

01-09-2003



Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005)

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

Tab settings

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

1. Name of conveying party(ies):

Beaulieu Group, LLC

12-11-02

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 07/19/2002

2. Name and address of receiving party(ies)

Name: L.D. Brinkman Corporation

Internal Address:

Street Address: 1655 Waters Ridge Drive

City: Lewisville State: TX Zip: 75067

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

OFFICE OF PUBLIC RECORDS 2002 OCT 11 AM 11:17 FINANCE SECTION

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

A. Trademark Application No.(s) 76/266,890

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: Peter J. Riebling, Esquire

Internal Address: Third Floor, L St. Entrance

Street Address: Arter & Hadden, LLP

1801 K Street, N.W.

City: Washington State: DC Zip: 20006-1304

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:

01-2520

DO NOT USE THIS SPACE

9. Signature.

Peter J. Riebling, Esquire

Name of Person Signing

Peter J. Riebling

Signature

12-11-02

Date

Total number of pages including cover sheet, attachments, and document: 29

01/08/2003 LNUELLER 00000196 012520 76266890

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

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TRADEMARK REEL: 2644 FRAME: 0968

1. Name of conveying party (ies):

L.D. Brinkman Trucking, LLC

**ASSET PURCHASE AGREEMENT**

**By and Between**

**BEAULIEU GROUP, LLC,**

**L.D. BRINKMAN TRUCKING, LLC**

**and**

**L.D. BRINKMAN CORPORATION**

AO 739886.12

12/10/02 TUE 18:22 ITX/RX NO 63741

**TRADEMARK**  
**REEL: 2644 FRAME: 0970**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made this 19<sup>th</sup> day of JULY, 2002, by and between BEAULIEU GROUP, LLC, a Georgia limited liability company ("BGLLC"), L.D. BRINKMAN TRUCKING, LLC, a Delaware limited liability company ("BTLCC") (BGLLC and BTLCC are hereinafter sometimes collectively referred to as "Sellers", and each individually, as a "Seller") and L.D. BRINKMAN CORPORATION, a Texas corporation ("Purchaser").

**BACKGROUND**

Sellers are the owners of, and desire to sell to Purchaser, and Purchaser desires to purchase from Sellers, the Assets, upon the terms and subject to the conditions set forth herein. Certain capitalized terms used in this Agreement shall have the meanings assigned to them in Article 10 hereof.

IN CONSIDERATION OF the foregoing, the mutual covenants, agreements, representations and warranties contained in this Agreement, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged by each party hereto, the parties hereto agree as follows:

**ARTICLE 1  
PURCHASE AND SALE OF ASSETS**

1.1 Purchase of the Assets. Subject to the terms and conditions of this Agreement, at the Closing, Sellers shall sell convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase and accept from Sellers, all of the Assets, free and clear of any and all Liens, other than the Permitted Liens.

**REDACTED**

1.2 Purchase Price. The total Purchase Price for the Assets shall be \_\_\_\_\_ and shall be paid as set forth in Section 1.3 hereof. As additional consideration for the Assets, Purchaser shall assume the Assumed Liabilities.

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1.3 Payment of the Purchase Price. On the Closing Date, Purchaser shall pay the Purchase Price to Sellers as follows: (i) by a wire transfer to BGLLC or its designee of the Purchase Price in immediately available funds, provided that, to the extent necessary to obtain the release of any Lien (other than Permitted Liens) on the Assets, a portion of such payment may be paid to the holder of such Lien to secure its release, and (ii) by the assumption of the Assumed Liabilities.

**REDACTED**

**REDACTED**

1.6 Closing. The Closing shall take place at the offices of Sutherland, Asbill & Brennan LLP, 999 Peachtree Street, N.E., Suite 2300, Atlanta, Georgia 30309 on the Closing Date. Title to the Assets shall pass from Sellers to Purchaser upon the occurrence of the Closing, unless the parties shall otherwise have agreed in writing.

1.7 Deliveries. All deliveries, payments and other transactions and documents relating to the Closing (i) shall be interdependent and none shall be deemed effective unless and until all are effective (except to the extent that the party entitled to the benefit thereof has waived satisfaction or performance thereof as a condition precedent to Closing), and (ii) shall be deemed to be consummated simultaneously.

