respect of the Properties, assets and operations of the Business as of the date hereof. The insurance policies of the Vendors are in full force and effect and the Vendors are not in default with respect to the payment of any premium or compliance with any of the provisions contained in any such insurance policy. To the best of the knowledge of the Vendors, there are no circumstances under which the Vendors would be required to or, in order to maintain their coverage, should give any notice to the insurers under any such insurance policies which has not been given. The Vendors have not received notice from any of the insurers regarding cancellation of such insurance policies. The Vendors have not failed to give any notice of or to present any claim under any such insurance policy in due and timely fashion. The Vendors have not received notice from any of the insurers denying any claims.

(34) **Non-Arm's Length Matters.** Except for: (1) the contract between James and its President; (2) a lease between Clifford E. Wells and Norma P. Wells, as Lessor and James, dated January 1, 1974, as subsequently amended - office building; and (3) a lease between R & J Warehouse, a Virginia partnership consisting of Roger P. Wells and Joe C. Wells, as Lessor, and James, dated January 1, 1981, as amended - plant facilities located behind office building, with respect to the Business, the Vendors are not a party to or bound by any agreement with, are not indebted to, and no amount is owing to the Vendors by, any of the Affiliates of the Vendors or any officers, former officers, directors, former directors, shareholders, former shareholders, employees (except for oral employment agreements with employees) or former employees of the Vendors or to any person not dealing at arm's length with any of the foregoing.

(35) **Government Assistance.** Schedule W attached hereto describes all agreements, loans, other funding arrangements and assistance programs (collectively called "Government Assistance Programs") which have been provided to the Business from any federal, provincial, municipal or other government or governmental agency, board, commission or authority, domestic or foreign (collectively called "Government Agencies"). Complete and correct copies of all documents relating to the Government Assistance Programs have been delivered to the Purchaser. The Vendors have performed all of their obligations under the Government Assistance Programs, and no basis exists for any Government Agencies to seek payment or repayment of any amount or benefit provided under any of the Government Assistance Programs.

(36) **Compliance with Laws.** In relation to the Business, to the best of their knowledge, the Vendors are not in violation of any federal, state or other law, regulation or order of any government or governmental or regulatory authority, domestic or foreign that have not been disclosed in this Agreement and the schedules hereto.

(37) **Complete Conveyance.** Except for the Excluded Assets, the assets included in the Purchased Assets constitute all of the assets of James used in carrying on the Business, and the Austinville Assets constitute all of the assets set forth on or reflected in the Depreciation Expense Report, other than assets acquired since the Depreciation Expense Report Date or disposed of, utilized or consumed since the Depreciation Expense Report Date in the ordinary course of the Business. The Purchased Assets include all rights, properties, interests, assets (both tangible and intangible) and agreements necessary to enable the Purchaser to carry on the Business in the same manner and to the same extent as it has been carried on by James prior to the date hereof.

(38) **Copies of Documents.** Complete and correct copies (including all amendments) of all contracts, leases and other documents referred to in this Agreement or any schedule hereto or required to be disclosed hereby have been delivered to the Purchaser.

(39) **Customers and Suppliers.** Schedule EE sets out the major customers of James (being those customers of James accounting for more than 70% of sales for the period December 31, 1995 to May 31, 1996 and except for the loss of the Certainteed Corp. account; there has been no termination or cancellation of, and no modification or change in, James' business relationship with any major customer or group of major customers. James has no reason to believe that the benefits of any relationship with any of the major customers or suppliers of

James will not continue after the Closing Date in substantially the same manner as prior to the date of the Agreement.

(40) **Product Warranties** Schedule R is a complete list of all warranties or guarantees given to purchasers of products supplied by James.

Except for the requirements imposed by The Agricultural Foreign Investment Disclosure Act, and the Virginia Air Pollution Control Act, there is no requirement for the Purchaser to make any filing with, give any notice to or obtain any license, permit, certificate, registration, authorization, consent or approval of, any government or regulatory authority as a condition to the lawful consummation of the transactions contemplated by this Agreement.

Neither of the Vendors have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

(41) **Taxes.** The Vendors and any affiliated group, within the meaning of Section 1504 of the Tax Act, of which the Vendors are or have been a member, have duly filed on a timely basis all tax returns required to be filed by it and have paid all Taxes that are due and payable, and all assessments, reassessments, governmental charges, penalties, interest and fines due and payable by it. The Vendors have made adequate provision for Taxes payable by it for the current period and any previous period for which tax returns are not yet required to be filed. There are no actions, suits, proceedings, investigations or claims pending or, to the knowledge of the Vendors, threatened against, the Vendors in respect of Taxes, governmental charges or assessments, nor are any material matters under discussion with any governmental authority relating to Taxes, governmental charges or assessments asserted by any such authority. The Vendors have withheld from each payment made to any of their past or present employees, officers or directors, and to any non-resident of the United States, the amount of all Taxes and other deductions required to be withheld therefrom and have paid the same to the proper tax or other receiving officers within the time required under any applicable legislation. The Vendors have remitted to the appropriate taxing authority when required by law to do so all amounts collected by it. The Tax liability of the Vendors have been assessed by the Internal Revenue Service and the relevant state and local taxing authorities for all fiscal years up to and including the fiscal year ended December 31, 1994 and there are no agreements, waivers or other arrangements providing for an extension of time with respect to the filing of any tax return by, or payment of any tax, governmental charge or deficiency against, the Vendors. The Vendors have provided to the Purchaser a true copy of all Tax returns filed by the Vendors in respect of the two last completed fiscal years of the Vendors.

(42) **Compliance with Bulk Transfer Law.** Vendors shall provide to Purchaser within 25 days of the execution of this Agreement, an affidavit listing all existing creditors. Said affidavit shall include the names and addresses of all creditors, business and personal, whether each creditor is a general or secured creditor, set forth the amount owed each creditor, and shall further set forth those who may assert claims even if contingent or disputed. Vendors shall provide, with assistance of Purchaser, a schedule of all property to be transferred sufficient to identify it as required by Section 8.6-104(1)(6) of the Code of Virginia, 1950, as amended. Purchaser shall preserve the above list of creditors and property for six months next following the transfer and shall permit inspection and/or copying of either or both at all reasonable hours by any creditor of Vendors. Purchaser shall give notice of the transfer, at least ten days prior to transfer, by registered or certified mail to all persons on the list of creditors or known to

Purchaser to be creditors. Said notice shall comply with Section 8.6-107 of the Code of Virginia, 1950, as amended. If any list of creditors or list of property is not provided by Vendors as herein required this Agreement, at the discretion of the Purchaser, shall be null and void and Purchaser may recover from Vendors all sums lawfully due.

(43) **Disclosure.** No representation or warranty contained in this section 3.1, and no statement contained in any schedule, certificate, list, summary or other disclosure document provided or to be provided to the Purchaser pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact which is necessary in order to make the statements contained therein not misleading. There has been no event, transaction or information that has come to the attention of the Vendors that has not been disclosed to the Purchaser in writing that could reasonably be expected to have a material adverse effect on the assets, business, earnings, prospects, properties or condition (financial or otherwise) of the Vendors.

(44) **Inventories.** The inventories of James do not include any material items that are slow moving, below standard quality or of a quality or quantity not usable or salable in the normal course of business, the value of which has not been written down on their books of account to net realizable market value. The inventory levels of James have been maintained at such amounts as are required for the operation of the Business as previously conducted and as proposed to be conducted, and such inventory levels are adequate therefor.

