

10-29-2001



Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

101887921

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Site Works, Inc., an Alabama corporation

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

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: September 28, 2001

2. Name and address of receiving party(ies)

Name: Grover & Harrison, Inc.

Internal Address:

Street Address: 605 37th Street South

City: Birmingham State: AL Zip: 35222

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

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,352,217

Additional number(s) attached Yes No

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

Name: Diane Crawley

Internal Address:

Street Address: 2001 Park Place North

Suite 700

City: Birmingham State: AL Zip: 35203

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:

(Attach duplicate copy of this page if paying by deposit account)

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.

Lois Harrison-Shindelbower Name of Person Signing

Lois Harrison-Shindelbower Signature

9/28/01

Date

Total number of pages including cover sheet, attachments, and document: 11

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

TRADEMARK REEL: 2390 FRAME: 0318

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made this 28th day of September, 2001, by and between **GROVER & HARRISON, INC.**, an Alabama corporation with its principal office in Birmingham, Alabama ("Purchaser"), and **SITE WORKS, INC.**, an Alabama corporation with its principal office in Birmingham, Alabama ("Seller").

WITNESSETH:

WHEREAS, Seller is engaged in the business of rendering landscape architecture, environmental planning and related services at a location at 605 37th Street South, Birmingham, Alabama 35222 (the "Business"); and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, all the properties and assets (except those the ownership of which is specifically retained by Seller) related to, or used, maintained or held for use in, the operation and conduct of the Business, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual promises and covenants hereinafter contained, Purchaser and Seller hereby agree as follows:

ARTICLE I SALE AND PURCHASE OF ASSETS

1.1 Sale and Purchase of Assets. On the Closing Date (as provided for and defined in Article II) and subject to the terms and conditions of this Agreement, Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase from Seller for a purchase price of \$62,104.19 (the "Purchase Price"), substantially all of the properties and assets of Seller related to, or used, maintained or held for use in, the operation and conduct of the Business and existing on the Closing Date of every kind and description, personal or mixed, tangible or intangible, whether or not reflected on Seller's books, including without limitation, all of the properties and assets hereinafter described in paragraphs (a) through (g) of this Section 1.1 (the "Purchased Assets"); provided that Purchaser will not purchase, and Seller will retain ownership of, the Retained Assets (as provided for and defined in Section 1.2):

(a) Furniture, Fixtures and Equipment, Etc. All furniture, fixtures and equipment, together with supplies and replacement and repair parts therefor, owned by Seller on the Closing Date and utilized in the operation and conduct of the Business (the "Furniture, Fixtures and Equipment").

(b) Accounts Receivable. All accounts receivable owned by Seller on the Closing Date and arising from the operation and conduct of the Business (the "Accounts Receivable").

(c) Inventories. All inventories of raw materials, work in progress and finished products owned by Seller on the Closing Date and utilized in the operation and conduct of the Business (the "Inventory").

(d) Contracts. All right, title and interest of Seller on the Closing Date in, to and under all contracts, leases (including, without limitation, capitalized leases), purchase orders, permits and licenses (to the extent transferrable), certificates, and the rights and commitments of Seller utilized in, or arising from, the operation and conduct of the Business (the "Contracts").

(e) Intangibles. The name and service mark "Site Works", copyrights and applications therefor, goodwill, local exchange telephone numbers and fax lines, and other similar rights owned by Seller on the Closing Date and utilized in, or arising from, the operation and conduct of the Business (the "Intangible Assets").

(f) Books, Records, Etc. All books, records and operating data owned by Seller on the Closing Date and utilized in, or arising from, the operation and conduct of the Business wherever located, including copies of customer lists, supplier lists, credit information, and applicable designs, patterns and trade secrets (the "Books and Records").

(g) Miscellaneous. All other properties and assets of Seller (except for the Retained Assets) of every kind and nature utilized in, or arising from, the operation and conduct of the Business, whether or not carried on the books of Seller.

1.2 Retained Assets. Purchaser shall not purchase, and Seller shall retain ownership of, the following assets, whether or not used, maintained or held for use in the operation and conduct of the Business: (i) cash and cash equivalents, (ii) prepaid expenses, (iii) corporate records, including the corporate minute books, stock transfer books, corporate seals, financial records and income tax records, of Seller, (iv) insurance policies and the right to proceeds thereunder, and (v) employee benefit plans, arrangements or agreements (the "Retained Assets").