**ARTICLE 2  
ASSUMPTION OF LIABILITIES**

**REDACTED**

**ARTICLE 3  
REPRESENTATIONS AND WARRANTIES  
OF SELLERS**

Sellers hereby represent and warrant to Purchaser as follows:

3.1 Organization, Standing and Foreign Qualification. Each Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of its state of organization, with the power and authority to carry on its business and to own, lease and operate its properties. Each Seller is duly qualified or licensed to transact business as a foreign limited liability company in each jurisdiction in which the failure to be so qualified or licensed could reasonably be expected to have a material adverse effect on the consummation of the transactions contemplated hereby

3.2 Authority and Binding Effect. Each Seller has the power and authority necessary to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement have been duly approved by all necessary action of the managers and members of each Seller. This Agreement has been duly executed and delivered by properly authorized officers of each Seller and constitutes the legal valid and binding obligation of each Seller, enforceable against each Seller in accordance with its terms.

**REDACTED**

**REDACTED**

3.7 Intellectual Property. Except as disclosed on Schedule 3.7, Sellers own or have the right to use the Intellectual Property, free and clear of all Liens (other than Permitted Liens).

**REDACTED**



**REDACTED**

**ARTICLE 4  
REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to Sellers that:

4.1 Organization, Standing and Foreign Qualification. Purchaser is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas with the corporate power and authority to carry on its business and to own, lease and operate its assets. Purchaser is duly qualified or licensed to transact business as a foreign corporation in each jurisdiction in which the failure to be so qualified or licensed could reasonably be expected to have a material adverse effect on Purchaser.

4.2 Authority and Binding Effect. Purchaser has the power and authority necessary to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement have been duly approved by all necessary action of the board of directors of Purchaser. This Agreement has been duly executed and delivered by properly authorized officers of Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

**REDACTED**

**REDACTED**

**ARTICLE 5  
COVENANTS AND ADDITIONAL AGREEMENTS OF  
SELLERS AND PURCHASER**

**REDACTED**

**REDACTED**

5.6 Delivery of Books and Records. At the Closing, Sellers shall deliver to Purchaser (i) with respect to any Assigned Contract, all original versions of such Contracts or copies of such contracts if originals are unavailable; (ii) with respect to all other Assets and Assumed Liabilities, copies of all documents, books and records pertaining to the Assets that are legally significant or useful to the operation or use of the Assets and all other documents, books and records pertaining to the Assets;

**REDACTED**

Without limiting the generality of the foregoing, Sellers shall deliver to Purchaser at the Closing all documents and records relating to the Intellectual Property, including without limitation, the original Certificates of Registration for all Letters Patent, trademarks and service marks and all

such documents relating thereto along with any other documents necessary to transfer title thereto and to record such transfer before the respective patent and trademark offices or similar Governmental Authorities.

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

**ARTICLE 6**  
**[Intentionally Omitted.]**

**ARTICLE 7**  
**[Intentionally Omitted.]**

**ARTICLE 8**  
**SURVIVAL OF REPRESENTATIONS AND WARRANTIES**  
**AND INDEMNIFICATION**

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**ARTICLE 9  
{Intentionally Omitted}**

**ARTICLE 10  
DEFINITIONS**

The following terms (in their singular and plural forms as appropriate) as used in this Agreement shall have the meanings set forth below unless the context requires otherwise:

"Accounts Receivable" shall mean those accounts receivable of the Division listed on Schedule 3.9, and shall include all instruments, contract rights, chattel paper, documents, proceeds and general intangibles related thereto;

**REDACTED**

"Affiliate" shall mean, with respect to any Person, (i) any other Person who directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person, (ii) who beneficially owns or holds five percent or more of any class of voting stock of such first Person, or (iii) any other Person who is a member of the board of directors of such first Person or any other Person who is a Related Person of such first Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting stock, by contract or otherwise.

**"Agreement"** means the Asset Purchase Agreement, including the Exhibits and Schedules delivered pursuant hereto or referred to herein.