3.2 Representations and Warranties by the Purchaser.

The Purchaser hereby represents and warrants to the Vendors as follows, and confirms that the Vendors are relying upon the accuracy of each of such representations and warranties in connection with the sale of the Purchased Assets and the completion of the other transactions hereunder:

(1) **Corporate Authority and Binding Obligation.** The Purchaser is a corporation duly incorporated and validly subsisting in all respects under the laws of its jurisdiction of incorporation. The Purchaser has good right, full corporate power and absolute authority to enter into this Agreement and to purchase the Purchased Assets from the Vendors in the manner contemplated herein and to perform all of the Purchaser's obligations under this Agreement. The Purchaser and its shareholders and board of directors have taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into of, and the execution, delivery and performance of, this Agreement and the purchase of the Purchased Assets by the Purchaser from the Vendors. This Agreement is a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms subject to bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally and the fact that equitable remedies, including the remedies of specific performance and injunction, may only be granted in the discretion of a court.

(2) **Contractual and Regulatory Approvals.** Except as specified in Schedule X attached hereto, the Purchaser is not under any obligation, contractual or otherwise to request or obtain

the consent of any person, and no permits, licenses, certifications, authorizations or approvals of, or notifications to, any federal, provincial, municipal or local government or governmental agency, board, commission or authority are required to be obtained by the Purchaser in connection with the execution, delivery or performance by the Purchaser of this Agreement or the completion of any of the transactions contemplated herein. Complete and correct copies of any agreements under which the Purchaser is obligated to request or obtain any such consent have been provided to the Vendors.

(3) **Compliance with Constatng Documents, Agreements and Laws.** The execution, delivery and performance of this Agreement and each of the other agreements contemplated or referred to herein by the Purchaser, and the completion of the transactions contemplated hereby, will not constitute or result in a violation or breach of or default:

- (a) under any term or provision of any of the articles, bylaws or other constating documents of the Purchaser;
- (b) any Trust Indenture or secured financing of the Purchaser, or
- (c) subject to obtaining the regulatory consents referred to in Schedule X hereof, under any term or provision of any licenses, registrations or qualification of the Purchaser or any order of any court, governmental authority or regulatory body or any applicable law or regulation of any jurisdiction.

ARTICLE 4 - SURVIVAL AND LIMITATIONS OF REPRESENTATIONS AND WARRANTIES

4.1 Survival of Warranties by the Vendors.

The representations and warranties made by the Vendors and contained in this Agreement, or contained in any document or certificate given in order to carry out the transactions contemplated hereby, will survive the closing of the purchase of the Purchased Assets provided for herein and, notwithstanding such closing or any investigation made by or on behalf of the Purchaser or any other person or any knowledge of the Purchaser or any other person, shall continue in full force and effect for the benefit of the Purchaser, subject to the following provisions of this section.

- (a) Except as provided in paragraph (b) of this section, no Warranty Claim may be made or brought by the Purchaser after the date which is two years following the Closing Date.
- (b) Any Warranty Claim which is based upon or relates to the title to the Purchased Assets or which is based upon intentional misrepresentation or fraud by the Vendors may be made or brought by the Purchaser at any time.

After the expiration of the period of time referred to in paragraph (a) of this section, the Vendors will be released from all obligations and liabilities in respect of the representations and warranties made by the Vendors and contained in this Agreement or in any document or certificate given in order to carry out the transactions contemplated hereby except with respect to any claims made by the Purchaser in writing prior to the expiration of such period and

subject to the rights of the Purchaser to make any claim permitted by paragraph (b) of this section.

4.2 Survival of Warranties by Purchaser.

The representations and warranties made by the Purchaser and contained in this Agreement or contained in any document or certificate given in order to carry out the transactions contemplated hereby will survive the closing of the purchase and sale of the Purchased Assets provided for herein and, notwithstanding such closing or any investigation made by or on behalf of the Vendors or any other person or any knowledge of the Vendors or any other person, shall continue in full force and effect for the benefit of the Vendors provided that no Warranty Claim may be made or brought by the Vendors after the date which is five years following the Closing Date.

4.3 Limitations on Warranty Claims.

- (a) The Purchaser shall not be entitled to make a Warranty Claim if the Purchaser has been advised in writing prior to the Closing Time of the inaccuracy, non-performance, non-fulfillment or breach which is the basis for such Warranty Claim and the Purchaser completes the transactions hereunder notwithstanding such inaccuracy, non-performance, non-fulfillment or breach.
- (b) The amount of any damages which may be claimed by the Purchaser pursuant to a Warranty Claim shall be calculated to be the cost or loss to the Purchaser after giving effect to:
 - (i) any insurance proceeds available to the Purchaser in relation to the matter which is the subject of the Warranty Claim, and
 - (ii) the value of any related, determinable tax benefits realized, or to be realized within a one year period following the date of incurring such cost or loss, by the Purchaser in relation to the matter which is the subject of the Warranty Claim.
- (c) The Purchaser shall not be entitled to make any Warranty Claim until the aggregate amount of all damages, losses, liabilities and expenses incurred by the Purchaser as a result of all misrepresentations and breaches of warranties contained in this Agreement or contained in any document or certificate given in order to carry out the transactions contemplated hereby, after taking into account paragraph (b) of this section, is equal to \$25,000.00.

ARTICLE 5 - COVENANTS

5.1 Covenants by the Vendors.

The Vendors jointly and severally covenant to the Purchaser that they will do or cause to be done the following:

(1) **Investigation of Business and Examination of Documents.** The Vendors shall forthwith make available to the Purchaser and its authorized representatives and, if requested by the Purchaser, provide a copy to the Purchaser of, all title documents, contracts, financial statements, minute books, share certificate books, share registers, plans, reports, licenses, orders, permits, books of account, accounting records, all books, records, accounts, tax returns and financial statements of the Business, charter and constituent documents of the Vendors, information or data relating to the Vendors and the Business, and all other information which, in the reasonable opinion of the Purchaser's representatives, is required in order to make an examination of the Business. The Vendors shall afford the Purchaser and its authorized representatives every reasonable opportunity to have free and unrestricted access to the Business and the property, assets, undertaking, records and documents of the Vendors. At the request of the Purchaser, the Vendors shall execute or cause to be executed such consents, authorizations and directions as may be necessary to permit any inspection of the Business and any property of the Vendors or to enable the Purchaser or its authorized representatives to obtain full access to all files and records relating to any of the assets of the Vendors maintained by governmental or other public authorities. At the Purchaser's request, the Vendors shall cooperate with the Purchaser in arranging any such meetings as the Purchaser should reasonably request with:

- (a) employees of the Vendors;
- (b) customers, suppliers, distributors or others who have or have had a business relationship with the Vendors; and
- (c) auditors, attorneys or any other persons engaged or previously engaged to provide services to the Vendors who have knowledge of matters relating to the Vendors and the Business.

In particular, without limitation, the Vendors shall permit the Purchaser's representatives or consultants to conduct all such testing and inspection in respect of environmental matters at such locations of the Business as the Purchaser may determine, in its sole discretion, as may be required to satisfy the Purchaser in respect of such matters, and the Vendors shall conduct, in co-operation with the representatives or consultants of the Purchaser, such physical review of the equipment of the Business as is necessary so as to enable the confirmation of the values carried on the respective balance sheets of the Corporation in respect of such assets, to the reasonable satisfaction of the Purchaser. The exercise of any rights of inspection by or on behalf of the Purchaser under this section 5.1 shall not mitigate or otherwise affect the representations and warranties of the Vendors hereunder, which shall continue in full force and effect as provided in Article 8. Provided that in the event the Purchaser shall in the course of its investigations discover any material fact that is in contravention of the representations and warranties made by the Vendors, the Purchaser shall give the Vendors notice of such material fact and in the event the Purchaser elects to complete the purchase of the Purchased Assets despite the existence of such material fact, the Purchaser shall be deemed to accept the knowledge of such material fact as a modification of the representations and warranties of the Vendors.