1.3 Assumption of Liabilities. At the closing, Purchaser shall assume and agree to perform in all respects as and when such performance is due (i) Seller's obligations under the Contracts which first arise or are to be performed after the Closing Date, (ii) trade accounts payable due and owing by Seller arising from the operation of the Business on or before the Closing Date (the "Trade Payables"), and (iii) liens for current year state and local ad valorem taxes imposed on the Purchased Assets which have accrued through the Closing Date (the "Accrued Taxes"). Except as provided in the preceding sentence, Purchaser shall not accept, assume or become or be liable for or subject to any liability, indebtedness, obligation or responsibility of Seller or of any other person or entity in any way related to the ownership or operation, or both, of the Purchased Assets or the Business prior to the Closing Date, whether said liability, indebtedness, obligation or responsibility arises before or after the closing. It is expressly agreed, without limiting the effect of the preceding sentence, that Purchaser shall not be obligated to assume or become liable for, without Purchaser's express written consent, any of Seller's liabilities, debts or commitments of any kind whatsoever,

known or unknown, fixed or contingent, including, without limitation, (x) liabilities for federal, state, local or foreign income or revenue or sales taxes on account of any transactions of Seller, including the consummation of this Agreement, (y) liabilities which relate to any product liability or warranty claim with respect to products sold by Seller, and (z) any action, suit, claim, proceeding or investigation pending or threatened against or affecting, directly or indirectly, Seller or the Business.

ARTICLE II **CLOSING**

The closing hereunder shall take place at the offices of Cabaniss, Johnston, Gardner, Dumas & O'Neal, Birmingham, Alabama, on September 28, 2001, or such other date or place as shall be mutually agreed to in writing by Purchaser and Seller. The date upon which such closing takes place is referred to in this Agreement as the "Closing Date."

2.1 Transfer of Assets. At the closing, Seller shall deliver to Purchaser such bills of sale, assignments, licenses, leases and other instruments of transfer, in form and substance satisfactory to Purchaser's counsel, as shall be necessary effectively to vest in Purchaser good and marketable title to, and possession of, the Purchased Assets, free and clear of any and all encumbrances, liens, charges or defects, except for the Accrued Taxes. Bills of sale and assignments in connection with the foregoing shall bear appropriate warranties of title. Seller also shall assign to Purchaser all rights, if any, which it may have in order to maintain privity with any manufacturer or supplier of a Purchased Asset and shall include assignments of claims and chooses in action against third parties relating to the Purchased Assets on account of express or implied warranties to Seller as the buyer thereof or otherwise. The transfer of the Purchased Assets by Seller to Purchaser shall be deemed to occur as of the close of business on the Closing Date and the Business shall be conducted for the benefit of Purchaser thereafter.

2.2 Payment of Purchase Price. At the closing, Purchaser shall effect payment of the Purchase Price to Seller by (i) assuming the Trade Payables, and (ii) crediting the note payable by Seller to Purchaser in an amount equal to any remaining Purchase Price.

2.3 Assumption of Liabilities. At the closing, Purchaser shall deliver to Seller such instruments, in form and substance satisfactory to Seller's counsel, as shall be necessary for Purchaser effectively to assume those obligations and liabilities of Seller which Purchaser is to assume pursuant to Section 1.3.

ARTICLE III **REPRESENTATIONS AND WARRANTIES WITH RESPECT TO** **SELLER AND THE BUSINESS**

Seller represents and warrants to Purchaser as follows:

3.1 Organization and Qualification of Seller. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Alabama, and is a corporation duly qualified to do business as a foreign corporation and in good standing in every jurisdiction in which the character and location of its properties or the nature of its business require qualification. Seller has all requisite corporate power and authority to own its properties and to carry on its business as the same is now being conducted by it and all requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

3.2 Due Authorization, Etc. The execution, delivery and performance of this Agreement by Seller has been duly authorized and approved by vote of the board of directors and shareholders of Seller. The execution of this Agreement, subject to consent, if required, of the other parties to the Contracts, and the consummation by Seller of the transactions contemplated hereby will not conflict with or result in any violation of any term of the Articles of Incorporation or Bylaws of Seller or of any mortgage, contract, agreement, indebtedness, lease, instrument, license, permit, judgment, decree or order or of any provision of any federal, state or local statute, law, ordinance, rule or regulation to which Seller is a party or by which Seller is bound. The execution, delivery and performance of this Agreement is valid and binding on Seller and enforceable against Seller in accordance with its terms. No consent, approval or other action of, or notice to, or filing with, any governmental entity is necessary or required with respect to the execution and delivery by Seller of this Agreement or the consummation by Seller of the transactions contemplated herein or therein.