**"Assets"** means all of Seller's right, title and interest in, to and on the assets and properties listed below:

- Liability.
- (i) all sample displays, brochures, promotional materials and similar items for the hard surface products distributed by the Division;
  - (ii) all business records pertaining to the business of the Divisions
  - (iii) all warranties pertaining to the Assets or relating to any Assumed
  - (iv) the Excess Accounts Receivable;
  - (v) the Assigned Contracts;
  - (vi) the Intellectual Property;
  - (vii) the Inventory;
  - (viii) the Manufacturing Equipment;
  - (ix) the Proprietary Software;
  - (x) the Telephone Numbers and Domain Names;
  - (xi) the Transferred Plants;
  - (xii) the Warehouse Equipment;
  - (xiii) the goodwill of the Division, including goodwill associated with all of the foregoing assets; and
  - (xiv) all rights, claims and causes of action relating to or arising from the foregoing,

**REDACTED**

**REDACTED**

“Closing” means the consummation of the transactions contemplated by this Agreement and shall be deemed to have occurred upon receipt of the Purchase Price by Seller.

“Closing Date” means the date of the Closing.

**REDACTED**

**"Improvements"** means all buildings, structures, fixtures and other improvements included in the Transferred Plants.

**"Intellectual Property"** means the intellectual property of Seller described on Schedule 10(c) attached hereto.

**"Inventory"** means, collectively, the Hard Surface Inventory and that amount of Carpet Inventory that is to be transferred to Purchaser pursuant to the terms hereof.

**REDACTED**

**REDACTED**

**REDACTED**

**ARTICLE 11  
MISCELLANEOUS**

11.1 Notices.

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(a) All notices, requests, demands and other communications hereunder shall be (i) delivered by hand, (ii) mailed by registered or certified mail, return receipt requested, first class postage prepaid and properly addressed, (iii) sent by overnight courier service, or (iv) sent by facsimile and, in each case, addressed as follows:

If to Sellers: Beaulieu Group, LLC  
1502 Coronet Drive  
Dalton, Georgia 30720  
Attention: Carl M. Bouckaert  
Fax: 706-226-7069

with copies to: Charles D. Ganz, Esq.  
Sutherland, Asbill & Brennan LLP  
999 Peachtree Street, N.E.  
Atlanta, Georgia 30309  
Fax: 404-853-8806

If to Purchaser: L.D. Brinkman Corporation  
1655 Water's Ridge Drive  
Lewisville, Texas 75057  
Attention: Eddie Lesok  
Fax: 972-353-3677

with copies to: Mark S. Solomon, Esq.  
Arter & Hadden LLP  
1717 Main Street, Ste. 4100  
Dallas, Texas 75201  
Fax: 214-741-7139

(b) All notices, requests, instructions or documents given to any party in accordance with this Section 11.1 shall be deemed to have been given (i) on the date of receipt, if delivered by hand, if sent by overnight courier service, or if sent by facsimile, or (ii) on the date that is three Business Days after mailing, if mailed in the manner described and addressed as set forth above.

(c) Any party hereto may change its address specified for notices herein by designating to the other party a new address by notice given in accordance with this Section 11.1.

11.2 Entire Agreement. This Agreement, the Schedules and the Exhibits constitute the entire agreement between the parties relating to the subject matter hereof and thereof and supersede all prior oral and written, and all contemporaneous oral negotiations, discussions, writings and agreements relating to the subject matter of this Agreement.

### 11.3 Modifications, Amendments and Waivers.

(a) At any time prior to or subsequent to the Closing, the parties hereto may

by mutual written agreement and in no other manner, (i) extend the time for the performance of any of the obligations or other acts of the parties hereto, (ii) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant hereto, (iii) waive compliance with any of the covenants or agreements contained in this Agreement, or (iv) make any other modifications of this Agreement approved by each of the parties hereto.

(b) The failure or delay of any party at any time or times to require performance of any provision of this Agreement shall in no manner affect its right to enforce that provision. No single or partial waiver by any party of any condition of this Agreement, or the breach of any term, agreement or covenant or the inaccuracy of any representation or warranty of this Agreement, whether by conduct or otherwise, in any one or more instances shall be construed or deemed to be a further or continuing waiver of any such condition, breach or inaccuracy or a waiver of any other condition, breach or inaccuracy.

11.4 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties hereto, and their respective successors and assigns, but no assignment shall relieve any party of the obligations hereunder. This Agreement cannot be assigned by any party without the prior written consent of the other party hereto.