(2) **Conduct of Business.** Except as contemplated by this agreement or with the prior written consent of the Purchaser, during the Interim Period the Vendors will:

- (a) operate the Business and the Austinville Assets only in the ordinary course thereof, consistent with past practices;
- (b) take all actions within their control to ensure that the representations and warranties in section 3.1 hereof remain true and correct at the Closing Time, with the same force and effect as if such representations and warranties were made at and as of the Closing Time, and to satisfy or cause to be satisfied the conditions in section 6.1 hereof;
- (c) promptly advise the Purchaser of any facts that come to their attention which would cause any of the Vendors' representations and warranties herein contained to be untrue in any respect;
- (d) take all action to preserve the Purchased Assets and the Business and their goodwill and relationships with customers, suppliers and others having dealings with the Business, to keep available the services of all employees of the Business and to maintain in full force and effect all agreements relating to the Business to which the Vendors are a party, and take all other action reasonably requested by the Purchaser in order that the Condition of the Business will not be impaired during the Interim Period;
- (e) promptly advise the Purchaser in writing of any material adverse change in the Condition of the Business or the Austinville Assets during the Interim Period;
- (f) maintain all of the tangible properties and assets of the Business and the Austinville Assets in the same condition as they now exist, ordinary wear and tear excepted;
- (g) maintain the books, records and accounts of the Business in the ordinary course and record all transactions on a basis consistent with past practice;
- (h) not create, incur or assume any Encumbrance upon any of the properties or assets of the Business and the Austinville Assets;
- (i) not dispose of any of the properties or assets of the Business except in the ordinary course of the Business;
- (j) not terminate or waive any right of substantial value of the Business;
- (k) not make any capital expenditure relating to the Business;
- (l) maintain the inventories of the Business in accordance with past practice;
- (m) use their best efforts to obtain, at or prior to the Closing Date, from all appropriate federal, state, municipal or other governmental or regulatory bodies, the licenses, permits, consents, approvals, certificates, registrations and authorizations described in Schedule M;
- (n) use their best efforts to obtain, the notices, consents and approvals described in Schedule M;
- (o) keep in full force all of the current insurance policies of the Business;

- (p) take all actions within their control to ensure that the Vendors performs all of their obligations falling due during the Interim Period under all agreements relating to the Business to which the Vendors are a party or by which they are bound;
 - (q) not enter into any agreement relating to the Business other than agreements made in the ordinary course of the Business consistent with past practice and which involve obligations of less than \$25,000.00, and
 - (r) not increase, in any manner, the compensation or employee benefits of any of the employees of the Business, or pay or agree to pay to any of them any pension, severance or termination amount or other employee benefit not required by any of the employee benefit plans and programs referred to in the schedules attached hereto.
- (3) **Transfer of Purchased Assets.** At or before the Closing Time, the Vendors will cause all necessary steps and corporate proceedings to be taken in order to permit the Purchased Assets to be duly and regularly transferred to the Purchaser.
- (4) **General Conveyance.** At the Closing Time, the Vendors will deliver to the Purchaser good and marketable title to and exclusive possession of the Purchased Assets, free and clear of any and all Encumbrances. At the Closing Time, James will convey the Real Properties to the Purchaser by General Warranty Deed with English Covenants of Title and free and clear of all liens and encumbrances except as provided herein. At the Closing Time, the Vendors will execute and deliver to the Purchaser one or more forms of general conveyance or bills of sale in respect of the assignment, conveyance, transfer and delivery of the Purchased Assets to the Purchaser in form acceptable to the Purchaser.
- (5) **Transfer of Assumed Contracts.** At the Closing Time, James will deliver to the Purchaser:
- (a) an executed original of each of the Assumed Contracts;
 - (b) one or more forms of assignment of the Assumed Contracts in form acceptable to the Purchaser, and
 - (c) consents to the assignment of all of the Assumed Contracts under which consent is required executed by all persons whose consent is required in form acceptable to the Purchaser.
- (6) **Non-Competition Agreement.** At the Closing Time, the Vendors, the shareholders of Austinville and Clifford E. Wells will execute and deliver to the Purchaser a non-competition agreement in the form of the draft agreement attached hereto as Schedule Y.
- (7) **Change of Name.** Forthwith after the Closing, James shall change its name, so that the Purchaser will be able to operate under the name James River or any variable thereof.
- (8) **Approval of James Shareholders.** Forthwith after the execution of this agreement, the Vendors will diligently use their best efforts to obtain approval of this transaction by 2/3rds of the shareholders of James.
- (9) **Termination of Employee Plans** The Employee Plans of the Vendors identified on Schedule U will be terminated by the Vendors as to employees of James on the Closing Date.

The Vendors acknowledge that the Purchaser will not assume any obligations or liabilities in connection with the Employee Plans on or after the Closing Date. Provided however that it is understood that the ESOP will be terminated upon distribution of its assets in accordance with applicable law..

(10) **COBRA Notice** The Vendors will be responsible for providing notice of the availability of continuation health care coverage to any and all former employees of the Vendors and/or beneficiaries of the Vendors' group health plan(s) entitled to elect such coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), 29 U.S.C. § 1161-1168. Upon request by the Purchaser, the Vendors will provide verification of electing participants' and beneficiaries' prior coverage under the Vendors' group health plan(s).

5.2 Covenants by the Purchaser.

The Purchaser covenants to the Vendors that it will do or cause to be done the following:

(1) **Confidentiality.** Prior to the Closing Time and, if the transaction contemplated hereby is not completed, at all times after the Closing Time, the Purchaser will keep confidential all information obtained by it relating to the Business, except such information which:

- (i) prior to the date hereof was already in the possession of the Purchaser, as demonstrated by written records, except as provided pursuant to the previously executed Confidentiality Agreement made between the Global Stone Corporation and James on June 14, 1994;
- (ii) is generally available to the public, other than as a result of a disclosure by the Purchaser, or
- (iii) is made available to the Purchaser on a non-confidential basis from a source other than the Vendors, or their representatives.

The Purchaser further agrees that such information will be disclosed only to those of its employees and representatives of its advisors who need to know such information for the purposes of evaluating and implementing the transaction contemplated hereby. Notwithstanding the foregoing provisions of this paragraph, the obligation to maintain the confidentiality of such information will not apply to the extent that disclosure of such information is required in connection with governmental or other applicable filings relating to the transactions hereunder, provided that, in such case, unless the Vendors otherwise agree, the Purchaser will, if possible, request confidentiality in respect of such governmental or other filings. If the transactions contemplated hereby are not consummated for any reason, the Purchaser will return forthwith, without retaining any copies thereof, all information and documents obtained from the Vendors.

(2) **Employees.**

- (a) After the Closing Time, the Purchaser will offer employment to the employees of the Business described in Schedule T attached hereto, who apply for such employment, other than the officers and directors of James, on terms not less

favorable on a cumulative basis than those provided to employees employed by James on the date hereof, other than with respect to the ESOP which will not be offered by Purchaser, save and except for employees who do not apply or who fail to take the Purchaser's medical exam or do not meet the Purchaser's minimum employment standards as currently in effect at other locations.