3.3 Title to Assets. Seller has, or at the closing Seller shall have, good record and marketable title to, or valid and subsisting leasehold interests in, all of the Purchased Assets, free and clear of any and all encumbrances, liens, charges or defects of every kind, nature and description, except for liens for the Accrued Taxes.

3.4 Undisclosed Liabilities. Seller is not subject to any indebtedness, liability, claim, obligation or responsibility, fixed or contingent, liquidated or unliquidated, secured or unsecured, or otherwise, relating to the Business, except as (i) disclosed in the internally prepared balance sheet of Seller dated as of September 19, 2001, and attached hereto as Exhibit A or otherwise in this Agreement, or (ii) incurred in the ordinary course of business since September 19, 2001, and not material in amount.

3.5 Tax Returns and Payments. Seller has duly filed all federal, state, local and foreign tax returns and reports required to be filed by it, and has duly paid all taxes and other governmental charges due upon Seller and its properties, assets, income, franchises, licenses, sales and payroll. Seller has not executed, or agreed to execute, any waivers of any statute of limitations on the right of any taxing authority to assess additional taxes or to contest the amount of tax reported as due and paid with respect to any tax period. As of the date of this Agreement, no issues have been raised by (and are currently pending before) the Internal Revenue Service or any other taxing authority in connection with any of the aforesaid tax returns.

3.6 Litigation; Compliance with Law. There are no actions, suits, claims, proceedings or investigations (whether or not purportedly on behalf of or against Seller) pending or, to the best of Seller's knowledge after due inquiry, threatened against or affecting, directly or indirectly, Seller or the Business at law or in equity, or before or by any federal, state, municipal or other governmental court, department, commission, board, bureau, agency or instrumentality, domestic or foreign. Seller is not in default with respect to any order, writ, injunction or decree of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, and Seller has complied in all material respects with all laws, regulations and orders applicable to the Business. Seller has no knowledge of any pending or threatened litigation or government action which could adversely affect the Purchased Assets or the Business or could prohibit or interfere with the performance of this Agreement.

3.7 Broker's or Finder's Fees, Etc. No agent, broker, investment banker, person or firm acting on behalf of Seller, or under the authority of Seller, is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly from any of the parties hereto in connection with any of the transactions contemplated herein.

3.8 Material Information, Etc. No representation or warranty made herein by Seller, and no statement made by Seller contained in any document, schedule, certificate or other instrument furnished or to be furnished to Purchaser by Seller in connection with the transactions contemplated by this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state any material facts necessary in order to make any statement of fact contained herein or therein not misleading.

3.9 Warranties True at Closing. All of the foregoing representations and warranties will be true and correct on and as of the Closing Date as though speaking on and as of said date.

ARTICLE IV **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser represents and warrants to Seller as follows:

4.1 Organization and Qualification of Purchaser. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Alabama. Purchaser has all requisite corporate power and authority to purchase and operate the Purchased Assets, and Purchaser has all requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

4.2 Due Authorization, Etc. This Agreement, and the other agreements referenced herein to which Purchaser shall be a party, have been authorized by vote of the board of directors of Purchaser. The execution of this Agreement and the consummation by Purchaser of the transactions contemplated hereby will not conflict with or result in any violation of any term of the Articles of Incorporation or Bylaws of Purchaser or of any mortgage, contract, agreement, indebtedness, lease,

instrument, license, permit, judgment, decree or order or of any provision of any federal, state or local statute, law, ordinance, rule or regulation to which Purchaser is a party or by which Purchaser is bound. The execution, delivery and performance of this Agreement is valid and binding on Purchaser and enforceable against Purchaser in accordance with its terms. No consent, approval or other action of, or notice to, or filing with, any governmental entity is necessary or required with respect to the execution and delivery by Purchaser of this Agreement or the consummation of the transactions contemplated herein or therein.