11.5 Table of Contents; Captions; References. The table of contents and the captions and other headings contained in this Agreement as to the contents of particular articles, sections, paragraphs or other subdivisions contained herein are inserted for convenience of reference only and are in no way to be construed as part of this Agreement or as limitations on the scope of the particular articles, sections, paragraphs or other subdivisions to which they refer and shall not affect the interpretation or meaning of this Agreement. All references in this Agreement to "Section" or "Article" shall be deemed to be references to a Section or Article of this Agreement.

11.6 Governing Law. This Agreement shall be construed under and enforced in accordance with the substantive Laws of the State of New York, without respect to the Laws related to choice or conflicts of Laws.

11.7 Pronouns. All pronouns used herein shall be deemed to refer to the masculine, feminine or neuter gender as the context requires.

11.8 Severability. Should any provision of this Agreement be determined to be invalid, illegal or unenforceable, such provision shall be deemed to be severed herefrom and shall not adversely affect the validity, legality and enforceability of the remaining provisions hereof. To the extent such determination is reasonably likely to give rise to a Material adverse effect, the parties shall endeavor in good faith to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as practicable to that of the invalid, illegal or unenforceable provisions.

11.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of such counterparts shall together constitute one and the same instrument.

11.10 Interpretations. Neither this Agreement nor any uncertainty or ambiguity herein shall be

construed or resolved against Purchaser or Seller, whether under any rule of constitution or otherwise. No party to this Agreement shall be considered the draftsman. On the contrary, this Agreement has been reviewed, negotiated and accepted by all parties and their attorneys and shall be construed and interpreted according to the ordinary meaning of the words used so as fairly to accomplish the purposes and intentions of all parties hereto.

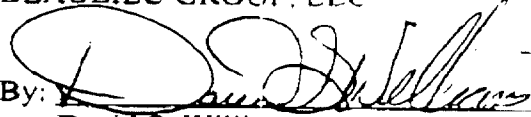
11.11 No Intention to Benefit Third Parties. Except as set forth in Article 8, this Agreement is not intended to, and shall not, (i) benefit any Person other than the parties who are signatories hereto or (ii) create any third party beneficiary right in any Person.

**[Signatures appear on the following page.]**

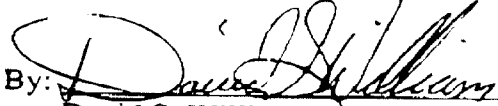
**IN WITNESS WHEREOF**, the parties have caused their duly authorized representatives to execute this Agreement as of the date first above written.

**SELLERS:**

BEAULIEU GROUP, LLC

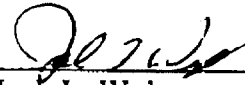
By:   
David S. Williams  
Vice President - Finance

L.D. BRINKMAN TRUCKING, LLC

By:   
David S. Williams  
Vice President

**PURCHASER:**

L.D. BRINKMAN CORPORATION

By:   
Jack L. Wulz  
Vice President and Chief Financial Officer

**Asset Purchase Agreement – Signature Page**

**Schedule 10(c)****Intellectual Property**

All of Seller's rights to, and interest in, the following trademarks, trade names, names and domain names, including without limitation (a) all rights to such names acquired by Beaulieu of America, Inc. pursuant to that certain Agreement and Plan of Merger, dated as of December 9, 1999, among Beaulieu of America, Inc., Pro Group Acquisition Company and Pro Group, Holdings, Inc. and (b) any and all common law rights that Sellers have in such trademarks, trade names, names or domain names:

LDBrinkman

LDBrinkman.com

Brinkfloor

Brinkcom

Heritage Collection

Renaissance Collection

Classic Creations

Columbus

Columbus Mills

Artisan Collection

Natural Forest

Renaissance Collection – Tile from around the World

BRINK-FLOOR

BRINK-CREST

ACCESSLDBRINKMAN.COM

ACCESSLDBRINKMAN.NET

ACCESSLDBRINKMAN.ORG

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12/10/02 TUE 18:22 [TX/RX NO 6374]

**RECORDED: 12/11/2002****TRADEMARK  
REEL: 2644 FRAME: 0996**