- (b) The Vendors will remain responsible and liable for all amounts which have accrued to all employees of the Business prior to the Closing Date including, without limitation, all salary, bonus, employee benefits and vacation pay. The Purchaser will be liable for all severance payments, damages for wrongful dismissal and all related costs payable in respect of the termination of the employment of the employees of the Business by James at the Closing Time save and except with respect to the officers and directors of James for whom the Vendors shall remain responsible and any employee of the Business who does not accept the Purchaser's offer of employment referred to in paragraph 5.2(2).
- (c) The Purchaser may, in its sole and unfettered discretion, make termination payments on behalf of the Vendors to some, none, any, or all of the former employees of the Vendors other than those for whom the Purchaser is not responsible pursuant to Section 2.5(e) in lieu of offering such former employees employment with the Purchaser.
- (d) Consistent with the Vendors' responsibility under Section 5.1, to provide notice of the availability of continuation health care coverage to eligible terminating employees of the Vendors and their beneficiaries, the Purchaser will make participation in the Purchaser's group health plan(s) available to former employees (and their beneficiaries) of the Business not hired by the Purchaser to the same extent and on the same terms and conditions that such coverage is or would be available to otherwise similarly situated former employees of the Purchaser (and their beneficiaries, respectively). Upon request the Vendors will provide to the Purchaser requested information reasonably necessary to identify former employees of the Vendors who may be eligible to elect continuation coverage, and to permit the Purchaser to give adequate notice to such persons and their beneficiaries of the procedures for electing and premium payments required for participation in the Purchaser's plan(s).

(3) **Post-Closing Access.** After the Closing Date, upon reasonable notice, the Purchaser shall give to the representatives, employees, counsel and accountants of James, access, during normal business hours, to the Business Records which relate to periods prior to the Closing Date and will permit such persons to examine and copy such records to the extent reasonably requested by James in connection with the preparation of tax and financial reporting matters, audits, legal proceedings, governmental investigations and other business purposes. However, the Purchaser shall not be obliged to take any action pursuant to this subsection that would unreasonably disrupt the normal course of its business, violate the terms of any contract to which it is a party or to which the Purchaser or any of its assets is subject or to grant access to any of its proprietary, confidential or classified information.

ARTICLE 6 - CONDITIONS

6.1 Conditions to the Obligations of the Purchaser.

Notwithstanding anything herein contained, the obligation of the Purchaser to complete the transactions provided for herein will be subject to the fulfillment of the following conditions at or prior to the Closing Time, and the Vendors jointly and severally covenant to use their best efforts to ensure that such conditions are fulfilled.

(1) Accuracy of Representations and Warranties and Performance of Covenants.

The representations and warranties of the Vendors contained in this Agreement or in any documents delivered in order to carry out the transactions contemplated hereby shall be true and accurate on the date hereof and at the Closing Time with the same force and effect as though such representations and warranties had been made as of the Closing Time (regardless of the date as of which the information in this Agreement or in any schedule or other document made pursuant hereto is given). In addition, the Vendors shall have complied with all covenants and agreements herein agreed to be performed or caused to be performed by them at or prior to the Closing Time. In addition, the Vendors shall have delivered to the Purchaser a certificate in the form of Schedule Z attached hereto confirming that the facts with respect to each of such representations and warranties by the Vendors are as set out herein at the Closing Time and that the Vendors have performed all covenants required to be performed by them hereunder.

(2) **Material Adverse Changes.** During the Interim Period there will have been no change in the Condition of the Business, howsoever arising, except changes which have occurred in the ordinary course of the Business and which, individually or in the aggregate, have not affected and may not affect the Condition of the Business in any material adverse respect. Without limiting the generality of the foregoing, during the Interim Period:

- (a) no damage to or destruction of any material part of the Purchased Assets shall have occurred, whether or not covered by insurance, and
- (b) none of the 10 largest customers of the Business will have ceased, or advised the James or the Purchaser of their intention to cease, purchasing from or dealing with the Business.

(3) **No Restraining Proceedings.** No order, decision or ruling of any court, tribunal or regulatory authority having jurisdiction shall have been made, and no action or proceeding shall be pending or threatened which, in the opinion of counsel to the Purchaser, is likely to result in an order, decision or ruling:

- (a) to disallow, enjoin, prohibit or impose any limitations or conditions on the purchase and sale of the Purchased Assets contemplated hereby or the right of the Purchaser to own the Purchased Assets, or
- (b) to impose any limitations or conditions which may have a material adverse effect on the Condition of the Business.

(4) **Consents.** Except as required by The Agricultural Foreign Investment Disclosure Act, and the Virginia Air Pollution Control Act, there is no requirement to make any filing with, give any notice to or to obtain any license, permit, certificate, registration, authorization,

consent or approval of, any governmental or regulatory authority as a condition to the lawful consummation of the transactions contemplated by this Agreement, except for the filings, notifications, licenses, permits, certificates, registrations, consents and approvals described in Schedule X or that relate solely to the identity of the Purchaser or the nature of any business carried on by the Purchaser. There is no requirement under any Contract relating to the Business or the Vendors to which the Vendors are a party or by which they are bound to give any notice to, or to obtain the consent or approval of, any party to such agreement, instrument or commitment relating to the consummation of the transactions contemplated by this Agreement except for the notifications, consents and approvals described in Schedule X.

(5) **Estoppel Certificates.** Prior to the Closing Time, the Purchaser shall have received from the landlords of the Leased Premises executed copies of estoppel certificates in the form of the draft certificate attached hereto as Schedule AA.

(6) **Title Insurance** Without limiting the generality of the foregoing, within twenty-one (21) days after this Agreement is executed, the Purchaser shall be able to cause the title company satisfactory to the Purchaser (the "Title Company") to issue a preliminary title report and commitment for title insurance (the "Commitment") to the Purchaser covering the parcels of the Real Properties, accompanied by two legible copies of all recorded documents relating to easements, right-of-way, and other matters affecting the Real Properties. The Commitment shall contain an irrevocable Commitment by the Title Company to issue the Title Policy on the Closing Date. The Purchaser shall give the Vendors written notice on or before the expiration of five (5) business days after receipt of the Commitment that the condition of title as set forth in the Commitment is not satisfactory, and if the Purchaser states that the condition of title is not satisfactory, then the Purchaser shall set forth in detail in writing to the Vendors those conditions which are not satisfactory to the Purchaser. The Vendors shall then have a period of fifteen (15) days to cure or eliminate any such unacceptable conditions to the reasonable satisfaction of the Purchaser. If the Vendors are unable to cure any such objections, then the Purchaser may terminate this Agreement without further force or effect hereunder.

(7) **Approval of James Shareholders.** Approval of this transaction by 2/3rds of the shareholders of James will have been obtained within 25 days of the execution of this Agreement.

(8) **The Purchaser will have received a Right of First Refusal to purchase the real estate assets owned by Austinville in form and substance satisfactory to the Purchaser**

(9) **Opinion of Vendors' Counsel.** At the Closing Time, the Purchaser shall have received an opinion of legal counsel for the Vendors in the form of the draft opinion attached hereto as Schedule BB, which opinion may rely on certificates of one or more senior officers of the Vendors as to factual matters and may rely upon opinions of local counsel with respect to matters governed by laws other than the laws of the State of Virginia and the federal laws of the United States of America.