4.3 Litigation. There are currently no pending or, to the best of Purchaser's knowledge after due inquiry, threatened lawsuits or administrative proceedings against Purchaser, or to which any of its assets are subject, which could reasonably be expected to have an adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement.

4.4 Broker's or Finder's Fees, Etc. No agent, broker, investment banker, person or firm acting on behalf of Purchaser, or under the authority of Purchaser, is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly from any of the parties hereto in connection with any of the transactions contemplated herein.

4.5 Material Information, Etc. No representation or warranty made herein by Purchaser, and no statement made by Purchaser contained in any document, schedule, certificate or other instrument furnished or to be furnished to Seller by Purchaser in connection with the transactions contemplated by this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state any material facts necessary in order to make any statement of fact contained herein or therein not misleading.

4.6 Warranties True at Closing. All of the foregoing representations and warranties will be true and correct on and as of the Closing Date as though speaking on and as of said date.

ARTICLE V

FURTHER COVENANTS OF PURCHASER AND SELLER

5.1 Right of Access and Furnishing Information. Seller shall give Purchaser or its duly appointed representatives (i) full access during normal business hours to the Purchased Assets and all Seller's books and records relating to the Business, including, but not limited to, customer lists, credit information, Inventory sales and purchasing information and documentation relating to computer software, and Seller shall furnish such other information as Purchaser may from time to time reasonably request; and (ii) authority to perform such reasonable inspections or tests on the Furniture, Fixtures and Equipment and the Inventory as Purchaser shall deem appropriate to ensure that the Facility is in compliance with all federal, state and local laws and regulations applicable thereto and in good condition and repair (ordinary wear and tear excepted); provided that the performance of such inspections and tests does not unreasonably interfere with the operation of the

Business. Seller acknowledges that any inspections or tests performed by Purchaser shall neither diminish nor negate the warranties and representations made by Seller to Purchaser in Article III.

5.2 Consents and Best Efforts. As soon as practicable, Purchaser and Seller, as applicable, will commence all reasonable action required hereunder to obtain all applicable permits, licenses, consents, approvals and agreements of, and to give all notices and make all filings with, any third parties as may be necessary to authorize, approve or permit the sale, conveyance, assignment or transfer of the Purchased Assets. Purchaser and Seller, as applicable, shall apply for or obtain, at Purchaser's expense, (i) any and all consents to transfer permits or licenses or (ii) any and all new permits or licenses required for the continued operation of the Business.

ARTICLE VI

SURVIVAL OF REPRESENTATIONS

All representations, warranties and agreements made by Purchaser or Seller in this Agreement or pursuant hereto shall survive the closing hereunder for a period of two (2) years, and all statements contained in any certificate, list or other instrument delivered by Purchaser or Seller pursuant to this Agreement or in connection with the transactions contemplated herein shall be deemed representations and warranties by such party.

ARTICLE VII

PURCHASER TO ACT FOR SELLER

7.1 No Assignment Without Consent. This Agreement shall not constitute an agreement to assign any claim, contract, lease or franchise if any attempted assignment of the same without the consent of the other party thereto would constitute a breach thereof or in any way affect the rights of Seller thereunder. If such consent is not obtained, or, if the attempted assignment would be ineffective or would adversely affect Seller's rights thereunder so that Purchaser would not in fact receive all such rights, then, subject to the terms and conditions of this Agreement, after the closing Purchaser may act as agent for Seller in order to obtain for Purchaser the benefits thereunder.

7.2 Attorney for Seller. Seller agrees that, effective on the Closing Date, it hereby constitutes and appoints Purchaser, its successors and assigns, the true and lawful attorney of Seller in the name of Purchaser, or in the name of Seller, but for the benefit of Purchaser, (i) to institute and prosecute all proceedings which Purchaser may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to the Purchased Assets or the Business as provided for in this Agreement, (ii) to defend or compromise any and all actions, suits or proceedings in respect of any of the Purchased Assets or the Business, and to do all such acts and things in relation thereto as Purchaser shall deem advisable, and (iii) to take all action which Purchaser, its successors or assigns, may reasonably deem proper in order to provide for Purchaser, its successors or assigns, the benefits under any of the Purchased Assets where any required consent of another party to the sale or

assignment thereof to Purchaser pursuant to this Agreement shall not have been obtained. If Purchaser, in the name of Seller, desires to institute and prosecute any action, suit or proceeding, or take any other action pursuant hereto, Purchaser shall give Seller ten (10) days' notice prior to taking any such action in the name of Seller. Seller acknowledges that the foregoing powers are coupled with an interest and shall be irrevocable by Seller. Purchaser shall be entitled to retain for its own account any amounts collected pursuant to the foregoing powers, including any amounts payable as interest in respect thereof.