6.2 **Waiver or Termination by Purchaser.**

The conditions contained in section 6.1 hereof are inserted for the exclusive benefit of the Purchaser and may be waived in whole or in part by the Purchaser at any time. The Vendors

acknowledge that the waiver by the Purchaser of any condition or any part of any condition shall constitute a waiver only of such condition or such part of such condition, as the case may be, and shall not constitute a waiver of any covenant, agreement, representation or warranty made by the Vendors herein that corresponds or is related to such condition or such part of such condition, as the case may be. If any of the conditions contained in section 6.1 hereof are not fulfilled or complied with as herein provided, the Purchaser may, at or prior to the Closing Time, at its option, rescind this Agreement by notice in writing to the Vendors and in such event the Purchaser shall be released from all obligations hereunder and, unless the condition or conditions which have not been fulfilled are reasonably capable of being fulfilled or caused to be fulfilled by the Vendors, then the Vendors shall also be released from all obligations hereunder.

6.3 Conditions to the Obligations of the Vendors.

Notwithstanding anything herein contained, the obligations of the Vendors to complete the transactions provided for herein will be subject to the fulfillment of the following conditions at or prior to the Closing Time, and the Purchaser will use its best efforts to ensure that such conditions are fulfilled.

(1) Accuracy of Representations and Warranties and Performance of Covenants.

The representations and warranties of the Purchaser contained in this Agreement or in any documents delivered in order to carry out the transactions contemplated hereby will be true and accurate on the date hereof and at the Closing Time with the same force and effect as though such representations and warranties had been made as of the Closing Time (regardless of the date as of which the information in this Agreement or any such schedule or other document made pursuant hereto is given). In addition, the Purchaser shall have complied with all covenants and agreements herein agreed to be performed or caused to be performed by it at or prior to the Closing Time. In addition, the Purchaser shall have delivered to the Vendors a certificate in the form of Schedule CC attached hereto confirming that the facts with respect to each of the representations and warranties of the Purchaser are as set out herein at the Closing Time and that the Purchaser has performed each of the covenants required to be performed by it hereunder.

(2) No Restraining Proceedings. No order, decision or ruling of any court, tribunal or regulatory authority having jurisdiction shall have been made, and no action or proceeding shall be pending or threatened which, in the opinion of counsel to the Vendors, is likely to result in an order, decision or ruling, to disallow, enjoin or prohibit the purchase and sale of the Purchased Assets contemplated hereby.

(3) Consents. All consents required to be obtained in order to carry out the transactions contemplated hereby in compliance with all laws and agreements binding upon the parties hereto shall have been obtained, including the consents referred to in Schedule M and Schedule X attached hereto.

(4) Approval of James Shareholders. Approval of this transaction by 2/3rds of the shareholders of James will have been obtained within 25 days of the execution of this Agreement.

(5) **Opinion of Purchaser's Counsel.** At the Closing Time, the Vendors shall have received an opinion of the Purchaser's counsel in the form of the draft opinion attached hereto as Schedule DD which opinion may rely on certificates of senior officers of the Purchaser as to factual matters and may rely upon opinions of local counsel with respect to matters governed by laws other than the laws of the State of Virginia and the federal laws of the United States of America.

6.4 Waiver or Termination by Vendors.

The conditions contained in section 6.3 hereof are inserted for the exclusive benefit of the Vendors and may be waived in whole or in part by the Vendors at any time. The Purchaser acknowledges that the waiver by the Vendors of any condition or any part of any condition shall constitute a waiver only of such condition or such part of such condition, as the case may be, and shall not constitute a waiver of any covenant, agreement, representation or warranty made by the Purchaser herein that corresponds or is related to such condition or such part of such condition, as the case may be. If any of the conditions contained in section 6.3 hereof are not fulfilled or complied with as herein provided, the Vendors may, at or prior to the Closing Time at their option, rescind this Agreement by notice in writing to the Purchaser and in such event the Vendors shall each be released from all obligations hereunder and, unless the condition or conditions which have not been fulfilled are reasonably capable of being fulfilled or caused to be fulfilled by the Purchaser, then the Purchaser shall also be released from all obligations hereunder.

ARTICLE 7 - CLOSING

7.1 Closing Arrangements.

Subject to the terms and conditions hereof, the transactions contemplated herein shall be closed at the Closing Time at the offices of Fray Hudson & Clark at Culpeper, Virginia or at such other place or places as may be mutually agreed upon by the Vendors and the Purchaser.

7.2 Documents to be Delivered.

At or before the Closing Time, the Vendors shall execute, or cause to be executed, and shall deliver, or cause to be delivered, to the Purchaser all documents, instruments and things which are to be delivered by the Vendors pursuant to the provisions of this Agreement, and the Purchaser shall execute, or cause to be executed, and shall deliver, or cause to be delivered, to the Vendors all checks or bank drafts and all documents, instruments and things which the Purchaser is to deliver or to cause to be delivered pursuant to the provisions of this Agreement.

ARTICLE 8 - INDEMNIFICATION AND SET-OFF

8.1 Indemnity by the Vendors.

(1) **Indemnity For Loss** The Vendors hereby jointly and severally agree to indemnify and hold the Purchaser harmless from and against any and all claims, demands, actions, causes of action, damages, losses, deficiencies, costs, liabilities and expenses which may be made or brought against the Purchaser or which the Purchaser may suffer or incur as a result of, in respect of or arising out of:

- (a) any non-performance or non-fulfillment of any covenant or agreement on the part of the Vendors contained in this Agreement or in any document given in order to carry out the transactions contemplated hereby;
- (b) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Vendors contained in this Agreement or contained in any document or certificate given in order to carry out the transactions contemplated hereby, and
- (c) all costs and expenses incidental to or in respect of the foregoing including, but not limited to , all attorneys' fees that the Purchaser may incur.

(2) **Limitations Of Obligations** The obligations of indemnification by the Vendors pursuant to paragraph (1) of this section will be:

- (a) subject to the limitations referred to in section 4.1 hereof with respect to the survival of the representations and warranties by the Vendors;
- (b) subject to the limitations referred to in section 4.3 hereof, and
- (c) subject to the provisions of section 8.2 hereof.

8.2 Provisions Relating to Indemnity Claims.

The following provisions will apply to any claim by the Purchaser for indemnification by the Vendors pursuant to section 8.1 hereof (hereinafter, in this section, called an "Indemnity Claim").

(1) **Timing Of Notice** Promptly after becoming aware of any matter that may give rise to an Indemnity Claim, the Purchaser will provide to the Vendors written notice of the Indemnity Claim specifying (to the extent that information is available) the factual basis for the Indemnity Claim and the amount of the Indemnity Claim or, if an amount is not then determinable, an estimate of the amount of the Indemnity Claim, if an estimate is feasible in the circumstances.

(2) **Third Party Liability** If an Indemnity Claim relates to an alleged liability to any other person (hereinafter, in this section, called a "Third Party Liability"), including without limitation any governmental or regulatory body or any taxing authority, which is of a nature such that the Purchaser is required by applicable law to make a payment to a third party before the relevant procedure for challenging the existence or quantum of the alleged liability can be implemented or completed, then the Purchaser may, notwithstanding the provisions of

paragraphs (3) and (4) of this section, make such payment and forthwith demand reimbursement for such payment from the Vendors in accordance with this Agreement; provided that, if the alleged liability to the third party as finally determined upon completion of settlement negotiations or related legal proceedings is less than the amount which is paid by the Vendors in respect of the related Indemnity Claim, then the Purchaser shall forthwith following the final determination pay to the Vendors the amount by which the amount of the liability as finally determined is less than the amount which is so paid by the Vendors.

(3) **No Settlement** The Purchaser shall not negotiate, settle, compromise or pay (except in the case of payment of a judgment) any Third Party Liability as to which it proposes to assert an Indemnity Claim, except with the prior consent of the Vendors (which consent shall not be unreasonably withheld or delayed), unless there is a reasonable possibility that such Third Party Liability may materially and adversely affect the Condition of the Business or the Purchaser, in which case the Purchaser shall have the right, after notifying the Vendors, to negotiate, settle, compromise or pay such Third Party Liability without prejudice to their rights of indemnification hereunder.

(4) **Admission of Third Party Liability** With respect to any Third Party Liability, provided the Vendors first admit the Purchaser's right to indemnification for the amount of such Third Party Liability which may at any time be determined or settled, then in any legal, administrative or other proceedings in connection with the matters forming the basis of the Third Party Liability, the following procedures will apply:

- (a) except as contemplated by subparagraph (c) below, the Vendors will have the right to assume carriage of the compromise or settlement of the Third Party Liability and the conduct of any related legal, administrative or other proceedings, but the Purchaser shall have the right and shall be given the opportunity to participate in the defense of the Third Party Liability, to consult with the Vendors in the settlement of the Third Party Liability and the conduct of related legal, administrative and other proceedings (including consultation with counsel) and to disagree on reasonable grounds with the selection and retention of counsel, in which case counsel satisfactory to the Vendors and the Purchaser shall be retained by the Vendors;
- (b) the Vendors will co-operate with the Purchaser in relation to the Third Party Liability, will keep it fully advised with respect thereto, will provide it with copies of all relevant documentation as it becomes available, will provide it with access to all records and files relating to the defense of the Third Party Liability and will meet with representatives of the Purchaser at all reasonable times to discuss the Third Party Liability, and
- (c) notwithstanding subparagraphs (a) and (b), the Vendors will not settle the Third Party Liability or conduct any legal, administrative or other proceedings in any manner which could, in the reasonable opinion of the Purchaser, have a material adverse affect on the Condition of the Business or the Purchaser, except with the prior written consent of the Purchaser.

(5) **Non - Admission of Third Party Liability** If, with respect to any Third Party Liability, the Vendors do not admit the Purchaser's right to indemnification or decline to

assume carriage of the settlement or of any legal, administrative or other proceedings relating to the Third Party Liability, then the following provisions will apply:

- (a) the Purchaser, at its discretion, may assume carriage of the settlement or of any legal, administrative or other proceedings relating to the Third Party Liability and may defend or settle the Third Party Liability on such terms as the Purchaser, acting in good faith, considers advisable, and
- (b) any cost, loss, damage or expense incurred or suffered by the Purchaser in the settlement of such Third Party Liability or the conduct of any legal, administrative or other proceedings shall be added to the amount of the Indemnity Claim.

8.3 Right of Set-Off

The Purchaser shall have the right to satisfy any amount from time to time owing by it to the Vendors by way of set-off against any amount from time to time owing by the Vendors to the Purchaser, including any amount owing to the Purchaser pursuant to the Vendors' indemnification pursuant to section 8.1 hereof.

ARTICLE 9 - GENERAL PROVISIONS

9.1 Further Assurances

Each of the Vendors and the Purchaser hereby covenants and agrees that at any time and from time to time after the Closing Date it will, upon the request of the others, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances and assurances as may be required for the better carrying out and performance of all the terms of this Agreement.

9.2 Remedies Cumulative

The rights and remedies of the parties under this Agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by any party hereto of any right or remedy for default or breach of any term, covenant or condition of this Agreement does not waive, alter, affect or prejudice any other right or remedy to which such party may be lawfully entitled for the same default or breach.

9.3 Notices.

(1) Any notice, designation, communication, request, demand or other document, required or permitted to be given or sent or delivered hereunder to any party hereto shall be in writing and shall be sufficiently given or sent or delivered if it is:

- (a) delivered personally to an officer or director of such party;
- (b) sent to the party entitled to receive it by registered mail, postage prepaid, mailed in The United States of America, or

(c) sent by telecopy machine.

(2) Notices shall be sent to the following addresses or telecopy numbers:

(a) in the case of James;

James River Limestone Company, Inc.
c/o Mr. Harold M. Bates
406 Professional Arts Building
30 W. Franklin Road
Roanoke, Virginia 24011

Attention: Mr. Clifford Wells

(b) in the case of Austinville;

c/o Mr. Harold M. Bates
406 Professional Arts Building
30 W. Franklin Road
Roanoke, Virginia 24011

Attention: Mr. Clifford Wells

(c) in the case of the Purchaser,

Chemstone Corporation
Suite 306
251 North Service Road West
Oakville, Ontario
Canada L6M 3E7

Attention: Mr. Michael Niblett

or to such other address or telecopier number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.

(3) Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall

(a) if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery;

(b) if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received (but not actually received) on the fourth Business Day following the date of mailing, unless at any time between the date of mailing and the fourth Business Day thereafter there is a discontinuance or interruption of regular postal service, whether due to strike or lockout or work slowdown, affecting postal service at the point of dispatch or delivery or any intermediate point, in which case the same shall

be deemed to have been given, sent, delivered and received in the ordinary course of the mails, allowing for such discontinuance or interruption of regular postal service, and

- (c) if sent by telecopy machine, be deemed to have been given, sent, delivered, and received on the date the sender receives the telecopy answer back confirming receipt by the recipient.

9.4 Counterparts.

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

9.5 Expenses of Parties.

Each of the parties hereto shall bear all expenses incurred by it in connection with this Agreement including, without limitation, the charges of their respective counsel, accountants, financial advisors and finders.

9.6 Arbitration.

If any dispute amongst the parties hereto arises in connection with any of the matters arising out of this agreement, including the Escrow Agreement or relating to an Indemnity Claim or a Third Party Claim, and the parties cannot resolve that dispute by agreement, then:

- (a) either party may give the other party written notice of that dispute;
- (b) the matter shall be referred to a single arbitrator if the parties can agree upon one, and if not, to three arbitrators, one to be appointed by each party and the third to be appointed by those two arbitrators;
- (c) the arbitrator or arbitrators shall proceed to hear and determine the matter in dispute in accordance with the provisions of the statute or statutes, if any, dealing with arbitration for the time being in force which determination shall be final and binding upon the parties hereto;
- (d) if within a reasonable time a party who has been notified of a dispute fails to agree in the appointment of an arbitrator or to appoint an arbitrator, the arbitrator appointed by the party who has appointed an arbitrator shall act as a single arbitrator as if both parties had agreed on the appointment of such arbitrator; and

the arbitrator or arbitrators shall determine who shall bear the costs of any arbitration and the amount of costs each party shall bear. Such arbitration shall be conducted in accordance with the Rules of the American Arbitration Association and judgment on any award of the arbitrators may be entered in any Court of the State of Delaware or any other jurisdiction in which the party against whom the award is made resides.

9.7 Brokerage and Finder's Fees.

The Vendors jointly and severally agree to indemnify the Purchaser and hold it harmless in respect of any claim for brokerage or other commissions relative to this Agreement or the transactions contemplated hereby which is caused by actions of the Vendors or any of their Affiliates. The Purchaser will indemnify the Vendors and hold them harmless in respect of any claim for brokerage or other commissions relative to this Agreement or to the transactions contemplated hereby which is caused by actions of the Purchaser or any of its Affiliates.