ARTICLE VIII
FURTHER ACTION AFTER CLOSING DATE

From and after the Closing Date, Purchaser and Seller shall cooperate in good faith with one another and will take all appropriate actions and execute, acknowledge and deliver all such further acts, bills of sale, assignments, transfers, conveyances and assurances as may be required to convey and transfer to and vest in Purchaser and protect its right, title and interest in all of the Purchased Assets, and as may be appropriate otherwise to carry out the transactions contemplated by this Agreement.

ARTICLE IX
CONFIDENTIALITY

If, for any reason, the transactions contemplated by this Agreement are not consummated, any confidential information obtained by either party hereto from the other party shall not be disclosed or used by such party, other than as required by applicable laws or regulations or in connection with any litigation arising under this Agreement, and each party shall return to the other all documents and written information obtained from such other party as such other party or its counsel may request in writing.

ARTICLE X
MISCELLANEOUS

10.1 Termination. This Agreement may be terminated, and the purchase and sale contemplated herein abandoned without liability, at any time prior to the closing, only on the following conditions or occurrences, or as otherwise specifically provided in this Agreement:

- (a) by the mutual written agreement of Purchaser and Seller; and
- (b) by Purchaser, if any matters come to its attention that could materially and adversely affect the Purchased Assets or the Business.

Upon termination of this Agreement, each party shall be relieved of any further obligation to the other parties; provided that no such termination shall operate to release any party from any liability to any other party incurred before the date of such termination or from any liability resulting from any willful misrepresentation made in connection with this Agreement or willful breach thereof.

10.2 Parties in Interest, Etc. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of Purchaser and Seller. Neither Purchaser nor Seller may assign their rights or obligations under this Agreement without the prior written consent of the other party.

10.3 Amendments; Waiver. Neither this Agreement nor any term hereof may be changed, modified, amended or discharged, except by an agreement in writing signed by Purchaser and Seller. Any of the terms or conditions of this Agreement may be waived at any time and from time to time, in writing, by whichever party hereto is entitled to the benefit of such terms or conditions.

10.4 Notices, Etc. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed, by certified or registered mail, postage prepaid, as follows:

(a) If to Purchaser, addressed to:

Grover & Harrison, Inc.
605 37th Street South
Birmingham, Alabama 35222
Attention: President

(b) If to Seller, addressed to:

Site Works, Inc.
605 37th Street South
Birmingham, Alabama 35222
Attention: President

or at such other address as any such party may have furnished to the other party in writing.

10.5 Choice of Law. This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Alabama, without regard to principles of conflicts of laws.

10.6 Miscellaneous. The parties agree that time is of the essence. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and shall supersede all prior understandings and agreements among the parties with respect to such subject

matter and all prior agreements are hereby superseded. The captions in this Agreement are for purposes of reference only and shall not limit or otherwise affect any of the terms hereof. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.7 Severability. Should any court of competent jurisdiction decide, hold, adjudge or decree that any provision, paragraph, clause or term of this Agreement is void or unenforceable, in whole or as applied in a particular situation, such determination shall not affect any other provision of this Agreement, and all other provisions of this Agreement shall remain in full force and effect in such situation, and all provisions of this Agreement shall remain in full force and effect in any and all other situations.

10.8 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and nothing herein, express or implied, shall give or be construed to give any person, other than the parties hereto, any legal or equitable rights hereunder.

IN WITNESS WHEREOF, Purchaser and Seller have caused this Agreement to be executed and delivered by their duly authorized officers, as of the day and year first above written.

GROVER & HARRISON, INC.,
an Alabama corporation

By Lois Hamon-Sundelbauer
Its President

SITE WORKS, INC.,
an Alabama corporation

By Lois Hamon-Sundelbauer
Its President