9.8 Announcements.

No announcement with respect to this Agreement will be made by any party hereto without the prior approval of the other parties, which approval shall not be unreasonably withheld or delayed. The foregoing will not apply to any announcement by any party required in order to comply with laws pertaining to timely disclosure, provided that such party consults with the other parties before making any such announcement.

9.9 Assignment.

The rights of the Vendors hereunder shall not be assignable without the written consent of the Purchaser. The rights of the Purchaser hereunder shall not be assignable without the written consent of the Vendors.

9.10 Successors and Assigns.

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

9.11 Entire Agreement.

This Agreement and the schedules referred to herein constitute the entire agreement between the parties hereto and supersede all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. None of the parties hereto shall be bound or charged with any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings not specifically set forth in this Agreement or in the schedules, documents and instruments to be delivered on or before the Closing Date pursuant to this Agreement. The parties hereto further acknowledge and agree that, in entering into this Agreement and in delivering the schedules, documents and instruments to be delivered on or before the Closing Date, they have not in any way relied, and will not in any way rely, upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, express or implied, not specifically set forth in this Agreement or in such schedules, documents or instruments.

9.12 Waiver.

Any party hereto which is entitled to the benefits of this Agreement may, and has the right to, waive any term or condition hereof at any time on or prior to the Closing Time; provided, however, that such waiver shall be evidenced by written instrument duly executed on behalf of such party.

9.13 Amendments.

No modification or amendment to this Agreement may be made unless agreed to by the parties hereto in writing.

9.14 Joint and Several Obligations.

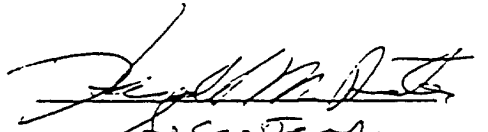
If there is more than one person, firm, trust or corporation comprising the Vendors, then all covenants and obligations of all these persons, trusts, corporations, or firms shall be several as well as joint and all covenants, representations, and warranties shall be deemed to be made by each of the Vendors separately wherever appropriate.

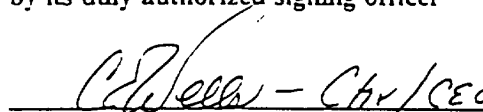
9.15 Counterparts.

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF this Agreement has been executed by the parties.

AUSTINVILLE LIMESTONE COMPANY, INC.
by its duly authorized signing officer


As to the signature of AUSTINVILLE
LIMESTONE COMPANY, INC.



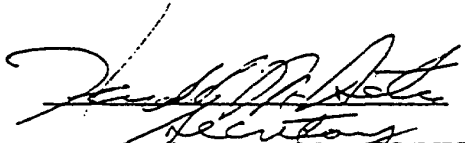
CHEMSTONE CORPORATION
by its duly authorized signing officer



As to the signature of CHEMSTONE CORPORATION



JAMES RIVER LIMESTONE COMPANY, INC.
by its duly authorized signing officer



As to the signature of JAMES RIVER LIMESTONE COMPANY, INC.



LIST OF SCHEDULES

Schedule A	Audited Financial Statements
Schedule B	Customer Contracts
Schedule C	Interim Financial Statements
Schedule D	Leased Premises
Schedule E	License Rights
Schedule F	Real Properties and Permitted Encumbrances
Schedule G	Machinery, Equipment and Furniture
Schedule H	Leased Equipment and Vehicles
Schedule I	Computer Equipment
Schedule J	Technology, Intellectual Property and Software
Schedule K	Escrow Agreement
Schedule L	Allocation of Purchase Price
Schedule M	Vendors' Contractual and Regulatory Approvals
Schedule N	Licenses, Registrations and Qualifications
Schedule O	Litigation
Schedule P	Environmental Matters
Schedule Q	Encumbrances
Schedule R	Warranties and Discounts
Schedule S	Material Contracts
Schedule T	Employees
Schedule U	Employee Benefit and Pension Plans
Schedule V	Insurance Policies
Schedule W	Governmental Assistance Programs
Schedule X	Purchaser's Contractual and Regulatory Approvals
Schedule Y	Non-Competition Agreement
Schedule Z	Vendors' Confirming Certificates
Schedule AA	Estoppel Certificate
Schedule BB	Opinion of Counsel to the Vendors
Schedule CC	Purchaser's Confirming Certificate

Schedule DD Opinion of Counsel to the Purchaser
Schedule EE Major Customers
Schedule FF Depreciation Expense Report
Schedule GG Austinville Assets

JAMES RIVER LIMESTONE COMPANY, INC.*Dolomitic and High Calcium Limestone*

2020 Main Street
 P. O. Box 677
 Buchanan, Virginia 24008
 Tel. (804) 284-1247
 FAX (804) 284-2985

SCHEDULE J - Intellectual Property**A) Trademarks**

Trademark	Product	Expires
JR Jiffycrete	Concrete Mixes	11/11/05
JR Carbodil	Dolomitic Extender	3/15/00
KleanLime	Pelletized Limestone	9/8/02
FertLime	Limestone and Fertilizer	Applied For
KlaySoft	Pelletized Gypsum	Applied for

B) Computer Software Licenses

Software	Vendor	Term
Titan (Intrix) (Complete Accounting Software)	Database Systems Inc.	Perpetual
Aggregate Management System (Scalehouse Software)	JWS Corporation	Perpetual
Tel-EDI (EDI Translation)	Piedmont Systems	Perpetual

Revised 5/30/96

PLANT LOCATIONS: VIRGINIA • WEST VIRGINIA

BILL OF SALE, ASSIGNMENT
AND ASSUMPTION AGREEMENT

This Bill of Sale, Assignment and Assumption Agreement is made as of the ~~25th~~ day of June, 1996 (the "Agreement"), by and between James River Limestone Company, Inc., a Virginia corporation ("James River") and Austinville Limestone Company, Inc., a Virginia corporation ("Austinville"), sometimes herein jointly referred to as the "Assignors" and Chemstone Corporation, a Delaware corporation (the "Assignee").

RECITALS

A. Pursuant to that certain Asset Purchase Agreement dated as of June 28, 1996, by and among James River, Austinville and Assignee (the "Asset Purchase Agreement"), Assignors have agreed to transfer, and Assignee has agreed to purchase, effective as of June 28, 1996 (the "Closing Date") all of the assets and rights and certain of the liabilities of James River used in and relating to the Business of James River and certain of the assets of Austinville, as provided in the Asset Purchase Agreement;

B. Assignors desire to execute this Agreement for the purpose of transferring to Assignee such assets and rights;

C. Pursuant to the Asset Purchase Agreement, Assignee desires to assume certain of the liabilities and obligations of James River relating to the Business;

D. Assignee desires to receive such assets and rights and to assume certain liabilities and obligations pursuant to the Asset Purchase Agreement;

E. Capitalized terms used herein but not otherwise defined shall have the meaning set forth in the Asset Purchase Agreement.

AGREEMENT

NOW THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignors and Assignee hereby agree as follows:

1. Assignment By James River. James River does hereby assign, transfer, convey, set over and deliver to Assignee, free and clear of all liens, claims and encumbrances except as specifically contemplated herein or in the Asset Purchase Agreement all of the right, title and interest of James River in, to and under all properties, assets, operations and all

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other rights and privileges, real, personal or mixed, tangible and intangible, used in the conduct of the Business including, without limitation, assets identified in Schedule G & FF of the Asset Purchase Agreement, including, without limitation, the following as they exist on the date hereof ("Assets"):

(a) Equipment, Machinery and Other Tangible Personal Property. All fixed equipment, machinery, tools, computers, supplies, furniture, leasehold improvements, automobiles, trucks, non-inventoried stores and supplies, and other miscellaneous tangible personal property (other than fixtures) exclusively related to the Business or located on the Real Property (as defined in the Asset Purchase Agreement) at the Closing Date (as defined in the Asset Purchase Agreement) (Collectively, the "Fixed Assets and Equipment") and listed on Schedule A hereto, which schedule is the same as Schedule G & FF of the Asset Purchase Agreement.

(b) Leases. All leases and subleases of personal property or Fixed Assets and Equipment used in the conduct of the Business.

(c) Inventory. All inventories owned by James River and related to the Business as of the Closing Date, and consisting of raw or crude limestone, finished, processed and/or ground limestone and all supplies and packaging materials employed in the conduct of the Business and relating to same ("Inventory").

(d) Contracts and Other Agreements Relating to the Business. All rights of James River as of the Closing Date under all contracts, licenses, leases, purchase and sale orders and other agreements exclusively relating to the operation of the Business as of the Closing Date.

(e) Licenses, Permits. All federal, state, local and other governmental licenses, permits, approvals and authorizations that relate to the operation of the Business as currently being operated.

(f) Brand and Trade Names; Know-How. All right, title and interest of James River and its affiliates in and to the brand or trade names of James River, including the name James River Limestone Company, Inc., together with all of James River's know-how and expertise, tangible and intangible, used in the conduct of the Business as of the Closing Date.

(g) Prepayments. Any security, utility or similar deposits or prepaid expenses relating to the Business (excluding any such prepayments under insurance policies of James River).

(h) Other Purchased Assets. All other assets of James River relating to the Business or located on the Real Property, including without limitation books, records, customer lists, pricing information, existing sales literature, plans, operating manuals, and all other files, and data relating to the Business or any of its assets.

2. Assignment By Austinville. Austinville does hereby assign, transfer, convey, set over and deliver to Assignee, free and clear all liens, claims and encumbrances except as specifically contemplated herein or in the Asset Purchase Agreement (1) all of the right, title and interest of Austinville in and to that certain equipment referred to in the Asset Purchase Agreement as "Austinville Assets" and described in Schedule B attached hereto and (2) all inventories owned by Austinville related to James River's consumer products line of business including, as of the Closing Date, raw materials, finished goods or products, supplies and packaging materials listed on Schedule C hereto.

3. Excluded Liabilities. Notwithstanding anything to the contrary contained in this Agreement, Assignee will not assume or be liable for any of the following liabilities or obligations of Assignors (consistent with the use of such term in the Asset Purchase Agreement, the "Excluded Liabilities"):

(a) Liabilities. All debts, liabilities, obligations, commitments and contracts related to the operation of the Business as of the Closing Date, including, without limitation all accounts payable and accrued liabilities identified on the Balance Sheet of Assignors, all purchase commitments, sales orders, utility contracts (unless assumed by Assignee), sales representative orders, licenses (unless acquired by Assignee), leases (other than any leases acquired and/or assumed by Assignee), consulting agreements and other contracts (excluding Material Contracts which are assumed by Assignee) relating to the operation of the Business, and all other undertakings and obligations relating thereto.

(b) Intercompany Payables. All liabilities and obligations of any kind existing as of the Closing Date of a nature characterized as an intercompany liability (including where such intercompany liability is used in the calculation of net intercompany payables or receivables, as the case may be) on the Balance Sheet or otherwise owned or owing by Assignors or any Affiliate thereof (the "Intercompany Payables"). As used herein, the term "Affiliate" of another person shall mean an individual, person, partnership, firm, corporation or other entity which, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, such other person.

(c) Employee Liabilities. All liabilities and obligations relating to Employees of Assignors currently or formerly employed in the conduct of the Business ("Employees") or consultants of the Business relating to the services performed prior to the Closing Date including, without limitation, compensation, wages, bonuses, severance, incentives, deferred compensation, life insurance, stock options, disability laws and premiums, worker's compensation, unemployment compensation, retiree medical or death benefits, employee welfare or retirement benefits, and obligations or agreements to rehire or give preferential treatment to laid off or terminated Employees, whether any of the foregoing are written, oral, funded, unfunded, matured or contingent.

4. Further Assurances. Assignors and Assignee shall each from time to time at the other's request and without further consideration execute and deliver to the other such additional instruments of transfer, conveyance, assignment and assumption as may be reasonably requested in order better (i) to assure, convey and confirm to the other all of the right, title and interest to be assigned, conveyed and transferred by Assignors hereunder and (ii) to assume, indemnify, perform and discharge all of the obligations and liabilities to be assumed by Assignee hereunder.

5. Power of Attorney. James River hereby constitutes and appoints Assignee to be James River's true and lawful attorney with full power of substitution, in James River's name and stead, on behalf and for the benefit of Assignee, to demand and receive any and all of the assets of the Business to be conveyed and assigned in accordance with the Asset Purchase Agreement, and to give receipts and releases for and in respect of the same, and any part thereof, and from time to time to institute and prosecute in James River's name, or otherwise, for the benefit of Assignee, any and all proceedings at law, in equity or otherwise, which Assignee may deem proper for the collection or reduction to possession of any of the assets of the Business, and to do all acts and things relating to the Business which Assignee shall deem desirable, Assignor hereby declaring that the foregoing powers are coupled with an interest and are and shall be irrevocable by James River or by its dissolution or in any manner or for any reason whatsoever.

6. Remedies. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or give to, any person, firm or corporation other than Assignee and Assignors and their successors and assigns, any remedy or claim under or by reason of this Agreement or any terms, covenants or conditions hereof, and all the terms, covenants and conditions, promises and agreements contained in this Agreement shall be for the sole and exclusive benefit of Assignee and its successors and assigns.

7. Transfer Costs. Assignee shall pay all transfer taxes and all costs of recording the bills of conveyance, assignment and assumption, certificates and other documents effecting or evidencing the transfer of title, rights and obligations transferred hereunder.

8. Assignors' Representations and Warranties. Except as disclosed in the Asset Purchase Agreement and the Schedules thereto, Assignors represent and warrant to Assignee:

(a) Assignors have good and valid title to the Assets;

(b) No person or entity other than Assignors have any interest in any of the Assets;

(c) Assignors have made no prior assignment of any interest in any of the Assets;

(d) Each of the Assets is free and clear of Encumbrances other than the Permitted Encumbrances; and

(e) Assignors have good right, full power and absolute authority to sell, assign and transfer the Assets to Assignee.

9. Indemnification. Assignors warrant and will defend the Assets against the lawful claims and demands against all persons whomsoever subject to the terms and conditions of the Asset Purchase Agreement.

10. Miscellaneous. The agreements, covenants and terms contained herein shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto and shall be construed and enforced according to the laws of the State of Virginia.

IN WITNESS WHEREOF, each of the undersigned has caused this instrument to be executed by its duly authorized officer all as of the day and year first above written.

Assignee:

CHEMSTONE CORPORATION

By: W.D. Paul, VP & GM
Title

Assignors:

JAMES RIVER LIMESTONE COMPANY, INC.

By: Clifford E. Wells
Clifford E. Wells, Chairman and Chief Executive Officer

AUSTINVILLE LIMESTONE COMPANY, INC.

By: Clifford E. Wells
Clifford E. Wells, Chairman and Chief Executive Officer